

Fair Workplaces, Better Jobs Act

A brief summary by the LCRSS Government Contact Committee

On November 27, 2017, the *Fair Workplaces, Better Jobs Act* became law in Ontario resulting in a number of changes to the *Employment Standards Act* (ESA). These changes provided the Government Contact Committee (GCC) with an opportunity to review the law, particularly with regard to pregnancy and parental leave as it applies to employees of our League schools in Ontario.

Pregnancy and parental provisions for applicable employees in Ontario are governed by two pieces of legislation, namely the *Employment Standards Act* (ESA) and the *Employment Insurance Act* (EIA). The ESA is a provincial Act that governs the right of an employee to take unpaid time off of work for pregnancy or parental leave whereas the EIA is a federal Act which, with the exception of Quebec, administers financial benefits associated with pregnancy or parental leave. Basically the right to take parental related leave from work comes from the province, whereas the payment while on leave comes from the federal government. The two acts, and their administration, are related, but separate and distinct.

The EIA provides maternity benefits to mothers for a maximum of 15 weeks at 55% of the employee's average weekly insurable earnings up to a maximum amount. The period of benefits can start as early as 12 weeks prior to the due date, and end as late as 17 weeks after the date of birth. This is not considered an "entitlement", but rather a benefit paid to those who have contributed.

For parental benefits, there are two options available to new parents. In the first option (standard), the parent can be paid for up to 35 weeks at 55% of his/her average weekly insurable earnings, providing that the benefit is claimed within 52 weeks of the week in which the child was born or came into the parent's custody. Alternatively, new parents can elect to have extended benefits, which would be paid up to a maximum of 61 weeks, at 33% of his/her average weekly insurable earnings. It is assumed in this report that anyone taking leave up to 35 weeks would be paid at 55%, while anyone taking between 36 and 61 weeks would be paid at 33%. It is noteworthy that parents can share both of these benefits options.

The *Fair Workplaces, Better Jobs Act* brings Ontario's leave entitlement provisions "up to speed" with the federal benefits provisions. As such, expectant mothers now have the right, with some exceptions, to take pregnancy leave of up to 17 weeks of unpaid time off work. The employee is not required to take pregnancy leave at all, nor is she required to use all 17 weeks, however once she has started it she must take it all at once.

In addition, new parents (mother or father) now have the right to take parental leave of up to 61 or 63 weeks of unpaid time off work. A mother who has used pregnancy leave has the right to take up to 61 weeks, whereas any other new parent is entitled to up to 63 weeks. Once again, the employee is not required to take parental leave, nor are they required to take the entire period, however once the employee has started the employee leave, he or she must take it all at one time. For clarity, the employee can elect to take anywhere from 0 – 63 weeks of unpaid time off work, however once started there is only one opportunity to use it. It is noteworthy that if the employee is seeking to use the leave

provision, it must be started within 78 weeks of either the date the baby is born or when the child came into the parent's custody.

It is recommended that anyone seeking more information with regard to a specific situation closely review the information provided online below or contact the GCC for possible guidance:

<https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental.html> - for Federal Parental Benefits

<https://www.ontario.ca/document/your-guide-employment-standards-act/pregnancy-and-parental-leave> - for Ontario Parental Leave Entitlements.

As a final note with regards to pregnancy/parental provisions: while the employee is entitled to take unpaid leave, individual employers *may*, but are not required by law to pay wages or "top up" the employee's Employment Insurance benefits while the employee is on leave. This is a matter of discussion or negotiation between the employee and employer.

The *Fair Workplaces, Better Jobs Act* also introduced a number of other changes that could affect employees within our school system. Of note are the following:

1. Raising Ontario's general minimum wage to \$14 per hour on January 1, 2018, and then to \$15 on January 1, 2019, followed by annual increases at the rate of inflation. If salaried, an employee's salary can be divided by the number of hours worked to determine compliance.
2. Expanding personal emergency leave to 10 days with an across-the-board minimum of at least two paid days per year for all workers. This would apply to sick leave or an emergency with regard to a family.
3. Bringing Ontario's vacation time in line with the national average by ensuring at least three weeks paid vacation after five years with a company. If vacation pay is paid in lieu, on January 1, 2018 (per S35.2) the vacation pay will rise for employees of greater than 5 years to 6%, as opposed to the current 4%.
4. s15(1) of the ESA dictates that the employer shall record the dates and times that each employee worked, and the number of hours the employee works in each day and each week unless the employee is salaried. The employer shall also record the amount of vacation time the employee has earned and used.

Going forward, it may be a worthwhile endeavour to develop a standardized employment agreement for schools to use that outlines standard leave, vacation, and work day / week provisions, in order to ensure consistent compliance with legislation across Ontario league schools.

The GCC is available to provide further case specific assistance if desired.