MATERNITY LEAVE & YOUR LEGAL RIGHTS AS AN EMPLOYEE

Many of our clients come to us with questions surrounding employment law and maternity leave. For instance, clients want to know, how long they should take off of work, what benefits they are eligible for, whether their employers are required to accommodate them during their pregnancy and if so, to what extent.

For this reason, we have put together some frequently asked questions in hopes of answering some questionings employees may have about maternity leave.

WHAT ARE MY RIGHTS AS A PREGNANT WOMAN WHEN IT COMES TO TAKING TIME OFF OF WORK?

It is often the case where pregnant women get to a point in their pregnancy where they begin to feel unwell, experiencing morning sickness symptoms like nausea and vomiting. As a result, you may require increased flexibility with
respect to your work hours, or even time off of work completely. If this is the case, the very first step is to get in touch with your company’s Human Resources department or manager and advise them of the pregnancy-related illness you are experiencing. Once your employer has been apprised of this fact, they are obligated to provide you with reasonable accommodation.

The Employment Standards Act allows for up to 17 weeks pregnancy leave without pay. In order to be eligible for this, you must have been working for your employer for up to 13 weeks before your due date. Keep in mind that this type of leave is unpaid and it is therefore worth speaking to your employer about whether you are eligible for a top-up.

**I AM FEELING WELL ENOUGH TO ATTEND WORK BUT NOT WELL ENOUGH TO COMMUTE TO AND FROM WORK OR PERFORM SOME TASKS. WHAT DO I DO?**

Generally speaking, once your employer is aware of your difficulty or inability, he/she has an obligation to provide reasonable accommodation. Where this is the case, we suggest working with your employer to find a reasonable solution. We have found that reaching a reasonable solution may include working out a more flexible work schedule, being put on modified work hours or work duties and/or working from home or another more convenient location.

**I AM CONSIDERING TAKING TIME OFF FOR MATERNITY LEAVE BUT I AM UNSURE OF HOW MUCH TIME I AM PERMITTED TO TAKE OFF?**

The Employment Standards Act stipulates that a parent is entitled to unpaid leave from work within 1 year of the child being born or coming into his/her care. The Employment Standards Act defines ‘parent’ broadly, encompassing biological
parents, adoptive parents, as well as persons in serious relationships who intend to
care for the child as their own.

If you are the birth mother, you are entitled to take up to 37 weeks of maternity
leave. Other parents, such as adoptive mothers, may take up to 35 weeks off.

Keep in mind that in order to qualify for maternity leave, you must have been
working with the employer for at least 13 weeks before the date that the leave
starts.

**Am I Eligible for Income Support, such as Employment Insurance (EI), or a Top-Up During Maternity Leave?**

Many clients, despite feeling unwell and requiring time off, find taking the time off
increasingly difficult where their employees do not provide much income support.
If you are deemed eligible, it is possible to obtain income support through the
Federal Government by way of Employment Insurance (“EI”). If you are a
biological mother, you are entitled to EI maternity benefits for up to a maximum
of 15 weeks. If you are not a biological mother, EI Parental Benefits are also
available to parents of a newborn or newly adopted child, for a maximum of 35
weeks.

While EI benefits is definitely worth looking into, it is also important to speak to your
employer about what top-up, if any, you are entitled to receive while off on leave.

**I returned to work after Maternity Leave to discover my job, role, duties and/or hours have been unilaterally changed. What do I do?**

This is a common concern for persons considering going off on leave. Generally
speaking, unless you agree to fundamental changes to your job, your employer
should not be making any such changes. If your job has been altered or changed in any fundamental way, such as change of status, duties, hours, position, remuneration etc., we recommend you speak to a lawyer as soon as possible. Broadly speaking, if you are or have experienced such a situation, you may start a human rights application for breach of human rights (for compensation or reinstatement), or initiate a court claim for constructive dismissal (for compensation).

Agnihotri Anwar LLP routinely deals with such matters. The route or course of action you take depends on the circumstances present in your particular matter, and what you are hoping to achieve (compensation or reinstatement).

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