

MOTHERHOOD BENEFITS



**Did you
know
that all
pregnant
employees
with
benefit
plans are
entitled
to a paid,
“health-related
leave” from
work?**

In two landmark decisions, the courts have ruled:

- Every pregnancy (even a normal pregnancy) has a period of “disability,” where an employee is absent from the workplace for valid health-related reasons.
- Employees must be allowed to access their employer’s sick leave or short-term disability plans during this “health-related absence.”
- A woman’s physician determines the length of the health-related leave. There is no presumptive period (minimum or maximum) as each pregnancy is unique. The leave may be three weeks or 30 weeks.
- The health-related absence is based on the health of the mother, not the baby.
- The College of Physicians and Surgeons of Saskatchewan has recommended that for a normal pregnancy, the health-related absence might be up to 15 weeks.
- Saskatchewan employers with benefit plans must comply with the court rulings.



The court decisions

In the past, pregnant employees have been denied access to their employers' sick leave and short-term disability plans. Those who were allowed to use their sick leave credits could only do so before the delivery date.

But three Safeway cashiers from Brandon, Manitoba challenged these restrictions all the way to the Supreme Court, claiming their employer's policies discriminated against women. In a 1989 landmark decision, the Supreme Court agreed. The court ruled that pregnancy is a valid health-related reason to be absent from work. Employers must compensate pregnant employees during their health-related absence in the same way they compensate employees on sick leave.

The Brooks decision established in broad strokes the right of pregnant employees to compensation, arguing it was unfair to impose all of the costs of pregnancy on one-half of the population.

The Alberta Court of Queen's Bench provided more details in a 1992 ruling involving Red Deer nurse Susan Parcels. The Alberta Court said that women are entitled to the same benefits as workers on sick leave for "that portion of their maternity leave that is health-related." They are not required to prepay benefit plans.

Compliance required

By law, all Saskatchewan employers with benefit plans must comply with the rulings. Failure to do so may result in complaints being filed with the Saskatchewan Human Rights Commission.

The Saskatchewan Federation of Labour has asked the Department of Labour to publicize this maternity benefit to employers and working people.

The health assessment

The courts concluded that every pregnancy has a “disability” period where a woman is absent from work for valid health-related reasons. Since no two pregnancies are the same, the courts refused to set a minimum or maximum length of time for the health-related absence. Instead, they have recommended physicians perform a unique health assessment on their pregnant patients to determine the length of the disability period.

The assessment should evaluate the health of the mother and fetus, risk factors, the patient’s job, work environment, and medical history. In Saskatchewan the assessment does not require a medical form.

The disability period may be caused by a complication during the pregnancy, post-partum depression, fatigue or simply due to the need to recover after a normal childbirth.

The Saskatchewan Council of the College of Physicians and Surgeons passed a motion in December 1992, recommending that for a normal pregnancy a reasonable health-related absence might be up to 15 weeks, including two weeks before the expected date of delivery.



The health-related absence

As part of the health-related leave, pregnant employees are entitled to access the employer's sick leave or short-term disability plans before, during or after the delivery. A pregnant employee may choose to begin her maternity leave before the baby is born, switch to her health-related leave on the advice of her physician, and then return to maternity leave once she has recovered from the birth.

The only restriction on the health-related absence is the employee must have accrued the sick leave credits to be able to access them. Pregnant employees who work less than full-time also are allowed to access this leave if they are covered by the employer's benefit plans.

During the health-related absence, the pregnant employee is on "sick leave." The maternity leave doesn't begin until the end of the "health-related" absence.

Employer premiums

The court rulings also affect benefit premiums. Employers are required to pay their usual share of benefit premiums during the health-related portion of maternity leaves. Pregnant employees may be required to pay the employer's share of premiums during the voluntary portion of the leave.

Supplemental Employment Benefit Plans

In the *Parcels* case, the court said employers may use Supplemental Employment Benefit (SEB) Plans, but only when they result in the employee receiving at least 95% of salary. Otherwise, the differential between the SEB Plan and the sick leave plan will be discriminatory. Under SEB plans, employers top-up an employee's EI benefits.

Employment insurance

Under the Employment Insurance Act, pregnant employees (who meet the eligibility requirements) are able to claim 15 weeks of paid maternity benefits, and an additional 35 weeks of parental benefits. Parental benefits are available to both biological and adoptive parents and can be shared by mother and father.

The EI maternity benefits may begin as early as eight weeks before the estimated birth date and must be paid out by 17 weeks after the estimated birth date, or the actual date whichever is later. The maternity benefits don't begin until after a two-week waiting period.

However, when a pregnant employee moves from the health-related leave (paid for through sick benefits) to EI maternity benefits, the two-week waiting period is waived.

Since EI benefits must be taken within 17 weeks of the birth date, employees who move from a health-related absence to maternity benefits may not be able to claim all 15 weeks. Here's an example. A pregnant employee takes a 10-week health-related leave, which begins two weeks before the due date. Eight weeks after the birth of the baby, she moves from her health related leave (paid for through sick benefits) to EI maternity benefits. Since she must use the EI maternity benefits within 17 weeks of the baby's birth, she is able to claim nine weeks of EI maternity benefits and then access 35 additional weeks of parental benefits.

FOR MORE INFORMATION

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