

# Helpful Legal Information for MAHCP Members

## Maternity/ Paternity Leave

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Members who have read through their collective agreements in detail (that is all of you, right?) will have noticed that there are differences between parental leave and maternity leave. Parental leave applies to: the natural mother of a child; the natural father of a child or a man who assumes the actual care and custody of his newborn child; or an adoptive parent. Those individuals are entitled to the parental leave benefits under Article 17 of the Collective Agreement. However, a biological mother receives additional benefits under the maternity leave provisions such as a “top up” of Employment Insurance benefits and up to 10 days of accumulated sick leave. This does not apply to adoptive mothers nor to fathers whether biological or adoptive. Questions have arisen from time to time as to whether this violates the discrimination provisions of Article 26 of the Collective Agreement or the Human Rights Code.



There is no question that individuals are being treated differently but the question is whether that amounts to discrimination. It seems logical to assume that if individuals are receiving different treatment that such treatment is discriminatory.

This matter has been considered by the courts and arbitrators in relation to the provisions of collective agreements and by the Human Rights Commission in relation to its Code.

Article 26 of the Collective Agreement provides that there shall be no discrimination or restriction based upon “family relationships”. Under the Human Rights Code “family status” is a prohibited ground of discrimination.

The Supreme Court of Canada, in the case of *Gibbs v. Battlefords and District Co-operative Ltd.*, said “a finding of discrimination based on the imposition of a burden or the withholding of a benefit must be rooted in a comparison of the treatment received by a person with the treatment received by other persons”. However, it is important to identify the appropriate comparator and, to do so, one must start with the individuals or groups that are to be compared.

There is a general recognition in the law that pregnancy is a unique physiological event which can justify treatment that is different from the treatment accorded to other parents. This is the key to why courts, arbitrators and Human Rights Commissions have found that additional benefits for biological mothers are not discriminatory. The result would be different if adoptive fathers were treated differently from biological fathers because neither experiences the physical demands of pregnancy and childbirth.

Courts, arbitrators and the Human Rights Commission also focus on the purpose and effect of



the benefit. If the purpose of the benefit is not to aid in the formation of a family (which would apply to all parents) but to protect the health and well-being of pregnant women and biological mothers while recovering from the health and related stresses of giving birth then there is justifiable reason for treating biological mothers in a different manner.

Essentially, the decisions made in these matters state that one cannot compare biological mothers to other parents as biological mothers are unique in that they experience the physical effects of pregnancy and childbirth. In addition, because the purpose of the additional benefits is to compensate for the physical effects, the provision of same is not discriminatory. Therefore, the provision of these extra benefits for biological mothers is not a breach of the discrimination provisions of the Collective Agreement nor the Human Rights Code.

*This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.*

**This is one of a series of articles that will be appearing in future editions of the MAHCP News.**