Federal Government Announces Expansion Of Parental Benefits And Other Leave-related Changes Under EI

November 10, 2017

On November 9, 2017, the federal government announced changes to the rules surrounding maternity and parental benefits and provided details about new caregiving benefits under the Employment Insurance Act. These changes are set to come into effect as of December 3, 2017.

a) Extension of EI Parental Benefits

New parents who are eligible for employment insurance ("EI") parental benefits will also soon have the option to receive such payments for up to 61 weeks after a child is born or adopted, which is an extension of 26 weeks, to be divided between the parents as they choose. These changes will not increase the total dollar value of EI parental benefits, nor do they affect the existing eligibility requirements. Rather, the new option allows for repackaging EI parental benefits over a longer period — eligible parents can choose to receive 33 per cent of average weekly earnings over the extended 18-month period instead of the current payments which represent 55 per cent of average weekly earnings paid over a 35-week benefit period, subject to maximum weekly payment levels set annually by the federal government.

The federal government, as part of its June 22, 2017 budget bill, passed amendments to the Canada Labour Code earlier this year to extend the maximum length of parental leave to 63 weeks, which may be divided between two workers. These amendments to the Canada Labour Code come into force on December 3, 2017, to coincide with the extended EI option for new parents. In anticipation of the federal EI benefit program's new options surrounding parental leave, Ontario's Bill 148, Fair Workplaces, Better Jobs Act, 2017, also contains amendments that would extend parental leave under the Employment Standards Act, 2000 from 35 weeks to 61 weeks for employees who have also taken pregnancy leave, and from 37 weeks to 63 weeks for those who are taking only parental leave. If Ontario's Bill 148 is passed, this means that an employee could

take a combined maternity and parental leave of a total of 78 weeks (up from the current 52 week maximum), and would have the option of receiving any EI parental benefits for which they are eligible, but at a lower rate, over the extended leave period.

In Alberta, the Employment Standards Code was amended earlier in 2017, introducing changes to maternity, parental and family caregiver type leave provisions, which come into effect on January 1, 2018. These will include the following leave periods:

Maternity Leave: 16 weeks commencing any time during the 12 weeks before the estimated delivery date;
Parental Leave: up to 37 weeks;
Compassionate Care Leave: up to 27 weeks; and
Critical Illness of Child Leave: up to 36 weeks.
As of this writing, the Alberta government has not introduced any further changes to the above leave periods to coincide with the extension of the time periods during which an eligible employee could draw on employment insurance benefits.

Employees in Québec will continue to receive maternity, parental and adoption benefits, as well as a paternity benefit under the Québec Parental Insurance Plan, which will not be affected by the federal government's announced changes.

In other provinces, employment standards legislation sets out parental leave periods at a lower level than those proposed for Ontario by Bill 148, and it remains to be seen whether changes to minimum entitlements in these provinces will be made in response to the federal government's changes to EI parental benefits.

b) Earlier access to EI Maternity Benefits

Under these changes, eligible employees will be able to receive earlier access to maternity benefits. Current rules allowing employees to claim EI maternity benefits up to 8 weeks prior to the expected date of birth will be amended to allow applications for maternity benefits as early as 12 weeks before the expected date. EI maternity benefits will remain at their current level — 15 weeks at 55 per cent of average weekly earnings (to a maximum of $543/week) — but will be accessible by eligible employees from up to 12 weeks before birth to 17 weeks after.

c) New EI Family Caregiver Benefits

New EI caregiving benefits have also been introduced, expanding support provided by the EI program to eligible employees who take time away from work to provide care for sick or injured family members in certain circumstances. These benefits include: (i) Up to 15 weeks' Family Caregiver benefit for adults to be provided to workers who leave work to care for or support an adult family member who is critically ill or injured, which may be shared by eligible family members over a one-year period; and (ii) Up to 35 weeks' Family Caregiver benefit for children to be provided to workers who leave work to care for or support a critically ill child. Each of these new benefits may be combined

with the existing Compassionate Care benefit, which provides a maximum of 26 weeks of benefits.

Employers across Canada will need to review and revise existing leave policies, including any policies to top-up salaries or provide supplemental benefits, in order to ensure they accurately reflect the changes to the law and the employer's intended policy for employees.

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