



Maternity leave - Stillbirth

Q: What is mother entitled to if the baby is stillborn?

A: In the case of the death of an infant during the period of gestation, the following entitlements apply: The member would be entitled to stay on maternity leave, to obtain bereavement leave and to also obtain sick leave if she was unable to return to work.

Ref: Treasury Board of Canada Secretariat - Maternity Benefits

http://www.collectionscanada.gc.ca/eppp-archive/100/201/301/tbs-sct/tb_manual-ef/Pubs_pol/hrpubs/TB_864/mb1_e.html

«Commencement and termination dates:

In the case of the death of a newborn child, the employee would be entitled to maternity leave without pay. »

In interpreting article 206 of The Canadian Labour Code part III, division VII, Treasury board maintains that the employee retains the right to maternity leave at the termination of the pregnancy, whether the baby is alive or not.

<http://www.hrsdc.gc.ca/eng/labour/ipg/017.shtml>

«One must, therefore, define "confinement" (and "accouchement" in the French text). The usual medical meaning of "accouchement" is any termination of the pregnancy during the third trimester, regardless of whether it is a live birth or stillbirth. The term "confinement" is less precise, but generally encompasses the concepts of delivery or childbirth. »

The member is entitled to Bereavement leave (EC Collective agreement, art. 21.02; LoP, art. 19.02; TR, art. 21.02) which is a leave with pay under the relevant collective agreement.

In addition, the member is eligible for a sick leave in the event they are unable to return to work prior to or subsequent to the stillbirth. Employment Insurance (EI) may also cover the remaining period that you may need but any monies received from the employer may affect the employees' entitlement. The employees should contact the (EI) office to verify their legibility directly with them.

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«Note (1): For any earlier termination of her pregnancy, the woman can take advantage of the protections in Division XIII (Sick Leave). »

Q: How long do I need to be pregnant in order to be eligible for maternity leave in such situation?

A: The rule is 19 weeks as defined by HRSDC consistent with the Employment Act. «In order to ensure that all appropriate cases are entitled to 17 weeks of leave, while at the same time providing an easy guideline for inspectors, HRDC - Labour Program's policy is to consider any termination after the 19th week of pregnancy to be a confinement. This eligibility period can normally be calculated on the basis of the "estimated date of confinement" given on the medical certificate required under section 206(b). »

«This period is selected for two reasons: it reflects women's actual experience that any termination after 19 weeks generally amounts to the same process as childbirth at term and she thus incurs the same health-related needs, and it is consistent with the eligibility period for maternity benefits under the Employment Insurance Act. »

Q: Will I be eligible for Employment Insurance?

A: As each claim is fact specific, we recommend members verify with your EI office to find out if you are eligible to receive benefits.

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