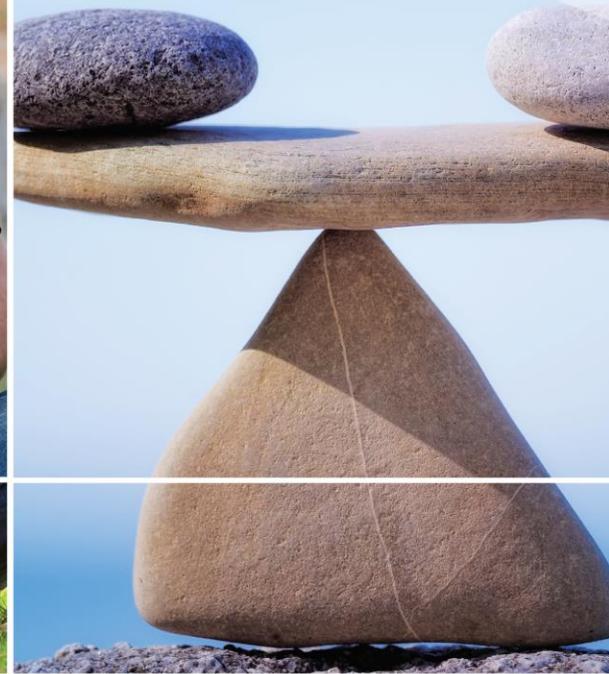




LAW SOCIETY
of ALBERTA

COMMITTED TO
JUSTITIA
ON 'S'Y ENGAGE



AlbertaJusticiaProject

Maternity and Parental Leave

Developing Pregnancy and Parental Leave Policies for Partners
Guide for Law Firms

DEVELOPING PREGNANCY AND PARENTAL LEAVE POLICIES FOR PARTNERS GUIDE FOR LAW FIRMS

Table of Contents

| | |
|--|----|
| Introduction..... | 3 |
| Reasons to Adopt a Policy..... | 4 |
| Issues to Consider when Drafting Policies..... | 5 |
| General Legal Rights and Obligations | 6 |
| Human Rights Obligations | 6 |
| <i>Employment Standards Code (ESC)</i> | 8 |
| <i>Employment Insurance Act (EIA)</i> | 9 |
| Sample Policy Options..... | 10 |
| Statement and Governing Legislation..... | 11 |
| <i>Definitions</i> | 11 |
| Application of Policy | 12 |
| ARTICLE ONE – Eligibility and Entitlement..... | 13 |
| ARTICLE TWO – Pregnancy – Compensation during Leave | 15 |
| ARTICLE THREE – Parental Leave – Eligibility | 17 |
| ARTICLE FOUR – Parental Leave – Compensation during Leave..... | 18 |
| ARTICLE FIVE – Extension of Leave | 20 |
| ARTICLE SIX – Compensation Consideration Following Leave..... | 21 |
| ARTICLE SEVEN – Billing Hours and Rates | 22 |
| ARTICLE EIGHT – Process for Requesting Pregnancy and/or Parental Leave and Return to Work | 23 |
| ARTICLE NINE – Benefits and Pregnancy Related Illness..... | 24 |
| ARTICLE TEN – Firm Support to Partners and Responsibility of Partners..... | 25 |

Introduction

This guide was developed by the Law Society of Alberta, in collaboration with the firms participating in the Alberta Justicia Project. The guide is intended as a tool to assist firms when they develop internal policies on pregnancy and parental leave for their partners in Alberta. The guide provides general advice. The guide does not provide legal advice and is not meant to be the ultimate or ideal policy. Firms have no obligation to adopt all or any part of the sample policy options.

The guide is drafted to apply to equity partners who are not employees of law firms. The guide assumes that the *Employment Standards Code (ESC)* and the *Employment Insurance Act (EIA)* do not apply in those cases. The term partner in this guide refers to equity partners.

A separate guide is available for associates who are considered “employees of the firm” under the *ESC* and the *EIA*. Please refer to the *Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Associates* when developing a policy for employed lawyers or articling students of the firm.

A firm could also extend this policy to make it applicable to other types of partners, such as non-equity partners, income partners or special partners. If that is the case, firms should consider whether the non-equity partner is tantamount to an employee of the firm and covered under the *ESC* and the *EIA*.

The guide is drafted to apply to a legal environment composed of partners, associates and other staff, not subject to a collective agreement. Firms should tailor their policy to reflect their own structure and culture. For example, where a workplace is governed by a collective agreement, the firm should design its policies to take that into account.

Law firm policies also vary based on a variety of factors, such as firm culture, size of firm, practice areas, existing policies, jurisdictions in which offices are located and economic considerations. The guide provides assistance to firms by outlining the types of issues that could be considered when developing pregnancy and parental leave policies for partners, identifying legal obligations, providing language that firms may wish to use in their policy and presenting information about firm practices.

Firms are free to cut and paste any section of the sample policy. Firms may also wish to add to the sample policy or delete any sections.

We thank Justicia firm participants for their engagement in this project and the tremendous amount of work undertaken to develop this guide.

Reasons to Adopt a Policy

Firms in the Justicia Project have committed to reviewing their policies relating to pregnancy and parental leave and/or to considering the adoption of policies in areas such as pregnancy and parental leave and customized work arrangements, to enhance the retention of women in private practice. Although a majority of law firms in the Justicia Project have adopted pregnancy leave policies for both associates and partners, and a majority of firms have adopted parental leave policies for associates, some law firms still use an ad hoc approach to providing pregnancy and parental leave and benefits to associates and partners. There are numerous reasons for law firms to develop and implement pregnancy and parental leave policies, including:

- increasing transparency, objectivity, fairness and consistency in decision making;
- providing an internal procedure to process requests for leaves and benefits;
- enhancing a firm wide acceptance that pregnancy and parental leaves are positive practices;
- showing that the law firm's management is committed to advancing inclusiveness and diversity at the firm and to providing the appropriate support to new parents;
- communicating the firm's commitment to potential recruits, to staff and lawyers of the firm, and to clients;
- ensuring that the firm complies with its statutory obligations, including its obligations under the *Employment Standards Code (ESC)*,¹ the *Employment Insurance Act (EIA)*,² the *Alberta Human Rights Act (AHRA)*,³ and similar legislation in other applicable jurisdictions.⁴

¹ RSA 2000, c E-9 [ESC].

² SC 1996, c 23 [EIA].

³ RSA 2000, c A-25.5 [AHRA].

⁴ This guide applies only to Alberta. Therefore, it only discusses legal obligations under the *ESC*, *EIA*, the *AHRA* and the Law Society of Alberta's *Code of Conduct*.

Issues to Consider when Drafting Policies

Economic considerations vs. value of policy

While economic considerations are important to take into account when developing a firm pregnancy and parental leave policy for partners, the value of providing pregnancy and parental leave and benefits to partners should also be recognized.

Policies to support women during their childbearing years and to assist women and men in balancing the demands of their career and family responsibilities, provide long-term benefits for law firms, and contribute to the promotion of equality, human dignity and respect.

Firm structure

When drafting a pregnancy and parental leave policy, a firm should take into account applicable legislation and common law, and may wish to consider market and economic conditions, the culture and structure of the firm, firm size, practice areas, other firm policies, contractual and partnership agreements, and the jurisdictions in which the policy will apply.

Partnership agreement

When drafting a policy for partners, a firm should ensure consistency with other firm policy, more specifically its partnership agreement.

Benefits

The *EIA* and the *ESC* do not apply to equity partners and therefore firms do not have to follow the minimum legal requirements provided under the *EIA* and *ESC*. However, firms should consider including clauses to address the following:

- provisions for compensation during the leave;
- length of leave;
- eligibility criteria for leaves and benefits;
- benefits during the leave;
- a process to request a leave.

It is a good practice to outline in a pregnancy and parental leave policy the minimum entitlement to pregnancy and parental leaves and benefits, and a process to request a leave and benefits. In addition, partners who are eligible under the pregnancy and parental leave policy may have unique needs related to the arrival of the child. Firms may wish to provide individualized support and accommodation to ensure that partners maintain a productive practice when returning from the leave.

Importance of management support

The successful implementation of a law firm policy is contingent on the support of the firm's partners and management. It is their leadership and attitude that influence the values and goals of the firm.

General Legal Rights and Obligations

The following outlines general legal obligations that relate to pregnancy and parental leaves and benefits for partners.

Note: The general legal rights and obligations are only up-to-date as at the date of writing. When drafting a policy, the firm should ensure that it takes into account up-to-date legislation and jurisprudence. Firms may wish to work with lawyers who have a good understanding of the *Alberta Human Rights Act*, the *Code of Conduct*, the *ESC* and the *EIA*, to develop their policy. Also, if a firm is developing a policy that applies to jurisdictions outside of Alberta, lawyers knowledgeable with the applicable laws of those jurisdictions should be consulted.

Human Rights Obligations

The most significant legal obligations relating to pregnancy and parental leaves for partners fall under human rights legislation, as the *ESC* and the *EIA* do not apply to self-employed lawyers, including equity partners. However, law firms may wish to consider the minimum legal obligations applicable under the *EIA* and the *ESC* that apply to associates. Firms will likely wish to adopt a fair approach with partners when compared with the approach used with associates.

Law firms and legal organizations have legal obligations under provincial and/or federal human rights legislation and case law, and lawyers are bound by rules that promote human rights under the Law Society of Alberta's *Code of Conduct*.⁵ The following provides a general overview of these obligations under the *AHRA* and the *Code of Conduct*.

Alberta Human Rights Act and Code of Conduct

The *AHRA* applies to everyone in Alberta with respect to publications and notices, goods, services, accommodations, and facilities, tenancy, employment, and trade union membership,⁶ unless the *Canadian Human Rights Act* applies.⁷ All employment relations, including those governed by a collective agreement, are subject to the *AHRA*. Therefore, law firms in Alberta are subject to the *AHRA*, and the *AHRA* applies to all employees of the law firm, including articling students, associates and salaried lawyers.

Human rights legislation expressly prohibits discrimination based on pregnancy and the Supreme Court of Canada has clearly established that discrimination because a woman is, or may become, pregnant is gender discrimination and is illegal.⁸ Discrimination in employment on the grounds of gender, marital

⁵ The Law Society of Alberta, *Code of Conduct*, Edmonton: Law Society of Alberta, 2016.

⁶ *AHRA*, *supra* note 3, ss 3, 4, 5, 6, 7, 8 and 9.

⁷ The *Canadian Human Rights Act*, RSC 1985, c H-6, applies to federally regulated employers or service providers. It is intended to apply to matters coming within the legislative authority of Parliament. This includes federal departments, agencies and crown corporations, chartered banks, airlines, television and radio stations, inter-provincial communications and telephone companies, First Nations and other federally regulated industries. The Act also applies to some private sector employers under federal jurisdiction. Lawyers employed by the federal government, or salaried or in-house lawyers employed directly by federally-regulated industries, would therefore be covered by the *Canadian Human Rights Act* and not the *AHRA*.

⁸ *Brooks v. Canada Safeway*, [1989] 1 SCR 1219. The *Code* states "The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant". *Code*, *supra* note 2, s. 10(2).

status and sexual orientation is also prohibited under the *AHRA*.⁹ The *Code of Conduct* applies to member lawyers of the Law Society of Alberta. Rule 6.3 places a special responsibility on lawyers to adhere to the tenets of human rights law and, in particular, to "not discriminate against any person".¹⁰ Therefore, lawyers must not sexually harass or discriminate on the basis of gender, marital status, family status or sexual orientation, or on any other ground.

In addition to Rule 6.3, lawyers should be mindful of their professional responsibility to provide legal services to clients in a manner that is conscientious, diligent, timely and cost-effective and to manage their practice effectively. Not only do lawyers have the right to be treated without discrimination because of pregnancy, gender or family status, they also have an obligation to manage their practice to ensure that the provision of services during pregnancy or parental leaves continues to be offered effectively. Both firms and individual lawyers have a duty to clients to ensure on-going seamless high quality client service.

Firms Have a Duty to Accommodate

The *AHRA* and the *Code of Conduct* impose a duty to accommodate, to the point of undue hardship, differences that arise based on the enumerated grounds in the *AHRA*. In determining whether an accommodation would constitute "undue hardship", the firm must take into consideration the financial cost of the accommodation; the size and resources of the firm; the impact of accommodation on operations; the morale of other employees; whether accommodation will cause a substantial interference with the rights of other individuals or groups at the firm; the interchangeability of the work and facilities; and, health and safety concerns.¹¹ In order to constitute undue hardship, the cost must be quantifiable, related to the accommodation, and so substantial that it would alter the essential nature of the firm, or so significant that it would substantially affect its viability.

In determining undue hardship, the onus is on the firm to prove that the accommodation would constitute undue hardship; there is no onus on the employee or partner, requesting the accommodation to prove that it can be accomplished without undue hardship.

⁹ *AHRA*, *supra* note 3, s 7(1).

¹⁰ The commentary under Rule 6.3 of the *Code of Conduct*, *supra* note 5, states: "A lawyer has a special responsibility to respect the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws."

¹¹ Alberta Human Rights Commission Interpretive Bulletin, "Duty to accommodate" (February 2010), online: https://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Pages/duty_to_accommodate.aspx.

The Human Rights Commission provides the following examples of how to accommodate employees during the pre-natal and post-natal periods, short of undue hardship:¹²

- **Changing a pregnant employee's job duties if her pregnancy prevents her from performing parts of her job.**
- **Providing a flexible work schedule to accommodate the needs of an employee who is pregnant or breastfeeding. This may include time off for medical appointments, arranging for an employee to work from home, flexible hours, providing a quiet space for breastfeeding or allowing a female employee to arrange her scheduled breaks to breastfeed her child.**
- **Ensuring that female employees are permitted to have their infants brought in to breastfeed in the workplace or to take time to breastfeed outside the workplace.**
- **Ensuring that a pregnant employee has full access to any earned benefits such as illness or vacation leave.**
- **Ensuring that a pregnant employee has equal access to workplace opportunities.**
- **Making other reasonable changes in the workplace that have been recommended by the doctor of a pregnant or breastfeeding employee.**

Employment Standards Code (ESC)

Except for s. 14(1)(a) and Part 2, Divisions 3 & 4, articling students and employed lawyers, including associates, are subject to the *ESC*.¹³ The *ESC* does not, however, apply to equity partners, and thus imposes no minimum obligations relating to pregnancy and parental leaves.¹⁴

Please refer to the *Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Associates* for a discussion about the *ESC* as it applies to associates.

¹² Alberta Human Rights Commission Interpretive Bulletin, "Rights and responsibilities related to pregnancy, childbirth and adoption" (September 2010), online:

https://www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Pages/pregnancy_PDF.aspx.

¹³ *Employment Standards Regulation*, AR 14/1997. Section 14(1)(a) of the *ESC* relates to the keeping of employment records for regular and overtime hours of work, and Part 2, Divisions 3 & 4, relates to hours of work, overtime, and overtime pay.

¹⁴ See *McCormick v Fasken Martineau DuMoulin LLP*, 2014 SCC 39, in which the Supreme Court of Canada found that an equity partner was not entitled to human rights protection. The Court stated at para 38 that "the structure and protections normally associated with equity partnerships mean they will rarely be employment relationships for purposes of human rights legislation," but noted at para 46 that a partner of a firm may qualify as an employee "where the powers, rights and protections normally associated with a partnership [are] greatly diminished." The definition of "employee" is more narrow under the *ESC* than it is under the *Alberta Human Rights Act* (The Joint Committee for Gender & Equality in the Legal Profession, "Guidelines for Drafting and Implementing Pregnancy and Parental Leave Policies," Law Society of Alberta (amended 2010).

Employment Insurance Act (EIA)

The *EIA* applies in Alberta and across Canada to employees who meet minimum hours of employment requirements. The *EIA* does not traditionally apply to self-employed workers; however, these individuals can register to access special employment insurance benefits.¹⁵ An equity partner is eligible for EI special benefits if at least 12 months have passed since the partner's registration was confirmed, and she or he has earned a required amount of self-employed earnings during the qualifying period.¹⁶

Please refer to the Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Associates for a discussion about the EIA as it applies to associates.

¹⁵ *EIA*, *supra* note 2, Part VII.1; Service Canada, "Employment Insurance Special Benefits for Self-Employed People" (11 July 2013), online: <http://www.servicecanada.gc.ca/eng/sc/ei/sew/index.shtml>.

¹⁶ *EIA supra* note 2, s 152.07(1). The required amount of self-employed earnings is adjusted from year to year (*Employment Insurance Regulation*, SOR 2005/274, s 11.1). An individual applying for benefits in 2014 would need to have earned at least \$6,515 in 2013 (Service Canada, "Employment Insurance Special Benefits for Self-Employed People: Eligibility" (9 January 2014), online: <http://www.servicecanada.gc.ca/eng/sc/ei/sew/eligibility.shtml>).

Sample Policy Options

Commentary

The sample policy options presented below are drafted to apply to equity partners who are not employees of law firms. The sample policy options assume that the *Employment Standards Code (ESC)* and the *Employment Insurance Act (EIA)* do not apply in those cases. A separate Guide, the *Guide to Assist Law Firms in Developing Pregnancy and Parental Leave Policies for Associates*, is available for associates who are considered “employees of the firm” under the *ESC* and the *EIA*.

A firm could also extend this policy to make it applicable to other types of partners, such as non-equity partners, income partners or special partners. If that is the case, firms should consider whether such a partner is considered an employee of the firm for the purposes of the *ESC* or the *EIA*.

The sample policy options address the most common legal work environment: a firm composed of partners, associates, articling students and other staff, not subject to a collective agreement. Where a workplace is governed by a collective agreement, modifications may need to be made to the policy.

The sample policy options are only up-to-date as at the date of writing. When drafting a policy, the firm should ensure that it takes into account up-to-date legislation and jurisprudence. Firms may wish to work with lawyers who have a good understanding of the *Alberta Human Rights Act* and of other relevant legislation to develop their policy.

PREGNANCY AND PARENTAL LEAVE POLICY FOR PARTNERS OF [NAME OF FIRM] (“THE FIRM”)

Statement and Governing Legislation

Commentary

Although not mandatory, firm policies often include an introductory section that outlines the statement of principles and commitment of the firm, along with the relevant governing legislation. Such introductory section provides context for the policy and emphasizes a firm’s commitment to equality and principles of human rights.

Firms may vary the text of the section “Statement and Governing Legislation”.

The firm is committed to advancing inclusiveness and diversity. It is important that it provide the appropriate support to new parents. This policy outlines the role of the firm in assisting partners to transition their practice prior to, during and after their leave, and the role of the partner in ensuring continued excellence in client service and practice management.

The firm is committed to fulfilling its legal obligations, including its obligations under the *Alberta Human Rights Act* and the Law Society of Alberta’s *Code of Conduct*, which prohibit sexual discrimination based on enumerated grounds, including gender/pregnancy, marital status, family status and sexual orientation. **[Firms that develop a policy applicable to jurisdictions outside of Alberta should refer to the applicable human rights legislation and rules of professional conduct in those jurisdictions.]**

This policy outlines the pregnancy and parental leave, and benefits, available to partners. **[Firms that develop a policy applicable to jurisdictions outside of Alberta should refer to the applicable legislation in those jurisdictions.]**

This policy also outlines the obligations of the firm and partners to ensure continued high quality client services during a partner’s absence.

Definitions

Commentary

It is not necessary to include a “Definitions” section within a firm policy. However, definitions are often helpful for the reader and may enhance transparency and consistency.

“Partners” under this policy are equity partners who are defined as such in the Partnership Agreement and are not employees covered under the *Employment Standards Code* (“*ESC*”) or the *Employment Insurance Act* (“*EIA*”).

Commentary

A firm should use terminology that is most commonly used by the firm, such as “partner” or “equity partner”. If the policy applies to non-equity partners, the firm may wish to consider whether the relationship with the non-equity partners is one that would be considered an “employment” relationship under the *ESC* and the *EIA*.

“Parent” includes a biological mother or father, or a person with whom a child is placed for adoption, and “child” has a corresponding meaning.

“Parental Leave” means, for the purpose of this policy, a leave taken by a partner who is a parent, as defined by this policy, when a child is born or first comes into his or her care.

“Pregnancy Leave” means, for the purpose of this policy, a leave of absence taken by a partner in connection with the birth of a child.

Commentary

To make the sample policy options consistent with the sample policy options for associates, we use the definition of “parent” that is consistent with the *ESC*. Appropriate legislation in other jurisdictions should also be considered if the policy applies to offices outside of Alberta.

The *ESC* and *EIA* do not apply to partners and therefore the terms pregnancy and parental leave are not legally defined in this context. As a result we have defined the terms “pregnancy leave” and “parental leave” for the purpose of this sample policy.

Application of Policy

This policy applies to all partners of the firm working in offices of the firm located in Alberta.

Commentary

The firm may wish to adopt a policy that applies to offices outside of Alberta. However, if that is the case, a firm should be mindful of legislation applicable in different provinces when developing its policy.

ARTICLE ONE – Eligibility and Entitlement

Commentary

Law firms have adopted various approaches in their policies to provide pregnancy leaves for partners. Some policies address requests for leaves of absences, including pregnancy leaves, on a case-by-case basis. Most policies reviewed, however, recognize the importance of providing support for pregnancy leaves, including clarity and certainty regarding the extent of such support. Most policies provided by Justicia firms include the maximum length of leave entitlement, along with a full description of the compensation entitlement.

1. The following are options based on clauses found in law firm policies. A firm can choose the most relevant option or draft its own clause:

Option 1: A partner may take up to **[insert length of leave]** of pregnancy leave.

Option 2: Requests for a pregnancy leave will be dealt with on a case-by-case basis in a manner that recognizes the importance of supporting partners during pregnancy leaves. All pregnancy leave arrangements will be decided following a consultation between the partner requesting a leave and **[insert position or committee]**. The approval of a pregnancy leave and the terms and conditions will be approved by **[insert position or committee]**.

Commentary

In option 1, the firm indicates the length of pregnancy leave it wishes to provide to partners. This approach enhances transparency and consistency.

The firm may also consider whether it wishes to impose conditions for eligibility, such as a minimum length of service at the firm, or a requirement that the partner return to the firm following the leave; and whether it wishes to establish timeline for taking the leave.

One policy includes, for example, a clause in which the compensation of the partner during the pregnancy leave is reduced in cases where a partner has been at the firm for a brief period of time prior to the pregnancy leave. The clause reads “A partner who has been with the firm as a lawyer for less than one year prior to the commencement of the pregnancy leave shall be entitled during the period of the pregnancy leave to receive one month’s income. All other partners shall be entitled to receive full income.”

Another policy includes the following clause with conditions: “The provision of draws and all allocation of income during the pregnancy leave is conditional upon i) the partner returning to practice at the end of the leave period, on the same full or part-time basis in effect at the commencement of the leave; ii) remaining a partner of the firm on that basis for a period of twelve months; and iii) the partner undertaking to

repay to the firm any draw and allocation of income paid during the pregnancy leave period in the event of non-compliance by the partner with the foregoing conditions.”

In option 2, an individualized approach to pregnancy leave is used. If that is the approach taken by the firm, the policy should include a fair process to consider the request, including a consultation with the partner requesting the leave.

Firms may also wish to include provisions about timeline and temporary interruptions of the leaves. Examples of options include,

Option 1 – A partner may temporarily interrupt a pregnancy leave to return to practice. In that case, the partner must resume the leave within [**insert period of time**], and the leave period will continue to run from the date at which the partner has resumed the leave.

Option 2 – A partner may temporarily interrupt a pregnancy leave to return to practice. In that case, the period of the leave continues to run while the partner works and the last day of the leave remains unchanged.

Option 3 - Once started, the pregnancy leave should be taken all at one time, unless the partner and the firm agree to allow interruptions of the leave. Such request will be made to [**insert appropriate position or committee such as the Executive Committee**] and be agreed upon by the committee and the partner.

ARTICLE TWO – Pregnancy – Compensation during Leave

Commentary

Most firm policies reviewed allow partners on pregnancy leaves to receive their full share of income for a period of time, as specified in the policy. As mentioned above, some impose conditions to the receipt of full share of income.

2. The following are options based on clauses found in law firm policies:

Option 1: Partners shall continue to receive their **[insert description of compensation, such as profit allocation, bonus, and/or other]** during their pregnancy leave.

Option 2: Partners shall continue to receive their **[insert description of compensation, such as profit allocation, bonus, and/or other]** during their pregnancy leave. A partner who has been at the firm for less than **[insert length of time]** prior to the commencement of the pregnancy leave shall be entitled during the period of her pregnancy leave to receive **[insert length of time]** months **[insert description of compensation, such as profit allocation, bonus, and/or other]**.

Option 3: Partners shall continue to receive their **[insert description of compensation, such as profit allocation, bonus, and/or other]** during their pregnancy leave. The receipt of **[insert description of compensation, such as profit allocation, bonus, and/or other]** during the pregnancy leave is conditional upon:

- i) the partner returning to practice at the end of the leave period, on the same full or part-time basis in effect at the commencement of the leave;
- ii) the partner remaining a partner of the firm on that basis for a period of **[insert length of time]**; and
- iii) the partner undertaking to repay to the firm any **[insert description of compensation, such as profit allocation, bonus, and/or other]** paid during the pregnancy leave period in the event of non-compliance by the partner of these conditions.

Option 4: Partners shall continue to receive their **[insert description of compensation, such as profit allocation, bonus, and/or other]** during their pregnancy leave. Partners taking pregnancy leaves are expected to return to full-time practice with the firm. In the event that a partner who has taken a pregnancy leave resigns within **[insert amount of time]** of the end of such leave, the partner shall repay the amounts paid to the partner during such pregnancy leave.

Commentary

Firms do not have a legal obligation to provide compensation to their partners for pregnancy leaves. However, firms may wish to provide compensation to partners

for pregnancy leaves, in part to ensure fairness when compared to associates' benefits.

In drafting its policy, the firm should consider whether to include all components of a partner's compensation, such as bonuses, draws, profit sharing percentages, periodic distribution of profit, benefits and future share allocation and corresponding compensation. The policy should be consistent the compensation scheme in the partnership agreement.

ARTICLE THREE – Parental Leave – Eligibility

Commentary

Law firms do not have a legal obligation to provide parental leaves for partners. However, a firm may wish to provide comparable benefits to partners and associates. The *ESC*, which applies to associates, provides that eligible employees are entitled to 37 weeks of parental leave.

Law firms have adopted various approaches in their policies to provide parental leave entitlements for their partners. A number of policies address requests for parental leaves on a case-by-case basis. Some policies include the maximum length of leave entitlement, along with a full description of the compensation entitlement.

The following are options based on clauses found in law firm policies.

3. The following are options based on clauses found in law firm policies:

Option 1: Partners, including those who have taken a pregnancy leave, who are new parents are entitled to take up to **[insert length of time for parental leave]** of parental leave.

Option 2: Partners who are new parents and have not taken a pregnancy leave are entitled to take up to **[insert length of time for parental leave]** of parental leave.

Option 3: Requests for a parental leave will be dealt with on a case-by-case basis in a manner that recognizes the importance of supporting partners during parental leaves. All parental leave arrangements will be decided following a consultation between the partner requesting a leave and **[insert position or committee]**. The approval of a parental leave and the terms and conditions will be approved by **[insert position or committee]**.

Commentary

A firm that provides parental leave entitlements should ensure that they are provided to both birth and adopting parents. Case law has indicated that adoptive parents and birth parents should be equally treated when providing parental leaves.

Firms may also wish to consider whether parental leaves will be available to partners who have taken a pregnancy leave. Pregnancy leaves are seen as serving a different purpose than parental leave as they enable women to prepare for childbirth, to recover physiologically and to have a period of time to take care of their families. Firms may wish to allow birth mothers to take a parental leave in addition to a pregnancy leave (option 1).

ARTICLE FOUR – Parental Leave – Compensation during Leave

Commentary

Firm policies use different approaches to parental leaves for partners. Some provide for full compensation during the leave, some adopt an ad hoc approach to parental leaves and compensation and some allow for parental leaves with a reduction in compensation.

4. The following are options based on clauses found in law firm policies. A firm can choose the option most appropriate to its culture and structure, or draft its own clause:

Option 1: A partner's **[insert description of compensation, including profit allocation, bonus, and/or other]** will continue for the duration of the parental leave.

Option 2: A partner's **[insert description of compensation, including profit allocation, bonus, and/or other]** will continue for the duration of the parental leave, but with a consequent proportionate reduction in **[insert description of compensation, including profit allocation, bonus, and/or other]**. Such reduction in **[insert description of compensation, including profit allocation, bonus, and/or other]** will be approved by **[insert position or committee]**.

Option 3: The terms and conditions of a partner's **[insert description of compensation, including profit allocation, bonus, and/or other]** during a parental leave will be established on a case-by-case basis at the discretion of **[insert position or committee]**. Decisions will be made following a consultation between the partner requesting a leave and **[insert position or committee]**. The approval of the parental leave terms and conditions will be approved by **[insert position or committee]**.

Option 4: Partners shall continue to receive their **[insert description of compensation, such as profit allocation, bonus, and/or other]** during their parental leave. A partner who has been at the firm for less than **[insert length of time]** prior to the commencement of the parental leave shall be entitled, during the period of his or her parental leave, to receive **[insert length of time]** months of his or her **[insert description of compensation, such as profit allocation, bonus, and/or other]**.

Option 5: Partners shall continue to receive their **[insert description of compensation, such as profit allocation, bonus, and/or other]** during their parental leave. The receipt of **[insert description of compensation, such as profit allocation, bonus, and/or other]** during the parental leave is conditional upon i) the partner returning to practice at the end of the leave period, on the same full or part-time basis in effect at the commencement of the leave; ii) remaining a partner of the firm on that basis for a period of **[insert length of time]**; and iii) the partner undertaking to repay to the firm any **[insert description of compensation, such as profit allocation, bonus, and/or other]** paid during the parental leave period in the event of non-compliance by the partner of these conditions.

Option 6: A partner taking a parental leave is expected to return to full-time practice with the firm. In the event that a partner who has taken a parental leave resigns within **[insert amount of time]** of the end of such leave, the partner shall repay the amounts paid to the partner during such parental leave.

Commentary

Firms do not have a legal obligation to provide compensation to their partners for parental leaves. In drafting its policy, the firm may wish to consider whether to include all components of a partner's compensation, such as bonuses, draws, profit sharing percentages, periodic distribution of profit, benefits and future share allocation and corresponding compensation. The policy should be consistent with the compensation scheme in the partnership agreement.

ARTICLE FIVE – Extension of Leave

Commentary

Firms may adopt a process based on the structure and culture of the partnership and of the firm to consider extension requests. Providing a process to address these requests, even if on an ad hoc basis, is helpful as it enhances consistency, transparency and fairness.

5. The following are options based on clauses found in law firm policies:

Option 1: Partners may request an extension to a pregnancy or parental leave to the **[insert position or name of committee such as Executive Committee]** of the firm. The **[insert position or name of committee such as Executive Committee]**, after consulting with the partner who is requesting the leave, has the discretion to grant, deny or vary the request.

Option 2: A partner may take up to **[insert length of period]** of further leave. A partner taking further leave will receive **[insert level of compensation if any]** during the period of further leave.

Compensation Review, Billing and Performance

ARTICLE SIX – Compensation Consideration Following Leave

Commentary

A clause in the policy that specifies how the performance of the partner will be assessed if a pregnancy or parental leave is taken is important, as it provides for consistency, transparency and fairness. Depending on the nature of the partner's practice, such as area of practice, types of clients, and other relevant factors, the period of one month to wind down the practice and to ramp up the practice may vary. Firms are encouraged to take that into account when drafting their policy.

6. The following are options based on clauses found in law firm policies:

Option 1: In considering the partner's compensation in a fiscal year when a pregnancy or parental leave has happened, the firm will consider the partner's statistics regarding hours, billings and cash received and will assess the performance based on the partner's pre and post-leave performance. The aim is to present the statistics as they would have been if no leave had occurred. The firm is aware that a partner who is taking a leave will have to wind down his or her practice prior to the leave and ramp up his or her practice upon the return from the leave. The firm will not take into account the practice of the partner during **[insert length of time]** prior to the leave or **[insert length of time]** following the leave, when assessing the partner's performance. The period to wind down and to ramp up the practice may be adjusted by agreement between the partner and the partnership. Consideration should be given to the partner's type of practice and other relevant circumstances.

Option 2: In considering the partner's compensation in a fiscal year when a pregnancy or parental leave has happened, the firm will annualize the billings and billable hours of that partner using the average monthly billings and average billable hours achieved by that partner during the twelve months immediately preceding the date of commencement of the leave. The aim is to present the statistics as they would have been if no leave had occurred. The firm is aware that a partner who is taking a leave will have to wind down his or her practice prior to the leave. The firm will not take into account the practice of the partner during the month prior to the leave, when annualizing the billings and billable hours. The period of one month to wind down the practice may be adjusted by agreement between the partner and the partnership. Consideration should be given to the partner's type of practice and other relevant circumstances.

Option 3: A partner taking either pregnancy or parental leave will not suffer any adverse impact during the compensation process. The partner's **[insert description of compensation, including profit allocation, bonus, and/or other]**, as applicable, will be unaffected by either pregnancy or parental leave. During either leave, the partner's personal fees rendered and billable hours will be adjusted on a prorated basis for purposes of all year-end financial reports or other reports considered by the **[insert committee]** in setting compensation.

ARTICLE SEVEN – Billing Hours and Rates

Commentary

Although a sample clause on the impact of pregnancy and parental leaves on billing rates is presented below, some Justicia participants were of the view that billing rates are firm business decisions and should not be included in policies on pregnancy and parental leaves, as the leave is not in and of itself determinative of the billing rate of the partner. Billing rates are often set based on a myriad of factors not linked to the performance review process.

Each firm should decide whether to include a clause that addresses the impact of pregnancy or parental leaves on billing rates.

If firms include a section to address billing rates in a pregnancy and parental leave policy, the firm is also encouraged to include provisions that outline the factors that will be taken into account to determine billing rates at the end of a pregnancy or parental leave, and the length of leave that will not be considered a break in practice for the purpose of determining billing rates. This allows for transparency, consistency and predictability. Because billing rates may have an impact on a partner's revenue generation and profitability, the billing rate may also impact on progression within the firm and partnership level. It is important for firms to clearly indicate how a leave impacts on billing rates, the factors that are taken into account to determine billing rates and to maintain some flexibility to consider the impact of billing rates on the unique circumstances of the partners.

7. [A partner who takes a leave under this policy will not be expected to increase his or her productivity or billable hours to compensate for the absence from practice. The firm reserves the right to determine the appropriate billing rate of the partner to clients at the end of a pregnancy or parental leave. Billing rates are determined in part by the experience and the number of years of practice.]

ARTICLE EIGHT – Process for Requesting Pregnancy and/or Parental Leave and Return to Work

Commentary

Justicia participants indicated that it is important for firms to adopt policies that include processes to request pregnancy and parental leaves. This enhances transparency, consistency and fairness.

The firm should use the terminology that is most commonly used by the firm and adopt a process for requesting the leave that reflects the firm's structure and culture. Firm policies that include processes may specify, for example, that the request will be provided to the practice group leader, the director of human resources, the regional managing partner, to the mentor, the executive committee and the department manager and that the person or committee will make decisions about the request.

8. A) A partner may request a pregnancy or parental leave by giving reasonable notice to his or her **[insert position such as Practice Group Leader]** and the **[insert position such as Director of Human Resources]** of his or her intention to take a leave under this policy and the expected date of return to work. Pregnancy and parental leave requests will be considered and approved by **[insert position such as Practice Group Leader]**.
- B) The partner may advise the **[insert position such as Practice Group Leader]** and the **[insert position such as Director of Human Resources]** of any changes to the start date or end of the leave by providing the firm with a reasonable notice of the change.
- C) To ensure a smooth transition back to work, partners on leave should provide reasonable notice to the **[insert position such as Managing Partner of the firm]** of their return so that appropriate arrangements can be made.

Commentary

The firm should use the terminology that is most commonly used by the firm and adopt a process for requesting the leave that reflects the firm's structure and culture. Firm policies include processes that may specify, for example, that the notice will be provided to the practice group leader, the director of human resources, the regional managing partner, to the mentor, the executive committee and the department manager.

ARTICLE NINE – Benefits and Pregnancy Related Illness

9. A) Partners on pregnancy or parental leave continue to participate in the **[insert benefits]** unless they elect in writing not to do so.

Commentary

The firm may wish to list the benefits, such as the pension plans, life and extended health insurance plans, accidental death plans and dental plans that were offered before the leave.

- B) Access to the **[insert the title of the assistance programs for partners]** continues and partners are encouraged to use these services to assist with family life transitions, return to work transitions, childcare issues and any other concerns that may arise.

Commentary

Not all firms have an assistance program for partners. If the firm does, it may wish to make reference to it in this section.

- C) A partner who experiences a pregnancy-related illness before or after her pregnancy leave may avail herself of the firm's policies applicable to that situation.

Commentary

The firm may wish to list the applicable policies.

ARTICLE TEN – Firm Support to Partners and Responsibility of Partners

10. When a request for leave is made, the **[insert name of position or committee]** will consult with the partner, at least **[insert timeline]** month **[or months]** before the leave, to determine how best to provide assistance to ensure that high quality services are offered to clients and the needs of the parent are met. The firm will always act in a manner that recognizes the privacy, confidentiality, comfort, autonomy and dignity of the partner. The partner and the firm will cooperate in the process, show willingness to be flexible and be responsible for ensuring that the client' needs are met. The firm will discuss and agree upon issues such as,

Commentary

Firms are encouraged to develop new parent tool kits for partners who will become parents. Justicia firm representatives and the Law Society have developed a template for the new parent tool kit. If the firm has developed the new parent tool kit, it may wish to refer to the kit in the pregnancy and parental leave policy.

The firm should use the terminology that is most commonly used by the firm and adopt a process that reflects the firm's structure and culture.

- a. the process by which client files, if applicable, are transferred and handled during the leave of absence;

Commentary

A number of law firm policies provide that partners deliver a memorandum to the managing partner or practice group leader identifying each file in his or her caseload and the designated lawyers who will be handling these matters during the leave period. The leave-taking partner, in consultation with other partners responsible for files, is responsible for timely advice to clients and designated lawyers confirming each matter transferred.

- b. the process by which the partner's responsibilities, if applicable, are transferred and handled during the leave, such as committee responsibilities and pro bono responsibilities;
- c. the process by which a partner, if she or he wishes to, will continue to have up-to-date information on the development of files;

Commentary

Firms should be mindful that the purpose of a pregnancy or parental leave is to allow partners to take time off for family responsibilities. Therefore, firms may not wish to have partners to continue having responsibilities relating to files.

A firm's policy should be drafted to clearly indicate that this clause applies only if the

partner wishes to continue to have information on the development of files.

- d. the process by which a partner, if she or he wishes to, will continue to participate in firm activities while on leave;

Commentary

The partner should inform the firm about his or her wishes to remain involved with firm activities during the leave. The following information could be provided to the firm: preferred method of communication during leave and activities that the lawyer wishes to receive notices of. Examples of those include professional development opportunities, law firm bulletins, social events, client development activities, business development activities, women's events, committee meetings, group meetings and partnership meetings.

- e. the process for the return of ongoing client files, or for the ramp up of the practice, upon the return to work;
- f. support or assistance that may be required by the partner upon return from the leave, such as availability of rooms to breastfeed, flexibility of work schedule, opportunities to work from home;

Commentary

In Alberta, women are legally protected from discrimination and harassment because of gender, including pregnancy and breastfeeding. Nursing mothers have the right to breastfeed a child in a public area. Firms should provide mothers with enough flexibility to breastfeed or express milk for their child. Where possible, firms should make rooms available to breastfeed.

- g. customized work schedules;

Commentary

Firms may wish to adopt separate customized work arrangement for all partners which would also be applicable to those returning from pregnancy or parental leaves.

- h. other reasonable accommodation requested by the partner returning to work after pregnancy/parental leave;
- i. staffing requirements that would ensure continuity of service during the leave.

Commentary

It is important for firms to provide direction and support to partners going on leave and returning from leave. Firms should adopt processes most applicable to their structure, culture and business.