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Preparing for a Lawyer's Pregnancy or Parental Leave Guide for Law Firms

August 2009

The Law Society of
Upper Canada

Barreau
du Haut-Canada

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Introduction

The Law Society of Upper Canada, in collaboration with the participating firms of the Justicia Project, created a guide to assist firms in preparing for lawyers' pregnancy or parental leaves. The guide has been drafted for those involved in firm management and human resources, including supervising lawyers and group leaders. The guide also includes a checklist for lawyers' legal assistants.

Where possible checklists, sample documents, references, links and/or contact information have been included. The guide is applicable to firms of all sizes. However, some sections may be more relevant to the smaller firm context while others will be more relevant to the larger firm environment.

The guide is divided into the following sections, each dealing with different aspects to consider when a lawyer wishes to take a pregnancy or parental leave:

1. The firm's legal obligations and lawyers' rights
2. The firm's policies on pregnancy and parental leave for lawyers
3. The firm's policy on flexible work arrangements
4. Knowing about the firm's resources and policies
5. External resources
6. Leave checklist
7. Checklist for legal assistants

The Firm's Legal Obligations and Lawyer's Rights

When a lawyer approaches you to request a pregnancy and/or parental leave, you should be aware of the firm's legal obligations and of the lawyer's minimum legal rights. The following outlines general legal obligations and rights in the employment context that relate to pregnancy and parental leave. **This is not a legal opinion and the information provided in this section is only up-to-date as of the time of writing.** Firm managers are encouraged to keep apprised of legal developments in the area of pregnancy and parental leave entitlements.

Human Rights Obligations

Law firms and legal organizations have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers are bound by rules that promote human rights under the Law Society's *Rules of Professional Conduct*. The following provides a general overview of these obligations under the Ontario *Human Rights Code* and the *Rules of Professional Conduct*.

Ontario Human Rights Code and Rules of Professional Conduct

The *Code* applies to everyone in Ontario with respect to services, goods and facilities, occupancy, contracts, employment, vocational associations and accommodations, unless the *Canadian Human Rights Act* applies.¹ All employment relations, including those governed by a collective agreement, are subject to the *Code*. Therefore, law firms in Ontario are subject to the *Code*, and the *Code* applies to all employees of the law firm, including associates, salaried lawyers, in-house counsel, and articling students. The definition of employment in the *Code* is broad enough to include partnership relationships. The *Code* applies to contractual agreements, and to the relationship between partners in a firm.

Human rights legislation expressly prohibits discrimination based on pregnancy and the Supreme Court of Canada (S.C.C) has clearly established that discrimination because a woman is, or may become, pregnant is discrimination on the ground of sex

¹ Part I, Sections 1, 2, 3, 4, 5, and 6 of the *Code*, R.S.O. 1990, c. H. 19.

and is illegal.² Discrimination in employment on the grounds of sex, sexual orientation, marital status and family status is also prohibited under the *Code*.³

The *Rules of Professional Conduct* apply to member lawyers, including associates and partners, of the Law Society of Upper Canada. Rule 5.04 places a special responsibility on lawyers to adhere to the tenets of human rights law and in particular to respect the obligation not to discriminate on a ground enumerated in the *Rules* and the *Code*.⁴ Lawyers must not sexually harass or discriminate on the grounds of, for example, sex, sexual orientation, marital status or family status.

A significant number of complaints made to the Discrimination and Harassment Counsel Program each year are complaints of discrimination or harassment on the basis of pregnancy. Of the breakdown of sex discrimination complaints between 2003-2008, 24 of the 175 (14%) complaints were related to pregnancy.⁵

Firms Have a Duty to Accommodate

The *Code* and the *Rules of Professional Conduct* impose a duty to accommodate, to the point of undue hardship, differences that arise based on the enumerated grounds in the *Code*. "Short of undue hardship" is a standard that applies to the person required to make the accommodation, and takes into consideration costs, outside sources of funding, and health and safety factors."

The following are examples of how to accommodate employees during the pre-natal and post-natal periods, short of undue hardship:⁶

- An employee may be temporarily relocated to another work station or location or re-assigned to alternative duties.
- A flexible work schedule may be provided to accommodate medical appointments, including treatment for infertility, as well as breastfeeding needs.
- Where required, a quiet environment may be provided for pregnant employees to rest during breaks.

² *Brooks v. Canada Safeway*, [1989] 1 S.C.R. 1219 (S.C.C). See also section 10(2) of the *Code*, which states "The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant"

³ *Code*, *supra* note 1, s. 5(1).

⁴ Rule 5.04(1) states "A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the *Ontario Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person". *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, November 1, 2000).

⁵ *The Report of Activities of the Discrimination and Harassment Counsel, July 1, 2008 to December 31, 2008 and Summary of Data Since January 1, 2003*.

⁶ *Policy on Discrimination because of Pregnancy and Breastfeeding* (Toronto: Human Rights Commission, revised 2008).

- Breaks may be allowed as necessary. Employees who require breaks, such as for pumping or breastfeeding, or for more frequent eating to counteract pregnancy-related nausea, should normally be accorded those breaks, and not be asked to forgo normal meal breaks as a result, or work additional time to make up for the breaks, unless the employer can show undue hardship.
- A supportive environment may be provided for a woman who is breastfeeding. Accommodation may mean allowing a caregiver to bring the baby into the workplace to be breastfeed, making scheduling changes to permit time to express milk or breastfeed at work or to reach home in time to breastfeed, and providing a comfortable, dignified and appropriate area so that a woman may breastfeed, or express and store breast milk at work. In some special cases, it may involve permitting a leave of absence. A supportive environment can generally be created with minimum disruption.
- An employee who requires special equipment or technology, such as a special chair or computer screen, during the pregnancy should be provided with such accommodation up to the point of undue hardship.

Employment Standards Act, 2000 (ESA)

Employed lawyers are subject to Part XIII (“Benefit Plans”) and Part XIV (“Leaves of Absence”)⁷ but exempt from Parts VII to XI of the *ESA*.⁸ Subject to these exceptions, the *ESA* applies to an employee and his or her employer if the employee's work is performed in Ontario, or the work performed outside of Ontario is a continuation of work performed in Ontario. The *ESA* applies to associates but does not apply to equity partners and therefore there are no minimum obligations relating to pregnancy and parental leave for equity partners. A firm that has income partners should consider whether those partners are included in the definition of “employee” in the *ESA*.

The *ESA*, sets out the minimum threshold for employment standards. It is expressly prohibited to contract out of the standards of the *ESA*.⁹

Part XIV of the *ESA* governs leaves of absence from the workplace, including pregnancy and parental leaves. The purpose of the legislation is to protect an employee’s position

⁷ *Exemptions, Special Rules and Establishment of Minimum Wage*, O. Reg. 285/01 (amended to O. Reg. 401/03) exempts members of the legal profession from Parts VII to XI of the *ESA*. Section 3(2) of the *ESA*, SO 2000, c. 41, exempts employees whose employment is within the legislative jurisdiction of the Parliament of Canada. Section 3(4) exempts Crown employees from many portions of the Act, however, they are subject to Parts XIII (“Benefit Plans”) and XIV (“Leaves of Absence”).

⁸ Part VII is Hours of Work and Eating, Part VIII is Overtime Pay, Part IX is Minimum Wage, Part X is Public Holidays, and Part XI is Vacation with Pay. *ESA, ibid.*

⁹ See section 5(1) of the *ESA*, *ibid.* Where an employment agreement offers a greater benefit to an employee than the standards set out in the *ESA*, s. 5(2) is paramount to the agreement.

while on leave. An employer is statutorily obligated to grant qualifying employees a pregnancy and/or parental unpaid leave if such is requested. The employer has no obligation to provide paid leaves under Part XIV of the *ESA*.

Pregnancy Leave

Entitlement to a pregnancy leave under the *ESA* is automatic unless the employee's due date falls fewer than 13 weeks after she began employment.¹⁰ If also entitled to parental leave, an employee's pregnancy leave will be 17 weeks in length.¹¹ An employee who is not eligible to parental leave is entitled to pregnancy leave that ends the later of either 17 weeks after the pregnancy leave began or six weeks after a birth, stillbirth or miscarriage.¹²

Section 46(4) of the *ESA* provides procedures for giving notice and changing the date of the notice, along with contingent procedures in the event of unforeseen complications related to the pregnancy.¹³

Parental Leave

An employee who has been employed by his or her employer for at least 13 weeks is entitled to take a parental leave.¹⁴ A parental leave may be taken following either the birth of a child or the coming of the child into the employee's custody, care and control for the first time.¹⁵

The length of the parental leave is contingent on whether or not the employee took a pregnancy leave. When that is the case, the parental leave is limited to 35 weeks. If no pregnancy leave has been taken, the employer must allow the employee to take up to 37 weeks of leave of absence.¹⁶

¹⁰ *ESA, ibid.* s. 46(1).

¹¹ *ESA, ibid.* s. 47(1)(a).

¹² *ESA, ibid.* s. 47(1)(b)(i) and (ii).

¹³ S. 47(2) of the *ESA, ibid.*, provides: "An employee may end her leave earlier than the day set out in subsection (1) by giving her employer written notice at least four weeks before the day she wishes to end her leave".

¹⁴ S. 48(1) of the *ESA, ibid.*

¹⁵ Employees who have step children coming into their custody, care and control may be eligible for parental leave under s. 48(1). The definition of "parent" is found in s. 45 of the *ESA, ibid.*, which states that "parent" includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own, and "child" has a corresponding meaning."

¹⁶ S. 49(1) of the *ESA, ibid.*

If an employee has taken a pregnancy leave, she must commence her parental leave when the pregnancy leave ends, unless the child has not yet come into her custody, care and control for the first time.¹⁷

In the event that an employee has not taken pregnancy leave, the commencement of parental leave is restricted to no later than 52 weeks after the day the child is born or comes into the custody, care and control of the employee for the first time.¹⁸

As with pregnancy leaves, procedures for parental leaves, such as giving notice, changing the date of notice and dealing with unexpected arrivals of the child, are proscribed.¹⁹

An employee may not terminate his or her employment before the end of the parental leave or when it expires without giving the employer at least four weeks written notice, unless the employee is constructively dismissed.²⁰

Employment Insurance Act (EIA)²¹

The *EIA* provides employment insurance benefits to eligible birth mothers and/or new parents, including pregnancy, parental and sickness benefits. Associates have a responsibility to inform the firm of their entitlement under the *EIA*. Such entitlement may impact supplemental income benefits provided by the firm.

The following is provided for the firm's information only. Further information about the *EIA* is available on-line at www.hrsdc.gc.ca.

The *EIA* applies in Ontario to employees who meet minimum hour requirements of employment, but does not apply to self-employed workers. Therefore, lawyers who are partners or sole practitioners are unlikely to be eligible for parental/pregnancy benefits under the *EAI*.

The *EIA* provides three types of special benefits relevant to birth mothers and/or new parents: pregnancy, parental and sickness benefits.

¹⁷ S. 48(3) of the *ESA*, *ibid.*

¹⁸ S. 48(2) of the *ESA*, *ibid.*

¹⁹ Section 48(4) of the *ESA*, *ibid.*, sets out that the employer is entitled to written notice at least two weeks before the leave is to begin. Subsection (5) and (6) govern the procedures for changing the date of commencement of the leave while s. 49(2) and (3) explain how an employee can amend final date of the leave.

²⁰ *EIA*, *ibid.* s. 49(4) and (5).

²¹ S.C. 1996, c. 23.

To be entitled to pregnancy, parental or sickness benefits an employee must show that she or he has accumulated 600 insured hours in the last 52 weeks or since the last claim.

Pregnancy benefits are available to birth mothers only. Parental benefits are available in addition to pregnancy benefits. Either or both parents of a newborn child or of an adopted child may be eligible for parental benefits.

A birth mother may be eligible for sickness benefits in addition to pregnancy and parental benefits.

A claimant may be eligible to receive benefits for up to a maximum of 65 weeks.²² Benefits are paid at a rate of 55% of a claimant's weekly earnings.²³ Maximum weekly earnings are set out in s. 14.²⁴

Pregnancy Benefits

Pregnancy benefits are payable to the birth mother or surrogate mother for a maximum of 15 weeks

The mother can start collecting pregnancy benefits either up to 8 weeks before she is expected to give birth or at the week she gives birth. Pregnancy benefits can be collected within 17 weeks of the actual or expected week of birth, whichever is later.

If the baby is hospitalized, the 17 week limit can be extended for every week the child is in the hospital up to 52 weeks — following the week of the child's birth.

Parental Benefits

Parental benefits are payable either to the biological or adoptive parents while they are caring for a new-born or an adopted child, up to a maximum of 35 weeks. Parental benefits can be claimed by one parent or shared between the two partners but will not exceed a combined maximum of 35 weeks.

Parental benefits for biological parents and their partners are payable from the child's birth date, and for adoptive parents and their partners from the date the child is placed

²² *Supra note 19*, s. 23 of the *EIA*.

²³ *EIA*, s. 14(1), *ibid*.

²⁴ *EIA*, *ibid*, s. 14(1.1) (a) states the maximum weekly insurable earnings is \$750 if the claimant's benefit period begins during the years 1997 to 2000; and s. 14(1.1)(b) states if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

with you. Parental benefits are only available within the 52 weeks following the child's birth, or for adoptive parents, within the 52 weeks from the date the child is placed with the parent, unless the child is hospitalized.

Sickness Benefits

Under the *EIA* a pregnant woman may be entitled to receive up to 15 weeks of sickness benefits in addition to pregnancy and parental benefits.²⁵

Income Benefits Supplements

Employers can pay income benefits supplements to the employee without a reduction of the employee's benefits under the *EIA*. The employer's income benefits supplement is not deemed to be earnings. To avoid a reduction of benefits under the *EIA*, the following two conditions must be met:

- the combined employment insurance benefits plus the income benefits supplements cannot exceed the employee's normal weekly earnings (ie. 95% of the gross salary); and
- the income benefits supplements does not reduce the employee's accumulated sick leave, vacation leave, severance pay or any other accumulated credits.²⁶

For on-line information about pregnancy and parental leave entitlements under the *ESA*, see:

http://www.labour.gov.on.ca/english/es/guide/guide_11.html

For on-line information about employment insurance benefits for pregnancy and parental leaves, see:

<http://www.servicecanada.gc.ca/eng/sc/ei/benefits/maternityparental.shtml>

For a list of Service Canada Centres in Ontario, see:

<http://www1.servicecanada.gc.ca/cgi-bin/hr-search.cgi?cmd=lst&pv=on&ln=eng>

For the Ontario Human Rights Commission's Policy on Discrimination because of Pregnancy and Breastfeeding see:

<http://www.ohrc.on.ca/en/issues/pregnancy>

²⁵ S. 22 of the *EIA*, *ibid*.

²⁶ Section 38 of *Employment Insurance Regulations* SOR/96-332.

The Firm’s Policies on Pregnancy and Parental Leave for Lawyers

In addition to the legal obligations outlined in the previous section, the firm has adopted the following policies on pregnancy and parental leave for lawyers. In order to inform the lawyers of their rights under the policy, [insert title such as Practice Group Leaders] should be familiar with the policies and processes to request a leave.

The following table outlines the general benefits under the ESA and the firm’s policies. Please refer to the policies for the complete outline of benefits and entitlements.

| Leave | Eligibility | Entitlement under ESA | Entitlement under firm policy | Entitlement of income under firm policy | Group benefits |
|--------------------------------|--|---|--|---|--|
| Pregnancy leave for associates | Associate birth mother – <i>Insert eligibility criteria</i> | 17 weeks | <i>Insert entitlement under policy</i> | <i>Insert income entitlement under the policy</i> | <i>Insert benefits such as medical, dental</i> |
| Parental leave for associates | Associate - <i>Insert eligibility criteria</i> | 35 weeks if taken pregnancy leave 37 weeks otherwise | <i>Insert entitlement under policy</i> | <i>Insert income entitlement under the policy</i> | <i>Insert benefits such as medical, dental</i> |
| Pregnancy leave for partners | Equity partner birth mother – <i>Insert eligibility criteria</i> | N/A | <i>Insert entitlement under policy</i> | <i>Insert income entitlement under the policy</i> | <i>Insert benefits such as medical, dental</i> |
| Parental leave for partners | Equity partner - <i>Insert</i> | N/A | <i>Insert entitlement under policy</i> | <i>Insert income entitlement under the</i> | <i>Insert benefits such as medical,</i> |

| Leave | Eligibility | Entitlement under ESA | Entitlement under firm policy | Entitlement of income under firm policy | Group benefits |
|-------|-----------------------------|-----------------------|-------------------------------|---|----------------|
| | <i>eligibility criteria</i> | | | <i>policy</i> | <i>dental</i> |

Insert firm policy

The Firm's Policy on Flexible Work Arrangements

In addition to the rights outlined in the pregnancy and parental leave policies, the *ESA* and the *EIA*, the law firm adopted a flexible work arrangement policy. The policy is presented below. Lawyers returning from leave may be interested in working flexible hours, either in a full-time or part-time capacity. In order to inform lawyers of their rights [insert title such as **Practice Group Leader**] should be familiar with the policy, their role under the policy and the process to consider a flexible work arrangement request. The process to request a flexible work arrangement is as follows:

Insert process and role of those with a responsibility to consider requests.

Insert firm policy

Knowing about the Firm's Resources and Policies

A **[insert title such as Practice Group Leader]** who is responsible for handling requests for pregnancy and parental leaves should also be aware of the firm's resources that relate to pregnancy and parental leaves. The following provides a checklist of resources that the **[insert title such as Practice Group Leader]** should be familiar with and may wish to communicate to the lawyer who is requesting the leave:

Insert firm programs and a brief description of available programs.

- ❑ **New Parent Tool Kit:** If the firm has developed a new parent tool kit, it should provide a copy of the tool kit, or access to the tool kit, to the lawyer who will be a new parent. A template of the New Parent Tool Kit is available on the Justicia Portal at **[insert link]** to assist law firms in developing their new parent tool kit.
- ❑ **Personal coaching by external provider:** One on one external coaching sessions with **[insert name of service provider]** focusing on transition issues such as parenting, lifestyle, new relationship dynamics, caregiver issues, managing stress and developing support systems. The firm pays for **[insert number of sessions]**. The content of sessions is confidential. To participate, please contact: **[insert contact information]**
- ❑ **Coaching by colleagues:** Coaching by colleagues on topics such as the path to partnership, transitioning one's practice, and reintegration issues upon return. **[insert contact information]**
- ❑ **Lunch and learn sessions:** Lunch and learn sessions for new parents, offered **[insert day and time]**, with guest speakers on topics such as **[insert topics]**. **[insert contact information]**
- ❑ **Emergency child care:** **[Insert name of service provider]** provides emergency childcare services for associates and partners at the firm to meet parents' needs. **[insert contact information]**
- ❑ **Information and workshops:** **[Include name of service provider]** designs customized workshops on topics related to parenthood and working as a lawyer.
- ❑ **Childcare resources**

- ❑ **The firm's new parent mentoring program**
- ❑ **The firm's new parent networking program**

External Resources

The following external resources may be of assistance to the firm when advising lawyers or planning for lawyers' absences from the firm.

| Resource | Description | Contact |
|--|--|---|
| Law Society of Upper Canada Locum Registry of Lawyers | A locum is a lawyer who stands in for another lawyer ("contracting firm/lawyer") to run his or her practice, while the contracting firm/lawyer is away on a maternity leave, vacation leave, or for some other reason. | http://rc.lsuc.on.ca/jsp/locum/index.jsp |
| Law Society of Upper Canada Parental Leave Assistance Program | The program provides financial benefits to practising lawyers in firms of five lawyers or fewer who do not have access to other maternity, parental, or adoption financial benefits under public or private plans and who meet the eligibility criteria. Those eligible for Employment Insurance (EI) are not eligible for the Law Society's parental leave benefit. | http://www.lsuc.on.ca/about/b/equity/parental-leave-assistance-program/ |
| Employment Standards Act (ESA) | Description of benefit entitlements under the ESA | http://www.labour.gov.on.ca/english/es/guide/guide_11.html |
| Employment Insurance Act | Employment insurance benefits under the EIA for pregnancy and parental leaves | http://www.servicecanada.gc.ca/eng/sc/ei/benefits/maternalparental.shtml |
| Service Canada | Location of Service Canada Centres for applications under | http://www1.servicecanada.gc.ca/cgi-bin/hr- |

| Resource | Description | Contact |
|---|---|---|
| Centres in Ontario | the EIA | search.cgi?cmd=lst&pv=on&ln=eng |
| Ontario Human Rights Commission | Resources produced by the Ontario Human Rights Commission | http://www.ohrc.on.ca/ |
| Finding childcare services and financial assistance | <i>Ministry of Children and Youth on-line guide to licensed childcare -</i> Information about selecting the proper childcare services, the differences between licensed and unlicensed childcare and how to find childcare services in Ontario. | http://www.gov.on.ca/children/english/programs/beststart/care/index.html#aboutchildcare |
| | <i>Ministry of Revenue Ontario Childcare Supplement for Working Families -</i> A tax-free monthly payment to help with the costs of raising children under the age of seven. The program benefits low-to-middle income single or two-parent families, families with one stay-at-home parent, or families with one or both parents studying or in training. A family does not have to have a child in daycare to apply for the supplement. The supplement is tax-free. | http://www.rev.gov.on.ca/english/guides/itrp/occs.html |
| | <i>Link to Parentguide.ca -</i> A comprehensive on-line resource centre for parents. It provides information about a wide range | http://www.parentguide.ca/index.php?page=64&mysession=pg0536896001204598764#c |

| Resource | Description | Contact |
|----------|--|--|
| | <p>of topics, including breastfeeding, childcare, education, health and wellbeing and parenting.</p> | |
| | <p><i>Prenatal Care</i> - Information about prenatal care, including finding a midwife and a doctor.</p> | <p>http://www.ontario.ca/en/life_events/baby/004574</p> |

Leave Checklist

The following is a checklist of the actions that should be considered by the firm when a lawyer informs the firm that he or she will soon be a new parent. The managing partner or practice group lead should consider how the firm will continue to maintain high quality legal services to clients while the lawyer is on leave. Ideally, the temporary absence of the lawyer from the firm would be seamless. The following checklist may vary based on the size of the firm. In a medium or large firm where a practice group or team approach is used for handling client files, the departure of one or more lawyer may have very minor implications for the clients, as the work could likely be easily reassigned to colleagues. For smaller firms where lawyers often have specialized practices, it might be more complex to ensure a seamless handling of client files.

Prior to Leave

| Responsibility | Action | Timeline |
|-----------------|---|----------|
| Firm management | <p>Adjust firm budget to account for leave(s). The following should be considered</p> <ul style="list-style-type: none"> • Cost of income supplement or income for lawyers during leave (take into account approximate number of lawyers taking a leave, length, cost of income provided by the firm and benefits) • Overhead cost • Cost of replacement, if required, during leave • Cost of reduction in billings for the firm | Annual |

| Responsibility | Action | Timeline |
|--|--|--|
| Practice group lead or Human Resources | Provide the lawyer with the Parent Took Kit and explanations about rights and responsibilities | As soon as notified of news |
| Human resources or manager | <p>Meet with lawyer to discuss administrative matters such as notifications, income and benefits. The following should be discussed</p> <ul style="list-style-type: none"> • Firm benefits and explanation of privileges for new family members • Provide lawyer with Notification of Pregnancy and Parental Leave Form and ask that it be filled out and returned within [insert timeline] See TAB 6A for sample forms. The notification should include a declaration to continue participation in pension plan and other [list benefits plans], if lawyer so wishes • Discuss medical leave and benefits entitlement and process if lawyer needs to stop working earlier than anticipated • If needed, require a certificate from a medical practitioner stating the child’s due date, or a proof of adoption • Discuss vacation and other benefit entitlements • Provide information to the lawyer, if applicable, about applying for Employment Insurance benefits and process to inform payroll of amount of benefits | As soon as possible or within timeline established by the ESA and policy |
| Human resources or manager | <p>Make arrangements with lawyer regarding notification to the Law Society of Upper Canada about change of status, if applicable</p> <p>Fill out the Law Society Notice of Change of Information</p> | Any time prior to the leave |

| Responsibility | Action | Timeline |
|----------------------------------|---|------------------------------|
| | Form at http://rc.lsuc.on.ca/pdf/membershipServices/member_change_info_en.pdf Contact information: 1-800-668-7380, ext. 3315 or 416-947-3315 or email at records@lsuc.on.ca | |
| Human resources or manager | Make arrangements with lawyer regarding notification to LawPRO For notification, contact http://www.lawpro.ca/Contact/default.asp Customer Service: (416) 598-5899 Fax: (416)599-8341 or 1-800-286-7639 | Any time prior to the leave |
| Manager or practice group leader | Establish a plan with the lawyer to reallocate the files/work load during the leave <ul style="list-style-type: none"> • Review active file list – identify files to be completed and transferred • Identify dates for appearances, time limitations or limitation periods for each file • Assess whether to allocate the work to lawyers within the firm, to lawyers outside the firm or to find a locum to replace the lawyer during the leave • If the firm decides to hire a locum to replace the lawyer during the leave, consult the Law Society of Upper Canada’s locum registry at http://rc.lsuc.on.ca/jsp/locum/info.jsp?language=en#s1 • Work with the lawyer to assign files to colleagues and agree on matters such as timelines to transfer files and to return files upon return to practice • Review the transfer memo from the departing lawyer to the new lawyers or to the file, which includes, a summary of the file, important dates, important tasks, important issues, important facts, limitation periods • Consult with lawyers receiving the files to ensure that they are properly handled | 1 to 2 months prior to leave |

| Responsibility | Action | Timeline |
|---|--|------------------------------|
| Lawyer taking leave, manager and/or practice group leader | <p>Inform finance department of leave and client reallocation, including the following</p> <ul style="list-style-type: none"> • Provide client list to financial department and instruction on ongoing carriage of files, conflict flags and mail references • Provide list of outstanding work in progress and accounts receivable balances • Provide list of outstanding trust balances • Provide instructions on outstanding work in progress, accounts receivable and trust balances and which lawyer will take over responsibility where balances remain • Submit outstanding expense reports | As soon as possible |
| Manager or Practice Team Leader | <p>Inform clients of leave and introduce clients to transitional lawyer</p> <p>There are a number of issues that should be addressed when informing clients and other business contacts about the impending leave, including the following: outline the expected length of leave</p> <ul style="list-style-type: none"> • identify the client's alternative firm contact for the period of the leave • supply the client with new phone/fax numbers and email addresses of new firm contact during the leave • let the client know that the communication lines are open and who he or she should call you if there are problems | 1 to 2 months prior to leave |
| Manager or practice group leader | <p>If lawyer is a mentor, assign new mentor to lawyer's mentees</p> | As soon as possible |

| Responsibility | Action | Timeline |
|----------------------------------|--|------------------------------|
| Manager or practice group leader | Discuss with the lawyer all non-billable assignments, such as work on committees and pro bono work and how they will be handled | 1 to 2 months prior to leave |
| Manager or practice group leader | <p>Ask the lawyer about his or her intentions and expectations regarding firm involvement while on leave</p> <p>Activities that the lawyer wishes to receive notices of might include</p> <ul style="list-style-type: none"> Professional development opportunities Law firm bulletins Social events Client development activities Business development activities Women’s events Committee meetings Group meetings Partnership meetings <p>Other: _____</p> <p>Also ask about preferred method of communication during leave</p> <ul style="list-style-type: none"> Telephone: [insert number] Cell phone: [insert number] Email: [insert address] | 1 to 2 months prior to leave |
| Manager or practice group leader | Clarify with the lawyer any concerns or details about the compensation process, the performance review and | 1 to 2 months prior to leave |

| Responsibility | Action | Timeline |
|----------------------------------|---|------------------------------------|
| Manager or practice group leader | timeline for partnership consideration | |
| | <p>Confirm with the lawyer whether he or she will need firm support during the leave. The following may be required:</p> <ul style="list-style-type: none"> Office supplies, such as stationery and other paper, if required Office equipment, such as fax machine and photocopier, if required Blackberry Remote access to firm system Laptop Access to an assistant Colleague support Other: _____ | 1 to 2 months prior to leave |
| Manager or practice group leader | Provide the lawyer with a mentor | 1 to 2 months prior to leave |
| Information services | <p>Organize files/e-mails in document management system and grant access to receiving lawyer</p> <ul style="list-style-type: none"> • Request for transfer of electronic files • Transfer of electronic files • Remove from voicemail and email groups • Set voicemail absence greeting and out of office e-mail response. Voicemail absence greeting and out of office e-mail should indicate length of leave and who to contact in the lawyer’s absence. | Within 2 weeks following departure |

During Leave

| Responsibility | Action | Timeline |
|----------------------------------|---|-------------------------------|
| Manager or practice group leader | Meet with the lawyer to develop plan for reintegration | 1 or 2 months prior to return |
| Manager or practice group leader | Agree on anticipated work load and transition issues upon return | 1 or 2 months prior to return |
| Manager or practice group leader | Discuss anticipated opportunities within the firm for involvement in new matters | 1 or 2 months prior to return |
| Manager or practice group leader | Communicate with clients regarding return to work | 1 or 2 months prior to return |
| Manager or practice group leader | Agree on matters related to firm support to ensure seamless client service and to aid with the transition back from leave, such as technology aids. | 1 or 2 months prior to return |

Return from the Leave

| Responsibility | Action | Timeline |
|----------------------------------|--|--|
| Human resources or manager | <p>Meet with lawyer to discuss administrative matters such as income and benefits. The following should be considered:</p> <ul style="list-style-type: none"> • Benefits and discussion of privileges for new family members • Required paper work to reinstate participation in pension plan and other [list benefits plans], if applicable | Upon return |
| Manager or practice group leader | <p>Discuss with returning lawyer the support or assistance that may be required upon return from the leave, such as availability of rooms to breastfeed, flexibility of work schedule, opportunities to work from home. Discuss scheduling of group meetings to ensure that lawyer easily reintegrates the practice. For example, scheduling meetings at 7 a.m. may be a hardship for the returning lawyer.</p> <ul style="list-style-type: none"> • Conclude arrangements if required. | 1 month prior to return or upon return |
| Human resources or manager | <p>Make arrangements with lawyer regarding notification to the Law Society of Upper Canada about change of status, if applicable.</p> <p>For a change of status, fill out the Notice of Change of Information Form at http://rc.lsuc.on.ca/pdf/membershipServices/member_change_info_en.pdf Contact information: 1-800-668-7380, ext. 3315 or 416-947-3315 or email at records@lsuc.on.ca</p> | Prior to return or immediately upon return |
| Human resources or manager | <p>Make arrangements with lawyer regarding notification to Law PRO</p> <p>For notification, contact http://www.lawpro.ca/Contact/default.asp Customer Service: (416) 598-5899 Fax: (416)599-8341 or 1-800-286-7639</p> | Prior to return or immediately upon return |

| Responsibility | Action | Timeline |
|---|--|---------------------------------|
| Manager or practice group leader | <p>Establish a plan with the lawyer for the return of files and to allocate new files/work load following the leave:</p> <ul style="list-style-type: none"> • Review active file list that had been prepared prior to departure – identify files that remain incomplete and may be transferred back to the lawyer • Note upcoming dates for appearances, time limitations or limitation periods for each file • Discuss workload and transfer of new files • If the firm has hired a locum to replace the lawyer during the leave, meet with the locum to discuss status and transfer of files. | 1 month prior to the return |
| Manager or practice group leader | <p>If lawyer was a mentor, consult with lawyer about having new mentees</p> | As soon as possible |
| Lawyer taking leave, manager and/or practice group leader | <p>Inform finance department of return and client reallocation, including the following:</p> <ul style="list-style-type: none"> • Provide list of client transfers to financial department and instruction on ongoing carriage of files, conflict flags and mail references • Provide list of outstanding work in progress and accounts receivable balances • Provide list of outstanding trust balances | As soon as possible upon return |
| Manager or Practice Team Leader | <p>Inform clients of return. Discuss with client his or her wishes about lawyer with responsibility regarding the file.</p> | 1 month prior to return |
| Manager or practice group leader | <p>Reassign non-billable hour responsibilities, such as committee work or pro bono work to the lawyer.</p> | Upon return |

| Responsibility | Action | Timeline |
|--|--|--|
| Manager or Practice Team Leader | <p>Confirm with the lawyer whether he or she still requires firm support at home, such as,</p> <ul style="list-style-type: none"> Office supplies, such as stationery and other paper, if required Office equipment, such as fax machine and photocopier, if required Blackberry Remote access to firm system Laptop Other: _____ | 1 month prior to return or upon return |
| Information services | <p>Organize files/e-mails in document management system and grant access to returning lawyer</p> <ul style="list-style-type: none"> • Request for transfer of electronic files • Transfer of electronic files • Place on voicemail and email groups • Cancel voicemail absence greeting and out of office e-mail response | Upon return |

Sample 1

NOTIFICATION OF PREGNANCY AND PARENTAL LEAVE

NOTE: The following must be submitted at least [insert timeline applicable to firm] months prior to the leave start date.

Name: _____

A. The following notice applies to (please check the appropriate box):

- Pregnancy Leave Only (applicable to birth mothers only)
- Parental Leave Only
- Pregnancy Leave and Parental Leave

B. Please complete the following dates:

Expected Due Date (for birth parents): _____

Expected Date the Child is Placed (for adopting parents): _____

C. Please complete the expected dates of your leave:

| | Start Date | End Date | # of weeks |
|--|------------|----------|------------|
| Pregnancy Leave (maximum of 17 weeks or [insert timeline from policy]) | | | |
| Parental Leave (maximum of 35 weeks if pregnancy leave taken OR maximum of 37 weeks if pregnancy leave <u>not</u> taken [or insert timeline from policy]) | | | |
| Vacation | | | |

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Please attach the following:

Doctors certification of pregnancy and due date. (This document is required by Human Resources at least 2 weeks prior to the commencement of your leave.)

Declaration of Participation in Pension Plan.

Signature: _____ **Date:** _____

Declaration of Participation in Pension Plan and Benefits Plans

NAME: _____

Please check the appropriate boxes below to indicate whether you will or will not participate in the firm's pension plans during your pregnancy leave and/or parental leave.

Pension Plan

Pregnancy Leave:

| | Continue | Discontinue |
|-------------------------------|--------------------------|--------------------------|
| Participation in Pension Plan | <input type="checkbox"/> | <input type="checkbox"/> |

Parental Leave:

| | Continue | Discontinue |
|-------------------------------|--------------------------|--------------------------|
| Participation in Pension Plan | <input type="checkbox"/> | <input type="checkbox"/> |

[Insert other plans]

Pregnancy Leave:

| | | |
|-------------------------------|--------------------------|--------------------------|
| | Continue | Discontinue |
| Participation in Pension Plan | <input type="checkbox"/> | <input type="checkbox"/> |

Parental Leave:

| | | |
|-------------------------------|--------------------------|--------------------------|
| | Continue | Discontinue |
| Participation in Pension Plan | <input type="checkbox"/> | <input type="checkbox"/> |

Signature: _____ Date: _____

Sample 2

Memorandum

To: [Insert name of person responsible in Human Resources]

From: [Insert name of person requesting the leave]

Re: Pregnancy/Parental Leave

This will confirm my plans for [insert either pregnancy leave, parental leave or both]:

My last day in the office will be _____.

I have taken _____ vacation day(s) to date. Listed below are the dates in which I will be taking my leave.

[Notice about any remaining vacation that, under the firm's policy, must be taken prior to the start of the leave, as unused vacation and that cannot be carried forward into the following year].

_____ Remaining vacation day(s)

_____ Pregnancy leave [insert number of weeks]

_____ Parental leave [insert number of weeks]

My expected date of return to the office is _____.

Name and signature

Checklist for Legal Assistants

The following is a checklist of the actions that should be considered by the departing lawyer’s legal assistant. The following checklist may vary based on the size of the firm and the nature of the lawyer’s practice.

| Department | Action | Completed |
|--------------------|--|--------------------------|
| Finance department | Assist with reallocation or closing of files | <input type="checkbox"/> |
| | Assist with reallocation or disbursing of all balances remaining in Trust. Provide instructions to finance department | <input type="checkbox"/> |
| | Prepare client directions for transfer of files | <input type="checkbox"/> |
| | Ensure a copy of all client directions, instructions for ongoing files, conflict flags and mail references is provided to the records department | <input type="checkbox"/> |
| | Ensure billing assistant is provided with contact information for billing and receivable follow up | <input type="checkbox"/> |
| | Complete any outstanding docket entries for lawyer | <input type="checkbox"/> |
| | Submit outstanding expense reports | <input type="checkbox"/> |
| Technology | Organize files/e-mails in document management system so lawyer may grant access to receiving lawyer | <input type="checkbox"/> |
| | Assist with request for transfer of | <input type="checkbox"/> |

| Department | Action | Completed |
|--------------------------|--|-----------|
| | electronic files | |
| Professional development | Inform Law Society of change in status and update information with LawPRO | |
| Human Resources | Assist with the submission of outstanding benefit claims Provide updated home address information | |

The Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

Barreau du Haut-Canada
Osgoode Hall
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