

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

“Maternity leave is not simply something that you can say, ‘Here’s the policy. Here are the statutory requirements.’ Employers are starting to recognize that this is a process that needs to be managed.”

—Jean-Marc MacKenzie,
senior vice-president,
Morneau Shepell Ltd.

arrangement while someone is on leave has to be crystal clear that it’s done with the employee’s consent,” he says. If the employer raises the idea of the employee working 10 hours a week while on leave, for example, is she going to feel pressured to take that work even though she wanted to be on leave? “That may get in the way of it being seen to be freely arranged, and that could expose an employer to risk,” he explains.

Any work accepted during the leave needs to be considered carefully by the employee. “You can earn an additional \$50 [a week] or an additional 25% of your weekly benefit, whichever is higher, before it starts to affect your EI benefits,” says McHardy. “Once you earn more than \$50 in a week, dollar for every dollar above that threshold is deducted from the EI benefit.”

During...

Although the employee will likely be very busy adapting to motherhood during her leave, that doesn’t necessarily mean she’s not interested in what’s happening at work. Once she settles into her baby-focused routine, she might yearn for that connection to the workplace.

Phil Sanford, a partner in McCarthy Tétrault’s municipal group in Toronto, says when he started at the firm in the late-1970s, women would not typically come into the office while on maternity leave. “From my viewpoint, it was an utter and complete separation during that time period, and we weren’t encouraged to communicate with people who were on mat leave. It was very bad form to interrupt them,” he says. Though he admits this was likely done for the best of reasons.

But employers are changing. In 2007, McCarthy Tétrault implemented its Parental Leave Buddy Program, in which a lawyer going on leave partners with another senior lawyer of her choosing in the office. Lisa Vogt, national practice group leader of the real property and planning group with McCarthy Tétrault in Vancouver, says while most new parents all have friends they can talk to about parenting, the Parental Leave Buddy Program is really to help our lawyers stay in touch with their legal practice and the office.

The firm also provides each leave employee with a Parental Leave Toolkit, available in print and electronic forms. “It’s a binder that includes all the information we think somebody going on a leave or about to have a new baby might find useful, including our parental leave and flex work policies,” she says. Other information includes a list of lawyers in the firm with young children and advice from fellow lawyers who’ve taken leave.

Tara Piurko, a partner in the real property and planning group with McCarthy Tétrault in Toronto, has been through the Parental Leave Buddy Program twice, choosing Sanford as her buddy for both leaves. “He’s a friend of mine and a partner I worked with a lot back then and still do now,” she says.

But while Piurko says she did experience some anxiety when she was off, the program provided her with a positive experience. “A couple of times during my first mat leave I would simply email or call Phil and explain that I was feeling disconnected,” she says. “Within the hour, I would feel completely connected again.”

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 about the job, 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 (on a volunteer basis) toward the end of her leave. Sanford made some investigations and the deal was sealed; Piurko began the “part-time” transition at the end of October 2008. “When I came back officially in January 2009, it really felt like I hadn’t gone,” she said. “I hit

the ground running and felt connected to the office.” She did the same for her second leave, which ended in December 2010.

“It was really good in terms of transitioning back to work, getting away from the kids and getting your family used to you not being there all the time—and just getting into a routine,” says Piurko.

After...

But while an employee may have stayed connected with the workplace during her leave, there are trends in the marketplace indicating that some women will *not* return from mat leave. How can employers mitigate this? Some offer a top-up (paying employees the difference between the EI benefits and some percentage of their salary) as a way to retain women. According to a Statistics Canada survey, in 2008, within 18 months of giving birth, 96% of women with paid benefits and a top-up returned to work for the same employer, compared with 77% with paid benefits and no top-up. Only 46% with neither benefits nor top-up returned.

Compensation is an obvious retention factor but so is an employer’s flexibility. Nowakowski says there are more and more cases in which employees returning from mat leave are looking for some kind of alteration in the hours they work. For example, the employee may have to start the day later and leave later in order to accommodate daycare drop-off and pickup. “While the Ontario *Employment Standards Act* may not say, for example, that a change to a 9:30 a.m. start 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.

Furthermore, as Canada faces a labour shortage in the coming years, employers’ ability to convince employees to return from a mat leave by offering more family- and child-friendly work policies (e.g., accommodating different capacities such as part-time work or flex hours) will be especially important, says McHardy.

But even if a woman returns to work after her leave, it can still be a shock to the system after a lengthy time off. Some organizations, according to MacKenzie, have gone so far as to give returning employees a reorientation. “You don’t need to put them through the full-blown training program, but a reorientation program with the worker to re-engage her back into the workplace so that she’s aware of any changes in policy, any changes in departments, anything that’s gone on,” he says.

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 and, if possible, accommodate this through flex 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 does happen. By law, however, 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 her position, there’s going to have to be very good documentary backup to why that has occurred, in explaining why the position does not exist, for example, in order to establish that an exception to the requirement to return the employee exists 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—one has to go and one has 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- and child-friendly policies, offer top-ups and offer support during an employee’s absence from the workplace, we will have come an even longer way. **BC**

Brooke Smith is managing editor of *Benefits Canada*. brooke.smith@rci.rogers.com