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SECTION: Benefits

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#### **Members' Pregnancy and Parental Leave May Require Plan Amendment**

In circumstances where a plan member is absent from employment as a result of pregnancy or parental leave, the member may elect to continue participation in the pension plan throughout the term of the leave (making contributions if required by the pension plan). In such a case, according to the recently proclaimed *Employment Standards Amendment Act, 1990* (the "ESAA, 1990") the employer's contributions to the pension plan must continue throughout the term of the leave.

The requirement applies to pension contributions that have been made or should have been made from the date of proclamation, December 20, 1990. This amendment to the ESAA affects employees who may have commenced pregnancy or parental leave prior to that date and were still on leave as of December 20, 1990; otherwise it is not retroactive.

Administrators should be aware that all plans registered with the PCO will have to be amended to conform with the ESAA, 1990 requirement. Further, each plan must ensure that there is adequate funding to meet this new requirement.

#### **Provisions in the Legislation**

The specific provisions in the ESAA, 1990 that deal with this requirement are:

##### **Definitions**

"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 his or her own;

"parental leave" means a leave of absence under subsection 38a(1);

"pregnancy leave" means a leave of absence under subsection 36(1); and

#### **Legislation**

- 36-(1)** A pregnant employee who started employment with her employer at least three months before the expected birth date is entitled to a leave of absence without pay.
- (2) An employee may begin pregnancy leave no earlier than seventeen weeks before the expected birth date.
- 38a-(1)** An employee who has been employed by his or her employer for at least three months and who is the parent of a child is entitled to a leave of absence without pay following,
- (a) the birth of the child; or
- (b) the coming of the child into custody, care and control of a parent for the first time.
- 38e-(1)** An employee may elect in writing to continue to participate during pregnancy leave or parental leave in any pension plan, insurance plan, accidental death plan, extended health plan or dental plan related to his or her employment.
- (2) If an employee elects to continue to participate in a plan described in ss. (1), the employer shall, during the leave, continue to make the employer's contributions for the plan if the employee continues to make the employee's contributions, if any.
- 38j** Section 38e does not apply in respect of any period before this section comes into force.

Administrators and others involved in the management of employee benefits may wish to familiarize themselves with the general requirements of the ESAA, 1990. Enquiries regarding this specific requirement should be directed to the Employment Practices Branch, Ministry of Labour, 4th Floor, Tower B, 40 Dundas Street West, Toronto, Ontario M5G 2C2, telephone (416) 326-7185 or fax (416) 326-7061. Questions and answers regarding the ESAA, 1990 requirements will appear in future issues of the PCO Bulletin in the section, Your Questions Answered.

#### **Notices - Erratum**

We have recently discovered that excerpts of the *Employment Standards Amendment Act (Pregnancy and Parental Leave) 1990* published in the July, 1991 *PCO Bulletin* were printed in error from an early reading of the Bill, rather than from the proclaimed Act. The *Employment Standards Amendment Act (Pregnancy and Parental Leave), 1990*, given Royal Assent on December 20, 1990, was announced in the Parliamentary Notices - Royal Assent section of the *Ontario Gazette* on January 19, 1992. In order to clarify any misunderstandings, please refer to the appropriate provisions of the *Employment Standards Act*.

*PCO Staff Comment: The corrected version of the ESAA appears above and the contact address has been updated.*