What to Expect When Your Employee’s Expecting

The HR issues and plan design details surrounding maternity leave.

BY BROOKE SMITH

When it comes to the workplace and motherhood, we’ve come a long way, baby. A woman’s job is now protected when she’s on maternity leave, guaranteeing her the same position (or a comparable one) when she returns. And maternity benefits are payable to the mother for a maximum of 15 weeks through employment insurance (EI).

While that’s great news for new mothers, employers are left to figure out how to cope without an important team member for an extended period—many times up to a full year.

In any leave situation, communication is key, according to Jean-Marc MacKenzie, senior vice-president at Morneau Shepell Ltd. in Toronto. “You need to have effective communication with your workers leading up to this process, during the leave and then reintegration back into the workplace,” he says. André Nowakowski, a partner in the labour and employment law department with Miller Thomson LLP in Toronto, agrees, adding that communication helps with business planning and the employee’s own personal planning.

“Maternity leave is not simply something that you can say, ‘Here’s the policy. Here are the statutory requirements,’” says MacKenzie. “Employers are starting to recognize that this is a process that needs to be managed.” A process that should be managed during three phases: before, during and after the leave.

Before...

As early as possible, a pregnant employee must supply a formal letter to HR indicating her intended leave start date and return-to-work date. The employer can then begin to think about coverage for her workload while she’s on leave. Depending on the industry and employer, there are several options.

An employer can choose not to replace the employee (for example, the employee’s role may be so specialized that it may be too difficult to find a contract replacement).

Or, the employer may simply disperse the employee’s duties to other employees. “Usually this is not that possible,” says Christopher McHardy, a partner in the labour and employment group with McCarthy Tétrault in Vancouver, “as other people have a full-time job as it is.”

The common scenario is hiring a replacement/contract worker. The replacement usually comes from one of two sources, says McHardy, a temporary agency or the marketplace. “The temp agency, in some respects, can be less of a headache because somebody else is responsible for that person, but it’s usually more costly because you’re paying a premium to the agency,” he says. Typically, then, this leaves the employer to go to market to hire a contract worker with the right skill set for the position.

Another option is for the employee to continue to be involved in the workplace somehow. “If that’s something the employer is interested in, then it might well offer that option to the employee,” says McHardy. While this usually happens for more executive-type positions, he says, the employer and employee will have to arrange some kind of compensation for the hours the employee works.

But be careful with this, warns Nowakowski. “Any sort of working...
arrangement while someone is on leave has to be clear so that it’s done with the employer’s consent,” he says. “If the employer raises the idea of the employee working 10 hours a week while they’re on leave, for example, is it going to feel pressured to take that work even though she wanted to be on leave?”

“Nowakowski says there are more and more cases in which employees returning from mat leave are looking for some kind of accommodation,” he says. “When people return to work after a long absence from the workplace, we will have to consider that accommodation.”

Training is an obvious retention factor but so is an employer’s flexibility. For example, the employee may have to leave work earlier or later in order to accommodate daycare drop-off and pickup. “While the Ontario Employment Standards Act may not say, for example, that a change in work schedule has to be granted, the Human Rights Code may require an employer to consider whether it can accommodate that type of change up to the point of undue hardship,” he says.

However, Piurko stresses that the success of a program like this is really what the employee makes of it. She and Sanford were in contact via email or phone practically every day—and by the second week of her first leave, she was in the office to go for lunch. “My view of the program was that while the job is about staying connected with the people I work with and staying connected with the files I work on, while not in the office full time,” she says.

Early in her first leave, Piurko spoke to Sanford about the possibility of putting in two to three hours of work a day, two to three days a week. “I would have employees working toward the end of her leave, Sanford made some investigations and the deal was straightforward—no one wants the incumbent back.”

Brooke Smith is managing editor of Benefits Canada.

The returning employee may even require training. “If a computer program’s been upgraded, if a new phone system’s been put in place or a new manual’s been put out—if an employee hasn’t been trained or updated on that, it’s not a great experience when she is still going through the transition of coming back into the workplace,” says MacKenzie. “And the goal is to re-engage her and get her as productive as quickly as possible.”

While there may or may not be changes in the workplace to account for, there will almost certainly be changes in the employee. The woman who left to have a baby is a very different woman when she returns—and employers need to acknowledge that and, if possible, accommodate the changes through flexible hours, for example.

Another concern involves transitioning other employees back to working with the person returning from leave. What happens if your replacement worker is a star? “Everyone loves them; they perform fantastically,” says McHardy. “The replacement has knocked everyone’s socks off and no one wants the incumbent back.”

While McHardy says it’s not common, it is possible that the employer must return an employee to her pre-leave position (or a comparable one). “Any time you’re not going to return an employee to the day later position, there’s no one there to do that work. You have to be very good document backup to what has happened, in explaining why the position does not exist, for example, in order to establish that an employee is not entitled to return to the workplace in the circumstances,” says Nowakowski.

However, that doesn’t necessarily mean the replacement has to leave. “With the changing dynamics, it’s not one minus one,” she says. “One can have to go and one can have to come back,” says MacKenzie. “There are opportunities with the changing environment to keep contract workers if they are successful,” he says, including a parallel position in the department or another position within the organization.

Maternity leave can be a win-win situation for both employers and employees. If employers continue to implement family-friendly policies and offer top-up and support office during an employee’s absence from the workplace, we will have come even longer way. 

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