



The Business Edge of Maternity and Parental Leave

Dr Selina Tribe PGeo

Several studies conducted over the past few years have found that helping employees balance their work and home responsibilities can significantly improve workplace productivity. Professional men are becoming more involved in child rearing and an increasing number of professional women are entering the engineering and geoscience workforce. Currently, many engineering companies are struggling to find and retain qualified people. Family-friendly policies may give companies an edge over the competition in attracting top people and improving the bottom line.

This article discusses the legal, business and ethical considerations related to maternity and parental leave for professional engineers and geoscientists in British Columbia and their employers. Employers may have concerns about how to keep a job open for the new parent to return to, or wonder how a new parent will manage fieldwork requirements. This article also provides an overview of salary top-ups, flexible work arrangements and other policies and options that can ease the transition back to work for professional parents with children up to about age three. This information is provided for general knowledge and discussion and is not meant to be an exhaustive legal resource.

Laws and Regulations Regarding Maternity and Parental Leave in Canada

In British Columbia, maternity and parental leave for most employees is governed by provincial

legislation. The *British Columbia Employment Standards Act* entitles employees to a maximum of 17 weeks of maternity leave (available only to the mother) and 35 weeks of parental leave (available to the mother and partner) for a maximum leave period of 52 weeks. Employees in British Columbia have additional annual entitlements to five weeks unpaid leave to care for a child, and five days unpaid leave for family responsibilities. These amounts are legal minimums. Leave may be extended if agreed on by both parties.

Federal Employment Insurance legislation (EI) provides a stipend to eligible employees for 50 of the 52 weeks of maternity and parental leave. The 2007 EI stipend is a maximum of \$423 per week, regardless of whether the employee's annual salary is \$40,000 or \$140,000. Because the on-leave employee must be unavailable for work, any earnings by the employee exceeding about \$100 per week will be deducted dollar-for-dollar by EI. The only way an on-leave employee can significantly supplement the stipend is to receive salary top-ups from their employer.

Job Protection While on Leave

Parents returning from maternity or parental leave have a statutory right to their job at the same pay rate, level of responsibility and prestige as before they left, as set out in provincial legislation. Company benefits continue to apply throughout the leave period providing contributions are made as required.

Professional engineers and geoscientists on leave are entitled to pay raises, vacation pay and company-wide

bonuses. Vacation time accrues as long as it is not calculated as 4% of wages, in which case it does not accrue since no wages are earned during the leave period. The period of leave is considered to be continuous employment. Accrued vacation time may be used to extend the leave period. Statutory holidays are paid as soon as the new parent returns to work.

An organization should codify policies regarding maternity and parental leave in order to decrease guesswork and uncertainty. Even if policies are stated, it is a good idea for new parents and employers to discuss a return-to-work plan and put it in writing about four weeks before the return date. A return-to-work plan may include taking advantage of flexible work arrangements, extending leave with vacation time, phasing into full-time office work and other options.

Holding the Parent's Position Until They Return

A valid concern of employers is how to preserve the new parent's position while they are on leave and how to complete the company's work. Some positions will allow for the on-leave parent's duties to be split among other employees. Contract employees can be hired for a maternity replacement on a one-year term with the possibility for part-time extension or job-sharing with the returning parent. Some companies may be able to share employees or contract out specialized work with the understanding that the favour will be returned if the situation were reversed. Companies and employees should work together to come up with a creative solution that will work for both parties.

Salary Top-Ups

One of the most helpful policies an employer can adopt is to supplement or "top-up" the EI stipend during the leave period. This is the only legal way to significantly enhance the stipend without the employee having to surrender the extra funds. EI legislation allows for employers to pay the on-leave employee up to 100% of their gross annual salary without

penalty. Salary top-ups ensure there is no deterioration of the standard of living of the employee during the leave period. Employers might top-up the EI stipend to 100% of salary during the entire 52 weeks of leave, or perhaps provide a staggered rate of 100% of wages for the first 27 weeks and to 75% for last 25 weeks, or some other combination. By law, employees must not be required to work for the supplementary income, nor to work overtime before leave to build up banked hours.

Salary top-up monies are not EI eligible, thus they do not require any deductions or matching contributions. The investment required by employers is not as prohibitive as it may seem if one considers that the first \$21,150 of the on-leave employee's salary is covered by EI benefits (\$423 per week for 50 weeks), and employers are not paying sick days. The company also retains the investment they have made by hiring and training the person in the first place, and maintains the benefit of their contributions. Some employers stipulate that returning parents demonstrate their commitment to the company by working at least six months after leave or repay the salary supplement.

Flexible Work Arrangements

New parents return to work with the same skills as before, but with new personal responsibilities: children may still be nursing; day care is needed. New parents may not be able to jump back into the typical work schedule of 40 or more hours per week. Flexible work arrangements refers to the practice of altering the conventional nine to five, Monday to Friday work week. Such arrangements can be helpful to returning professional parents and ensure that the employer's work is completed.

Examples of flexible work arrangements include but are not limited to: flex-time, which refers to adopting earlier or later start and end times to the work day; telecommuting, which refers to working from home through a remote network connected to the employer's

computer system; working part-time hours while maintaining full-time health and insurance benefits; compressed work weeks; and job sharing with a professional colleague or contract professional.

Duty To Accommodate

Employers have a "duty to accommodate" under the *Canadian Human Rights Act*. They are required to accommodate returning parents in ways that allow parents to return to work and still care for their dependants in a responsible way. This might mean providing further unpaid leave with job protection, or modifying work duties and schedules. If an organization has a history of accommodating other employees, for example if some people work at home one or more days per week or work part-time hours, then a precedent has been set for offering flexible work arrangements that should be extended to returning new parents. Accommodating companies may enjoy more dedicated and motivated employees.

Employers have a duty to accommodate their employees up to the point of undue hardship. Organizations may have to endure some hardship in their efforts but not so much that their ability to perform services or business is adversely affected. Reasonable accommodation may include provisions for women who choose to breastfeed, for example providing a private office or room in which to nurse a child or to pump milk.

Fieldwork

Many engineering and geoscience jobs have a field component requiring short or extended trips away from home. It may not be possible for new parents to go on extended field assignments. Work-related field trips may need to be modified, postponed or completed by other qualified people depending on the requirements. Contract employees could have their work term extended in order to complete fieldwork while the returning parent does the office component, in effect sharing the job.

In some cases, professional parents can combine remote fieldwork

and parenting. Some types of engineering and geoscience fieldwork take place in remote settlements or field camps requiring lengthy rotations. Some mining camps have family quarters and it may be possible to hire a local person to provide child care. The option of combining fieldwork and parenting depends on the nature of the work assignment and duties, field location, site infrastructure, length of absence, and the willingness

of employer and employee to consider novel approaches to the situation.

Child Care

Securing quality and reliable day care for a young child is essential in order for new parents to return to work. Day care is a critical issue for new parents, and is complicated by the fact that many child care centres will not take children under age three. Solutions might include obtaining care from other family members or hiring baby sitters, au pairs, live-in or live-out nannies. Day care needs can be reduced if professional parents take advantage of part-time hours or other flexible work arrangements allowing them to spend more time at home.

Free or subsidized in-office day care is another solution that can position a company ahead of the rest in attracting top professionals. Even just two or three children in an on-site day care can be worth the money to employers if it means the ability to keep valued professionals. Organizations must be sure to meet all applicable municipal and provincial regulations and have adequate liability coverage if setting up in-office day care.

Summary

The aim of this article is to demystify some issues surrounding maternity and parental leave in British Columbia, and to present options to employers and human resource managers to help retain professional parents. Family-friendly policies also can be used as a tool for organizations to recruit professionals. For many new parents, returning to work is not a choice but a necessity. Employers can help the transition back to work by adopting progressive workplace policies that recognize the right of all employees to pursue a family. Such policies also recognize the dual roles of many women as both child-bearer and professional worker, and the desire of men to participate in child rearing. ☒

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Key Reference

Manning, M., 2003, *Pregnancy, Workplace and the Law*, Canada Law Book, Aurora, Ontario.

Dr Selina Tribe PGeo is a consulting geologist specializing in glacial geology, terrain analysis and geomorphological mapping.

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