

2001 BILL 11

First Session, 25th Legislature, 50 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 11

**EMPLOYMENT STANDARDS
AMENDMENT ACT, 2001**

THE MINISTER OF HUMAN
RESOURCES AND EMPLOYMENT

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 11

2001

EMPLOYMENT STANDARDS AMENDMENT ACT, 2001

(Assented to _____, 2001)

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

Amends SA
1996 cE-10.3

1 The *Employment Standards Code* is amended by this Act.

2 Division 7 of Part 2 is repealed and the following is substituted:

Maternity Leave and Parental Leave

Entitlement to
maternity
leave

45 A pregnant employee who has been employed by an employer for at least 52 consecutive weeks is entitled to maternity leave without pay.

Length of
maternity
leave

46(1) The maternity leave to which a pregnant employee is entitled is a period of not more than 15 weeks starting at any time during the 12 weeks immediately before the estimated date of delivery.

(2) An employee who takes maternity leave must take a period of leave of at least 6 weeks immediately following the date of delivery, unless the employee and her employer agree to shorten the period by the employee's giving her employer a medical certificate indicating that resumption of work will not endanger her health.

Notice of
maternity
leave

47(1) A pregnant employee must give her employer at least 6 weeks' written notice of the date she will start her maternity leave, and if so requested by her employer, the pregnant employee must provide her employer with a

Explanatory Notes

1 Amends chapter E-10.3 of the Statutes of Alberta, 1996.

2 Part 2, Division 7 presently reads:

45 A pregnant employee who has been employed by an employer for at least 12 consecutive months is entitled to maternity leave without pay.

46(1) The maternity leave to which a pregnant employee is entitled is

(a) a period of not more than 18 weeks starting at any time during the 12 weeks immediately before the estimated date of delivery,

(b) if the actual date of delivery is after the estimated date of delivery, an additional period of time between the estimated and the actual date of delivery, and

(c) if, after the date of delivery, the medical condition of the mother or child prevents the employee from returning to work, a further period of maternity leave of not more than 3 weeks if the employee provides a medical certificate indicating that, due to her or her child's medical condition, the employee is not able to return to work.

(2) Maternity leave must include a period of at least 6 weeks immediately following the date of delivery, unless the employee and her employer agree to shorten the period by the employee's giving

medical certificate certifying that she is pregnant and giving the estimated date of delivery.

(2) A pregnant employee is entitled to start maternity leave on the date specified in the written notice given to her employer under subsection (1).

No notice of
maternity
leave

48 An employee who does not give her employer prior notice of maternity leave before starting it is still entitled to maternity leave if, within 2 weeks after she ceases to work, she provides her employer with a medical certificate

- (a) indicating that she is not able to work because of a medical condition arising from her pregnancy, and
- (b) giving the estimated or actual date of delivery.

Notice of
employer to
start maternity
leave

49 If during the 12 weeks immediately before the estimated date of delivery the pregnancy of an employee interferes with the performance of her duties, an employer may give the employee written notice requiring her to start maternity leave.

Parental leave

50(1) Subject to subsection (2), an employer must grant parental leave to an employee as follows:

- (a) in the case of an employee entitled to maternity leave under this Division, a period of not more than 37 consecutive weeks immediately following the last day of maternity leave;
- (b) in the case of a parent who has been employed by the employer for at least 52 consecutive weeks, a period of not more than 37 consecutive weeks within 52 weeks after the child's birth;
- (c) in the case of an adoptive parent who has been employed by the employer for at least 52 consecutive weeks, a period of not more than 37 consecutive weeks within 52 weeks after the child is placed with the adoptive parent for the purpose of adoption.

(2) If employees described in this section are parents of the same child, the parental leave granted under subsection (1) may

- (a) be taken wholly by one of the employees, or

her employer a medical certificate indicating that resumption of work will not endanger her health.

47(1) A pregnant employee must give her employer at least 2 weeks' written notice of the date she will start her maternity leave, and if so requested by her employer, the pregnant employee must provide her employer with a medical certificate certifying that she is pregnant and giving the estimated date of delivery.

(2) A pregnant employee is entitled to start maternity leave on the date specified in the notice given to her employer under subsection (1).

48 An employee who does not give her employer prior notice of maternity leave before starting it is still entitled to maternity leave if, within 2 weeks after she ceases to work, she provides her employer with a medical certificate

(a) indicating that she is not able to work because of a medical condition arising from her pregnancy, and

(b) giving the estimated or actual date of delivery.

49 If during the 12 weeks immediately before the estimated date of delivery the pregnancy of an employee interferes with the performance of her duties, an employer may give the employee written notice requiring her to start maternity leave.

Adoption Leave

50(1) Adoption leave is a period of not more than 8 weeks' leave, without pay, starting on the date the adoptive parent first obtains custody of the child.

(2) An employer must grant adoption leave to an employee who is the adoptive parent of a child under 3 years of age if

(a) the employee has been employed by the employer for at least 12 consecutive months, and

(b) the employee gives written notice to the employer of adoption leave at least 2 weeks before the employee can reasonably expect to first obtain custody of the child.

(3) When an employee is unable to give written notice of adoption leave, the employee must give notice to the employer as soon as possible after receiving notice of the adoption.

(4) An employer is not required to grant adoption leave to more than one parent of an adoptive child.

Rules Common to Maternity and Adoption Benefits

51(1) No employer may terminate the employment of, or lay off, an employee who

(a) has started her maternity leave, or

(b) be shared by the employees.

(3) If employees described in this section are parents of the same child and are employed by the same employer, the employer is not required to grant parental leave to more than one employee at a time.

Notice of
parental leave

51(1) An employee must give the employer at least 6 weeks' written notice of the date the employee will start parental leave unless

- (a) the medical condition of the birth mother or child makes it impossible to comply with this requirement;
- (b) the date of the child's placement with the adoptive parent was not foreseeable.

(2) If the employee cannot comply with the written notice requirement for any of the reasons stated in subsection (1)(a) or (b), the employee must give the employer written notice at the earliest possible time of the date the employee will start or has started parental leave.

(3) An employee is entitled to start parental leave on the date specified in the written notice given to the employer under subsection (1) or (2).

(4) Written notice under section 47(1) is deemed to be notice of parental leave under this section unless the notice specifically provides that it is not notice of parental leave, in which case this section applies.

(5) Employees who intend to share parental leave must advise their respective employers of their intention to share parental leave.

Termination of
employment
prohibited
during
maternity
leave and
parental leave

52(1) No employer may terminate the employment of, or lay off, an employee who

- (a) has started her maternity leave, or
- (b) is entitled to or has started parental leave.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or

(b) is entitled to or has started adoption leave.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53 continues to apply.

52(1) An employee who wishes to resume working after maternity leave or adoption leave ends must give the employer at least 2 weeks' written notice of the day on which the employee intends to resume work.

(2) The employer must

(a) reinstate the employee in the position occupied when maternity or adoption leave started, or

(b) provide the employee with alternative work of a comparable nature

at not less than the earnings and other benefits that had accrued to the employee when the maternity or adoption leave started.

(3) An employer is not required to allow an employee to whom maternity or adoption leave has been granted to resume employment until 2 weeks after receipt of the employee's notice of intention to return to work.

(4) An employee who does not wish to resume employment after maternity or adoption leave must give the employer at least 2 weeks' written notice of intention to terminate employment.

53 If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's maternity or adoption leave and the employer has not resumed operations when the employee's leave ends, the employer must, if the operation is subsequently resumed within 12 months following the end of the leave,

(a) reinstate the employee in the position occupied at the time the maternity or adoption leave started, at not less than the earnings and other benefits that had accrued to the employee, or

(b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's maternity or adoption leave started, with no loss of seniority or other benefits accrued to the employee.

Resumption of
employment

provide the employee with alternative work in accordance with section 53.1 continues to apply.

53(1) Subject to section 46(2), an employee must give the employer at least 4 weeks' written notice of the date on which the employee intends to resume work and in any event must give notice not later than 4 weeks before the end of the leave period to which the employee is entitled or 4 weeks before the date on which the employee has specified as the end of the employee's leave period, whichever is earlier.

(2) If an employee has given notice that she intends to resume work on a date that is before the end of the 6-week period referred to in section 46(2), the employee is entitled without further notice to an additional period of leave sufficient to meet the requirements of section 46(2).

(3) The additional period of leave referred to in subsection (2) is to be charged first against any remaining maternity leave to which the employee is entitled and then against parental leave, and if it is charged against parental leave the amount of parental leave referred to in section 50 is reduced accordingly.

(4) An employee is not entitled to resume working until the date specified in the written notice referred to in subsection (1) or the end of the additional period referred to in subsection (2), as the case may be.

(5) An employee must resume work on the date specified in the written notice or immediately following the end of the additional period, as the case may be, and if the employee fails to return to work on that date the employee is not entitled to resume work subsequently unless the failure to return to work resulted from unforeseeable or unpreventable circumstances.

(6) If an employee fails to provide at least 4 weeks' notice before the end of the leave period to which the employee is entitled, the employee is not entitled to resume work unless the failure to provide the notice resulted from unforeseeable or unpreventable circumstances.

(7) Where an employee is entitled to resume work under this section, the employer must

- (a) reinstate the employee in the position occupied when maternity or parental leave started, or

- (b) provide the employee with alternative work of a comparable nature

at not less than the earnings and other benefits that had accrued to the employee when the maternity or parental leave started.

(8) An employee who does not wish to resume employment after maternity or parental leave must give the employer at least 4 weeks' written notice of intention to terminate employment.

Suspension of operations

53.1 If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's maternity or parental leave and the employer has not resumed operations when the employee's leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the maternity or parental leave started, at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's maternity or parental leave started, with no loss of seniority or other benefits accrued to the employee.

3 Section 82(1)(b)(i) is repealed and the following is substituted:

- (i) contrary to section 52(1) after the employee started maternity leave or because the employee was entitled to or had started parental leave,

4 Section 128(c) is amended by striking out "52 or 53" and substituting "53 or 53.1".

3 Section 82(1)(b)(i) presently reads:

82(1) An employee may make a written complaint to an officer that

(b) the employment of the employee was suspended or terminated or the employee was laid off

(i) contrary to section 51(1), after the employee started maternity leave or because the employee was entitled to or had started adoption leave,

4 Internal cross-reference changes - consequential.

5 Section 129 is amended by striking out “51” and substituting “52”.

6 The following provisions are amended by striking out “adoption benefits” and substituting “parental leave”:

section 1(1)(o);
section 2(2);
section 3(1)(b)(i) and (2);
section 14(4)(f).

7 The *Maternity and Parental Leave Regulation* (AR 38/2001) is hereby validated on and from February 7, 2001.

5 Internal cross-reference change - consequential.

6 Consequential changes because of change in terminology.

7 Validation of regulation.