

MODEL POLICY ON MATERNITY AND PARENTAL LEAVE

**June, 2000
Amended May 2003**

Preface

The Benchers of the Law Society of Manitoba have adopted the following Equity policy statements:

Men and women fully participate in the legal profession regardless of age, disability, race, religion, marital or family status or sexual orientation.

- (a) *There is an absence of systemic barriers to entry to and practice within the profession to persons who are members of groups against whom discrimination is prohibited by law.*
- (b) *Lawyers will treat with respect the dignity and worth of all persons and shall treat all persons equally, without discrimination on the basis of any of the grounds noted in the Code of Conduct.*

In order to carry out these policies, The Law Society of Manitoba has made a commitment to make available and to disseminate, as requested, information to members of the profession to assist them in identifying and removing barriers both to entry to and to practice within the profession. The Model Policy on Maternity and Parental Leave is the second policy prepared by the Equity Committee of the Law Society in response to meeting this commitment. The Committee recommends its adoption and implementation by law firms and other employers of lawyers in Manitoba.

Maternity and parental leave and benefits policies available to lawyers vary greatly. In many firms, no policies exist and lawyers negotiate with the managing body of the firm on a case by case basis. Other firms and institutions that employ lawyers have benefits and policies in place and their provisions considerably exceed statutory minimums.

At the time of the updating of this policy, the federal *Employment Insurance Act* provides 35 weeks of parental leave benefits and 15 weeks of maternity leave benefits for a total of 50 weeks of paid leave. Current provincial legislation – *The Employment Standards Code* – provides unpaid parental leave of up to 37 weeks combined with 17 weeks of unpaid maternity leave for a total of up to 54 weeks of combined unpaid maternity and parental leave. Parental benefits are available to both biological and adoptive parents and can be shared by both parents. As these two statutes are frequently amended, it is strongly recommended that employers check with both the Federal Government's HRDC (Human Resources Development Canada) and the Provincial Government's Employment Branch for further updating information.

The Law Society of Manitoba's Equity Ombudsperson is available to provide assistance free of charge in developing policies for your office.

The Equity Committee of The Law Society of Manitoba ("the Committee") recognizes that enabling employees with childcare responsibilities to balance career, childbirth and family life will ultimately be to the benefit of both firm and employee. Recruitment and retention of lawyers are important reasons to institute a thoughtful parental leave policy. Demonstrating to lawyers that it is possible to be both a good lawyer and a good parent is equally important. A firm's parental leave policy is a visible means of demonstrating to a firm's lawyers its commitment to these goals. Lawyers who believe their firm has done the best possible job of helping them balance work and family are more likely to be loyal and productive. Law students who learn that a firm has developed a sound parental leave policy will note that the firm has made family issues a priority and will be encouraged to accept that firm's offer. Most importantly, the firm's atmosphere will be one of an organization that understands how to maintain human values in a busy, successful legal practice.

The Committee recognizes the physical, emotional, and psychological demands of childbirth and adoption and considers that a period of leave is important for the well-being of both the parent and child.

The attached Model Policy was formulated after a thorough review of a variety of policies from various jurisdictions within Canada, including Law Societies and Bar Associations, the American Bar Association, and existing policies of Manitoba law firms, corporations and governmental agencies. Our review disclosed that in some cases, firms simply provide unpaid periods of leave while in other cases, firms supplement the paid benefits which are applicable under the appropriate federal legislation. The Committee recognizes that it will be up to the individual employer to determine, based on its particular needs and circumstances, the benefits which it will extend to the lawyers who make up the firm. The Committee has developed the attached policy with a view to it serving as the recommended model for Manitoba law firms and other employers of lawyers in Manitoba.

A lawyer on maternity and parental leave remains a lawyer and a professional. It is recognized that from time to time issues may arise that require a lawyer on leave to be consulted about ongoing client matters. In order for this to work well, it will be necessary to balance the needs of the clients and the ability of the firm to meet those needs, with the needs of the lawyer on leave.

As important as a thoughtful policy with a positive tone may be, the best drafted policy cannot succeed without the support of the firm's managing partners and senior lawyers. Attitudes positive and negative are transmitted in this way. If firm leadership projects an attitude that the parental leave policy is important to the goals of the firm, and that the firm actively encourages a full family life, that attitude will become the pervasive attitude of the firm. The primary reason for the support of the policy is the retention of valued lawyers.

Adopting the provisions of the attached Model Policy does not need to be an expensive or onerous proposition for the employer. By way of example, the firm's plan could allow for 70% of an employee's salary during the two week waiting period and a top up to 70% for a maximum of thirty eight weeks, after the initial two week period.

Again, the Committee recognizes that firms have differing abilities to offer benefits. An effective and comprehensive policy will enable lawyers with child care responsibilities to balance career, childbirth and family life which is ultimately to the benefit of both firm and lawyer. Accordingly, this policy may be used in whole or in part, according to the needs and circumstances of the firm.

In preparing this policy, certain assumptions were made as to the remuneration practices of most Manitoba firms and employers of lawyers. In modifying this policy for use in your firm you should read it carefully and amend it, as appropriate, to the circumstances of your particular firm. There are a number of blanks and paragraphs left in bold type, which need to be considered and completed prior to the implementation of this policy. Have regard to the chart at the end of the policy which is used for illustration and example purposes only, and may be of some benefit to you in considering and completing the blanks and bold paragraphs. Also, be aware that this policy has legal ramifications in that it may become part of the employment contract between your firm and its employed or commissioned associates.

MODEL POLICY
MATERNITY AND PARENTAL LEAVE

1. Introduction

The firm has implemented this leave policy to enable partners and associate lawyers of the firm who are new parents to spend time with their newborn or newly adopted children. The firm recognizes the physical, emotional and psychological demands of childbirth and adoption, and considers that a period of leave is important for the well-being of both parent and child. Through this policy, the firm affirms its support for its lawyers in their decisions to become parents and in their work as lawyers. The policy also reflects the firm's commitment to providing and maintaining high quality legal services to its clients in the most economical and efficient manner possible. Through this policy, the firm aims to reconcile these objectives.

The provincial *Employment Standards Code* and the federal *Employment Insurance Act* apply to employees, including employed lawyers. Accordingly, the distinction between associates who are employees and associates who are independent contractors must be kept in mind in interpreting this policy. Partners are dealt with separately herein.

Any associate in good standing, who gives birth to or adopts a child, and who has been with the firm on a full time basis as an associate lawyer for at least one year, or the equivalent in part time work, prior to the date on which a leave period is to begin, is eligible for benefits under this policy. Associates who are spouses of persons giving birth or adopting a child and who have been associated with the firm full time for one year, or the equivalent in part time work, are eligible for parental leave benefits under this policy, regardless of family status or sex.

All partners in good standing who give birth to or adopt a child are eligible for benefits under this policy. Partners who are spouses of persons giving birth or adopting a child are also eligible for parental leave benefits under this policy, regardless of family status or sex.

2. Maternity Leave for Associates

Maternity leave applies only to associates who are pregnant or who have given birth. In accordance with *The Employment Standards Code*, the maternity leave entitlement offered herein to employed lawyers is 17 weeks, while the unpaid parental leave offered to employed lawyers is 37 weeks. By the existing Employment Insurance system, salaried employees receive benefits, after a 2 week unpaid waiting period of 55% of insurable earnings up to a maximum of \$413 per week for a maximum of 15 weeks.

Employed lawyers on maternity leave will be entitled to receive from the firm payment supplementary to Employment Insurance benefits ("Top Up") for ___ weeks (see chart at end of Policy) commencing at the beginning of the 2 week waiting period provided for under *The Employment Insurance Act*. The top up will be an amount which when added to

the gross Employment Insurance benefits, and any other earnings of the employee, will equal ___% of the employed lawyer's normal weekly earnings.

It is expected that the associate will be able to avail herself of any existing and applicable group or individual disability benefit plan in the event of pregnancy related illness or disability before or after the maternity leave commences.

Commissioned associates are self employed and paid on the basis of collected billings. They cannot access benefits under the existing Employment Insurance system nor does the provincial *Employment Standards Code* apply. However, they will be paid by the firm. The commissioned associate will receive on a monthly basis ___% of his or her average income (based upon the last 12 months prior to taking maternity leave) for the duration of the period of leave, not to exceed the amount of benefit that would have been provided by the Employment Insurance system had the associate qualified as an employee. The period of leave will be equal to that offered to employed lawyers.

Commissioned associates on leave will receive credit for whatever actual billings and collections do occur during the leave along with the firm's benefits. This recognizes that the associate is receiving credit during his or her leave for work done prior to taking the leave, and further that upon return, the commissioned associate may not have a large amount of work in progress to bill for the first few months after returning.

3. Parental Leave for Associates

Under *The Employment Standards Code* of Manitoba, employed lawyers are entitled to 17 weeks of unpaid parental leave so long as they have been employed by the employer for at least 12 consecutive months and have given the employer at least 4 weeks notice before the leave begins. By the existing Employment Insurance system, salaried employees receive paid parental benefits for a maximum of 35 weeks.

Paid parental leave is available to both men and women in the firm, including lawyers in common law relationships, whether those relationships are between persons of the opposite or the same sex. Salaried associate lawyers should apply for and receive parental benefits for which they are eligible under *The Employment Insurance Act*. The firm's policy is designed to supplement and to add to those benefits, rather than to replace them.

Salaried associates on paid parental leave will be entitled to receive Top Up for ___ weeks. The Top Up will top up the gross Employment Insurance benefits to a maximum of ___% of the associate's normal weekly salary.

Commissioned associates will be paid on the same basis for parental leave as is set out in the maternity leave provisions above and will receive the same number of paid parental weeks leave as employed lawyers.

4. Provisions Applicable to Both Maternity and Parental Leaves for Associates

- a) Employed associates on leave will be entitled to the benefit of any salary increases which they would otherwise have received.
- b) The intention of this Policy is to assist someone during a leave, not to pay a bonus to someone who is quitting. It is expected that anyone receiving the benefits should be willing to return to work and if they chose not to do so, they should not be accepting the firm's money. The normal expectation is that someone who does receive the benefit will return for at least ___ billable hours in the case of maternity leave and ___ billable hours in the case of parental leave (and in the event that the associate takes advantage of both leaves, then those billable hours will be cumulative). Should a lawyer who receives top up benefits under this Policy not return to work, the firm shall be entitled to take all action necessary or appropriate to recover any top up benefits paid to the lawyer during her or his leave.
- c) Any associate who does not qualify for maternity or parental benefits under this Policy but requires maternity or parental leave may be granted a maximum of 54 unpaid weeks leave of absence.
- d) If an associate wishes to extend the aggregate period of maternity or parental leave beyond that allowed under the paid or unpaid leave portions of this policy, he or she may apply for an additional period of unpaid leave. The firm will respond within 30 days of receiving such application.
- e) Unpaid leave under subparagraph (c) and (d) above, will be subject to the firm's approval. The criteria for approval will include needs of the employed lawyer and the employed lawyer's family, the needs of the firm, work load, specific client needs, unique skills of the employed lawyer, and time for proper planning to meet the demands of the practice.
- f) All regular benefits provided by the firm to the associate will continue to be paid by the firm during all periods of paid leave, so long as the associate continues to make any contributions normally made by that associate. For unpaid leaves extending beyond the period of paid leave, no benefits will be paid by the firm.

5. Partners

Partners are entitled to receive maternity and parental leave as negotiated but not less than the periods of leave offered to associates.

Partnerships vary greatly and it would be impractical to propose in the Model Policy remuneration to be paid to a partner on leave. It is suggested, however, that a

partner receive remuneration during leave at a level at least equivalent to the remuneration paid to an employed lawyer on leave.

6. Adoption

Consistent with the rationale of this policy, a parent who adopts or takes custody of a child may take parental leave. The Firm understands that new parents may wish to spend time with a newly adopted child. This period of time is important for the emotional and psychological well-being of the parent as well as the child. Adoption leave must commence not later than the first anniversary date on which the child is adopted or comes into the care and control of the employee. (s. 58(3) of *The Employment Standards Code*)

Under *The Employment Standards Code*, where a parent adopts or takes custody of a child, that parent is entitled to 37 weeks unpaid leave. In addition, the parent is entitled to apply for and receive the paid parental benefits for which they are eligible under the *Employment Insurance Act*, currently 35 weeks.

Where a parent adopts or takes custody of a child over twelve months of age, the parent is entitled to apply for and receive the parental benefits for which they are eligible under the *Employment Insurance Act*. In addition, the parent is entitled to a further continuous unpaid leave of up to 17 weeks. Such a parent is entitled to apply for further leave if the child suffers from a physical, psychological, or emotional condition that requires extended care.

7. Procedures

a. Notice

- i) Whenever possible, any lawyer who wishes to take a leave must notify the firm in writing at least two months prior to the anticipated date the leave will begin. Where a medical emergency or unexpected adoption make this notice period impossible, the lawyer should give the firm as much notice as possible. In either case the notice period should provide the expected starting and ending dates of the leave required and should be directed to the Management Committee (or managing partner, as the case may be). If the lawyer anticipates also requiring unpaid leave, a written application stating the reasons and the estimated additional time, should be included with the leave notice.

b) Transitional Provisions

i) Case-Load Advisor

It is the joint responsibility of the leave-taking lawyer and the firm to ensure that: 1) the leave has the least possible impact on the productivity of the lawyer and the firm; and 2) service to the clients is maintained. To assist in achieving this goal, the firm shall designate a partner of the firm to: 1) assist the leave-taking lawyer in transferring work; 2) ensure that the lawyer's work is appropriately distributed; 3) handle any difficulties concerning the distribution of the leave-taking lawyer's work arising during the leave period; and 4) assist the leave-taking lawyer in acquiring work assignments and retransfer of files upon the return to work. The case-load advisor will be the liaison for any emergency contact with the leave-taking lawyer required during the leave and will keep a leave memorandum containing the list and whereabouts of all of the leave-taking lawyers files.

ii) Leave Memorandum

One month prior to the leave, the leave-taking lawyer will develop a leave memorandum directed to his or her case-load advisor and to the appropriate individuals in the firm, identifying each file in his or her case-load and the designated lawyers who will be handling these matters during the leave period. No later than two weeks prior to the expected date of departure, the lawyer will have completed the memo and met with each person taking over any file to review that file.

iii) Return to Work

Three weeks prior to the scheduled date for returning to work, the leave-taking lawyer will prepare a reminder memo to the case-load advisor respecting the date of return to work as well as outlining any proposed reduced work schedule upon returning to work at the firm. The case-load advisor will have the responsibility for circulating the memo to the required persons at the firm.

Upon return to work after leave, the case-load advisor, the leave-taking lawyer and the lawyer(s) with temporary charge over any of the leave-taking lawyer's files will meet to decide which files are most appropriately transferred back to the returning work at which point in time.

c) Transitional Work Scheduling

i) Transition

It is the joint responsibility of the leave-taking lawyer and the firm to facilitate the transfer of work both before and after the leave. It is the policy of the firm that leave-taking lawyers have the opportunity to be as productive as possible during the transition periods before and after taking a maternity or parental leave.

ii) Reduced Work Schedule Prior to Birth

Lawyers may find that the physical impact of pregnancy necessitates a reduced hour schedule prior to the date of birth of a child. Lawyers may request to work a reduced hour schedule for a period of up to two months immediately prior to the expected date of birth of a child. In response to such requests, the firm will negotiate that lawyer's work schedule, compensation and benefits for the requested period.

iii) Reduced Work Schedule on Return

Lawyers may find that the demands of child care necessitate a reduced hour schedule on return to work. Lawyers may request to work a reduced hour schedule for a period of up to 12 months immediately following return to work after leave. In response to such requests, the firm will consider and discuss that lawyer's work schedule, compensation and benefits for the requested period.

This limited period of a reduced work schedule is designed to assist the lawyer in making an effective transition back into the workplace after a parental leave and to adjust to his/her role as a working parent. This reduced work schedule portion of the firm's parental leave policy should not be confused with the firm's formal policy on alternative work schedules. Lawyers interested in working reduced hours for an extended period of time should consult the procedures and guidelines provided under the firm's alternative work schedule policy.

8. Impact on Future Work, Salary and Partnership

No lawyer will be penalized in any way for taking any maternity or adoption leave authorized under this policy and all lawyers taking such leaves are guaranteed the same or comparable jobs with the firm upon their return to work.

The opportunity of an associate to become a partner is not dependent upon whether she/he has taken maternity or parental leaves. The length of the partnership track is a matter of individual professional development of the associate.

9. Conclusion

This policy may be reviewed from time to time and may be modified as the firm learns from experience and continues to grow or change. Changes may reduce the benefits available under this policy would come into effect only after one month's notice to all lawyers and would apply only to leaves commencing after the expiration of the notice period.

Maternity and Parental Leave Chart

Examples of Provisions in existing policies in use in Manitoba firms and institutions that employ lawyers. These examples pertain to employed associates only.

Recommended Minimums as at May 2003

Paid maternity leave:

A. Length - 17 weeks*

B. Remuneration:

Employed Associates - 70% Top Up 55%, 93%, 95%, full compensation

Paid parental leave:

A. Length - 21 weeks*

10, 15, 17, 25, 35 weeks

B. Remuneration:

Employed Associates - 70% Top Up 55%, 93%, 95%

*Note, these recommended minimums only deal with the paid portion of leave. Under *The Employment Standards Code*, employed lawyers are entitled to 17 weeks unpaid maternity leave and 37 weeks unpaid parental leave.