

Alberta Federation of Labour Submission
Minister's Committee on Employment Leave for Parents
January 17, 2001

The Alberta Federation of Labour appreciates the opportunity to provide a response to the Department of Human Resources and Employment's questionnaire regarding employment leave for parents. This section of the Employment Standards Act is very important, in that it demonstrates the value placed on Alberta's families.

We would like to thank the Minister's Committee for their work and commitment. The task of balancing several competing and polarized interests is difficult, but we are hopeful that your efforts will result in improved legislation that, if nothing else, serves to meet the best interests of children in the province.

Our submission will be broken down into four (4) sections. The first section will provide general comments on the benefits of the federal changes to the Employment Insurance Act. The second section will address the main areas of your consultation. The third section will provide our response to the concerns of employers. The final section will outline the areas that we see as necessary for effective and meaningful job protected maternity and parental leave legislation. This section will also include our recommendations about issues not currently addressed in the legislation or through the questionnaire.

General Comments on the Federal Government's Changes to the Employment Insurance Act

The changes made by the federal government to the Employment Insurance Act serve several purposes.

Parenthood as a "social good."

The general statement made by increasing the time that is allowed for job protected and paid leave is that parenthood is a "social good." By "social good," one means that society places value on both childbearing and child-rearing. It is also a social good in that there is a social value placed on the first years of a child's life. This year is important for a child's development, in that it is during this time that emotional child-parent bonds are established.

Job protection for the duration of a leave eliminates the "labour risks" associated with parenthood.

By ensuring that one's job is protected for the duration of one's maternity and/or parental leave removes the labour risk associated with parenthood. These "labour risks" are the risks of termination or job reclassification one faces, as a result of parental duty. By allowing up to 52 weeks of job protected paid leave, a parent does not need to balance the benefits of parenthood with the labour risks, for the first year of life with a new child.

Equity

The changes to the federal Employment Insurance Act addresses the issues of equity in several ways:

a. Gender equity

By increasing the number of weeks of parental leave to 35 weeks, the federal government is, in a way, legislating and encouraging gender equity in parenthood. By setting out paid parental benefits, the federal government is able to "emphasize the gender-neutral processes of nurturing and bonding" (Garrett, Wenk & Lubbeck, 1990). It emphasizes that fathers should be encouraged to be present during childbirth, to bond with their children, and to be involved in their daily care (Baker, 1997, 54).

Policies that only include maternity leave, and benefits directed only to mothers, serves to discourage employers from hiring women of childbearing age, to discourage gender equity within workplaces and occupations, and discriminates against fathers who may wish to become involved with their children.

b. Familial equity

The provisions on parental leave address the diversity of modern families in Canada. It cannot be assumed that a natural mother and a natural father head all families. Adoptive families, single-parent families, and same-sex partnerships are now, in essence, all included in the government's definition of familial cohorts. The extension of paid leave for adoptive parents, emphasizes that the bonding between adopted children and their parents is just as important as the bonding between children and their natural parents. This provision encourages adoption by both men and women.

c. Jurisdictional Equity

Working men and women across the country can access federal maternity and parental leave benefits. No matter what province they live, they are able to access these benefits, which results in jurisdictional equity. It is important to note here, however, that while mothers and fathers can still access EI maternity and parental benefits for the legislated 50 weeks (52 weeks when including the 2 week waiting period), the amount of job protection they will receive while on leave is determined by the province in which they live.

Consultation Response

The following section will provide responses to the questions asked on the questionnaire distributed by the Minister's Committee for employment leave for parents.

Duration of Leaves for Mothers

Mothers should be entitled to 15 weeks of job protected maternity leave. Leaves under this provision would be 17 weeks, when one includes the two-week waiting period for EI maternity benefit claims. Expectant mothers should be able to access this leave up to 12 weeks prior to the expected date of delivery. In the event that a medical condition prior to the date of delivery

requires the mother to be away from work for a longer period than 12 weeks, this leave period should be extended to accommodate this.

After this 17 week maternity leave period, mothers should be entitled to 35 weeks of job protected parental leave. Mothers would then be entitled to a total of 52 weeks of job protected leave to benefit in full from EI and return to work with the same employer.

Duration of Leaves for Fathers

Fathers should be entitled to 35 weeks of job protected parental leave. Including the two week waiting period, a father would be entitled to a total of 37 weeks of job protected leave to benefit in full from EI and return to work with the same employer. A father may begin this leave no later than 52 weeks after the birth of the child.

Duration of Leaves for Adoptive Parents

Adoptive parents should be entitled to 35 weeks of job protected parental leave. Including the two week waiting period, adoptive parents would be entitled to a total of 37 weeks of job protected leave to benefit in full from EI and return to work with the same employer. Adoptive parents may begin this leave no later than 52 weeks after the coming of the child into the parent(s) custody, care and control for the first time.

Eligibility Requirements

In order to be eligible for job protected maternity and parental leave, one must complete 360 hours of insurable employment.

This qualifying time allows more equitable levels of access to maternity and parental leave by women and men who may be working part-time or seasonally.

Eligibility requirements across provinces vary from no eligibility requirements, up to 52 weeks of insurable employment required for eligibility. Ontario requires 13 weeks; Newfoundland, Prince Edward Island and Saskatchewan require 20 weeks; and British Columbia, Quebec and New Brunswick have no qualifying requirements. A study done by the Canadian Labour Congress (using data from Statistics Canada) showed that 41% of women who claimed EI maternity benefits in 1998 had worked 1,819 or more insurable hours before taking leave.

Notice Periods for Leave and Return

An employee wishing to take maternity and/or parental leave should give the employer a written notice at least 2 weeks before the date the leave is to begin.

Should this leave need to begin earlier for any medical reason, a written notice should be given to the employer stating the new date on which the leave will begin. The employer may also request a medical certificate in these where leave dates are earlier.

Should leave begin later than first thought, the employee should give the employer written notice at least 2 weeks prior to the new date when leave is to start.

Unless the employee wishes to return before the end date of the leave period, the employee should return to work on the day following the last day allowed for the leave.

Should the employee wish to return earlier, the employee should provide the employer with written notice at least 2 weeks prior to the intended date of return. Should this return date change, the employee should provide written notice at least 2 weeks prior to the new desired return date.

Should the employee not return to work following the completion of the leave period, and not provide any written notification outlining reasons to have the leave extended, the employee can be deemed to have abandoned employment.

Maternity leave should be able to be extended for up to six weeks in the case of incapacity or health problems of the mother or of the child. Employees should provide employers with written notification outlining the expected length of the extension. In these cases, an employer may request a medical certificate.

Addressing Employers' Concerns

We feel it is important to address the concerns employers have with respect to the extension of job protected leave under the provincial Employment Standards Act. We understand the concerns over cost and inconvenience that employers may have, but we hope by offering labour's point of view on these concerns, it will help to form a more balanced debate on these issues.

Costs

Employers are resistant to extending the length of job protection for maternity and parental leaves because of the costs they see as being associated with these types of leaves. The costs referred to by employers include costs for training and retraining, cost of recruitment, costs of replacement, and costs of maintaining benefits.

Training Costs

Employers are citing that costs for training become higher because retention of temporary employees is difficult. Simply said, a temporary employee is very likely to leave upon securing full-time employment elsewhere. In that incident, an employer would have to recruit, hire and retain another temporary worker, or the employer may choose to forgo hiring a temporary employee.

There are a number of other incidents when the use of temporary workers is necessary. Whether that be to provide replacements for workers on short-term disability, or workers away on vacation, the use of temporary workers is a common reality in many workplaces, large and small.

Workplaces that become involved in special projects may hire workers on a temporary contract basis, where terms of employment are set out in a written contract. Start dates and end dates,

as well as rate of pay for the project would be stated. All provisions regarding termination of the contract would also be stated. Contracts of this nature are common in many workplaces, and lengths can vary from two months, to six months, to one year and longer. With contracts, workers hired would most often be skilled, and able to handle the work tasks required for the contract work, therefore making large amounts of training unnecessary.

Job sharing is also something that has become very common in many workplaces. In this model, workers share the duties associated with a certain job. In times of maternity and parental leave, temporary staff or permanent staff could undertake this job-sharing model. Again, this shortens the amount of training undertaken by employers, and thus lessens the costs associated with extending job protected maternity and parental leave.

Retraining Costs

Employers are concerned that after 52 weeks, employees returning to workplaces would have to undergo retraining. It is thought that with advances in technology, and a rapidly changing economy, that work duties could potentially change over the course of one's maternity and parental leave to the point where the returning employee cannot complete the tasks associated with the position. It is also thought that within 52 weeks, some positions may cease to exist. In order to meet their legal obligations, employers would have to retrain employees to do another job (at the same rate of pay).

Retraining costs are always a part of the labour costs employers are faced with. Should technology change so much and so rapidly that it changes the duties associated with a position, an employee would have to undergo retraining regardless of being on leave or not. Positions become phased out all the time. Reclassification of positions is common in workplaces affected by changes to technology. It is not uncommon for workers to shift into different jobs should certain duties of their current job become redundant. The modern workforce is flexible and adaptable to changes in the labour market and workplaces.

Costs of Maintaining Benefits

Employers argue that they will incur higher costs for benefits (healthcare, etc.) for employees on maternity and parental leaves, as well as temporary workers hired in their absence.

It is our feeling that very few workplaces, other than those, which are unionized, would continue paying benefits for those workers taking leaves. In these cases, non-unionized employees on leave would bear some of the costs associated with benefit premiums. The employer then could, if administratively feasible, offer benefits to temporary employees during their term of employment. There are many workplaces where the employer and employee share the costs of benefit premiums, so a cost analysis by the firm may be needed to determine actual costs of offering benefits to temporary employees while maintaining benefits for employees on leave. It is also our inclination that if the employer maintained benefits for employees on leave, the employer would not offer any benefits to temporary employees. We see little or no additional costs associated with benefit premiums given these examples.

Inconvenience

Many employers have expressed that extending job protected maternity and parental leave for their employees is 'inconvenient.' The inconvenience to employers is in having to hire and train temporary workers, the inconvenience of having to 'lose key people' for up to one year, and the inconvenience of having to replace these workers should they not decide to return to the workplace.

There are many inconveniences inherent in owning a business. Undoubtedly, employees will be the cause of some of these 'inconveniences.' Employees resign in small and large workplaces each and every day; employers must then hire and train their replacements. We do not see extending job protected maternity and parental leave as imposing an unusual set of inconveniences on employers.

Instead, by legislating that employers must keep these jobs open for the length of the leave, makes a statement to employees that their employers value parenthood. Statistics Canada analysis shows that a large majority of those employees on leave will return to their current employer.

The extension of the legislation, in a way, puts all workplaces on a level playing field. With a number of work choices available for people, those thinking of having or adopting children may choose one workplace over another based on the amount of job protected maternity and parental leave being offered. This legislation can be utilized by employers as an incentive for the recruitment and retention of workers.

Some workplaces may feel that they are further inconvenienced by this legislation because female workers dominate their workplaces. With the inclusion of parental leave, there is equity built right into the legislation. In essence, female-dominated workplaces would be affected as much as male-dominated workplaces. Fathers have as much access to parental EI benefits under the federal Employment Insurance Act as do mothers. Therefore, this argument does not hold.

What Is Required for Effective Employment Standards Legislation

We feel that in order for Alberta's Employment Standards Act to be effective in the areas concerning job protected maternity and parental leave, that the Act must include the following:

- Application and Operation of this Act
- Definition of maternity leave and those for whom it applies.
- Definition of parental leave and those for whom it applies.
- Maternity Leave
- Job protected maternity leave that lasts for 15 weeks.
- Start date can occur up to 12 weeks prior to the date of delivery.
- Parental Leave for Mothers, Fathers and Adoptive Parents
- Job protected parental leave that lasts for 35 weeks.

- Start date of leave must begin no later than 52 weeks after the birth of the child or the coming of the child into the parent(s) custody, care and control for the first time.

Notice of Leave

The employee should give the employer a written notice at least 2 weeks before the date the leave is to begin.

Should this date be later, the employee should give the employer a written notice at least 2 weeks before the new date for leave is to begin.

Should this date be earlier due to medical reasons (case of maternity leave), written notice should be forwarded to the employer as soon as possible stating the new date the leave is to begin. Employers may request a medical certificate in these cases.

Should the employee wish to return before the official completion of the leave period, the employee should give the employer a written notice at least 2 weeks before the date the employee wishes to return.

Maternity leave should be able to be extended for up to six weeks in the case of incapacity or health problems of the mother or of the child. Employees should provide employers with written notification outlining the expected length of the extension. In these cases, an employer may request a medical certificate.

Employees that fail to return following the completion of their leave will have assumed to have 'abandoned employment.' (covered under "Resumption of Employment" section)

Rules Common

Termination

Termination of employment prohibited during maternity and/or parental leave periods. Job will be protected for the length of the leave period.

Eligibility

In order to be eligible for job protected maternity and parental leave, one must complete 360 hours of insurable employment.

Protection

Job protected maternity and parental leave periods should not be lessened by entitled regular leave or time off used by the employee (sick leave, vacation, etc.).

Language Used in the Act

There should be some discussion on the language used in the Act. "Maternity" could be replaced with "pregnancy" as it has been in Ontario's Employment Standards Act. Their "Maternity Leave" is called "Pregnancy Leave." By using "pregnancy leave," this portion of the

Act refers only to those pregnant. This clearly defines who is eligible for job protected maternity leave. Adoptive mothers, who may feel they should be eligible under maternity leave provisions, would not be able to make this claim according to this language. They are eligible for job protected parental leave instead.

Concluding Remarks

Please accept this formal submission as the Alberta Federation of Labour's position on job protected maternity and parental leave. Of the 120,000 members we currently represent in this province, many will be affected in the coming year and years by the province's changes to these sections of the Employment Standards Act.

On behalf of all working mothers and fathers in this province, I urge the Minister's Committee and the Department of Human Resources and Employment to consider what it will mean to ensure mothers and fathers in the province are guaranteed the same social benefits as their counterparts in other jurisdictions - that this government values working people, that it values children and that it values families. Failure to comply fully with the changes made to federal Employment Insurance seriously puts into question this government's commitment to all Albertans.

Respectfully Submitted,

Alberta Federation of Labour