

Article 38

Article 38 - Parental Leave

Related Articles: 11.04(G) (4), 12, 13.05 (B), 14, 18.04, 32.04, 37.03, 38.06, 42, 43.02 (B)

Interpretation Guidelines:

Please see tables that follow for application of benefits, accrual of seniority etc.

General Applicability:

1. Employers must meet the minimum standards established by the **Employment Standards Act** ("Act") of the benefit an employee is entitled to receive when taking maternity, adoption or parental leave, regardless of the terms of the PCA (See Part 6 of the "**Act**"). In other words, if the government improves the minimum benefits in between bargaining cycles, the legislation overrides the collective agreement.
2. The PCA provisions apply only to regular employees. However, both casual and regular employees are covered by the provisions of the "**Act**".

Article 38.01 - Natural Mother (A) and (B)

- Automatically entitled to 52 weeks unpaid parental leave
- Weeks 1-17 are considered to be maternity leave and weeks 18-52 are considered to be 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 11 weeks before the week of her predicted due date, this means that any leave before would be considered to be sick leave or some other type of leave (see Article 38.01 (E)).
- The mother cannot be required to return until a minimum of 6 weeks after the birth.
- Employees on maternity leave are also covered by the **Supplemental Employment Benefits Plan (SEB Plan)** (See Article 38.06).

The total leave under Article 38.01 (A) (B) and (C) cannot exceed 63 weeks.

In other words in total the natural mother can get: 52 weeks (automatically) + 6 additional weeks (on request) + 5 more weeks (doctor's certificate) = 63 weeks.

Entitlement to Employment Insurance (EI) Benefits:

- Before starting the leave it is important to check with HRSDC (Human Resources and Skills Development) to determine the current entitlement to EI payments for maternity/parental/sick leave. You can phone your local HRSDC office or check the website www.hrsdc.gc.ca which has lots of information about how to apply for benefits etc.

Article 38

- Normally a natural mother can claim up to a maximum of 50 weeks in maternity/parental/sick EI Benefits. Plus a further 15 weeks in certain circumstances for a maximum of 65 weeks EI Benefits.
- It is also extremely important (particularly if you are a casual or regular part-time employee) to confirm with HRSDC whether you meet the eligibility requirements for EI benefits.
- Do not rely solely on information from your local payroll office to determine eligibility for benefits. HRSDC may measure insurable hours differently. For example: HRSDC measures hours and weeks based on a Sunday to Saturday week for the EI claims purposes.
- Most people need 700 hours of employment in the 52 weeks before the start date of the claim. This number could be less depending on the unemployment rate in the region. Check with HRSDC.
- You can get EI benefits through direct deposit.
- Biological parents (i.e. natural father) and adoptive parents are entitled to EI parental leave benefits to a maximum of 35 weeks. Check with HRSDC for more information.

Article 38.01 - Natural Mother - Parental Leave - (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 (also see Section (50) (3) of the "Act").
- In addition, an employee on parental leave can request a further 5 weeks of unpaid leave beginning immediately after the end of the parental leave if 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 "Act").

Article 38.01 - (E) Natural Mother - Sick Leave

- 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 [See *Arbitration Award: 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'].

Article 38

- An employee who is receiving SEB plan benefits under Article 38.06 is not entitled to receive sick leave benefits at the same time [See Article 38.06 (4)].
- A pregnant mother may request a transfer to lighter duties if her physician believes the pregnancy might be at risk (See Article 32.04).

Article 38.01 - (H) Natural Mother - Employment Status

- The Employer is not allowed to terminate employment or change a condition of employment without getting 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 she held before taking the leave.
- This means that displacement notices are effective only once the employee returns to work. However, we advise that employees who might be affected by displacement should seek the advice of their BCNU worksite Steward and not wait until they return to work to make their choice.

Article 38.02 (A) - Natural Father - Parental Leave

- The natural father is entitled to request up to 37 weeks of parental leave;
- He needs to make the request 4 weeks before the planned start of the leave and within 52 weeks of the birth of his child;
- He is also entitled to 1 day special leave as paternity leave [See Article 43.02 (B)].

Article 38.02 (B) - Parental Leave beyond 37 Weeks - Special Circumstances

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

- If the child will be or is at least 6 months old when the child comes under the care of the father; and
- 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 "Act").

The total parental leave for a natural father cannot be more than 42 weeks. i.e. 37 weeks (on request) + 5 weeks (doctor's certificate) = 42 weeks.

Article 38

Article 38.03 (A) - Adoptive Parents - Adoption Leave

- The adoptive parent is entitled to request up to 37 weeks adoption leave;
- Proof of adoption must be provided to the Employer;
- Where both adoptive parents are employed by the same Employer, the employees need to decide which one of them will apply for "adoption" leave.

Article 38.03 (B) - Adoptive Parents - Parental Leave

- Where both adoptive parents are employed by the Employer, the parent who did not apply for adoption leave can apply for 37 weeks of parental leave.
- The adoptive parent needs to make the request 4 weeks before the planned start of the leave and within 52 weeks of taking custody of the child.

Article 38.03 - Adoptive Parents - Beyond 37 Weeks - Special Circumstances

The adoptive parent may apply for an additional 5 weeks of unpaid leave:

- If the child will be or is at least 6 months old when the child comes under the care of the parent; and
- 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 "Act").

The total leave for an adoptive parent cannot be more than 42 weeks. i.e. 37 weeks (on request) + 5 weeks (doctor's certificate) = 42 weeks.

Article 38.04 - Return to Employment

- An employee who resumes employment following maternity, parental or adoption leave is entitled to be reinstated in their previous position or a comparable position; and
- The employee is entitled to all increases in wages and benefits she/he would have received had the leave not been taken.

Article 38.05 - 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:

- Need to have completed 3 years of service with the Employer;
- The letter of resignation must say that they are resigning to raise a dependent child or children;

Article 38

- The break in service can't be longer than 3 years;
- The employee cannot have been paid for employment for more than 6 months in total during those 3 years;
- Applies to employees who return to a regular position with the same Employer;
- The employee has to serve another 3 month probationary period; and
- The employee retains their previous increment level and years of service for vacation entitlement.

Casual Employees

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

Article 38

Natural Mother - Leave				
Absence	Seniority	Accumulative Benefits (Sick Leave, Vacation, Special Leave & Stat Holidays)	H&W Benefits (Dental, Medical, Group Life, LTD, Extended Health & Superannuation)	Employment Status
First 20 working days	Accrues	Accumulates credits	Employer continues to pay premiums as if the employee were not absent.	Maternity Leave
21 st working day - the end of 17 weeks	Accrues	Vacation accrual continues. Other banks are frozen effective the 21 st day.	Employer continues to pay premiums as if the employee were not absent.	Maternity Leave
Week 18-52	Accrues	Vacation accrual continues. Other banks are frozen effective the 21 st day.	Employer continues to pay premiums as if the employee were not absent	Parental Leave
Weeks 52-63	Accrues	Vacation accrual continues. Other banks are frozen effective the 21 st day.	Employer continues to pay premiums as if the employee were not absent	Leave - Special Circumstances
Any leave beyond the maximum of 63 weeks would be unpaid leave	Maintains seniority but no further accrual while on unpaid leave.	Maintains but no further accrual of vacation while on unpaid leave.	Benefits continue only if employee prepays premiums.	Leave - General

Article 38

Natural Father				
Absence	Seniority	Accumulative Benefits (Sick Leave, Vacation, Special Leave & Stat Holidays)	H&W Benefits (Dental, Medical, Group Life, LTD, Extended Health & Superannuation)	Employment Status
First 20 days	Accrues	Accumulate credit	Employer continues to pay premiums	Parental Leave
21 st working day - 37 weeks	Accrues	Vacation accrual continues. Accrual of other benefits stops on 21 st day.	Employer continues to pay premiums as if the employee were not absent	Parental Leave
Week 38-42	Accrues	Vacation accrual continues.	Employer continues to pay premiums as if the employee were not absent	Parental Leave
Any leave beyond the maximum of 42 weeks would be unpaid leave	Maintains seniority but no further accrual while on unpaid leave.	Maintains but no further accrual of vacation while on unpaid leave.	Benefits continue only if employee prepays premiums.	Leave - General

Article 38

Adoptive Parents If both adoptive parents are employed by the same Employer, 1 may take adoption leave and the other parent may take parental leave with the same seniority, accumulation of benefits etc as set out for the Natural Father.				
Absence	Seniority	Accumulative Benefits (Sick Leave, Vacation, Special Leave & Stat Holidays)	H&W Benefits (Dental, Medical, Group Life, LTD, Extended Health & Superannuation)	Employment Status
First 20 days	Accrues	Accumulate credit	Employer continues to pay premiums	Parental Leave
21 st working day - 37 weeks	Accrues	Vacation accrual continues. Accrual of other benefits stops on 21 st day.	Employer continues to pay premiums as if the employee were not absent	Parental Leave
Week 38-42	Accrues	Vacation accrual continues.	Employer continues to pay premiums as if the employee were not absent	Parental Leave
Any leave beyond the maximum of 42 weeks would be unpaid leave	Maintains seniority but no further accrual while on unpaid leave.	Maintains but no further accrual of vacation while on unpaid leave.	Benefits continue only if employee prepays premiums.	Leave - General

Article 38

Additional References:

Legislation:

Employment Standards Act, Sections 50, 51, and 56

Human Resources and Skills Development (HRSDC) - dealing with Employment Insurance. Website: www.hrsdc.gc.ca

Arbitration Awards:

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.

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.

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.

Article 38

Article 38.06 - Supplemental Employment Benefits (SEB) Plan

Related Articles: 11.03, 25.01, 25.04, 38, 48, 55, 62

Interpretation Guidelines

The SEB Plan is the result of an Interest Arbitration Award: HLRA and BCNU & HAS, August 30, 1993 (Ready).

Article 38.06 (1)

Adoptive parents and/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.

Article 38.06 (2)

Only regular employees are eligible for SEB Plan benefits.

Article 38.06 (3)

1. 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.
2. This includes "regularly scheduled" hours accumulated by regular part-time employees working extra shifts. [See *Arbitration Award: HEABC (Richmond Hospital) and BCNU, May 20, 1998 (Kelleher)* - where the arbitrator confirmed the Union's position that extra shifts worked by RPT are to be used on the calculation of SEB benefits].
3. However, the definition of regular scheduled hours for the purpose of calculation for SEB benefits for a regular part-time employee is those hours that are posted on the schedule 6 weeks in advance. [See *Arbitration Award: HEABC and BCNU, GAD, January 24, 2002 (Kelleher)*]
4. In the situation where a regular part-time 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. [See *Arbitration Award: New Vista Home Care Society and BCNU, April 10, 2002 (Gordon)*].
5. The Employer pays 85 % of "normal weekly earnings" for the 2 week waiting period that normally occurs with EI benefits. If there is no waiting period, the 2 weeks are paid at the conclusion of the 15 week "top-up" period outlined below.

Article 38

6. The Employer pays the difference between the gross EI benefits received by the employee and 85% of "normal weekly earnings" for a further 15 weeks.
7. SEB Plan benefits are paid for a total of 17 weeks. This includes the two week waiting period and the 15 weeks of top-up payments.
8. SEB benefits are not insurable earnings for EI purposes.
9. The Employer makes payroll deductions from the amount of the SEB benefits for income tax, CPP premiums, Union dues and Superannuation, but not for EI.
10. SEB Plan benefits are calculated based on the amount of EI benefits the employee receives due to her work with the Employer under the PCA. The Employer is to disregard the portion of the EI benefits calculated from work with other Employers, when making their SEB Plan benefit calculation for the employee.

Article 38.06 (4)

1. An employee cannot receive sick plan benefits and SEB Plan benefits at the same time.
2. However the employee can choose to receive sick leave pay rather than applying for SEB Plan benefits provided she can prove that she is unable to attend work due to illness.

Article 38.06 (5)

1. To be eligible for SEB Plan benefits, the employee has to provide proof that she has applied for and is receiving EI benefits.
2. Employees who are not eligible for EI benefits are still eligible for SEB Plan benefits if the only reason for disqualification is:
 - She does not have enough insurable weeks of employment to qualify;
 - She works less than the required number of hours as set out in Article 11.03 (A) per week; or
 - Her earnings are at least equal to 20% of the maximum weekly insurable earnings for EI purposes.

Effective January 1, 1997 the entitlement to EI benefits was changed to be based on hours of employment rather than weeks and the regional rate of unemployment. Check with HRSDC for further information. Website: www.hrsdc.gc.ca

Additional References:

Legislation:

Article 38

Employment Insurance Act and Employment Insurance Regulations - The website is:
www.hrsdc.gc.ca

Employment Standards Act, Sections 50, 51, and 56 - The website is:
www.labour.gov.bc.ca/esb/esaguide

Arbitration Awards:

Interest Arbitration Award: HLRA and BCNU & HSA, August 30, 1993 (Ready) - originally set out the terms and conditions for the SEB Plan.

HEABC (Richmond Hospital) and BCNU, May 20, 1998 (Kelleher) - the calculation for SEB Plan benefit for regular part time employees includes the extra regularly scheduled hours worked during the eligibility period.

HEABC and BCNU, GAD, January 24, 2002 (Kelleher) - defined regularly scheduled hours for the purpose of regular part-time calculations for SEB Plan benefits as those posted 6 weeks in advance.

New Vista Home Care Society and BCNU, April 10, 2002 (Gordon) - for a regular part-time employee who is occupying a regular full-time temporary position before her maternity leave, the calculation of SEB Plan benefits is based on hours worked in the temporary regular full-time position.