

DEVELOPING A PRE-DELIVERY / BIRTH MATERNITY BENEFIT



CBTU SMCC

CANADA'S BUILDING TRADES UNIONS
LES SYNDICATS DES MÉTIERS DE LA CONSTRUCTION DU CANADA
Value on Display. Every Day. Valeur sûre à tous les jours.

**DEVELOPING A PRE-DELIVERY/BIRTH
MATERNITY BENEFIT**

Table of Contents

Background	2
Research	3
Issues to Consider	3-4



BACKGROUND

Canada's Building Trades Unions have been working diligently to meaningfully address barriers that exist for women in the skilled trades; this includes barriers for women to consider entering the trades and barriers around apprenticeship completion and retention. Many jobs in construction, despite technological advances, are still physically demanding. The nature of these jobs can pose increased risk to those considering pregnancy and working prior to delivery. Under the current Employment Insurance (EI) system, nowhere in Canada, with the exception of Quebec, offers a pre-delivery benefit that does not reduce an individual's post-delivery maternity leave. In 2017, the Ironworkers Union in the U.S. rolled out such a benefit to allow for preventive withdrawal for five months from work that posed a hazard to either a pregnant member and/or her unborn baby.

In March of 2019, the UA Canada launched their National Parental Wellness Program to provide financial assistance to expecting female members who would otherwise need to continue working in the trades in an environment that could pose a risk to both the mother and unborn child.

**DEVELOPING A
PRE-DELIVERY/
BIRTH
MATERNITY
BENEFIT**

in March 2017, the Federal Government revised the EI Maternity Benefit in response to a private member's bill to allow a pregnant worker to receive maternity benefits up to 12 weeks prior to her expected delivery date/birth, previously this was only available as of the eighth week before the expected date of delivery. However, because no new funds were made available to the program, the total which may be payable is still a maximum of 15 weeks. Pregnant workers that work in conditions hazardous to them and/or their unborn baby are forced to choose between receiving maternity benefits prior to delivery or after delivery.

Understanding this is very real barrier to women in the trades, the CBTU has created this discussion document to address some of the issues around a Pre-Delivery/Birth Maternity Benefit that Unions and Employers could offer to their members.



RESEARCH

The CBTU has conducted research to determine current provisions for pre-delivery/birth benefits, interviewed different stakeholders as well as explored some of the issues to consider in developing a Pre-Delivery/Birth Benefit, which make up the content of this document. The information and discussions around this issue provide some unknowns and contradictory information. The UA Canada recently released their National Parental Wellness Program, the first of its kind in the construction industry in Canada. Given this is the first type of benefit being offered in the construction industry in Canada, it will allow us to develop a more fulsome understanding of any challenges that could arise, at which time, this report will be updated to reflect those findings.

DEVELOPING A
PRE-DELIVERY/
BIRTH
MATERNITY
BENEFIT

ISSUES TO CONSIDER



WOULD IT DISPLACE OR AFFECT A MEMBER'S ABILITY TO RECEIVE THE EI MATERNITY BENEFIT?



WOULD IT AFFECT THE QUALIFYING CONDITIONS FOR THE EI MATERNITY BENEFIT?



COULD A MEMBER BE ASSURED THAT HER JOB WOULD BE HELD BY HER EMPLOYER DURING HER PRE



WHAT EFFECT WOULD THE TIME OFF HAVE ON APPRENTICESHIP HOURS?



HOW WOULD A CANADIAN UNION BENEFIT DIFFER FROM THE IRONWORKERS' PRE-DELIVERY / BIRTH MATERNITY BENEFIT?



WHAT ARE THE RED FLAGS OR OTHER ISSUES TO ADDRESS?



WOULD IT DISPLACE OR AFFECT A MEMBER'S ABILITY TO RECEIVE THE EI MATERNITY BENEFIT?

Although workers may choose to start maternity benefits as early as 12 weeks before the expected date of delivery, they are not required to do so. Under the Employment Insurance Act, eligible workers may receive up to a total of 15 weeks of maternity benefits. Those maternity benefits can start as early as 12 weeks before the expected date of birth and must end no later than 17 weeks after the child is born. Depending on what suits the mother's situation, benefits can be started before or following childbirth. Therefore, a worker could choose to start their EI Maternity Benefit following delivery/birth and use the Union Pre-Delivery/Birth Benefit prior to delivery/birth which should not displace the EI Maternity Benefit.

There is precedence in the governmental sector for the existence of Pre-Delivery/Birth Benefits that does not disqualify a worker from receiving other benefits after birth/delivery. In the Quebec Safe Maternity Experience Program administered under the Quebec Occupational and Safety Act, workers can receive Pre-Delivery/Birth benefits until the fourth week preceding the week of the expected date of delivery and then receive benefits, if the worker is eligible, under the Quebec Parental Insurance Plan.

The union would want to be clear that the Pre-Delivery/Birth Benefit is different from the EI Maternity Benefit. For example, to receive it, the worker must have a doctor's certificate stating that she should no longer work due to the hazards posed to her and/or her unborn baby.

WOULD IT AFFECT THE QUALIFYING CONDITIONS FOR THE EI MATERNITY BENEFIT?

Among other conditions, a worker must have accumulated 600 hours of insurable employment during the 52-week period immediately prior to the start date of the Employment Insurance period (i.e. the delivery date). Whilst this is a condition of qualifying for EI, the union may be able to alleviate this issue by stating that the worker must already have 600 hours of insurable employment in the 52 weeks prior to the delivery date before receiving benefits under the union pre-delivery/birth program.

In the Quebec Safe Maternity Experience Program, the qualifying period of 52 weeks is extended by each week of that the Safe Maternity Program is used by a worker up to 52 additional weeks. For example, if a worker receives Safe Maternity benefits for 8 weeks prior to delivery, the qualifying period for which earnings are calculated is 52 weeks plus 8 weeks.

According to the EI Representative interviewed, the EI qualifying period would be calculated in the same way should the federal government or Ontario were to develop such a benefit.

However, it should be noted that a union Pre-delivery/birth benefit is non-governmental, and there is no non-governmental precedent for a private pre-delivery/birth benefit.



COULD A MEMBER BE ASSURED THAT HER JOB WOULD BE HELD BY HER EMPLOYER DURING HER PRE DELIVERY/BIRTH ABSENCE?

In employment situations where workers are on a long-term project in which a job could feasibly be held, and/or are regularly employed by one employer, employers are under obligation to make reasonable accommodation up to the point of undue hardship. However, if an employer claims undue hardship, and the worker uses the union pre-delivery/birth benefit, it is possible that the employer would not hold her job since the employer is not under any explicit legal obligation, through EI or Occupational Health and Safety, to do so.



It is also a possibility, that an employer knows the pre-delivery/birth benefit exists, which may be an incentive for an employer to claim undue hardship and not hold the job for the pregnant worker. In this scenario, it might be more beneficial for the worker to use the EI Maternity Benefits prior to delivery/birth regardless

of the consequence of reducing post-delivery/birth benefits. However, in discussions with the Ironworkers', they stated that their members' have reported employers have been supportive of finding alternative duties once they were made aware of the member's pregnancy.

WHAT EFFECT WOULD THE TIME OFF HAVE ON APPRENTICESHIP HOURS?

In the same way that a worker does not accumulate hours toward their apprenticeship during a medical absence from work under the OHSA, or during EI Maternity absence, it is not likely that they would under a pre-delivery/birth benefit, and this could be clarified with each Joint Apprenticeship Council.

HOW WOULD A CANADIAN UNION BENEFIT DIFFER FROM THE IRONWORKERS' PRE DELIVERY/BIRTH MATERNITY BENEFIT?

The U.S. does not have federal maternity benefits, nor do many states, but there are some private insurance policies that may conflict with the Ironworkers Benefit. However, there is no federal program such as the EI Maternity Benefit, available to all workers, and so any conflict in this scenario does not exist.

In terms of the duration of benefits and the dollar value of the Benefit, the Ironworkers' Benefit is superior to EI Maternity Benefit (Although it should be noted that there is an EI Parental Benefit of 35 weeks which follows the EI Maternity Benefit: See Appendix 1). The union benefit would need to be at least the same as the EI Maternity Benefit Pre-Delivery/Birth duration and dollar value; otherwise Members may be incentivized to use the union benefit at its maximum with, say a few weeks of the EI Maternity Benefit Pre-delivery/birth option; if this would in reality be allowed by EI. As mentioned above, there is no precedent in Canada regarding private pre-delivery/birth benefits.

APPENDIX 1

EXISTING MEASURES TO SUPPORT PREGNANT AND NURSING EMPLOYEES WORKING IN A HAZARDOUS ENVIRONMENT

1. The Iron Workers (U.S. only) Pre-delivery Benefit

See www.impact-net.org

This program covers workers who do not have access to paid maternity benefits and are unable to perform their duties due to physical limitations arising from their pregnancy. The benefits can also be used up to 6-8 weeks after delivery. In Canada, a Pre-Delivery/Birth benefit would be used only pre-delivery as EI Maternity benefits are available after delivery.

The Iron Workers Pre-Delivery Benefit

The Ironworker Management Progressive Action Cooperative Trust (IMPACT) provides paid maternity leave ("Paid Maternity Leave") to female members ("Members") who are qualified based on the criteria outlined below. It is paid leave associated with the birth of a Member's own child.

Paid Maternity Leave is available to members if all of the following criteria are met. It may be used during pregnancy and post-delivery.

Benefit amount: \$800/week maximum; benefit amount determined by weekly salary

Benefit period: up to 6 months prior to delivery; and up to 6-8 weeks after delivery

- Member has submitted a certification of their pregnancy from their medical doctor verifying they are unable to perform the duties of iron work due to physical limitations arising from the pregnancy
- Member is eligible for the local union's health plan on the date of disability and
- Member has not used this benefit within the past 24 months and
- There are no such benefits available through other means, such as time loss benefits through their employer or Local Union's health plan,
- government provided benefits (federal, state or local), or any other means available.

Pregnancy (Pre-Delivery/Birth): Six (6) Months Maximum Benefit.

For Paid Maternity Leave to commence prior to delivery/birth, the Member must be deemed unable to work by their medical doctor. This certification must indicate that the Member is not able to work due to physical limitations arising from the pregnancy but not sooner than the 4th month of pregnancy. This cumulative pre-delivery/birth benefit may be intermittent and may not exceed six (6) months. After six months, the Paid Maternity Leave benefits will stop regardless of whether the Member is able to return to work for not.

Calculation:

- The rate of 1/7 of the weekly benefit for each day of Total Disability when totally disabled for less than a full week;
- At 66.7% (to a maximum of \$800) of Normal Hourly wage x 2080/52=weekly benefit; most prevalent wage rate for that Member of the past 90 days on a 40-hour work week.

The benefit is **not** available to:

- Canadian residents
- Surrogate related pregnancies
- Adoptions
- Foster Care

2. Maternity-Related Reassignment and Leave (in a federally regulated business or industry, Canada only)

A pregnant or nursing employee in a federally regulated business or industry may cease to perform her job in accordance with Part II of the Canada Labour Code if she believes that her current job functions may pose a risk to her or her unborn baby.

Regardless of whether the employee is reassigned, she is deemed to continue to hold her original position.

Under the Canada Labour Code, where reasonably practicable, the employer is required under Part III of the Code to modify the employee's job functions or reassign her, with the same wages and benefits attached to her original position. However, the employee is also entitled to a leave of absence with pay until the employer modifies her job functions. Where the

employer is unable to provide accommodation, the pregnant or nursing employee can take an unpaid leave of absence. All provinces have human rights legislation that prohibits discrimination related to pregnancy; this in turn imposes a duty on the employer to accommodate up to the point of undue hardship.

3. Employment Insurance Maternity Benefits (in Canada, outside the province of Quebec)

In Canada, outside the province of Quebec, temporary financial assistance for pregnant and nursing workers is provided primarily through maternity benefits established in accordance with the EI Act.

EI maternity benefits are intended to support a woman's income when she's out of the workforce to recuperate from pregnancy and childbirth. Under the Employment Insurance Act, eligible workers may receive up to 15 weeks of maternity benefits. Those maternity benefits can start as early as 12 weeks before the expected date of birth and must end no later than 17 weeks after the child is born. Depending on what suits the mother's situation, benefits can be started before or following childbirth.

In addition, parents may receive EI parental benefits which are intended to support parents providing care to a newborn or newly adopted child or children. Eligible parents may share up to 35 weeks of parental benefits following the birth or placement of the child for the purpose of adoption.

In order to be eligible for EI maternity benefits, women must meet the following criteria:

- The claimant must be employed in insurable employment and have paid EI premiums
- The claimant must be unable to work because she is pregnant or has recently given birth;
- The claimant's normal weekly earnings have been reduced by more than 40% because of pregnancy or the need to care for a newborn or newly adopted child;
- The claimant must have accumulated at least 600 hours of insurable employment during the qualifying period (the qualifying period being the shorter of the 52-week period immediately before the start date of

the EI period, or the period since the start of a previous EI period if this period started during the last 52 weeks)

In Canada outside of Quebec, parents can access combined maternity and parental benefits for up to 12 months and at the current EI replacement rate, which is at 55% of average weekly earnings.

Parents have the option of taking those benefits over 12 months or over 18 months, if they prefer. If they receive them over 18 months, the benefits would be paid at a lower rate. It is approximately the same total amount for either option selected.

4. Quebec's Safe Maternity Experience Program

Quebec is the only jurisdiction to offer wage replacement for provincially regulated employees during the period of preventive withdrawal connected with pregnancy and childbirth. Under Quebec's Act Respecting Occupational Health and Safety (OHS Act), a pregnant or nursing employee may request to be reassigned to other duties when she has obtained a medical certificate stating that her "working conditions may be physically dangerous to her unborn child or to herself by reason of her pregnancy" or that her "working conditions involve risks for the child she is breast-feeding." If, however, reassignment is not possible, the pregnant or nursing employee has the right to take a precautionary leave of absence and receive income replacement benefits during this time.

Income replacement benefits are provided by Quebec's Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) in accordance with the Safe Maternity Experience Program, which has its basis in the OHS Act. A worker is entitled to full remuneration from her employer for the first five working days after stopping work and for the following 14 full days she receives an indemnity equivalent to 90% of her net salary up to a maximum of \$74,000 (maximum yearly insurable earnings). The employer pays the indemnity and is reimbursed by the CNESST.

- There are no restrictions as to when an employee may begin the precautionary leave of absence, except according to the conditions noted above and the benefits are payable until:

- The beginning of the work reassignment;
- The cessation of the hazard that justified the preventive withdrawal;
- The fourth week preceding the week of the expected date of delivery if the worker is eligible for benefits under the Quebec Parental Insurance Plan (QPIP); or
- The end of the nursing period.

Employees who are eligible for the QPIP will continue to receive income replacement benefits from CNESST until the date of delivery if a request is made.

5. UA National Parental Wellness Benefit

The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of Canada (UA Canada) are pleased to announce the launch of our new National Parental Wellness Program. This program is the first of its kind in the construction industry in Canada. It has been created to help our members during pregnancy and the crucial first year of life of a new child. UA Canada believes in the health and safety of our expectant members and recognizes the importance of the first formative year of development during which one or both parents must focus on the needs of their child.

The UA Canada National Parental Wellness Program will provide financial assistance to expecting female members who would otherwise need to continue working in the trades in an environment that could pose a risk to both the mother and unborn child. This program will instead allow these members to take paid time off prior to the birth of their child without having to exhaust their federal government employment insurance maternity/parental benefits.

UA Canada is also introducing our Parental and Maternity EI Supplementary Benefit. This Benefit plan will provide a supplementary top up to assist families financially while they are off work caring for children during their first year of life. This top up will work in conjunction with EI Maternity Benefits and/or EI Parental Benefits, allowing the Mother and/or Father to stay at home, creating a family bond unburdened by the financial loss that can come with taking paternity and maternity leave.

“

Recruitment and retention are crucial in the construction industry. With the skills shortage that we are experiencing in Canada, it is imperative that we take care of our membership. We must show that we support our members throughout their entire career, including their personal lives, or we risk losing the highly skilled and well-trained professionals within our industry. Creating an environment in which family is valued is the key to retention in our industry. This will shift construction culture to become more inclusive, and in turn, ensure that we will continue to have the most skilled workforce in the piping industry.

Alanna Marklund, National Manager for Youth, Diversity and
Indigenous Relations.

”

The National Parental Wellness Program will promote a welcome change in construction culture, and by doing so, will increase diversity on our jobsites. UA Canada is committed to maintaining the highest standards for our members and their families.

- Parental Wellness Benefit will pay qualifying members the equivalent of the current EI amount for up to 24 weeks during pregnancy
- Maternity EI Supplementary Benefit will provide qualifying members with a top up for a maximum of 15 weeks while they are receiving EI Maternity Benefits
- Parental EI Supplementary Benefit will provide qualifying members who are mothers or fathers with a top up for a maximum of 35 weeks while they are receiving EI Parental Benefits
- UA Canada is extremely proud of this initiative and is dedicated to bettering the quality of life for all of our members and their families.

DEVELOPING A
PRE-DELIVERY/
BIRTH
MATERNITY
BENEFIT



THANK YOU



72 Chamberlain Avenue, Ottawa, ON K1S 1V9



(613) 236-0653



www.BuildingTrades.ca



CBTU SMCC

CANADA'S BUILDING TRADES UNIONS
LES SYNDICATS DES MÉTIERS DE LA CONSTRUCTION DU CANADA
Value on Display. Every Day. Valeur sûre à tous les jours.

DEVELOPING A
PRE-DELIVERY/
BIRTH
MATERNITY
BENEFIT