

CONTRACT INTERPRETATION MANUAL

Article 38 PARENTAL LEAVE

Interpretation Guidelines

General Applicability

Employers must meet the minimum standards established by the Employment Standards Act (ESA) of the benefits an employee is entitled to receive when taking maternity, or parental leave birthing or non-birthing, regardless of the terms of the PCA (Part 6 of the ESA). In other words, if the government improves the minimum benefits in between bargaining cycles, the legislation overrides the collective agreement.

The PCA provisions apply only to regular employees. However, both casual and regular employees are covered by the provisions of the ESA.

In 2019 changes to the article, including renaming and editing, were made to align it with new legislation and make it easier to understand.

Article 38.01 - (A) and (B) Maternity and Parental Leave – Birthing parent

Automatically entitled to 78 weeks unpaid parental leave.

Weeks 1-17 are considered maternity leave and weeks 18-78 are considered parental leave.

Parental leave normally immediately follows maternity leave unless agreed to by the Employer for reasons associated with premature birth or hospitalized infant.

Maternity leave can start no sooner than 13 weeks before the week of the predicted due date, any leave before would be considered to be sick leave or some other type of leave (Article 38.01 (E)).

The mother cannot be required to return until a minimum of 6 weeks after the birth or termination of the pregnancy.

Employees on maternity leave are also covered by the Maternal Allowance (Article 38.02).

The total leave under Article 38.01 (A) (B) and (C) cannot exceed 89 weeks.

Entitlement to Employment Insurance (EI) Benefits:

1. Before starting the leave, it is important to check with Service Canada (www.servicecanada.gc.ca) to determine the current eligibility requirements and entitlement to EI benefits for maternity, parental, or sick leave.
2. Do not rely solely on information from your local payroll office to determine eligibility for benefits. Service Canada may measure insurable hours differently. For example, Service Canada measures hours and weeks based on a Sunday to Saturday week for the EI claims purposes.
3. Non-Birthing parents may be entitled to EI parental leave benefits.

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Article 38.01 - (C) Special Circumstances

An employee can request up to 6 additional consecutive weeks of unpaid leave for parental leave;

The reasons need to be associated with the birth or termination of the pregnancy and may require a doctor's certificate (Section (50) (3) of the ESA).

The total of all leaves may not exceed 89 weeks.

Article 38.01 - (D)

The natural mother may use sick leave for reasons associated with the pregnancy or an unrelated illness before starting maternity leave or for an unrelated illness that occurs during her parental leave.

Arbitration Awards

1. University Hospital (UBC Site) and BCNU, October 18, 1988 (Hope). The grievor required sick leave in the last month of her pregnancy. In granting the grievance, the Arbitrator stated that "exceptions to the entitlement to sick pay for pregnancy related illness had to be defined in clear language". The employee must not be in receipt of maternity benefits under EI or any other wage replacement in order to access sick leave.

Article 38.01 - (F) – Employment Status

The Employer is not allowed to terminate employment or change a condition of employment, without the employee's written consent, because of the employee's maternity or parental leave.

When the leave ends, the employee must be placed back in the position they held before taking the leave.

This means that displacement notices are effective only once the employee returns to work. However, employees who might be affected by displacement should seek the advice of their Steward (Article 19).

Article 38.02 - Maternity Leave Allowance

The Supplemental Employment Benefit (SEB) Plan is the result of HLRA and BCNU & HSA, August 30, 1993 (Ready) (Interest Arbitration Award).

Article 38.02 (A)

Adoptive parents or natural fathers are not eligible to receive SEB Plan benefits. Government limitations on compensation have prevented the NBA from negotiating improvements that would extend SEB Plan benefits. The employee must also notify the Employer if they are taking the standard or extended parental leave (12 months versus 18 months).

Only regular employees are eligible for SEB Plan benefits, this includes casuals filling a temporary position that started after April 1, 2019.

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Benefits are based on “normal weekly earnings” which are calculated by multiplying the employee’s regularly scheduled hours by the employee’s base rate of pay.

This includes “regularly scheduled” hours accumulated by regular part-time employees working extra shifts. In HEABC (Richmond Hospital) and BCNU, May 20, 1998 (Kelleher), the Arbitrator confirmed the Union’s position that extra shifts worked by RPT are to be used on the calculation of SEB benefits].

However, the definition of regular scheduled hours for the purpose of calculation for SEB benefits for a RPT employee are those hours that are posted on the schedule 6 weeks in advance (HEABC and BCNU, GAD, January 24, 2002 (Kelleher)).

In the situation where a RPT employee has been working in a temporary full-time position in the period before the maternity leave, the SEB Plan Benefits are based on the hours worked in the temporary full-time position (New Vista Home Care Society and BCNU, April 10, 2002 (Gordon)).

The Employer pays a percentage of normal weekly earnings based on contract obligations at the time of the leave for the 1 week waiting period that normally occurs with EI benefits. If there is no waiting period, the 1 week is paid at the conclusion of the 16 week “top-up” period outlined below.

The Employer pays the difference between the gross EI benefits received by the employee and a percentage of “normal weekly earnings” based on contract obligations at the time of the leave for a further 16 weeks.

Article 38.03 – Parental Leave - Non-Birthing Parent

A regular employee is entitled to request up to 62 weeks of parental leave.

They need to make the request in writing before the planned start of the leave and within 78 weeks of the birth or placement of the child.

They are also entitled to 5 days special leave as paternity leave (Article 43.0 1 (B)).

Article 38.03 (B) – Special Circumstances

The regular employee may apply for an additional 5 weeks of unpaid leave:

1. If the child will be or is at least 6 months old when they come under the care of the non-birthing parent; and
2. A physician certifies that the child has a physical, psychological or emotional condition requiring an additional period of parental care (Section 51 (2) of the ESA).

The total parental leave for a non-birthing parent cannot be more than 67 weeks.

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Article 38.04 – Benefits Continuation

Maternity and Parental Leave – Birthing Parents Absence	Seniority	Accumulative Benefits - Sick time, Vacation, Special Leave, and Paid Holiday	Health Welfare Benefits - Extended Health, Dental, LTD, Group Life and Pension
First 20 days	Accrues	Accumulates	Employer continues to pay premiums as though not absent.
21st day until end of week 18	Accrues	Vacation accumulates but other banks frozen.	Employer continues to pay as though not absent.
Weeks 18-61	Accrues	Vacation accumulates but other banks remain frozen.	Employer continues to pay premiums as though not absent.
Weeks 62-89	Accrues	Vacation accumulates but other banks remain frozen.	Employer continues to pay premiums as though not absent.
Any leave beyond 89 weeks would be unpaid	Remains frozen but not further accruals	Banks remain frozen but no further vacation accruals.	Benefits may continue but employee must pay premiums.
Parental Leave – Non-Birthing Parent			
First 20 days	Accrues	Accumulates	Employer continues to pay premiums as though not absent.
21 days end of week of 62	Accrues	Vacation accumulates but other banks remain frozen	Employer continues to pay premiums as though not absent.
Weeks 63 - 67	Accrues	Vacation accumulates but other banks remain frozen.	Employer continues to pay premiums as though not absent.
Leave beyond 68 weeks	Remains frozen but not further accruals	No further vacation accruals but all banks remain frozen.	Benefits may continue but employee must pay premiums.

Article 38.05 – Notice Requirement

An employee will make every effort to give four (4) weeks' notice prior to the commencement of a leave of absence pursuant to Article 38.01 and 38.03, and at least fourteen (14) days' notice of their intention to return to work prior to the termination of the leave of absence.

An adoptive parent will notify the Employer when they are advised of the date of the adoptive placement and provide proof of adoption to the Employer.

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Article 38.06 - Return to Employment

An employee who resumes employment following maternity, or parental leave is entitled to be reinstated in their previous position or a comparable position.

The employee is entitled to all increases in wages and benefits they would have received had the leave not been taken.

Vacation earned during this leave may be paid out, taken at the end of the leave, or held over till the next year, at the employee's discretion.

Article 38.07 - Bridging of Service

An employee who terminates employment from a PCA employer to raise a dependent child or children can be credited with length of service accumulated at the time of termination if they meet the following conditions:

1. Need to have completed 3 years of service with the Employer;
2. The letter of resignation must say that they are resigning to raise a dependent child or children;
3. The break in service cannot be longer than 3 years;
4. The employee cannot have been paid for employment for more than 6 months total during those 3 years;
5. Applies to employees who return to a regular position with the same Employer;
6. The employee has to serve another 3 month probationary period; and
7. The employee retains their previous increment level and years of service for vacation entitlement.

Casual Employees

1. Employees who have enrolled in health and welfare plans under Article 11.04 (G) (4) can continue their enrolment provided they pay the full monthly premiums in advance.
2. Casuals who require time off work for maternity, parental or adoption leave need to confirm the specific period they are unavailable for work with the Employer.

Arbitration Awards

1. Grace Hospital and BCNU, August 14, 1984 (MacIntyre). While the Union's grievance on the primary issue in this arbitration was dismissed on the basis that the content of the medical certificate was not adequate, the Arbitrator accepted that breast-feeding could be the basis for a possible claim for maternity leave benefits.
2. Government of the Province of British Columbia and BCNU, January 7, 1984 (Munroe). Confirmed entitlement to STIIP for illness arising from pregnancy where such illness arose before commencing maternity leave.
3. University Hospital (UBC Site) and BCNU, October 18, 1988 (Hope). Grievor was entitled to sick leave for illness related to her pregnancy that arose in the last month of her pregnancy.
4. Interest Arbitration Award: HLRA and BCNU & HSA, August 30, 1993 (Ready). Originally set out the terms and conditions for the SEB Plan.

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5. HEABC (Richmond Hospital) and BCNU, May 20, 1998 (Kelleher). The calculation for SEB Plan benefit for RPT employees includes the extra regularly scheduled hours worked during the eligibility period.
6. HEABC and BCNU, GAD, January 24, 2002 (Kelleher). Defined regularly scheduled hours for the purpose of RPT calculations for SEB Plan benefits as those posted 6 weeks in advance.
7. New Vista Home Care Society and BCNU, April 10, 2002 (Gordon). For a RPT employee who is occupying a RFT temporary position before her maternity leave, the calculation of SEB Plan benefits is based on hours worked in the temporary RFT position.

Additional Resources

Legislation

1. Employment Standards Act, Sections 50, 51, and 56
2. Employment Insurance Benefits and Leave (<https://www.canada.ca/en/services/benefits/ei.html>)

Footnotes

Article	38
Sub-Article	38.01, 38.02, 38.03, 38.04, 38.05, 38.06, 38.07, 38.08
Last Update	31-03-21
Related Articles	11, 12, 13, 14, 17, 18, 25., 32, 37, 38, 42, 43, 48, 55, 62