



**Law Society**  
of Ontario

**Barreau**  
de l'Ontario

# **Women's Resource Centre**

**A guide to prepare you for a pregnancy or  
parental leave**

<b>1. INTRODUCTION .....</b>	<b>3</b>
<b>2. PREPARING FOR YOUR LEAVE AND RETURN FROM YOUR LEAVE .....</b>	<b>3</b>
<b>Detailed checklist for ramping down and ramping up your practice .....</b>	<b>5</b>
Sample Memo to Human Resources re: Pregnancy/Parental Leave .....	14
Active File List .....	16
Transfer memo to file or new person .....	17
Template Letter to Client.....	17
<b>3. YOUR ORGANIZATION’S LEGAL OBLIGATIONS AND YOUR RIGHTS .....</b>	<b>18</b>
Human rights obligations for everyone.....	18
Ontario <i>Human Rights Code</i> and Law Society Rules .....	18
Organizations have a duty to accommodate .....	19
Statutory leave and benefits .....	20
Employment Standards Act, 2000 .....	20
Resources .....	23
<b>4. INFORMATION ABOUT CHILDCARE.....</b>	<b>24</b>
Childcare: finding and choosing.....	24
Choosing unlicensed childcare.....	24
Choosing licensed childcare .....	25
Licensed home childcare .....	25
Licensed childcare centres .....	26
Before-school and after-school care.....	27
Questions For Home-Based Childcare .....	27
Finding a nanny .....	29
Choosing a nanny .....	30
External Resources .....	31

## 1. INTRODUCTION

The Law Society of Ontario originally developed a guide in collaboration with law firms participating in the Law Society's Justicia Project to assist in the development of pregnancy and parental leave policies. This updated version is meant to be a tool for all women legal professionals (not subject to a collective agreement) to refer to when preparing for a leave.

**This Guide provides general advice and guidance to help you prepare for a pregnancy or parental leave. It contains information specific to the law firm setting; however, the overall principles apply to an in-house or government setting. The term "organization" is used to represent all these scenarios. This Guide does not provide legal advice.**

## 2. PREPARING FOR YOUR LEAVE AND RETURN FROM YOUR LEAVE

When you learn that you will soon become a new parent, you should begin planning to ramp down the work on your files, while ensuring the highest quality of legal services to your clients. Once you are about to return to practice, you should begin to take steps to ramp up your practice to a level that is appropriate and desired.

Please remember that it is critical for both you and your organization to continue to always offer high quality professional legal services to clients. The following is an overview of the things to prepare before, during and after your leave. A detailed checklist follows that can be printed off or downloaded for easy access.

### Preparing for your leave

- You may not be able to finish everything before you go on leave, especially if the birth or adoption occurs sooner than anticipated. At least one month prior to your scheduled leave, you should:
  - Take inventory of your files and work that needs to be completed;
  - Discuss your ongoing workload with the appropriate person;
  - Assign your files to colleagues and discuss them with the lawyers or paralegals who will be taking on your work;
  - Prepare transfer memos of the files that are ongoing so they can be transferred at a moment's notice;
  - Inform your clients of your plans and introduce them to their new lawyer or paralegal;
  - Ensure that your group leader/CEO/Director is fully informed.
- Make a list of on-going non-billable responsibilities that require attention, such as committee work and pro bono work. Discuss these responsibilities with the appropriate person and assign responsibilities that require follow-up actions.
- Be prepared for the eventuality that you might have to stop working earlier than anticipated by fully informing whoever you report to (practice group leader or Director) of

your ongoing files as soon as possible.

- Inform the organization, including your assistant, about how you can be contacted during your leave and whether you wish to remain involved in some of the organization's activities.
- Be careful about taking on new files that may run into your leave time.
- Do not feel guilty by the slowdown in your work. Things will and should slow down as you are approaching your leave date.
- Contact your mentor or maternity/parental leave buddy and discuss how to ramp down and ramp up your practice, the pros and cons of maintaining contact with the organization during your absence and any tips that they may have about having a new child and maintaining your professional life.
- Plan and arrange for childcare as soon as possible. The process of finding a nanny or other caregiver can be long and you will not want to rush into any decisions. If you are considering or planning for daycare, understand that some waiting lists are several months long and you will have to place your name on a waiting list as soon as, or even before the child is born or begins living with you.
- Talk to others, co-workers, friends, and family, and to childcare service providers about childcare options that have worked for them. You must be sure that the option you choose gives you confidence about the care of your child and will work with your routine without too much stress.

### **While on leave**

- It might be helpful for you to keep in touch with colleagues, if only to stay in the loop. Most people who work with you will want to see pictures of your new child and hear about developments.
- If possible, making yourself available if someone needs to briefly talk with you about a file you worked on can be helpful to you and the firm. It is important to note that you are not required to work during your leave, however, your personal history on a file may be invaluable and a brief conversation with you over the phone may be much appreciated.
- Keep in touch with your mentor or maternity/parental leave buddy.

### **Preparing to return from a leave**

- Remind those you work with of your upcoming return. Giving advance notice will put you on the radar screen for upcoming work.
- Have lunch or meet with one or more co-workers a few weeks prior to your return – it will be helpful when you get back into the swing of things and to remind yourself that you enjoy your work.
- If you are considering a flexible time arrangement on your return from leave, speak to other lawyers or paralegals who are on a flexible time arrangement to find out about the various arrangements before you negotiate the terms. Also speak with the lawyers or

paralegals you will be working with about your flexible time arrangement and how you expect to carry out your responsibilities while on flexible time. Prepare a business case related to your flexible time arrangement, including how you intend to maintain your profitability, to provide high quality service to your clients and to be available to colleagues. Consult the organization’s flexible work arrangement policies for guidance and the Law Society’s [Guide to developing a flexible work arrangement](#).

**During the first few months back and beyond**

- If possible, ease back into your regular work schedule. You may even find that your schedule will change from what it was prior to your leave.
- Be clear on expectations – when work is assigned be clear on when completion is required and advise those you work with of your work schedule.
- Keep photos of your child in your office for personal pleasure and to share.
- Figure out the best way to stay on top of work and maintain your schedule, such as by having remote access to the office system.
- Remember that you are not alone. There will be days when it feels like nothing is working. We have all felt that way. Your mentor or maternity/parental leave buddy and fellow lawyers or paralegals can be good friends to talk to.

**Detailed checklist for ramping down and ramping up your practice**

**Prior to leave:**

Activity	Timeline	Completed
Complete and submit to Human Resources a notification of pregnancy and/or parental leave (see sample Memo to Human Resources re Pregnancy/ Parental Leave)	Prior to the start of your leave	
If required by your organization, provide a certificate from a medical practitioner stating the baby’s due date	Prior to the start of your leave	

Complete and submit to Human Resources a declaration of your participation in pension plan (if applicable)	Prior to the start of your leave
Contact [insert the appropriate person in your organization] to establish work assignment plan	Based on organization policy. If no organization policy timeline, one to two months is often appropriate
Review your active file list and identify files to be completed and transferred  See sample Active File List.  Check dates for appearances, time limitations or limitation periods for each file	Ongoing maintenance of Active File List
Assign files to colleagues and agree on matters such as timelines to transfer files and to return files upon your return to practice.  Prepare a transfer memo to the new lawyer/paralegal or to the file. See sample Transfer Memo to File or New Person	At least two months prior to leave, if possible
Inform clients of leave and introduce clients to transitional lawyer/paralegal/counsel. See sample Letter to Client	At least two months prior to leave, if possible

<p>Inform [insert appropriate person], of your intentions and expectations regarding organization involvement (e.g., continued participation on organization committees, organization events, etc.) while on leave</p>	<p>At least one months prior to leave, if possible</p>
<p>Identify method of communication for notification of organization events and activities during your leave and which events you wish to receive notice of</p>	<p>At least one month prior to leave, if possible</p>
<p>Clarify with [insert position] your concerns or details about compensation process and performance review</p>	<p>At least one month before leave, if possible</p>
<p>Provide final date of your leave to the appropriate person and Human Resources</p>	<p>At least two weeks before the start of your leave</p>
<p>Notify the Law Society of any change in your status (if your organization will not manage such issues)</p>	<p>As soon as the change is effective</p>
<p>Contact LAWPRO to determine whether you are entitled to an exemption from payment of your insurance premium levy:  <a href="http://www.lawpro.ca/Contact/default.asp">http://www.lawpro.ca/Contact/default.asp</a>  Customer Service: (416) 598-5899 or 1-800-286-7639</p>	<p>As soon as possible</p>

Let your organization know your needs during the leave, including: At least one month before leave, if possible

- Office supplies
- Office equipment
- Smart phone
- Remote access to organization system
- Laptop
- Access to an assistant
- Colleague support

Decide if you will want to receive client emails (and which kind) directed to your home email address At least two weeks prior to leave

Decide if you would like to work on certain files during your leave At least one to two months prior to leave

Set voicemail absence alert and out of office e-mail response (which should include the length of leave and who to contact in your absence) Last day of work



**During leave:**

Activity	Timeline	Completed
<p>Apply for the following Ontario certifications, if required:</p> <ul style="list-style-type: none"><li>• Birth registration</li><li>• Birth certificate</li><li>• Health card</li><li>• Passport</li><li>• Social insurance card</li></ul> <p>For more information, please visit: <a href="https://www.orgforms.gov.on.ca/IBR/start">https://www.orgforms.gov.on.ca/IBR/start</a></p>	As soon as possible	
<p>Keep up existing friendships with colleagues. You do not have to focus on work unless you want to. Chat on the phone about your new child and life in general. They want to hear from you!</p> <p>Call colleagues who have recently returned from parental/pregnancy leave</p>	Ongoing	
<p>Stay informed where possible. Some news may be of interest and useful to you when you return.</p> <p>Depending on how much information you feel you can handle, arrange for a co-worker to keep you updated on the status of projects or files</p>	Ongoing	

<p>If you decide to resign before your return to work, provide written notice</p>	<p>At least one month prior to return, if possible</p>
<p>Meet with [insert appropriate person/Human Resources] to develop a plan for your reintegration</p>	<p>Based on timeline in policy. If no timeline in policy, at least one month prior to return, if possible</p>
<p>Agree on anticipated workload and transition issues upon return</p>	<p>Based on timeline in policy. If no timeline in policy, at least one month prior to return, if possible</p>
<p>Discuss anticipated opportunities within the organization for involvement in new matters and new files</p>	<p>Based on timeline in policy. If no timeline in policy, at least one month prior to return, if possible</p>
<p>Communicate with coworkers and clients regarding return to work. Get together for lunch with a colleague to catch up on news. Call your practice group leader, Director, or CEO to get a handle on the projects you will be returning to</p>	<p>Based on timeline in policy. If no timeline in policy, at least one month prior to return, if possible</p>

Ask the appropriate person about the possibility of remote/hybrid work arrangements, flexible hours or a part-time schedule for the first week or two after your return	At least one month prior to return, if possible
Talk to friends who have recently had a new child and have returned to work. Ask for tips	Whenever you feel comfortable
Get help for yourself and be aware of your mental well-being.  Remember that your LSO dues cover access to the Member Assistance Program: <a href="https://lso.ca/lawyers/well-being-resource-centre/member-assistance-program-(1)"><u>https://lso.ca/lawyers/well-being-resource-centre/member-assistance-program-(1)</u></a>	Always

**Easing the transition back to work**

Activity	Timeline	Completed
You may find it helpful to phase in your return to work, both physically and mentally	Go at your own pace	

<p>If possible, begin your childcare arrangements a few weeks prior to returning to work (if only part-time) to help ease yourself and your child into a new routine</p>	<p>A few weeks prior to returning to work</p>
<p>Arrange for emergency childcare backup plans in case things go awry. Review childcare options close to home or near your workplace. Create a support system of neighbours with small children or other parents at the daycare centre. Discuss extended hours with your childcare provider and agree on how you will handle a sudden workplace need for late hours</p>	<p>At least one month before returning to work</p>
<p>Discuss arrangements with your support system for pick-up and drop-off duties</p>	<p>At least one month before returning to work</p>
<p>Meet with Human Resources to discuss benefits for new family members and paperwork to reinstate participation in pension plan (if applicable)</p>	<p>Upon return</p>
<p>Contact the Law Society about any change of status (if applicable)</p>	<p>Prior to or immediately upon return</p>

Make arrangements with LAWPRO about resuming your coverage (if applicable)

Prior to or immediately upon return

Decide which non-billable responsibilities you would like to resume

Upon return

Decide if you still need support at home (i.e., office supplies, laptop, etc.,) should you decide to work occasionally

Upon return

## Sample Memo to Human Resources re: Pregnancy/Parental Leave

NOTE: This sample is meant to give you an idea of what kind of information might be expected of you to provide prior to taking a pregnancy or parental leave. Your organization may have its own notification form. If not, you may use the below and insert the applicable timelines of your organization.

**Name:** \_\_\_\_\_

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

- Pregnancy Leave Only (applicable to pregnant parent 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 your organization's policy])			
Parental Leave (maximum of 61 weeks if pregnancy leave taken OR maximum of 63 weeks if pregnancy leave <u>not</u> taken [or insert timeline from policy])			

**Sample Memo to Human Resources re: Pregnancy/Parental Leave Cont'd**

**Please attach the following:**

Doctor's certification of pregnancy and due date. (This document is required by Human Resources at least two 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 organization's pension plans during your pregnancy leave and/or parental leave.

**Pension Plan**

Pregnancy Leave:

Participation in Pension Plan                      Continue                       Discontinue

Parental Leave:

Participation in Pension Plan                      Continue                       Discontinue

**[Insert other plans]**

Pregnancy Leave:

Participation in Pension Plan                      Continue                       Discontinue

Parental Leave:

Participation in Pension Plan                      Continue                       Discontinue

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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 organization'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)





## Transfer memo to file or new person

**MEMO TO:** (File or New Lawyer/Paralegal)

**NAME OF FILE:**

**FILE NUMBER:**

**DATE:**

**NOTE:** [limitation periods, appearance dates, and outstanding obligations]

**FACTS AND INFORMATION:**

I was retained by client [X on date] with respect to the following:

**[List items and include retainer letter if relevant]**

1. A summary of the history of this matter is as follows:

**[Summarize the relevant facts and the history of the case to present. Include details of litigation, negotiations, etc.]**

2. The client's position on each issue is [Include]
3. The opposing side's position on each issue is:[Include]
4. Include other relevant information:[Include]

I have contacted the client to inform them of the temporary transfer of the file and the timeline for the transfer. Letter of transfer attached.

### Template Letter to Client

**RE:** [Name of case]

**Name:** [Name]

As of [date], I will be taking a [pregnancy or parental] leave for an expected period of [insert number of months]. During my absence, I have asked [insert name of lawyer/paralegal/counsel] to carry on the work on your file. [Name of responsible lawyer/paralegal/counsel] can be reached at [contact information including phone number and email address]. I have fully briefed [name of responsible lawyer/paralegal/counsel] on the details of your file and they know how to contact me during my leave. Should you have any concerns about this arrangement or the management of your file, do not hesitate to contact me or [name of appropriate person] to discuss the matter.

**Sincerely,**

[Lawyer/Paralegal/Counsel]

[Organization]

### 3. YOUR ORGANIZATION'S LEGAL OBLIGATIONS AND YOUR RIGHTS

The general legal rights and obligations mentioned here are up to date as of September 2023

#### Human rights obligations for everyone

Law firms and legal organizations have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers and paralegals are bound by rules that promote human rights under the Law Society's rules. The following provides a general overview of these obligations under the Ontario *Human Rights Code* (*Code*), *Paralegal Rules of Conduct* and the *Rules of Professional Conduct* as they relate to your pregnancy or parental leave.

#### Ontario *Human Rights Code* and Law Society Rules

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.<sup>1</sup> 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 paralegals, associates, salaried lawyers, 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. The *Code* also applies to lawyers employed in-house, including government.

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

The *Rules of Professional Conduct* apply to member lawyers, including associates and partners, of the Law Society of Ontario. [Rule 6.3.1-1](#) 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*. The *Paralegal Rules of Conduct* have a similar rule, 2.03(4). Lawyers and paralegals must not sexually harass or discriminate on the grounds of, for example, sex, sexual orientation, marital status, or family status.

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

<sup>2</sup> *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".

<sup>3</sup> *Code*, *supra* note 1, s. 5(1).

No one should be subjected to discrimination solely because they have taken a pregnancy or parental leave. It may be discriminatory, for example, to refuse to advance or to pay someone at a higher year level only because the person took one or more pregnancy or parental leaves. Unfortunately, a significant number of complaints made to the Discrimination and Harassment Counsel Program each year are complaints of sex discrimination. After sexual harassment, discrimination based on pregnancy is the most common form of sex-based discrimination faced by lawyers and paralegals.<sup>4</sup>

### **Organizations have a duty to accommodate**

The *Code* and the *Rules of Professional Conduct* impose a duty to accommodate to the point of undue hardship. “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 your organization can accommodate you during the pre-natal and post-natal periods, short of undue hardship:<sup>5</sup>

- A lawyer or paralegal may be able to participate in more flexible remote or hybrid work, or may be temporarily relocated to another workstation 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.
- Breaks may be allowed as necessary. Lawyers or paralegals 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.
- A lawyer or paralegal 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.

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<sup>4</sup> The *Report of Activities of the Discrimination and Harassment Counsel*, Summary of Data Since January 1, 2003 and semi-annual reports posted at [www.lso.can/dhc](http://www.lso.can/dhc).

<sup>5</sup> *Policy on Discrimination Because of Pregnancy and Breastfeeding* (Toronto: Human Rights Commission, revised 2008).

## **Statutory leave and benefits**

### ***Employment Standards Act, 2000***

The *Employment Standards Act (ESA)* applies to an employee and their employer if the employee's work is to be performed in Ontario, or the employee's work is to be performed in Ontario and outside Ontario, but the work performed outside Ontario is a continuation of work performed in Ontario (Section 3 of the *ESA*).

The *ESA* applies to law and articling students, associates, in-house counsel, and paralegals ("employees") but does not apply to equity partners. Therefore, there are no minimum obligations relating to pregnancy and parental leave for equity partners (there is more information in a section below called, Equity Partners). A firm that has income partners should consider whether those partners are included in the definition of "employee" in the *ESA*.

Employees are subject to Parts XIII and XIV of the *ESA* that deal with benefit plans and leaves of absences, including pregnancy and parental leaves, but exempt from Parts VII to XI that deal with hours of work and eating, overtime pay, minimum wage, public holidays, and vacation with pay.

The *ESA* sets out the minimum threshold for employment standards. Your employer may choose to provide benefits that go beyond or are broader than the *ESA*. However, an employer is expressly prohibited to contract out of the standards of the *ESA*.<sup>6</sup> The purpose of the legislation is to protect an employee's position while on leave. If you are absent on a pregnancy or parental leave, you are entitled to be reinstated to your recently held position (if it still exists or a comparable position if it does not exist) upon returning to employment. 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***

A pregnant employee is entitled to pregnancy leave under the *ESA* whether they are a full-time, part-time, permanent or contract employee provided they work for an employer that is covered by the *ESA*.

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.<sup>7</sup> If also entitled to parental leave, an employee's pregnancy leave will be 17 weeks in length.<sup>8</sup> An employee who is not eligible for parental leave is entitled to pregnancy leave that ends the later of either 17 weeks after the pregnancy leave began or twelve weeks after a birth, stillbirth, or miscarriage.<sup>9</sup>

Section 46(4) of the *ESA* provides procedures for giving notice and changing the date of the notice,

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<sup>6</sup> 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.

<sup>7</sup> *ESA*, *ibid*. s. 46(1).

<sup>8</sup> *ESA*, *ibid*. s. 47(1)(a).

<sup>9</sup> *ESA*, *ibid*. s. 47(1)(b)(i) and (ii).

along with contingent procedures in the event of unforeseen complications related to the pregnancy.<sup>10</sup>

### **Parental Leave**

An employee who has been employed by their employer for at least 13 weeks is entitled to take a parental leave.<sup>11</sup> 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.<sup>12</sup>

The length of the parental leave is contingent on whether the employee took a pregnancy leave. When that is the case, the parental leave is limited to 61 weeks. If no pregnancy leave has been taken, the employer must allow the employee to take up to 63 weeks of leave of absence.<sup>13</sup>

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.<sup>14</sup>

If an employee has not taken pregnancy leave, the commencement of parental leave is restricted to no later than 78 weeks after the day the child is born or comes into the custody, care, and control of the employee for the first time.<sup>15</sup>

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 prescribed.<sup>16</sup>

An employee may not terminate their 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.<sup>17</sup>

### **Employment Insurance Act**

Employees may also be eligible for benefits under the *Employment Insurance Act*, S.C. 1996, c. 23.

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<sup>10</sup> 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".

<sup>11</sup> S. 48(1) of the *ESA*, *ibid.*

<sup>12</sup> Employees who have stepchildren 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 their own, and "child" has a corresponding meaning."

<sup>13</sup> S. 49(1) of the *ESA*, *ibid.*

<sup>14</sup> S. 48(3) of the *ESA*, *ibid.*

<sup>15</sup> S. 48(2) of the *ESA*, *ibid.*

<sup>16</sup> 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 the final date of the leave.

<sup>17</sup> *ESA*, *ibid.* s. 49(4) and (5).

(*EIA*), including pregnancy, parental and sickness benefits. Employees have a responsibility to inform the organization of their entitlement under the *EIA*. Such entitlement may impact supplemental income benefits provided by the organization.

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 *EIA*.

To be entitled to benefits, an employee must show that they have accumulated 600 insured hours in the last 52 weeks or since the last claim. A claimant may be eligible to receive benefits for up to a maximum of 65 weeks.<sup>18</sup> Benefits are paid at a rate of 55% of a claimant's weekly earnings.<sup>19</sup> Maximum weekly earnings are set out in s. 14.<sup>20</sup>

### ***Pregnancy Benefits***

Pregnancy benefits are payable to the pregnant parent or surrogate parent for a maximum of 15 weeks.

Because there is a two-week waiting period for which no benefits are paid under the *EIA*, for a 17-week pregnancy leave under the *ESA*, an employee can receive a maximum of 15 weeks of EI benefits. The pregnant parent can start collecting pregnancy benefits either up to 8 weeks before they are expected to give birth or at the week they give 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. If an employee has received pregnancy benefits, the employee can continue to receive parental benefits without a second waiting period. If the employee did not take a pregnancy leave, but takes a parental leave, the employee will receive 35 weeks of benefits under the *EIA*.

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 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.

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<sup>18</sup> *Employment Insurance Act*, S.C. 1996, c. 23, s. 23 of the *EIA*.

<sup>19</sup> *EIA*, s. 14(1), *ibid.*

<sup>20</sup> *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.

## **Sickness Benefits**

Under the *EIA*, a pregnant person may be entitled to receive up to 15 weeks of sickness benefits in addition to pregnancy and parental benefits.<sup>21</sup> There are special rules governing claims for pregnancy and illness benefits in the event of termination of pregnancy, depending on the point in the pregnancy at which the pregnancy terminates.

## **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 (i.e. 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.<sup>22</sup>

Further information about the *EIA* is available on-line at [www.hrsdc.gc.ca](http://www.hrsdc.gc.ca).

## **Resources**

- For on-line information about pregnancy and parental leave entitlements under the *ESA*, see: <https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave>
- 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>

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<sup>21</sup> S. 22 of the *EIA*, *ibid*.

<sup>22</sup> Section 38 of *Employment Insurance Regulations* SOR/96-332.

## 4. INFORMATION ABOUT CHILDCARE

### Childcare: finding and choosing

This information is based on information that was previously published on the website of Ministry of Children and Youth Services (which is no longer the Ministry responsible for childcare) but still helpful.

If possible, both parents should participate in the childcare selection process. Your child should be present for at least some of the time while you observe and interview caregivers.

When choosing childcare, you should:

- Meet with the directors and staff or caregiver to discuss your expectations
- Spend an hour or two observing active and quiet activities at all facilities you are seriously considering
- Review the licensing files, if possible
- Talk with other parents from the facilities
- Trust your instincts and ask questions.

### Choosing unlicensed childcare

In Ontario, caregivers who look after five or fewer unrelated children under the age of 13 do not have to be licensed: <https://www.ontario.ca/page/home-child-care-and-unlicensed-child-care-how-many-children-are-allowed>

Unlicensed childcare are private arrangements made between the parents and the caregiver. Another name for unlicensed childcare is informal childcare.

Here are some examples:

- A babysitter or relative who comes to the child's home at the required times
- A nanny who lives with the family
- A friend or relative who cares for the child in their own home.

Some advantages:

- Family atmosphere in a home-like setting
- Caregiver may know you and your child
- Schedules may be more flexible
- Can be more affordable than licensed childcare
- Provides stable surroundings
- Your child receives ample, personal attention.



Some disadvantages:

- Caregiver may not have any formal training
- Isolation of caregiver
- Other children may not be the same age or the same stage of development
- Reliability may be a problem
- May be difficult to find
- May be the most expensive option for one or two children
- You are responsible for all fees, taxes, social insurance, and sometimes benefits
- The caregiver may not always be available (illness, vacation), and turnover may be high
- Your child may not get the stimulation of other children.

Who supervises unlicensed caregivers?

The Government of Ontario does not regulate these caregivers. That means the person caring for your child does not have to meet provincial health, safety, and caregiver training standards.

### **Choosing licensed childcare**

In Ontario, all licensed childcare settings must meet all provincial requirements under the *Child Care and Early Years Act, 2014*.

Check out the Government of Ontario's website for how to find childcare:

<https://www.ontario.ca/page/find-and-pay-child-care>

Learn about the different kinds of childcare: <https://www.ontario.ca/page/types-child-care>

### **Licensed home childcare**

Home childcare is provided in a caregiver's home. They are not licensed by the Ministry of Education, but rather are contracted by home childcare agencies that are licensed by the ministry. You can find home childcare for infants, toddlers, pre-school, and school-aged children. It can include full-day care, before/after school care, extended hours, and overnight care.

An individual home childcare provider that is overseen by a licensed agency can care for up to six children under the age of 13, which must include any of their own children under the age of four.

All licensed childcare centres, home childcare agencies and childcare providers that are overseen by a licensed home childcare agency have a decal on display that says that they are licensed. Private residences that provide in-home services will not have a decal.

The benefits of home childcare include:

- Government-regulated and inspected homes that meet specific standards
- Siblings to be placed together
- Small group size
- Childcare fee subsidies that may be available
- Standards that must be met by providers.

### **What do home visitors do?**

Home visitors work for licensed home childcare agencies. They screen and monitor home providers that are overseen by a licensed agency. A home visitor must be either:

- A member in good standing of the College of Early Childhood Educators, with at least two years of experience working with children under 13 years old
- Approved by a director, who is an employee of the Ministry of Education.

They check that a home is safe before children are enrolled and conduct routine inspections to ensure providers are following provincial rules and the agency's policies and procedures. Home visitors can also help families find a home childcare provider who meets their needs and is overseen by a licensed agency.

Examples of ways home visitors can help providers include:

- Developing programs for children at different stages of development
- Providing advice about nutritious meal planning
- Helping choose toys and equipment that are safe and suitable.

The Ministry of Education inspects licensed home childcare agencies, and some home childcare locations, to ensure they meet specific provincial health, safety and developmental standards.

### **Licensed childcare centres**

Licensed childcare centres care for infants, toddlers, pre-school, and school-age children. They include nurseries, full day care, extended hours care and before/after school programs.

Childcare centres operate in a variety of locations including workplaces, schools, and places of worship.

The benefits of licensed childcare centres include:

- Government-regulated and inspected
- Allow children to be with other children their age
- Make sure staff members meet the qualification requirements set out under the *Child Care and Early Years Act, 2014*

- Must meet certain standards of care
- Have activities designed for children at different stages of development
- May have childcare fee subsidies available.

The Ministry of Education inspects childcare centres to ensure they meet specific provincial health, safety, and developmental standards.

### ***Before-school and after-school care***

Where there is sufficient demand, schools that offer kindergarten to grade six must also offer before-and-after-school programs. These programs complement the regular school day with a mix of exploration, guided independent activities, quiet times, and outdoor play.

School boards may:

- Operate before-school and after-school programs directly
- Enter into a third-party agreement with a licensed childcare centre or an authorized recreational and skill building program to operate the program.

### **Resources:**

- To learn more about childcare deductions, please visit: <https://www.ontario.ca/document/ontario-works-policy-directives/54-child-care-deductions>
- Find licensed childcare: <https://www.earlyyears.edu.gov.on.ca/LCCWWeb/childcare/search.xhtml>
- Learn about childcare fee subsidies: <https://www.ontario.ca/page/child-care-subsidies#section-0>
- Learn about the Ontario Child Benefit: <https://www.ontario.ca/page/child-care-subsidies#section-1>
- Learn about the Canada Child Benefit: <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/canada-child-benefit-overview.html>
- Learn about financial support for children with special needs: <https://www.ontario.ca/page/child-care-subsidies#section-3>

### **Questions For Home-Based Childcare**

- Are you licensed by the province?
- Do you have any Early Childhood Education certificates or experience?
- How many children do you care for?
- Do you have any children of your own? (By law, licensed caregivers can only provide childcare for five children under the age of ten in addition to their own).
- What are the ages of the children, including your own?

- How many staff/helpers do you have?
- What background checks do you do on extra caregivers?
- What other family members live in your home?
- Do other family members interact with the children?
- What background checks have you done/can you provide on the other adults who interact with the children?
- What is your daily schedule like?
- Do you provide a daily “log” of the child’s activities (food/play/diaper changes/naps)?
- Where do the children nap and where do they play?
- How do you deal with the needs of children who no longer nap?
- How much time do you generally spend outdoors and what climate affects your decision?
- If you cannot go outdoors, how do you get large muscle activities for the children?
- Do you ever leave your home with the children? If so, how do you travel (wagon, stroller, etc.)
- What do you do for back up if you are ill or on vacation?
- Do you provide food and what do you expect of parents concerning food? (i.e. are parents expected to bring food/snacks/provide breakfast before arrival)
- What other items are parents expected to provide? (i.e. diapers, wipes, formula, changes of clothing, blankets, other bedding)
- How and how often are the children’s toys cleaned?
- What do you consider as disruptive behavior?
- How do you handle disruptive behaviour? How do you handle common scenarios like biting?
- Do you provide an “incident report” to the parents at the end of the day when a child is injured (even if minor)?
- What are your approaches to milestones such as walking, potty training, etc.?
- Do you go on field trips or other outings (other than walks around the neighbourhood)?
- Are parents expected to provide a car seat?
- What is the caregiver to child ratio for field trips?
- Do you have any school-aged children under your care?
- How do they get to and from school?
- Can I speak with some of the parents of the children currently under your care?

## Finding a nanny

Some people turn to a nanny agency to assist them in finding a nanny. A good nanny agency can make the process faster and easier, as well as provide peace of mind. Finding a nanny privately can be time-consuming, stressful, and hard work, which is why many people turn to an agency for help. An agency can help you find a full-time, part-time, temporary, or emergency caregiver for your child. It is important to carefully choose the agency. Not only will you be investing your time and money in their services, but you will also be trusting them to find the right nanny for your family.

Before sending an agency out to interview, a good nanny agency should:

- Interview the nanny in person - not just over the telephone
- Check birth certificate, passport, driving license - original, not a copy
- Always ask for at least two references
- Ask about qualifications and First Aid - check originals of certificates
- Ask about any gaps in a nanny's CV and make them account for them
- Ask for a police check
- Find out where the nanny is living and their current circumstances
- Ask what experience the nanny has and how they care for and stimulate children in their care.

The following is a checklist of questions to ask to find out if the agency is a good one:

- How long has the agency been in the business, or (if the agency is new) how much experience in the industry has the agency's director/operator had?
- Does the agency meet each nanny candidate in person?
- How long will it take to find a nanny through the agency? About how many candidates will they present to you?
- Do its nannies have first aid certificates as standard?
- What childcare qualifications and/or experience do its nannies have?
- Do they perform a full background check? What does that include? At what point during the screening / referral process do they perform the various checks? Will all the screenings be completed before the nanny begins work?
- Does the agency run training courses for its nannies, and provide opportunities for them to increase their skills?
- How does the agency go about matching nannies to families? Does the agency meet you to discuss your requirements?
- What support does the agency give the family during the recruitment process?
- Does the agency assist with drawing up the employment contract between the family and nanny?
- What ongoing support does the agency provide families? Does the agency check back to see if the arrangement is working? Does the agency offer back-up support if a nanny gets sick or fails to show up?
- What advice can the agency give parents about employment law and their responsibilities and risks as an employer?
- What costs are involved and what do they cover? (For example, registration fee, placement fee, etc.)

For information from the Ontario Government about hiring a domestic worker, please visit:

## Choosing a nanny

The following are sample questions to pick and choose from that best suit your own circumstances. Remember to let them do most of the talking. Sometimes interviewers monopolize the conversation and the applicant merely nods their head. You will never get to know them that way.

### Phone interview questions

The first six questions are designed to help you interview over the phone to narrow down your selection and waste less time.

- Confirm the requirements of the job. Make sure the person is available for the hours you need. If you need someone who drives, make sure the nanny drives. Verify whether the nanny is CPR certified. Make sure the nanny is looking for the same living arrangement you are and the same salary.
- Does the person have the level of language that you require. This person is going to have a huge impact on your child's development.
- If you are looking for someone with childcare experience, make sure the nanny has the experience required.
- Ask about the nanny's last childcare experience. Why did it end? What were the ages of the children the nanny cared for?
- Ask the nanny how long they would be willing to stay in this position? When can the person start? What does the person plan to do when the contract is completed?
- Tell the person that you plan to do a background check on anyone you are considering hiring. Ask if the person has a problem with this.

If you are satisfied with the answers you received, set up an appointment for a face-to-face interview. Remind the person to bring a list of at least three references that you can call.

### Face-to-face interview questions:

- What do you think children like best about you?
- What kinds of activities would you do with a (insert ages of your children) year old?
- Can you give me some examples of problems you have had with kids and how you handled them?
- What would you say is your discipline style? Can you give me some examples of when you would need to use discipline with a (insert age) year old child?
- What do you consider to be your most important responsibility in this job?
- At what point would you call a pediatrician or 911? Have you ever had to handle an emergency? How did you handle it?
- Have you ever had to manage a morning routine during the school year so that all the children got off to school on time? If no, do you think you could?
- Do you have any health-related problems that would prevent you from doing this job?
- Will you be able to adjust your schedule if we need to go out of town or stay late at work from time to time? [Note: Make sure they know that this would be overtime and they would be compensated with additional pay]

- What do you like to do in your spare time? Hobbies, activities?
- What do you like most about yourself? What would you like to improve about yourself?
- What was your last childcare experience? Why did it end? What were the ages of the children you cared for?
- What do you think a typical day is like with a (insert the age of your child i.e., infant, toddler, 5-year-old, 10-year-old)?
- How do you feel about furthering your training by attending child development classes or seminars?

**If your nanny position is going to be a live-in position, you may wish to ask a few more questions of your candidates:**

- What is your typical schedule?
- Do you have any worries or apprehensions about living with a family? What are they? It is best to get these out in the open now so you can try to alleviate them.
- Do you have any pets you are hoping to bring along?
- Do you have any friends that will be overnight guests from time to time?
- Did you run into any problems with your last live-in arrangement? What were they?

If your nanny candidate has passed all the above, it is time to check the references, perform a background check and if all is well, have the nanny come over and watch the kids for a trial run (paid, of course).

**External Resources**

The following external resources may be helpful to you when planning an absence from work.

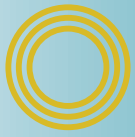
Resource	Description	Contact
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<p><b>Law Society of Ontario Parental Leave Assistance Program</b></p>	<p>The program provides financial benefits to sole practitioners and partners in firms of five lawyers or less, where the applying lawyer has an annual net practice income of less than \$50,000, and 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</p>	<p><a href="https://lso.ca/lawyers/practice-supports-and-resources/equity-supports-resources/parental-leave-assistance-program-(1)">https://lso.ca/lawyers/practice-supports-and-resources/equity-supports-resources/parental-leave-assistance-program-(1)</a></p>
<p><b>Employment Standards Act (ESA)</b></p>	<p>Description of benefit entitlements under the <i>ESA</i></p>	<p><a href="https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave">https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave</a></p>
<p><b>Employment Insurance Act</b></p>	<p>Employment insurance benefits under the <i>EIA</i> for pregnancy and parental leaves</p>	<p><a href="https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental/benefit-amount.html">https://www.canada.ca/en/services/benefits/ei/ei-maternity-parental/benefit-amount.html</a></p>
<p><b>Service Canada Centres in Ontario</b></p>	<p>Location of Service Canada Centres for applications under the <i>EIA</i></p>	<p><a href="http://www1.servicecanada.gc.ca/cgi-bin/hr-search.cgi?cmd=lst&amp;pv=on&amp;ln=eng">http://www1.servicecanada.gc.ca/cgi-bin/hr-search.cgi?cmd=lst&amp;pv=on&amp;ln=eng</a></p>



Resource	Description	Contact
Ontario Human Rights Commission	Resources produced by the Ontario Human Rights Commission	<a href="http://www.ohrc.on.ca/">http://www.ohrc.on.ca/</a>
Finding Childcare Services and Financial Assistance	Information about selecting the proper childcare services, the differences between licensed and unlicensed childcare and how to find childcare services in Ontario	<a href="https://www.ontario.ca/page/types-child-care">https://www.ontario.ca/page/types-child-care</a>
Government of Canada	A list of resources reflecting Canada's diversity, cultural practices, and values	<a href="https://www.canada.ca/en/public-health/services/health-promotion/childhood-adolescence/parent/parenting-resources-support.html">https://www.canada.ca/en/public-health/services/health-promotion/childhood-adolescence/parent/parenting-resources-support.html</a>
Kidcare Canada	Resources for all new parents	<a href="https://kidcarecanada.org/get-to-know-us/">https://kidcarecanada.org/get-to-know-us/</a>
Parents Canada	Parenting advice for parents of newborns and toddlers	<a href="https://www.parentscanada.com">https://www.parentscanada.com</a>
Ontario Principals' Council	Resources for parents	<a href="https://www.principals.ca/en/opic-resources/resources-for-parents.aspx">https://www.principals.ca/en/opic-resources/resources-for-parents.aspx</a>
Ottawa's 18-Month Well-Baby Visit Pathway	Resources for Ottawa residents	<a href="https://www.ottawapublichealth.ca/en/professionals-and-partners/resources/Documents/18month_pathway_en.pdf">https://www.ottawapublichealth.ca/en/professionals-and-partners/resources/Documents/18month_pathway_en.pdf</a>
Toronto Early Childhood and Family Resource System	Resources for Torontonians	<a href="http://healthykidstoronto.ca/index.html">http://healthykidstoronto.ca/index.html</a>

<b>Family Care Centre</b>	Resources for awareness and early identification of mental health disorders in children and youth	<a href="https://www.family.cmho.org/parent-resources/">https://www.family.cmho.org/parent-resources/</a>
<b>Ontario Association of Children's Aid Societies</b>	Resources and supports for Ontario families	<a href="https://www.oacas.org/what-we-do/communications-and-public-engagement/resources-and-supports-for-ontario-families/">https://www.oacas.org/what-we-do/communications-and-public-engagement/resources-and-supports-for-ontario-families/</a>
<b>Family Info.ca</b>	Resources for families in London and Middlesex County	<a href="https://familyinfo.ca/en/14/Parenting/">https://familyinfo.ca/en/14/Parenting/</a>
<b>Empower Simcoe</b>	Resources for families in Simcoe	<a href="https://www.empowersimcoe.ca/child-family-online-resources/">https://www.empowersimcoe.ca/child-family-online-resources/</a>
<b>Holland Bloorview Kids Rehabilitation Hospital</b>	Family resources centre	<a href="https://hollandbloorview.ca/services/family-workshops-resources/family-resource-centre/online-family-resources-centre">https://hollandbloorview.ca/services/family-workshops-resources/family-resource-centre/online-family-resources-centre</a>
<b>City of Toronto</b>	Resources	<a href="https://www.toronto.ca/community-people/children-parenting/">https://www.toronto.ca/community-people/children-parenting/</a>



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