

PART IV Maternity Leave For Female Employees

Conditions for applications, etc.

- 23 (1) Every employee who:
- (a) is currently employed and has been in the employment of her employer for a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence.
 - (b) submits to her employer an application in writing for leave under this section at least four weeks before the day specified by her in the application as the day on which she intends to commence the leave; and
 - (c) provides her employer with a certificate of a qualified medical practitioner certifying that she is pregnant and specifying the estimated date of birth; shall be granted by her employer maternity leave from her employment with the employer in accordance with subsection (3).
- (2) Notwithstanding subsection (1), an employer shall grant to an employee maternity leave from her employment with the employer in accordance with subsection (3) if the employee meets the requirements of clause (1)(a) and provides her employer with a certificate of a duly qualified medical practitioner:
- (a) certifying that the employee is pregnant, specifying the estimated date of birth and certifying that there are bona fide medical reasons that require the employee to cease work immediately; or
 - (b) certifying that the employee was pregnant and that her pregnancy terminated on a specified date, not more than 14 days prior to the date of the certificate, due to a miscarriage or a stillbirth.
- (3) The maternity leave to which an employee is entitled pursuant to subsections (1) and (2) shall consist of a period not exceeding 18 weeks commencing at any time during the period of 12 weeks immediately preceding the estimated date of birth.
- (4) Where:
- (a) an employee has failed to comply with clause (1)(b) but is otherwise entitled to maternity leave pursuant to subsection (1); and
 - (b) the employee has not provided her employer with a certificate of a duly qualified medical practitioner certifying that there are bona fide medical reasons that require the employee to cease work immediately; the employee shall be granted by her employer maternity leave from her employment with the employer in accordance with subsection (5).
- (5) The maternity leave to which an employee is entitled pursuant to subsection (4) shall consist of a period not exceeding 14 weeks commencing at any time during the period of eight weeks immediately preceding the estimated date of birth.
- (6) Notwithstanding subsections (3) and (5), where the actual date of birth is later than the estimated date of birth, the employee is entitled to not less than six weeks' leave after the actual date of birth.
- (7) Where an employee to whom maternity leave has been granted in accordance with this section and her employer agree that the portion of the leave that follows the actual date of birth should be a period of less than six weeks, the employer may permit the employee to resume her employment at the expiration of a period agreed to by them.

1976-77, c.36, s.23; R.S.S. 1978, c.L-1, s.23; 1994, c.39, s.11.

Further period of leave

- 24 Where an employee who has been granted maternity leave by her employer pursuant to section 23:
- (a) is unable, for bona fide medical reasons, to return to her employment after the expiration of the maternity leave; and
 - (b) provides her employer with a certificate of a qualified medical practitioner stating that, for bona fide medical reasons, she is not able to return to her employment at that time; the employer shall grant to her any further period of leave, not exceeding six weeks, that is requested by her.

1976-77, c.36, s.24; R.S.S. 1978, c.L-1, s.24.

Employer may require commencement of maternity leave

- 25 (1) Where the pregnancy of an employee would unreasonably interfere with the performance of the employee's duties, her employer may, if no opportunity exists to modify her duties or reassign her to another job with no loss of wages or benefits, require her to commence maternity leave not more than 13 weeks prior to the estimated date of birth.
- (2) Where an employer requires an employee to commence maternity leave pursuant to subsection (1), the provisions of this Part apply mutatis mutandis to that maternity leave.
- (3) In any prosecution alleging a violation of subsection (1) the onus shall be upon the employer to prove that the pregnancy of the employee would unreasonably interfere with her duties and that no opportunity exists to modify the employee's duties or to reassign the employee to another job.

1976-77, c.36, s.25; R.S.S. 1978, c.L-1, s.25; 1994, c.39, s.12.

Reinstatement after maternity leave

- 26 (1) An employer who has granted maternity leave to an employee pursuant to this Part shall, at the expiration of the leave, reinstate the employee in the position occupied by the employee at the time the leave commenced, or in a comparable position, with no loss of accrued seniority or benefits or reduction in wages.
- (2) For the purposes of seniority and rights of recall, being on maternity leave does not constitute a break in service, and seniority and rights of recall continue to accrue while an employee is taking maternity leave.
- (3) Subject to subsection (4), an employee is entitled to continue participating in any benefit plan that is prescribed in the regulations for the purposes of this subsection while taking maternity leave if the employee pays contributions required by the plan.
- (4) A benefit plan that does not permit the participation of employees in accordance with subsection (3) must be amended to permit that participation not later than three years after the day on which this section comes into force.

1994, c.39, s.13.

Employer not to dismiss pregnant employee; magistrate may order employer to comply

- 27 (1) No employer shall dismiss, lay off, suspend or otherwise discriminate against an employee by reason of the fact that she:
- (a) is pregnant;
 - (b) is temporarily disabled because of pregnancy; or
 - (c) has applied for maternity leave in accordance with this Part.
- (2) In any prosecution alleging a violation of subsection (1) the onus shall be upon the employer to prove that the employee was dismissed, laid off, suspended or otherwise discriminated against for good and sufficient cause.
- (3) Where an employer is convicted of failure to comply with any provision of this Part, the convicting judge may, in addition to any other penalty imposed for the offence, order the employer to allow forthwith the employee such maternity leave as the employer ought to have granted to the employee or, if the conviction is for failing to reinstate an employee in her former employment after the employee has, pursuant to this Part, been granted leave, the convicting judge may order the employer to reinstate the employee in her employment under the same terms and conditions in which she was formerly employed and may further order the employer to pay to the employee her wages retroactive to such date as the convicting judge deems that the employee ought to have been reinstated in her former employment under the terms of this Part.

1976-77, c.36, s.27; R.S.S. 1978, c.L-1, s.27; 1994, c.39, s.14.

Notice to employer of intention to resume employment

- 28 (1) An employee to whom maternity leave has been granted pursuant to this Part and who intends to resume her employment with her employer after the date of birth shall, at least four weeks prior to the day on which she intends to resume her employment, notify her employer of her intention to do so.
- (2) No employer is required to allow an employee to whom maternity leave has been granted pursuant to this Part to resume her employment until after the employee has complied with subsection (1).

1976-77, c.36, s.28; R.S.S. 1978, c.L-1, s.28; 2001, c.6, s.3.

29 **Repealed.** 1994 c39 s15.

PART IV.1

Other Leave

Parental leave

- 29.1 (1) An employer shall grant parental leave in accordance with subsection (2) to every employee who:
- (a) is currently employed and has been in the employment of the employer for a total of at least 20 weeks during the 52 weeks immediately preceding the day on which the requested leave is to commence;
 - (a.1) is a parent of a newborn child or a newly adopted child; and
 - (b) submits to the employer a written application for parental leave:
 - (i) at least four weeks before the day specified by the employee in the application as the day on which the employee intends to commence parental leave; or
 - (ii) in the case of an employee who is taking maternity leave pursuant to Part IV, at least four weeks before the day on which the employee was scheduled to return from maternity leave, which is deemed to be the day on which the employee intends to commence parental leave.
- (2) Subject to subsection (5), parental leave consists of the period described in subsection (2.1) to be taken during the 12 weeks before the estimated date of birth or the estimated date on which the child is to come into the employee's care, as the case may be, or the 52 weeks following the actual date of birth or the actual date on which the child comes into the employee's care.
- (2.1) The period of parental leave to which an employee is entitled is: (a) not more than 34 consecutive weeks in the case of an employee who is entitled to maternity leave pursuant to Part IV or adoption leave pursuant to section 29.2; and
- (b) not more than 37 consecutive weeks in the case of an employee who is not entitled to maternity leave pursuant to Part IV or adoption leave pursuant to section 29.2.
- (3) An employer shall, on application, grant to an employee who fails to comply with clause (1)(b) parental leave commencing on a day within three weeks after the date of birth of the child or the day on which the child comes into the employee's care, as the case may be, for the period described in clause (2.1)(a) or (b).
- (4) Section 26, subsection 27(3) and section 28 apply, with any necessary modification, to parental leave pursuant to this section.
- (5) An employee who wishes to take leave pursuant to Part IV and also take leave pursuant to this section shall take the two leaves consecutively.

1994, c.39, s.16; 2001, c.6, s.4.

Adoption leave

- 29.2 (1) An employer shall grant adoption leave in accordance with subsection (2) to an employee who:
- (a) is currently employed and has been in the employment of the employer for a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence;
 - (b) submits to the employer a written application for leave at least four weeks prior to the day on which the child comes into the employee's care; and
 - (c) is to be the primary caregiver of the adopted child during the period of the leave.
- (2) Adoption leave consists of a period of not more than 18 weeks commencing on the day the child becomes available for adoption.
- (3) Where an employee is unable to comply with clause (1)(b), the employee shall give notice to the employer equivalent to the notice given to the adoptive parents by the Department of Community Resources and Employment, the adoption agency or the birth parent, as the case may be.
- (4) Section 26, subsection 27(3) and section 28 apply, mutatis mutandis, to adoption leave under this section.

1979-80, c.84, s.8; 1994, c.39, s.17; 2004, c.65, s.13.