

Leave alterations present challenges for B.C. employers

New options could raise logistical, financial issues, say experts

BY SARAH DOBSON

NEW or extended leaves recently unveiled in British Columbia might not be unexpected but could still pose challenges for employers, according to experts.

"The issues for employers aren't necessarily new ones — employers have been dealing with leave issues and the impact on the workplace for a long time — but it does produce some new considerations, both financial and administrative ones," said Marino Sveinson, a partner at Norton Rose Fulbright in Vancouver.

"In terms of preparation, though, any diligent employer can prepare for the changes without much issue."

The B.C. government has made changes around maternity, parental and compassionate care leaves, along with introducing two new leaves around children.

"These amendments are about supporting B.C. workers and extending compassion to families who face tragic circumstances, such as the loss or disappearance of a child, or the need to care for a dying family member," said Labour Minister Harry Bains.

The changes are about matching the federal rules, while also evolving the province's laws.

"Once the federal employment insurance (EI) changes came into place to extend the maternity and parental leave to a total of 18 months, the provinces had to catch up," said Sveinson.

Pregnancy leave

The amendments allow mothers

to start their pregnancy leave up to 13 weeks before the expected birth date, up from 11 weeks. New parents can also take a longer unpaid parental leave — resulting in a total of up to 18 months.

Legally, many employers aren't sure if the longer leaves mean health and pension benefits have to continue for the employee. They do, said Sveinson.

"There's now an extra six-month period added on to that where they have that cost if the employer's paying some of those premiums."

For large employers, it's a cost of doing business and of operating and backfilling those sorts of leaves, he said.

"I definitely think the smaller businesses... can have much more challenges in dealing with these sorts of extended leaves for a position that they have to find somebody temporarily for and can only offer them a job for 18 months."

Often, there is internal shuffling, but it depends on the level of position too, said Sveinson.

"When you've got a job that's more available in the market and easier to fill, then you're doing that; when you've got a senior manager leaving the workplace, it can be more of a scramble in figuring out how to fill that role."

There could also be a financial impact for employers, as "childbirth is common and recurring, so this can have a consistent impact on employers that do top up for parental leave," said Jordan Thompson, an associate at Fasken in Vancouver.

But with the total EI payments for the 18 months the same as they were for 12 months, it's hard to imagine many people will be able to afford such a long leave, he said.

Employers should plan for somebody to be off work for a long time, said Cissy Pau, principal consultant at Clear HR Consulting in Vancouver.

"Any extended period of time is hard and I look at it specifically in our job market here — it's so tough to find employees, there's such a shortage, that if you have a good employee, you certainly want to keep them," she said.

"Where are you going to find that next person who wants to be here for 18 months when there's lots of jobs available for full-time people?... It's going to be really hard for employers to find a replacement for that time, and to train them up."

The impact is going to depend on the resources and the dynamic of the employer, said Thompson.

"Some are a lot more capable of hiring a contract employee to fill a role, whereas some that have less resources and more flexibility might be able to do some cross-training and have two people to fill in a role during that leave time. I think, due to the length of the leave, we might see a little bit more in the way of temporary or contract employees being hired."

Protections around children

British Columbia also has a new unpaid, job-protected leave of up to 52 weeks for parents if a worker's child

is missing because of a crime, and a new unpaid, job-protected leave of up to 104 weeks for parents dealing with the death of a child.

"That's not one people are going to abuse and, really, if somebody's child did disappear or they had the death of a child, they're not going to be productive anyways for that length of time, so even without the leave, they're not going to be fully present," said Pau.

In addition, amendments to compassionate care leave have extended the length of leave from eight to 27 weeks for an employee who must care for a family member who is terminally ill.

That's in line with EI changes as well, said Pau.

"It's not something that we've seen at all (even for eight weeks). We understand it and we can anticipate it but we've not seen very much of it being taken," she said. "That's a long time to be off without pay, so how many people will take advantage of it?"

As baby boomers age, there is going to be that need for greater care, so employers might want to consider more cross-training of employees, she said.

"When it was eight weeks, I think it would have been one of those things where you just kind of make do and you redeploy. At 27 weeks, it's a tougher call (as to) whether you bring a new person in or you make do for that time period. That's half a year, that's a long time," said Pau.

"I think that's where some employers are going to be caught... it's

going to take them three months to find somebody.”

Coping with the leaves

Revisiting policies is advisable, she said.

For instance, if an employer has a paid sick leave policy and paid personal day policy with five days each, do those include or are they over and above all the statutory paid leaves?

“If they take an unpaid leave, a statutory leave, can they use some of their personal days to pay for that?” said Pau.

“That’s opened up the conversation. But I don’t know of many employers that have a 27-week paid leave policy, it’s just unrealistic. You might have short-term disability but that’s usually for the employee

— it’s not going to cover their family members.”

It’s important that these policies are in accordance with the legislation, said Thompson.

“You don’t want to run into an issue where you’re deferring to a policy rather than the act, which would be paramount, of course, and then looking at dealing with an employer breaching some of the provisions of the Employment Standards Act,” he said.

“(It’s about) avoiding that at all costs, and also making sure employees get their entitlement that they’re due.”

Employers should also know the basic rules about leaves, such as not being able to terminate employment, not substantially changing a person’s job duties and returning an

employee to the same or a comparable position, said Thompson.

It’s also important to note these changes have been put in retroactively, so anyone who’s currently on leave is entitled to extend it, he said.

“That might make for an interesting logistical dynamic too, with administering the benefits and the EI and everything.”

Another consideration is a person’s return to work after a lengthy leave, said Pau.

“A lot can change in two years or even in 18 months or in six months, so maintaining some communication is important, just to make sure employees are kept in the loop and you’re kept in the loop about what’s going on,” she said.

“But it’s a delicate balance — you shouldn’t be calling every week.”

Looking ahead

The Ministry of Labour has announced it is looking to make broader amendments to B.C.’s Employment Standards Act, considering recommendations from the B.C. Law Institute’s review of the act and from organizations like the B.C. Employment Standards Coalition.

“We have an NDP/Green coalition which has a very aggressive or progressive agenda in dealing with all the labour and employment-related statutes,” said Sveinson.

“We’re concerned... the statutes haven’t been amended for decades and we know what’s occurred with the NDP government in Alberta — some of the changes that have occurred there — and we’re expecting changes that are not necessarily employer-friendly, quite frankly.”