

Supplementary Employee Benefits Plans - No Good Deed Goes Unpunished

A recent Supreme Court of Canada decision has prompted employers who may have thought offering supplementary employee benefits (“SEB”) to employees on maternity or parental leave was a very generous benefit, to review their SEB plans for compliance with human rights legislation.

In *British Columbia Teachers’ Federation v British Columbia Public School Employers’ Association*, the employer provided SEB to employees on maternity or parental leave over a 17 week period. When birth mothers used up 15 weeks over their maternity leave, the birth mothers under the British Columbia Public School SEB were only eligible for an additional 2 weeks of SEB over their parental leave period.

The Supreme Court of Canada found that maternity leave and parental leave have 2 distinct purposes. The purpose of maternity leave is to provide a woman a chance to recuperate from the effects of pregnancy and childbirth. The purpose of parental leave is to provide parents an opportunity to care for and bond with their children. Given these different purposes, birth mothers are not able to enjoy the same amount of SEB benefits provided to other employees on parental leave, and as such, the employer’s SEB plan was discriminatory.

In light of this decision, it appears employers have 2 options to ensure their SEB plan is in compliance with human rights legislation. (Below we have outlined the 2 options using the example provided in this case):

- 1) Provide birth mothers additional SEB benefits over the maternity leave period.
For example:
 - Provide birth mothers with SEB benefits over the 15 week maternity leave period
 - Provide SEB benefits for 17 weeks of the parental leave period (birth mothers would be eligible to receive this benefit)
 - This would result in the birth mothers receiving SEB benefits for a total of 35 weeks
- 2) Provide SEB benefits for parental leave only. For example:
 - Provide no SEB benefits to birth mothers over the 15 week maternity leave period
 - Provide SEB benefits for 17 weeks of the parental leave period

If you need assistance reviewing your SEB plan in light of this recent decision, please contact e2r Solutions®.