

1990

## c 26 Employment Standards Amendment Act (Pregnancy and Parental Leave), 1990

Ontario

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## CHAPTER 26

**An Act to amend the  
Employment Standards Act  
with respect to Pregnancy and Parental Leave**

*Assented to December 20th, 1990*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The heading preceding section 35 of the *Employment Standards Act* is repealed and the following substituted:** R.S.O. 1980,  
c. 137

PREGNANCY AND PARENTAL LEAVE

**2. Sections 35, 36, 37 and 38 of the Act are repealed and the following substituted:**

**35. In this Part,**

Definitions

“parent” includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own;

“parental leave” means a leave of absence under subsection 38a (1);

“pregnancy leave” means a leave of absence under subsection 36 (1).

**36.—(1)** A pregnant employee who started employment with her employer at least thirteen weeks before the expected birth date is entitled to a leave of absence without pay. Pregnancy  
leave

(2) An employee may begin pregnancy leave no earlier than seventeen weeks before the expected birth date. When leave  
may begin

(3) The employee must give the employer,

Notice

(a) at least two weeks written notice of the date the leave is to begin; and

- (b) a certificate from a legally qualified medical practitioner stating the expected birth date.

Special  
circumstances

**37.—**(1) Subsection 36 (3) does not apply in the case of an employee who stops working because of complications caused by her pregnancy or because of a birth, still-birth or miscarriage that happens earlier than the employee was expected to give birth.

Notice in  
special  
circumstances

(2) An employee described in subsection (1) must, within two weeks of stopping work, give the employer,

- (a) written notice of the date the pregnancy leave began or is to begin; and
- (b) a certificate from a legally qualified medical practitioner that,
  - (i) in the case of an employee who stops working because of complications caused by her pregnancy, states the employee is unable to perform her duties because of complications caused by her pregnancy and states the expected birth date, or
  - (ii) in any other case, states the date of the birth, still-birth or miscarriage and the date the employee was expected to give birth.

End of  
pregnancy  
leave if  
parental  
leave  
available

**38.—**(1) The pregnancy leave of an employee who is entitled to take parental leave ends seventeen weeks after the pregnancy leave began.

End of  
pregnancy  
leave if  
parental  
leave not  
available

(2) The pregnancy leave of an employee who is not entitled to take parental leave ends on the later of the day that is seventeen weeks after the pregnancy leave began or the day that is six weeks after the birth, still-birth or miscarriage.

End of  
pregnancy  
leave on  
employee  
notice

(3) The pregnancy leave of an employee ends on a day earlier than the day provided for in subsection (1) or (2) if the employee gives the employer at least four weeks written notice of that day.

Parental  
leave

**38a.—**(1) An employee who has been employed by his or her employer for at least thirteen weeks and who is the parent of a child is entitled to a leave of absence without pay following,

- (a) the birth of the child; or

- (b) the coming of the child into the custody, care and control of a parent for the first time.

(2) Parental leave may begin no more than thirty-five weeks after the day the child is born or comes into the custody, care and control of a parent for the first time. Restriction on when leave may begin

(3) The parental leave of an employee who takes a pregnancy leave must begin when the pregnancy leave ends unless the child has not yet come into the custody, care and control of a parent for the first time. When mother's parental leave may begin

(4) The employee must give the employer at least two weeks written notice of the date the leave is to begin. Notice

**38b.**—(1) Subsection 38a (4) does not apply in the case of an employee who is the parent of a child and who stops working because the child comes into the custody, care and control of a parent for the first time sooner than expected. Special circumstances

(2) The parental leave of an employee described in subsection (1) begins on the day the employee stops working. When leave in special circumstances begins

(3) An employee described in subsection (1) must give the employer written notice that the employee wishes to take leave within two weeks after the employee stops working. Notice

**38c.** Parental leave ends eighteen weeks after it began or on an earlier day if the employee gives the employer at least four weeks written notice of that day. End of parental leave

**38d.**—(1) An employee who has given notice to begin pregnancy leave or parental leave may change the notice, Change of notice to begin leave

(a) to an earlier date if the employee gives the employer at least two weeks written notice before the earlier date; or

(b) to a later date if the employee gives the employer at least two weeks written notice before the date leave was to begin.

(2) An employee who has given notice to end leave may change the notice, Change of notice to end leave

(a) to an earlier date if the employee gives the employer at least four weeks written notice before the earlier date; or

- (b) to a later date if the employee gives the employer at least four weeks written notice before the date leave was to end.

Rights during leave

**38e.**—(1) During pregnancy leave or parental leave, an employee continues to participate in each type of benefit plan described in subsection (2) that is related to his or her employment unless he or she elects in writing not to do so.

Benefit plans

(2) For the purpose of subsection (1), the types of plans are pension plans, life insurance plans, accidental death plans, extended health plans, dental plans and any other types of benefit plans that are prescribed.

Employer contributions

(3) During an employee's pregnancy leave or parental leave, the employer shall continue to make the employer's contributions for any plan described in subsection (2) unless the employee gives the employer a written notice that the employee does not intend to pay the employee's contributions, if any.

Seniority

(4) Seniority continues to accrue during pregnancy leave or parental leave.

Reinstatement

**38f.**—(1) The employer of an employee who has taken pregnancy leave or parental leave shall reinstate the employee when the leave ends to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not.

Reinstatement where employer's operations have been suspended, etc.

(2) If the employer's operations were suspended or discontinued while the employee was on leave and have not resumed when the leave ends, the employer shall reinstate the employee, when the operations resume, in accordance with the employer's seniority system or practice, if any.

Wages

(3) The employer shall pay a reinstated employee wages that are at least equal to the greater of,

- (a) the wages the employee was most recently paid by the employer; or
- (b) the wages that the employee would be earning had the employee worked throughout the leave.

No discipline, etc. because of leave

**38g.** An employer shall not intimidate, discipline, suspend, lay off, dismiss or impose a penalty on an employee because the employee is or will become eligible to take, intends to take or takes pregnancy leave or parental leave.

**38h.**—(1) This section applies to a person who stopped work on or after the 18th day of November, 1990 but before the day this section comes into force and who would have been entitled to pregnancy leave if section 2 of the *Employment Standards Amendment Act (Pregnancy and Parental Leave)*, 1990 had come into force before she stopped work. Transitional,  
pregnancy  
leave  
1990, c. 26

(2) A person to whom this section applies shall be deemed to have taken a pregnancy leave beginning when the person stopped work if, Idem

- (a) the stopping of work was related to the person's pregnancy; and
- (b) when the person stopped work, she was not entitled to pregnancy leave.

**38i.**—(1) This section applies to a person who stopped work on or after the 18th day of November, 1990 but before the day this section comes into force, whether or not the person took a pregnancy leave that ended during that period, or whose pregnancy leave ended during that period and who did not return to work if the person would have been entitled to parental leave had section 2 of the *Employment Standards Amendment Act (Pregnancy and Parental Leave)*, 1990 come into force before the person stopped work or before the pregnancy leave ended. Transitional,  
parental  
leave  
1990, c. 26

(2) A person to whom this section applies shall be deemed to have taken a parental leave beginning when the person stopped work or when the person's pregnancy leave ended if the stopping of work or the not returning to work was related to the birth of a child or to the coming of a child into the custody, care and control of a parent for the first time. Idem

**38j.** Section 38e does not apply in respect of any period before this section comes into force. Transitional,  
benefits

**3.** Subclauses 47 (1) (c) (i) and (ii) of the Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 3, are repealed and the following substituted:

- (i) the sum of \$4,000 with respect to any wages other than the employee's severance pay or an amount payable to the employee under Part XI, plus
- (ii) the amount of the employee's severance pay, if any, plus

(iii) the amount payable to the employee under Part XI.

**4. Subsection 65 (1) of the Act, as amended by the Statutes of Ontario, 1987, chapter 30, section 7, is further amended by adding the following clause:**

(ra) prescribing types of benefit plans for the purpose of subsection 38e (2).

Commence-  
ment

**5. This Act comes into force on the day it receives Royal Assent.**

Short title

**6. The short title of this Act is the *Employment Standards Amendment Act (Pregnancy and Parental Leave), 1990.***