

Disability Benefits & Maternity Leave

Effective September 4, 2001, changes to Ontario's Employment Standards Act allow women to claim disability benefits for a portion of their maternity leave.

This affects employers who offer short term disability, weekly indemnity, or other sick leave benefits to disabled employees.

"Disability Benefit" payments during maternity leave are now available to employees located in Ontario, Saskatchewan, Alberta, Manitoba, and Québec. If you do not provide short term sickness or income replacement benefits which exceed the E.I. benefits, you are not affected by this change. If you do provide income replacement benefits, you have **several options available to you** in order to comply with the new legislation.

Short Term Plan Pays Full Benefits

1. Let your income replacement plan (STD, W.I., TDI, or sick leave plan) pay full benefits for the disability period.
 - This option requires the least effort on your part, but could increase costs significantly, depending on your "female content".
 - Average cost increase estimate is 10%.

Short Term Plan Tops Up E.I.

2. Your income replacement plan can "top up" the E.I. maternity benefit. In this case, your plan is acting as a Supplemental Unemployment Benefit (SUB) plan. Your plan would pay:
 - First 2 weeks of benefit (at full level) less the elimination period under your plan (i.e. 1 week for sickness, 1st day hospitalization, etc.).
 - For the remainder of the deemed disability period, your plan would pay full benefits less the E.I. benefit (55%, max \$413/wk).

This option would reduce your claims costs by using E.I. as the base, but does require more administration.

Company Tops Up Benefits

3. "Top Up Benefits" on your own (self-insure). In this case, you use E.I. as the base benefit and do not claim through your disability plan.

With this option, you assume the risk fully for all benefits (including the E.I. benefit, if the employee is not eligible for benefits). You should also establish clear procedures to process benefits for qualified claimants.

Several sources consider the “health related” or “disabled” portion of a maternity leave to be 6 weeks for normal delivery and 8 weeks for Caesarean birth.

This period could be shorter or longer depending on the situation but must be supported by medical evidence indicating that the individual is in fact disabled (and unable to work).

With options 2 and 3, your contract for short term disability would need to be amended to recognize the handling of these claims.

These benefits have been available to employees in Québec, Alberta, and Manitoba for some time. In these provinces, the most popular approach has been Option #3, “Company Tops Up Benefits”. Your choice will depend on several factors:

- Demographics of your group (age/female content)
- Level of benefit currently provided for income replacement benefits
- Size of your work force
- Administrative capabilities
- Your insurance provider

Over the next few weeks, you should receive correspondence from your insurer outlining this situation. Some insurers (Clarica) are automatically amending plans to exclude benefit payments in this instance, which means you must top up their benefit. We expect that most insurers will take the passive approach and simply allow maternity claims as any other claim. (They do get paid to process claims!) This would also require them to increase rates (at renewal) in anticipation of increased claims.

We will review this change with all of our clients in order to determine the approach which best fits your needs. In the meantime, you can view more details on the Ministry of Labour website: www.gov.on.ca/lab/es/chap3e.htm

Please contact our office if you have any immediate concerns:

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