

Maternity & Parental Leave

TABLE OF CONTENTS

Introduction	3
Part 1 Provisions for Maternity and Parental Leave	4
Part 2 Employment Insurance Benefits.....	10
Part 3 Supplemental Unemployment Benefits (SUB) Plan.....	15
Part 4 Use of Sick Leave as a Component of Maternity Leave.....	18
Part 5 Experience Credit for Maternity and Parental Leave	20
Part 6 Participation in Benefit Plans.....	21
<u>Appendices</u>	23
Checklist on Timelines	24
Checklist on Documentation.....	25
Sample Letter Requesting Maternity Leave	26
Sample Letter Requesting Parental Leave	27
Sample Letter Requesting Sick Leave During Maternity Leave	28
Excerpts from Employment Standards Code	29
Use of Sick Leave Legal Decisions and Awards	32
Winnipeg Free Press Article – The Motherhood Penalty	41

Any questions, please contact:

Andrea Zaroda
Staff Officer, Teacher Welfare Dept.
The Manitoba Teachers' Society
191 Harcourt St
Winnipeg MB R3J 3H2

Phone (Direct): 204-831-3059 or
(toll-free) 1-866-494-5747 (ext 223)

Fax: 204-831-3077 or
(toll-free) 1-866-799-5784

Email: mat-leave-questions@mbteach.org

www.mbteach.org
facebook.com/manitobateachers
twitter.com/mbteachers

Revised January 2022

INTRODUCTION

This booklet is designed to familiarize teachers with their rights and responsibilities regarding maternity and/or parental leave.

Although care has been taken to include as much information as is possible, individual situations may arise which are not covered by this booklet.

Any teachers having questions regarding any provisions of maternity and/or parental leave are asked to contact their local Association or Andrea Zaroda at The Manitoba Teachers' Society at 204-831-3059/1-866-494-5747 (ext 223) or azaroda@mbteach.org.

PART 1

PROVISIONS FOR MATERNITY AND PARENTAL LEAVE

RIGHTS UNDER LAW

There are two sources that define a teacher's right to maternity and/or parental leave --- the Employment Standards Code and the collective agreement. The Code provides for minimum standards applicable to all employees, while the collective agreement may provide for enhanced rights.

A. EMPLOYMENT STANDARDS CODE

The following are the provisions of the Employment Standards Code (see Appendix for exact wording). Teachers are advised that these are minimum provisions only.

1. Maternity Leave

a) Entitlement

Any female teacher is entitled to maternity leave if she has worked for the same employer for 7 consecutive months, if her leave is due to pregnancy. For the purposes of maternity and/or parental leave, July and August do not constitute a break in service. If a teacher has less than 7 consecutive months of service, she may be granted leave but there may not be any job protection unless it is provided for in the collective agreement.

b) Method of Obtaining Leave

The teacher must apply to the school board, *in writing*, at least four weeks prior to the date leave is to commence. The letter should state both the expected date of commencement of leave and the expected date of return to work, and a medical certificate indicating the expected date of confinement should be attached. A sample application letter is included in the Appendix.

Note: The Code requires the employer to grant the applicant leave. The period of leave may commence any time up to the 17th week before expected date of delivery. If the commencement date is earlier, the Board's permission must be obtained. However, if early commencement is due to medical reasons, access to sick leave should be requested.

c) **Duration of Leave**

The maximum maternity leave provided in the Code is 17 weeks plus any additional time by which the actual delivery date is later than the expected delivery date. Leave is to be taken during the period beginning 17 weeks before the expected date of delivery and ending 17 weeks after the actual date of delivery.

A female teacher is also eligible for a parental leave of up to 63 weeks. This parental leave must follow immediately after her maternity leave is completed unless she and her employer have agreed to a different arrangement.

d) **Reinstatement**

- i) Full reinstatement is guaranteed at the expiration of the leave granted in accordance with the above terms. Reinstatement means a guarantee of the same **or** a comparable position with at least the same pay and benefits.
- ii) Leave of a greater duration must be by agreement between the teacher and the Board. Additional rights may be granted under the collective agreement.
- iii) Employment is deemed continuous for purposes of service.

In view of the above restrictions, especially section d (ii), it is recommended that the teacher seek mutual agreement with the board regarding the length of leave. Such agreement should be in writing. This becomes essential if the terms of the leave extend the deadlines provided in the Employment Standards Code and/or the collective agreement.

When making an agreement to extend a leave, the teacher should contact The Manitoba Teachers' Society regarding the agreement to ensure she is not signing away any of her rights.

2. **Parental Leave**

a) **Entitlement**

Any teacher is entitled to parental leave if s/he has worked for the same employer for 7 consecutive months and has become a parent as a result of the birth or adoption of a child.

b) **Method of Obtaining Leave**

The teacher must apply to the school board, *in writing*, at least four weeks prior to the day leave is to commence. The letter should state both the date of commencement of leave and the date of return to work. Where an employee intends to take parental leave in addition to maternity leave, the parental leave must follow immediately after her maternity leave is completed unless she and her employer have agreed to a different arrangement. The partner's parental leave can be taken at the same time, a different time, or overlap the mother's maternity or parental leave.

c) **Duration of Leave**

The maximum leave provided in the Code is 63 weeks, for babies born, adopted or coming into care of the parent after June 4, 2018. The leave must begin no later than 18 months after the date on which the child is born or adopted or the date on which the child comes into the actual care and custody of the employee.

d) **Reinstatement**

The same provisions that apply to maternity leave apply to parental leave. (see p. 5).

B. **COLLECTIVE AGREEMENTS**

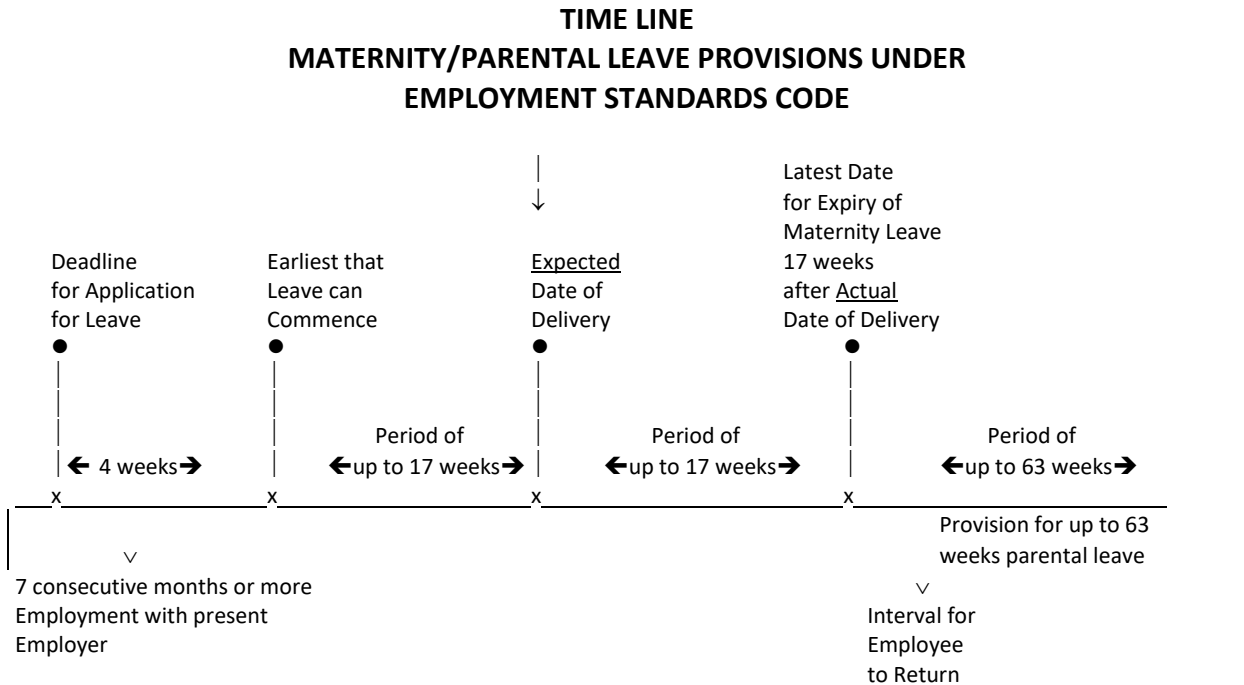
Collective agreements differ from one local association to the next. Consequently, leave provisions with respect to maternity and parental leave may vary. Teachers should carefully read the applicable sections of their collective agreement and contact the local Association or The Manitoba Teachers' Society (204-888-7961 or 1-800-262-8803), in order to determine individual rights according to the agreement.

C. **SCHOOL DIVISION POLICIES**

School boards may have policy regarding leaves for maternity and/or parenting purposes. These policies are legal *only if they do not contravene* the Employment Standards Code or the provisions of the collective agreement. Where a teacher believes that the board policy is not legal, that teacher should contact the local Association or The Manitoba Teachers' Society for advice.

D. **TIME LINE FOR EMPLOYMENT STANDARDS CODE**

There are various time limits and deadlines in the Employment Standards Code that must be observed. In order to avoid some confusion, these are shown graphically below.



- (a) Total duration of maternity leave may not exceed 17 weeks plus the period by which the actual delivery date is later than the expected delivery date.
- (b) Total duration of parental leave may not exceed 63 weeks. If parental leave follows maternity leave, the leave must be continuous unless mutually agreed.
- (c) Maximum leave (maternity plus parental) equals 80 weeks.
- (d) By mutual agreement periods of leave of greater duration may be arranged but the employer's promise of reinstatement with no loss of benefits should be obtained in writing.

PROVISIONS FOR MATERNITY AND PARENTAL LEAVE

QUESTIONS AND ANSWERS

The following section is offered in order to answer some of the frequently asked questions regarding leave for parenting (includes maternity and parental leave). These questions are by no means comprehensive and teachers are urged to refer unanswered questions to their local Association or to The Manitoba Teachers' Society (204-888-7961 / 1-800-262-8803).

1. **Q: Must the Board grant maternity or parental leave?**

A: Yes, if a teacher has been in its employ for 7 consecutive months, or for lesser periods if so specified in the collective agreement.

2. **Q: Can the Board force me to start my maternity leave at a specific time?**

A: No. The commencement of leave is entirely at the teacher's discretion within the parameters established by the Employment Standards Code.

3. **Q: Can the Board force me to take a leave to the beginning of the next semester or the next school year?**

A: The Board cannot enforce a leave not desired by the teacher. A teacher, however, may consider it advantageous to wait a longer period. But, if this leave is longer than 17 weeks for maternity leave or 80 weeks for a combined maternity/parental leave, the extension must be by mutual consent and should be in writing.

4. **Q: Do I accumulate experience for maternity leave and parental leave?**

A: Yes. As of January 15th, 2016, teachers accumulate credit for experience for up to one full year of leave.

5. **Q: My spouse and I are both teachers. Can we be off at the same time?**

A: Yes, you can take leave at the same time or at different times.

6. **Q: Can the Board force me to return to work at a specified time?**

A: Inside the 80 weeks allowed by legislation – no – the teacher is free to choose the date of returning to work, usually at the conclusion of either maternity leave (17 weeks) or parental leave (80 weeks). If a teacher wishes to return to work *later* than 63 weeks in the case of parental leave or 80 weeks in the case of a combined maternity/parental leave, it must be by agreement with the Board, preferably in writing. At the expiry of the leave the teacher is under the legal obligations imposed by the individual teacher contract. Leaves beyond 80 weeks lose the protection of the ESC.

The ESC {see Appendix} does allow a teacher to return to work earlier than the expiry date of the leave by giving notice of two weeks or one pay period, whichever is longer.

7. **Q: Can any provisions of the Employment Standards Code be broken or amended by either the teacher or the Board?**

A: Not unilaterally. However, conditions may be altered if both the teacher and the Board agree. In such cases, it is imperative that the teacher obtains a written agreement, and it is highly recommended that the teacher consult with the local Association or a Staff Officer at The Manitoba Teachers' Society prior to making any such agreement.

8. **Q: Must parental leave be taken in a continuous block?**

A: Yes, unless the teacher is able to negotiate a different arrangement with the employer. Any such arrangement should be obtained in writing.

9. **Q: Once I have taken a maternity and/or parental leave, do I have to return to work for seven months before I can take another maternity and/or parental leave?**

A: No. The seven month requirement only has to be served once. However, if the teacher changes employers, s/he must work seven consecutive months for the new employer before a maternity and/or parental leave must be granted.

PART 2 EMPLOYMENT INSURANCE BENEFITS (EI)

PROVISIONS OF THE EMPLOYMENT INSURANCE ACT

Teachers who are on maternity or parental leave may collect employment insurance benefits subject to the qualifying provisions noted below.

Benefits are 55% of the teacher's weekly salary up to a maximum if they choose the standard leave option (12 months). Benefits are 33% of the teacher's weekly salary up to a maximum if they choose the extended leave option (18 months).

As of January 2022, the maximum insured salary for calculation of benefits is \$60,300 (i.e. maximum benefit is 55% x \$60,300 divided by 52 or approximately \$638 weekly for the 12 month leave option). The extended leave option (18 months) would be approximately \$382 weekly (33% x \$60,300 divided by 52). Benefits cease either 52 weeks (standard leave) or 78 weeks (extended leave) after the birth date of the child or commencement of the leave, whichever comes earlier.

A. PERSONS WHO QUALIFY

a) Maternity Benefits

Any female teacher who has accumulated at least 600 insurable hours during the year prior to taking a leave, and who is taking leave due to pregnancy.

b) For Parental Benefits

Both biological and adoptive parents can collect parental benefits while they are caring for a newborn or adopted child. The minimum qualifying period for this benefit is 600 hours in the year prior for each parent who is applying for benefits.

Note: Employment Insurance parental benefits are payable only from the child's birth date or from the date the child is placed in the full time care and custody of the parents in the case of adoption.

B. DURATION OF EMPLOYMENT BENEFITS

a) For Maternity

Maternity benefits are available only to biological mothers. The first week of leave is a waiting period for which no benefits are received. Following the waiting period, benefits are payable for 15 consecutive weeks. The benefit period can begin up to 13 weeks (including the waiting period) before the expected week of confinement and must end no later than 16 weeks after the actual week of confinement or the original due date. The total combined weeks may not exceed 16 weeks.

b) **For Parenting**

For children born or placed for adoption on or after December 3rd, 2017, parents now have two options for taking parental leave benefits, which can be taken by one parent or shared between both parents if both are eligible:

- (i) up to 35 weeks of benefits at 55% of average weekly earnings subject to the maximum, which must be taken within 52 weeks or 12 months of the birth of the child or placement of the child for adoption; or
- (ii) up to 61 weeks at 33% of average weekly earnings subject to the maximum, which must be taken within 78 weeks or 18 months of the birth or placement of the child for adoption. Once this option is chosen, it is irrevocable and benefits will be lost if the employee returns to work early. If one partner has already served the waiting period, there is no further waiting period required for the other partner.

iii) **Parental Sharing Benefit**

The Parental Sharing Benefit was introduced in March, 2019. This benefit allows for parents to receive extra weeks of EI parental benefits so that both parents can be on leave at the same time. When parents agree to apply for and share benefits, they are eligible for either 5 extra weeks of benefits if taking the standard leave option (12 months) or 8 weeks if they have chosen the extended leave option (18 months).

Therefore, parents can now share up to 40 weeks of parental benefits with the standard leave option or up to 69 weeks of parental leave if they choose the extended leave option. Please note that one parent cannot receive more than 35 weeks or 61 weeks of parental benefits. This leave is specifically designed for parents to be on parental leave at the same time.

C. **APPLICATION FOR BENEFITS**

For both maternity and parental benefits, the application should be made the week the benefit period is to begin.

EMPLOYMENT INSURANCE BENEFITS

QUESTIONS AND ANSWERS

The following section is offered in order to answer some of the frequently asked questions regarding Employment Insurance benefits. These questions are by no means comprehensive and teachers are urged to refer unanswered questions to their Local Association or to The Manitoba Teachers' Society (204-888-7961 or 1-800-262-8803).

1. **Q: If a teacher commences leave fewer than 13 weeks prior to confinement, can she claim the weeks "saved" after her confinement?**

A: Yes. Any 16 consecutive weeks may be used, subject to a one-week waiting period - 9 weeks prior to confinement to 16 weeks after the baby is born.

2. **Q: If a teacher begins receiving benefits 12 weeks prior to the expected date of confinement but the baby is late, will she receive benefits between the end of the 8 week period and the actual birth of the baby?**

A: Yes, but the total period for which maternity benefits are payable may not exceed 15 weeks.

3. **Q: Can a teacher claim parental benefits after the maternity benefit period is ended?**

A: Yes. Both biological and adoptive parents can collect parental benefits while they are caring for a newborn or adopted child. The benefits can be received by one parent or split between the two if both parents are eligible.

4. **Q: Can a teacher on a term contract or in the first year of a regular contract receive benefits?**

A: Yes, as long as the 600-hour requirement has been met, unless (in most divisions) the teacher is in their first year of a term contract.

5. **Q: Is a teacher entitled to receive Employment Insurance maternity or parental benefits during July and August?**

A: Yes. EI Regulations provide that teachers can be eligible to receive employment insurance maternity or parental benefits during July and August.

6. **Q: Does my employer have to grant leave to the amount of the extended parental leave benefit period of 61 weeks?**
- A: Yes. the Employment Standards Code was amended to allow for an extended parental leave of up to 63 weeks for babies born on or after June 4, 2018.
7. **Q: What happens in the case of a miscarriage?**
- A: If a miscarriage occurs up to the 19th week of gestation, sick leave benefits can be accessed. After the 19th week of gestation, Employment Insurance maternity benefits can be accessed.
8. **Q: If I am adopting a child from another country, can I claim EI benefits for my travel time?**
- A: No. EI parental benefits are only payable from the date the child is placed with you.
9. **Q: I would like to take parental leave prior to my partner giving birth. Is that possible?**
- A: No. EI parental benefits are only payable from the date the child is born.
10. **Q: Does my parental leave have to follow immediately after my maternity leave?**
- A: No. From an Employment Insurance point of view, you can take parental leave benefits any time during the eighteen months following the birth of the child or the date the child is placed with you for the purpose of adoption.
11. **Q: My partner doesn't qualify for EI maternity or parental leave benefits. Can I, as the other parent, access those benefits?**
- A: Only biological mothers can access EI maternity benefits, but the other parent can access the full parental leave benefit period. If you do not want to take the full parental leave benefit period, you do have the right to access benefits during any teaching or non-teaching periods.
12. **Q: Service Canada has offered to waive my waiting period. Should I accept this offer?**
- A: Under no circumstances should you ever waive the waiting period.

TEMPORARY CHANGES TO EI DUE TO COVID-19

Changes were introduced on September 27th, 2020 to help people have greater access to EI due to COVID-19. These changes will be in effect for one year.

While you must still earn 600 insurable hours in the previous 52 weeks to qualify for EI, you will receive a one-time credit of 480 insured hours if you are applying for maternity or parental leave. This means you will only need to earn 120 insurable hours to receive EI benefits.

b) **Remainder of Paid Leave Period**

The employer pays the difference between Employment Insurance Benefits and gross salary, up to the percentage of gross salary payable, as outlined in the collective agreement. The amount payable is calculated as follows:

1. Salary is calculated on a daily rate by taking the gross salary and dividing by the number of days in the school year.
2. Employment Insurance Benefits are calculated on a daily rate by taking the weekly benefit and dividing by 5 days.
3. The employer pays the difference between the percentage of gross salary payable and the Employment Insurance benefits. Income tax and C.P.P. premiums are deducted from this amount.

D. **APPLICATION FOR BENEFITS**

Application for benefits is made to the payroll department of the employing division. Proof of acceptance for EI benefits must be provided to the employer. This can be printed from your My Service Canada account.

SUPPLEMENTAL UNEMPLOYMENT BENEFITS (SUB) PLAN

QUESTIONS AND ANSWERS

The following section is offered in order to answer some of the frequently asked questions regarding Employment Insurance benefits. These questions are by no means comprehensive and teachers are urged to refer unanswered questions to their local Association or to The Manitoba Teachers' Society (204-888-7961 or 1-800-262-8803).

1. **Q: Why don't I receive SUB payments over the summer even though I am eligible for Employment Insurance benefits?**

A: Currently, SUB payments are made only for those periods during which you would have been teaching had you not been on a maternity/parental leave. At this time, no benefits will be paid during the summer, Christmas, and spring breaks, nor for statutory holidays, as these are non-teaching periods for which you would not normally receive pay. However, all divisions now pay out the full amount of top-up benefits. See your collective agreement for information.

2. **Q: My division has offered to pay my SUB benefits in a lump sum. Should I accept this?**

A: No, particularly if your benefits will extend from one calendar year to the next. Your tax situation may change from one year to the next, depending on the length of any parental leave you may take, so it is in your best interests not to accept a lump sum payment. You may also adversely affect your right to Employment Insurance benefits.

3. **Q: I would like my Division to deduct my other benefit plan premiums from the SUB payments. Can this be done?**

A: No. Contributions for T.R.A.F. and premiums for other benefit plans cannot be deducted at source because the teacher is on a leave of absence. However, arrangements to make regular payments to maintain benefit plans may be negotiated with the payroll department of your division. For further information, contact your division or The Manitoba Teachers' Society. Teachers planning on purchasing pensionable service for periods of maternity leave should contact T.R.A.F. for further information regarding payment options.

4. **Q: My baby is due during the summer. When is the best time for me to start my maternity benefits?**

A: As all divisions now pay the full amount of SUB, you can start your benefit period whenever you want.

5. **Q: My waiting period was waived and now I am losing SUB. Can this be changed?**

A: You should never waive your waiting period. If Service Canada does waive it without your permission, you need to call and insist that you serve the waiting period. This must be done as soon as possible after you notice that the waiting period was waived.

PART 4

USE OF SICK LEAVE AS A COMPONENT OF MATERNITY LEAVE

INTRODUCTION

Teachers are entitled to claim sick leave for pregnancy-related medical conditions that may prevent them from performing their duties, as determined by a doctor or midwife. Court decisions have confirmed the right of women to claim sick leave both before delivery and/or during maternity leave, for any time during which the women is unable to work due to medical reasons. This includes the period of time needed to recover after giving birth.

MAKING A CLAIM FOR SICK LEAVE DURING MATERNITY LEAVE

1. Discuss with your doctor the probable length of time you will need to be on sick leave due to your inability to perform your duties. Request a medical certificate indicating the approximate dates you will be on sick leave. Ask the doctor to indicate the minimum anticipated duration of sick leave, and the date on which your ability to perform your duties will be reassessed.

Since each case is unique, it is advisable to file a letter for sick leave up to the expected due date of your child **and** a second one after the birth when your doctor can predict with greater certainty how long your recovery period might be.

Note: An assessment taking into account the difficulties of the birth may be the more informed way to proceed. It is advisable to make a doctor's appointment that will fall within the 6-week post delivery period.

2. Forward the medical certificate to the Division.
3. If the Division or District rejects your request, immediately contact your local association president or a staff officer of the Manitoba Teachers' Society. It may be necessary to consider filing a grievance in order to ensure that your rights are respected.

USE OF SICK LEAVE AS A COMPONENT OF MATERNITY LEAVE

QUESTIONS AND ANSWERS

The following section is offered in order to answer some of the frequently asked questions regarding use of sick leave during and after pregnancy. These questions are by no means comprehensive and teachers are urged to refer unanswered questions to their local Association or to The Manitoba Teachers' Society (204-888-7961 or 1-800-262-8803).

1. Q: Can I use sick leave when I am on maternity leave?

A: You may claim sick leave at any time when you are unable to perform your duties and responsibilities as a teacher for medical or health-related reasons, subject to the sick leave you have accumulated, and subject to your doctor or midwife providing a medical certificate. If you develop complications related to your pregnancy, before or during your maternity leave, you may use sick leave until your medical condition allows you to resume your duties as a teacher.

You may also claim sick leave for health related reasons during a normal pregnancy and delivery. There is likely to be a period of time when you would be unable to work and this time qualifies as sick leave regardless of your ability to access maternity leave benefits. You should discuss with your doctor his or her recommended time away from work for your particular circumstances. Things like fatigue, safety in moving about the classroom, and stress are examples of issues that should be considered. Sick leave may also be accessed during a maternity leave for medical conditions unrelated to pregnancy.

In all instances, you must follow the usual procedures in your division and provide medical documentation of your inability to work.

Contact your local Association president or the Manitoba Teachers' Society if you encounter any difficulties in claiming sick leave.

2. Q: Can I take sick leave and also get the 15 weeks of EI maternity benefits?

A: The EI benefits with respect to maternity leave must be used within a 16 consecutive week period beginning

- a) no earlier than 12 weeks prior to expected date of delivery and
- b) no later than the actual date the child is born.

The 16-week period cannot be extended through the use of sick leave but may include a period of sick leave. Any sick leave you may take prior to the birth of the child (if you have not begun receiving EI benefits) would not be considered part of the 16 weeks of maternity leave.

3. Q: What if I do not have enough sick leave days to cover periods when I am medically unable to work?

A: You may be able to access Short Term Disability benefits if your Association provides for this coverage. You may also be able to access Employment Insurance sickness benefits. Contact your local Association or The Manitoba Teachers' Society for further information.

PART 5

**EXPERIENCE CREDIT FOR
MATERNITY/PARENTAL LEAVE**

The Education Administration Act, Regulation 2/2016 states:

In determining recognized experience, a person who is on maternity or parental leave in a school year, as provided for under *The Employment Standards Code*, is to be credited with the same recognized experience in the school year that he or she would have been credited with had the leave not been taken.

This change was effective January 15, 2016 and applies to any teacher commencing maternity and/or parental leave as of this date.

**PART 6 PARTICIPATION IN BENEFIT PLANS – DISABILITY, LIFE
INSURANCE, DENTAL AND EXTENDED HEALTH PLANS,
AND T.R.A.F.**

INTRODUCTION

Many of the benefit plans available to teachers in active service are also available to teachers on maternity and/or parental leave. Some plans have provisions for mandatory participation while on leave, while others offer optional participation. Just as collective agreements differ from one local association to the next, so do benefit plans and provisions. For further information, teachers should contact their divisional payroll office first, the local Association or The Manitoba Teachers' Society (204-888-7961 or 1-800-262-8803).

BENEFIT PLANS

A. TEACHERS' RETIREMENT ALLOWANCES FUND

Amendments to The Teachers' Pensions Act have made it possible for teachers to purchase pensionable service for periods of service missed due to maternity and/or parental leaves. Such service must be purchased within 18 months of returning to work. The length of service that can be purchased and the contributions required will vary depending on the type of leave and the terms of the collective agreement.

Teachers wishing to purchase pensionable service for periods of maternity and/or parental leave should contact T.R.A.F. at 204-949-0048/1-800-782-0714 or info@traf.mb.ca for further information **prior to commencing the leave.**

B. DISABILITY PLAN

Participation in the plan and payment of premiums is **mandatory** for the first two years of a leave of absence.

C. MSBA/MTS DENTAL PLAN

Coverage continues for the duration of the leave, at the employee's option, provided that:

- (a) premiums are paid by the employee in a manner mutually agreed between the employee and the employer; and
- (b) the employee elects coverage **prior** to the commencement of the leave.

D. MANITOBA PUBLIC SCHOOL EMPLOYEES GROUP LIFE INSURANCE PLAN

Participation in the plan and payment of premiums is *mandatory* for the first two years of a leave of absence.

E. BLUE CROSS EXTENDED HEALTH PLAN

Coverage will continue indefinitely, at the *employee's option*, provided premiums are paid.

PARTICIPATION IN BENEFIT PLANS

QUESTIONS AND ANSWERS

The following section is offered in order to answer some of the frequently asked questions regarding participation in benefit plans. These questions are by no means comprehensive and teachers are urged to refer unanswered questions to their local Association or to The Manitoba Teachers' Society (204-888-7961 or 1-800-262-8803).

Q: Must premiums for benefit plans be paid as a lump sum taken from my last regular pay cheque?

A: No. Arrangements can be made with your payroll department for a series of post-dated cheques or an automated withdrawal form to be submitted for the payment of most benefit premiums. Teachers planning on purchasing pensionable service for periods of maternity leave should contact T.R.A.F. for further information regarding payment options.

APPENDICES

Checklist on Timelines	24
Checklist on Documentation.....	25
Sample Letter Requesting Maternity Leave	26
Sample Letter Requesting Parental Leave	27
Sample Letter Requesting Sick Leave During Maternity Leave	28
Excerpts from Employment Standards Code	29
Use of Sick Leave Legal Decisions and Awards	32
Winnipeg Free Press Article – The Motherhood Penalty	41

CHECKLIST ON TIMELINES

The provisions which are most likely to affect teachers on maternity or parental leave are those contained in the Employment Insurance Act and the Employment Standards Code. Both include various time limitations.

For purposes of clarification, this section will review all time limitations mentioned previously; a provision of the Employment Insurance Act is marked EI, while a provision of the Employment Standards Code is marked ESC.

One year prior to confinement/adoption or caring for newborn (EI)

A teacher must have been employed at least 600 hours in her/his qualifying period (i.e., during the past year, if no employment benefits were claimed in that period) to qualify for EI benefits for maternity or parenting, including adoption.

17 weeks prior to expected date of confinement (ESC)

The earliest possible date for commencement of maternity leave according to the Employment Standards Code. A teacher may commence leave any time between this time and the expected date of confinement provided that the Board receives notice 4 weeks prior to the intended date of leave.

12 weeks prior to week of confinement (EI)

Employment Insurance benefits could start at this time provided that (a) the teacher has made previous application, (b) the teacher is no longer teaching and (c) the teacher has completed the one-week waiting period for benefits.

4 weeks prior to leave (ESC)

The Board must be notified at least 4 weeks prior to commencement of maternity or parental leave. A medical certificate confirming pregnancy and stating the expected date of delivery must be submitted with notification.

Week of confinement (EI) or week of original due date

The latest time at which Employment Insurance maternity benefits can start.

16 weeks after confinement (EI)

The last week during which employment insurance maternity benefits are payable, subject to a maximum of 15 weeks of benefits received.

51 or 78 weeks after child arrives or is placed in the home (EI)

*The last week during which employment insurance parental benefits are payable, subject to a maximum of 35 or 61 weeks of benefits received.

CHECKLIST ON DOCUMENTATION

There are a number of documents which must be prepared and/or obtained and/or submitted by teachers who are planning to take maternity and/or parental leave, including adoptive leave. This checklist is provided as a reminder of the various documents you may require. ***Be sure to keep copies of all documentation.***

√

- ___ Letter requesting maternity and/or parental leave.

- ___ Medical Certificate confirming pregnancy and stating the expected date of delivery **OR** certificate of adoption.
Note: You should keep a copy of the certificate that you give your employer in case it is requested by Service Canada.

- ___ Letter from school division confirming periods of leave negotiated other than those that are statutory.

- ___ Medical Certificate stating period of sick leave required, if applying for sick leave prior to delivery.

- ___ Medical Certificate stating period of sick leave required, if applying for sick leave post-delivery.

- ___ ESDA (formerly HRSDC) Benefit Statement (to be printed from your My Service Canada account).

SAMPLE LETTER
REQUESTING MATERNITY LEAVE

Date

Name of Superintendent
Address

Dear _____

I am writing to advise you that I will be taking maternity leave and parental leave from approximately due date to return date.

Enclosed please find my doctor's certificate confirming I am pregnant and stating my expected date of delivery.

Thank you for your consideration in this matter.

Sincerely,

Encl. Medical Certificate

Note: You are not compelled to take the entire 17 weeks maternity and 63 weeks parental leave. You may choose to take a shorter parental leave if that fits within your family plan. However, if you are planning to take the 78 weeks, it's a good idea to indicate this in your first letter.

* 80 weeks is allowed by Employment Standards Code but there are no benefits paid for those extra two weeks.

Note: Many divisions also have a maternity/parental leave form that employees are required to fill out. Please inquire with Human Resources.

SAMPLE LETTER
REQUESTING PARENTAL LEAVE

Date

Name of Superintendent
Address

Dear _____

I am writing to advise you that I will be taking _____ weeks of parental leave from date to date.

Thank you for your consideration in this matter.

Sincerely,

Note: Many divisions also have a maternity/parental leave form that employees are required to fill out. Please inquire with Human Resources.

SAMPLE LETTER
REQUESTING SICK LEAVE
DURING MATERNITY LEAVE

Date

Name of Superintendent
Address

Dear

RE: Sick Leave During Maternity Leave

Further to my application for maternity leave dated _____, this letter is to request that I be paid sick leave for the period from _____ to approximately (due date). Enclosed is a certificate from my doctor advising that I not work during that period.

The above-noted period is an estimate at this time based on my doctor's current assessment. My doctor will reassess my medical condition at the end of that period. If additional medical leave is required, I will advise you and forward a medical certificate.

If you require further information in relation to this request, please contact me.

Sincerely,
Name

Encl. – Medical Certificate

c: President, Teacher Association or your staff officer

(Please note you have the option to decide whether to send a copy of your letter to the local association president or your staff officer. It is imperative that you keep a copy for your own records.)

THE EMPLOYMENT STANDARDS CODE C.C.S.M. c. E110

DIVISION 9

LEAVES OF ABSENCE

MATERNITY LEAVE

Definitions

52 In this Division,

"**date of delivery**" means the date when the pregnancy of an employee terminates with the birth of a child; (« date d'accouchement »)

"**medical certificate**" means the signed statement of a duly qualified medical practitioner. (« certificat médical »)

Eligibility for maternity leave

53 A pregnant employee who has been employed by the same employer for at least seven consecutive months is eligible for unpaid maternity leave.

S.M. 2000, c. 49, s. 2; S.M. 2016, c. 2, s. 3.

Length of maternity leave

54(1) Subject to subsection (3), an employee who is eligible for maternity leave is entitled to the following maternity leave:

- (a) if the date of delivery is on or before the date estimated in a medical certificate, a period of not more than 17 weeks; or
- (b) if the date of delivery is after the estimated date, 17 weeks and a period of time equal to the time between the estimated date and the date of delivery.

Beginning and end of maternity leave

54(2) A maternity leave must begin not earlier than 17 weeks before the date of delivery estimated in the medical certificate and end not later than 17 weeks after the date of delivery.

Employee to provide certificate and give notice

54(3) An employee who is eligible for maternity leave shall

- (a) as soon as practicable, provide the employer with a medical certificate giving the estimated date of delivery; and
- (b) give the employer not less than four weeks' written notice of the date she will start her maternity leave.

Maternity leave if notice given after stopping work

55(1) An employee who is eligible for maternity leave but does not give notice under clause 54(3)(b) before leaving the employment is still entitled to maternity leave if, within two weeks after stopping work, she gives notice and provides her employer with a medical certificate

- (a) giving the date of delivery or estimated date of delivery; and

- (b) stating any period or periods of time within the 17 weeks before the date of delivery or estimated date of delivery that the normal duties of the employment could not be performed because of a medical condition arising from the pregnancy.

Length of maternity leave

55(2) The maternity leave to which the employee is entitled under subsection (1) is

- (a) any time, within the time referred to in clause (1)(b), that she does not work; and
- (b) the difference between that time and the time she would receive if she were entitled under subsection 54(1).

Maternity leave where notice not given

56 An employee who is eligible for maternity leave but who does not give notice under clause 54(3)(b) or subsection 55(1) is still entitled to maternity leave for a period not exceeding the time she would receive if she were entitled under subsection 54(1).

End of maternity leave where notice not given

57 The maternity leave of an employee referred to in subsection 55(1) or section 56 terminates not later than 17 weeks after the date of delivery.

End of maternity leave

57.1(1) An employee's maternity leave ends

- (a) 17 weeks after it began; or
- (b) if clause 54(1)(b) applies, 17 weeks after it began plus the additional time provided for in that clause.

Ending leave early

57.1(2) An employee may end her maternity leave earlier than the day set out in subsection (1) by giving her employer written notice at least two weeks or one pay period, whichever is longer, before the day she wishes to end the leave.

S.M. 2000, c. 49, s. 3.

PARENTAL LEAVE

Employee entitled to parental leave

58(1) An employee who adopts or becomes a parent of a child is entitled to unpaid parental leave to a maximum of 63 continuous weeks if

- (a) the employee has been employed by the employer for at least seven consecutive months;
- (b) the employee gives written notice to the employer at least four weeks before the day specified in the notice as the day on which the employee intends to begin the leave; and
- (c) in the case of an adoption, the adoption occurs or is recognized under Manitoba law.

Effect of late notice on parental leave

58(2) An employee who gives less notice than is required under clause (1)(b) is entitled to the 63 weeks of parental leave less the number of days by which the notice given is less than four weeks.

Commencement of parental leave

58(3) A parental leave must commence not later than 18 months after the date on which the child is born or adopted or comes into the care and custody of the employee.

S.M. 2000, c. 49, s. 4; S.M. 2006, c. 26, s. 23; S.M. 2016, c. 2, s. 4; S.M. 2018, c. 15, s. 4.

Maternity and parental leaves must be continuous

59 An employee who takes maternity leave and parental leave shall take them in one continuous period, unless the employee and the employer otherwise agree or a collective agreement otherwise provides.

End of parental leave

59.1(1) An employee's parental leave ends

- (a) 63 weeks after it began; or
- (b) if subsection 58(2) applies, 63 weeks after it began less the number of days provided for in that subsection.

Transitional

59.1(1.1) Despite subsection (1), if the child for whom the employee takes parental leave was born or adopted or came into the employee's care and custody before the day this section came into force, the employee's parental leave ends

- (a) 37 weeks after it began; or
- (b) if subsection 58(2) applies, 37 weeks after it began less the number of days provided for in that subsection.

Ending leave early

59.1(2) An employee may end his or her parental leave earlier than the day set out in subsection (1) by giving the employer written notice at least two weeks or one pay period, whichever is longer, before the day the employee wishes to end the leave.

GENERAL

No termination or lay-off

60(1) No employer shall lay off or terminate the employment of an employee entitled to take a leave under this Division because the employee is pregnant or intends to take a leave or takes a leave allowed by this Division.

Reinstatement

60(2) At the end of an employee's leave under this Division, the employer shall reinstate the employee to the position the employee occupied when the leave began or to a comparable position, with not less than the wages and any other benefits earned by the employee immediately before the leave began.

Exception

60(3) Subsections (1) and (2) do not apply if the employer lays off the employee, terminates his or her employment or fails to reinstate for reasons unrelated to the leave.

Employment deemed continuous

60(4) For the purpose of pension and other benefits, the employment of an employee with the same employer before and after a leave under this Division is deemed to be continuous.

PAID MATERNITY LEAVE

Susan Brooks and Others v. Canada Safeway Limited

Susan Parcels vs The Red Deer General and Auxiliary Hospital and Nursing Home District No. 15 and the United Nurses of Alberta Local No. 002 and the Alberta Hospital Association.

Alberta College of Physicians & Surgeons Policy
Assiniboine South Arbitration Award

“Paid maternity leave is considered such a shocking demand, such a departure from the rightful norm. But what’s the norm anyway? The norm is simply the pattern of society established by men. If insemination took months instead of minutes, you can bet paternity leave would be as normal as coffee break.”

- Michele Landsberg

Sex Discrimination Includes Pregnancy

Brooks v. Canada Safeway Ltd. (1989), 10 C.H.R.R. D/6183 (S.C.C.)

The Supreme Court, in a unanimous decision, rules that Safeway's employee disability plan discriminated against pregnant employees and that this constitutes discrimination because of sex within the meaning of s. 6(1) of the 1974 Manitoba *Human Rights Act*.

This is an appeal from a decision of the Manitoba Court of Appeal which found that the Safeway disability plan did not discriminate against pregnant employees and that discrimination because of pregnancy is not discrimination because of sex.

The Safeway disability plan, which was challenged in the complaints of Susan Brooks, Patricia Allen and Patricia Dixon, provided twenty-six weeks of disability benefits to any worker who had worked for Safeway for three months and who had to be absent from work for health reasons. However, the plan denied benefits to pregnant employees during a seventeen-week period commencing ten weeks before the week of childbirth and extending to six weeks after it. During this time, pregnant employees who were unable to work, either because of pregnancy-related complications or non-pregnancy-related illness, were not eligible for benefits. UIC maternity benefits provided an imperfect substitute for the disability benefits because they required a longer work period for eligibility, and provided less money for a shorter time.

The Court finds that pregnancy provides a perfectly legitimate health-related reason for not working and as such it should be compensated under the Safeway plan. Not to compensate pregnant employees for legitimate health-related absences goes against the purpose of human rights legislation which is to remove unfair disadvantages suffered by groups. Though society in general benefits from procreation, the Safeway plan places the major costs of procreation entirely on one group - pregnant women - and imposes unfair disadvantages on them.

Having found that the plan discriminated against pregnant employees, the Court considers the second issue in this appeal: whether discrimination because of pregnancy is discrimination because of sex. The Manitoba Court of Appeal relied on the 1979 Supreme Court of Canada decision in *Bliss v. Canada (Attorney General)* to support its finding that discrimination because of pregnancy is not discrimination because of sex because not all women are or become pregnant.

The Supreme Court repudiates *Bliss*, stating that *Bliss* was decided wrongly or in any case would not be decided now as it was then. The reasoning of *Bliss* and the Manitoba Court of Appeal decision in this case are rejected; the fact that only some women are affected by pregnancy-related discrimination does not mean that it is not discrimination because of sex. Only women are affected by this form of discrimination and they are discriminated against because of their gender.

The Court concludes that Safeway's disability plan discriminated against pregnant employees because of their sex.

The Court sets aside the decision of the Manitoba Court of Appeal with costs of the proceedings before the Manitoba courts and the Supreme Court and remits the complaints to the Board of Adjudication for determination of the appropriate remedy.

BOARD OF INQUIRY

UNDER THE INDIVIDUAL'S RIGHTS PROTECTION ACT

CONCERNING A COMPLAINT BY SUSAN PARCELS AGAINST THE RED DEER GENERAL & AUXILIARY HOSPITAL AND NURSING HOME DISTRICT #15 AND THE UNITED NURSES OF ALBERTA LOCAL 002 AND THE ALBERTA HOSPITAL ASSOCIATION ALLEGING DISCRIMINATION ON THE BASIS OF SEX IN CONTRAVENTION OF THE ACT BECAUSE SHE WAS REQUIRED TO PAY 100% OF THE PREMIUMS FOR CERTAIN HEALTH BENEFITS WHEN SHE WAS ABSENT FROM WORK ON PREGNANCY LEAVE.

AND CONCERNING THE MEANING OF THE SUPREME COURT OF CANADA'S DECISION IN BROOKS V. CANADA SAFEWAY: FOR WHAT PART OF A MATERNITY LEAVE MUST AN EMPLOYEE BENEFITS PLAN COMPENSATE THE EMPLOYEE – WHAT IS A VALID HEALTH-RELATED ABSENCE FROM THE WORKPLACE; IS THE BENEFITS PLAN LIABLE TO PAY IF THE EMPLOYEE TAKES A VOLUNTARY MATERNITY LEAVE FIRST; WHAT IS THE INTERRELATIONSHIP BETWEEN BENEFITS PLANS AND THE UNEMPLOYMENT INSURANCE SCHEME; HOW IS ANY INCOME DIFFERENTIAL TO BE TREATED?

DECISION

Issued at Edmonton, Alberta on 19 June, 1991

**Anne de Villars
de Villars Jones
300 Noble Building
8540-109 Street
Edmonton, Alberta
T6G 1E6**

3.2.

17. DECISION

The decision of this Board of Inquiry is:

- Susan Parcels was discriminated against by her Employer and her Union. It is discrimination for the Collective Agreement to require an employee on maternity leave to pre-pay 100% of premiums in order to retain benefits coverage for that part of her absence which is health-related. The Employer has breached section 7 and the Union has breached section 10 of the *Individual's Rights Protection Act*.
- The rationale in *Brooks* is that an employer with a benefits plan must compensate its pregnant employees when they are absent from the workplace for a valid health-related reason in the same way and at the same level as it compensates any employee absent on sick leave.
- The benefits plan must pay pregnant employees for the entire period of their health-related absence wherever it occurs during the pre-delivery, childbirth, and recovery from childbirth period.
- There is no presumptive period for the beginning or ending of the health-related portion of the absence. A pregnant employee must follow current proof of claim procedures to establish that the health-related absence is valid.
- The benefits for the health-related absence portion of a maternity leave are payable whether or not this portion occurs before, during, or after a period of unpaid voluntary maternity leave. In particular, the benefits must be paid notwithstanding current insurance principles, which in other cases would prevent payment of benefits when a health-related reason for absence occurs during a voluntary leave. The foresee ability of a health-related absence due to pregnancy in the course of a maternity leave distinguishes the present case from other circumstances in which the indemnity principle of insurance operates to prevent payment.
- Employers can take advantage of the U.I. SUB plans regulations to offset some increased costs. However, an employee cannot receive less than she would under the employer benefits plan. An employer cannot use a SUB plan if it results in discrimination.
- Accordingly, the Collective Agreement and benefits plan must be amended to provide for payment of the benefits in these circumstances. The ultimate cost of this decision will have to work its way through the market place in a non-discriminatory fashion.
- In this case, there is no need to deal with remedies and costs.

Dated at Edmonton, Alberta, on 19 June, 1991.

Signed by Anne de Villars

**Source: “Court of Queen’s Bench of Alberta,
April 14, 1992”**

There is no doubt that our society is moving towards greater benefits for pregnant women, such as have long existed in most of Western Europe. The real question for employers arising out of *Brooks* and *Parcels* is the extent of those benefits and whether the costs will fall on society as a whole or on employers.

It is clear from the evidence before the Board of Inquiry that at least a portion of any maternity leave is health-related. However, it is not identical to sick leave, as there is often a non-health-related component. It cannot be neatly pigeon-holed because of its hybrid nature. Certainly that part of maternity leave that is health-related needs to be treated like sick leave but because of its interrelationship with a health-related leave, any voluntary maternity leave cannot be treated identically with other leaves. It is a unique situation. As a result, maternity leave should be removed from the leave of absence article in the collective agreement and placed in a category by itself.

For that part of the maternity leave that is health-related, the sub-article is clearly directly discriminatory as it does not treat maternity leave in the same manner as other health-related leaves, for example, leave for illness or accident. A woman who is absent on a health-related maternity leave must not be required to pre-pay the full premiums in order to maintain her benefits if those employees who are absent for other health-related absences do not. To require her to do so is discriminatory.

An employee is entitled to take a voluntary maternity leave prior to a health-related maternity leave. At the time that the employee wishes to change her status, it will be incumbent on her to satisfy the employer as with any health-related matter that she is legitimately absent for a health-related reason. A pregnant employee is not required to choose between a voluntary leave and a health-related leave.

The Board of Inquiry decided that the employee could not receive less and that Unemployment Insurance SUB plans could not be used if they were discriminatory. The Board did not say that they had to be identical.

I am of the opinion that the plans do not have to be identical. They only need to be substantially the same. There can be some variation between the benefits although certainly no more than the 5% existing on its face between the present illness leave and an Unemployment Insurance SUB plan. However, in this case it would appear that the amount is actually substantially less than 5%.

In the result, the plans do not have to be identical as long as they are substantially the same. The dollar amounts do not have to be exactly the same, as circumstances vary, but any percentage variations should not be great. The final determination of a health-related maternity leave plan is a matter for collective bargaining.

Alberta College of Physicians and Surgeons

Messenger, No. 20

July 7, 1992

MATERNITY “DISABILITY” (Part 3)

Two articles in past issues of the Messenger have discussed the issuance of letters attesting to “medical disability” surrounding childbirth. It was noted that, because of the “Parcels Decision”, requests for such notes, letters or forms were likely to increase. Since those two articles appeared, however, it has become apparent that our advice may have taken too narrow a view of the issue.

On the basis of further information, advice from an expert committee, and considerable discussion, Council passed the following motion at its June meeting:

“That, for a normal pregnancy, a reasonable health-related absence from the workplace might be a period of up to 13 weeks, including two weeks before the expected date of delivery.”

It is important to note that physicians do not, and should not, determine what benefits their patients may be entitled to. Labor Standards legislation, court decisions and employer/employee bargaining do this. All that physicians can and should do is attest to the expected date of delivery, and comment on the length of time that the patient should be away from work for health-related reasons.

In passing this motion, it was not Council’s intent to interfere with the clinical judgment of a physician in dealing with his/her patient. Nor was it the intent that the 13-week figure should be mandatory, or a maximum. Rather, it was only intended to provide a “ballpark” point of reference for maternity leave.

Assiniboine South Arbitration Award, 1994

(Penner, Shrom, Liffman)

MATERNITY LEAVE AND SICK LEAVE

As noted above, the Maternity Leave provision, Article 4.03 allows a period of 17 or more weeks of unpaid leave. The issue we confront here arises from sources within the Agreement and current proposals:

- a) The fact, as noted above, that maternity leave as such is totally unpaid by the employer.
- b) The effect of 6.01 (a) which reads as follows:

It is agreed by the parties that sick leave entitlement shall only be granted by the Division where an employee is unable to be at work and perform his/her regular duties as a result of illness or injury. (Emphasis added)

which has been, as this section is applied, to exclude pregnant teachers from sick leave benefits while on maternity leave, the assumption being that their absence is due to the leave and not for any health-related reason.

- c) The Association's revised proposal for a new section 6.01 b) as follows:

The Board shall provide full sick leave entitlement to a pregnant teacher who, as a result of her condition either before or after delivery, is unable to be at work and perform her regular duties for a valid health-related reason(s). The pregnant teacher shall follow current proof of claim procedures for sick leave entitlement as may be required by the Board.

the effect of which would be to qualify pregnant teachers for sick leave benefits if there are valid health-related reasons which arise during the currency of both the pregnancy and the maternity leave which may both pre-date and ante-date the actual date of delivery.

It is commonly recognized that, generally, maternity leave (usually about 17 weeks in duration, calculated as 10 weeks prior to the expected date of confinement, the week of delivery and 6 weeks *post partum*) is a combination of non health-related needs (e.g. simply getting everything ready for the new arrival) and health-related reasons. Surprisingly, it seems to us, the current agreement as it is applied fails to recognize the health-related component in a maternity leave.

We say “surprisingly” for three reasons: One is simple common sense: Since a pregnant teacher not on maternity leave continues her entitlement to sick leave benefits, the current agreement either encourages or, even worse, pressures a pregnant teacher to stay on the job longer than she should or might want to. Secondly, aside from what the law itself might now require, it seems to us simply inequitable in this day and age that what is clearly gender discrimination should continue. Only women can become pregnant and being pregnant requires some reasonable absence from work; and, yet in the current state of affairs, pregnant women on maternity leave are deprived, if the need arises, of a benefit available to all other employees.

Thirdly, and perhaps most decisively, is the state of the law following the momentous decision of the Supreme Court of Canada in a case arising in Manitoba: *Susan Brooks and Others vs. Canada Safeway Limited* (1989) 59 D.L.R. 4th 321 (hereinafter *Brooks*). In *Brooks* a Collective Agreement between Canada Safeway in Manitoba and its union was the basis for a sick leave plan which had the effect of denying benefits to a pregnant employee which were available to all others. Susan Brooks challenged this provision as being unlawful discrimination on account of sex contrary to the *Manitoba Human Rights Act* and, after having lost her case before a Human Rights Adjudicator and lost it again on appeal, first to the Manitoba Court of Queen’s Bench and then to the Manitoba Court of Appeal, took the issue to the Supreme Court of Canada, which court unanimously found in favour of Susan Brooks!

The wider proposition enunciated in *Brooks*, which we should both be mindful of and take pride in states, in part, as follows (referring to a 1979 decision of the Supreme Court of Canada, as it was then constituted, denying a claim similar to the *Brooks* claim):

Over ten years have elapsed since the decision in Bliss. During that time there have been profound changes in women’s labour force participation. With the benefit of a decade of hindsight and ten years of experience with claims of human rights discrimination and jurisprudence arising therefrom, I am prepared to say that Bliss was wrongly decided or, in any event, that Bliss would not be decided now as it was decided then. Combining paid work with motherhood and accommodating the childbearing needs of working women are ever-increasing imperatives. That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seems to bespeak the obvious. It is only women who bear children; no man can become pregnant. As I argued earlier, it is unfair to impose all of the costs of pregnancy upon one half of the population. It is difficult to conceive that distinctions of discrimination based upon pregnancy could ever be regarded as other than discrimination based upon sex, or that restrictive statutory conditions applicable only to pregnant women did not discriminate against them as women.

The Supreme Court went on to say:

It seems indisputable that in our society pregnancy is a valid health-related reason for being absent from work. It is to state the obvious to say that pregnancy is of fundamental importance in our society. Indeed, its importance makes description difficult. ...If the medical condition associated with procreation does not provide a legitimate reason for absence from the workplace, it is hard to imagine what would provide such a reason. Viewed in its social context, pregnancy provides a perfectly legitimate health-related reason for not working and as such it should be compensated by the Safeway plan. In terms of the economic consequences to the employee resulting from the inability to perform employment duties, pregnancy is no different from any other health-related reason for absence from the workplace.

In the light of all of these considerations, we award the Association's proposed 6.01 (b) which, for greater certainty, we restate here.

The Board shall provide full sick leave entitlement to a pregnant teacher who, as a result of her condition either before or after delivery, is unable to be at work and perform her regular duties for a valid health-related reason(s). The pregnant teacher shall follow current proof of claim procedures for sick leave entitlement as may be required by the Board.

No doubt there will be some cost associated with the implementation of this provision. We urge the Parties to consider negotiating what is sometimes referred to as an Unemployment Insurance SUB Plan. Such a plan, as we understand it, gives some relief to employers whose plans cover maternity benefits. SUB plans allow an employer to remain as second payers of maternity benefits, merely topping up to the Plan level the Unemployment Insurance payments to the employee, without the recipients suffering any reduction in the Unemployment Insurance payment. There may be some complications in the elaboration, approval, and implementation of a SUB plan; but they are not insoluble. It is not within our mandate to elaborate a SUB plan here: we simply draw this to the attention of the Parties who may wish to minimize the cost of this Award as a reasonable option for doing so.

Source: Winnipeg Free Press, May 21, 2015, Shannon Sampert

ANALYSIS

The motherhood penalty

'Mommy track' frequently derails women's career ambitions

It was a wonderful understatement: It's normal until someone reminds you how ridiculous it is. And with that, Manitoba Teachers' Society president Paul Olson neatly wrapped up what happens when you treat women exactly like men and don't keep their important differences in mind.

Olson was responding to the news the Manitoba School Boards Association avoided a grievance arbitration with the school district of Mystery Lake by extending the top-up in maternity benefits. Those on maternity leave previously only received top-ups for days they were teaching. In other words, women on paid maternity leave did not get top-up compensation while on vacation. That has now changed, and other school districts will likely have to incorporate the changes as bargaining continues.

As Olson said, it's an obvious equity piece as the majority of the teachers in the school division are women and many are hired in their child-bearing years.

But honestly, this is a continuation of transitions made in workplace policy that have been ongoing for more than a quarter of a century. The Supreme Court of Canada ruled in 1989 Safeway violated the Manitoba Human Rights Act by failing to provide equal compensation for those who missed work due to sickness during the later stages of pregnancy. In *Brooks v. Canada Safeway*, the court ruled the grocery-store chain could not deny pregnant women coverage under their health-care benefits, forcing them instead to go on employment insurance.

The court ruled: "The respondent alleged that the decision to exclude pregnancy from the scope of its plan was not a question of discrimination, but a question of deciding to compensate some risks and to exclude others. Under-inclusion may be simply a backhanded way of permitting discrimination. Once an employer decides to provide an employee benefit package, exclusions from such schemes may not be made, like in this case, in a discriminatory fashion."

There is a wage gap in Canada. Despite the fact women are better-educated and have higher employment rates than men, they still make less. Women are less likely to make advances in their career. They are more likely to work part time.

But it's not women per se. It's women with children.

In studies, the issue of paid family leave is viewed as an important way to ameliorate the gendered wage gap. One study suggested maternity-leave policies are integral to ensuring women's continued labour-force participation because women can have their children while maintaining their employment position.

Canada falls in the low end of the scale for parental leave and benefits in comparison to other rich countries, according to a study by Washington's Center for Economic and Policy Research published in 2008. Scandinavian countries consistently rate very high, while the United States by comparison is considered to have one of the poorest support systems for pregnant and new mothers in the world.

Women who have children have long suffered what's called the motherhood penalty, making less than men and being held back because they have children. Women on the "mommy track" can't be taken seriously career-wise until they're finished having children.

Interestingly, men with children get a fatherhood bonus, with studies indicating they receive more money on average than childless men. As an aside, the study also found men with children are more likely to be interviewed for jobs than women with children. In other words, the stability from having a family is viewed as a plus for men while it works against women.

The Manitoba Human Rights Commission says discrimination based on pregnancy continues to be an issue in Manitoba, especially in an employment setting. Statistically, pregnancy-related complaints are pretty consistent, making up 4.5 per cent of the complaints filed in 2013 and 2014. According to the commission, complaints that are filed based on pregnancy in employment typically include allegations there have been changes to job duties or a termination of employment.

It's unbelievable in this day and age women with children still have to fight for fairness in the employment front.

As everyone knows, it takes more than one person to make a baby. Having children benefits society, particularly with an aging population and falling birth rates.

If we truly want to support women and gender equality, we cannot continue to have women be penalized for having children. It's not an issue of choice, for heaven's sake. It's an issue of fairness.

Shannon Sampert is the Free Press perspectives and politics editor.

Reproduced with permission from the May 21, 2015 edition of the Winnipeg Free Press.

