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AlbertaJusticiaProject

Maternity and Parental Leave

Pregnancy and Parental Leave Policy – For Associates

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

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 associates to transition their practice prior to, during and after their leave, and the role of the associate in ensuring continued excellence in client service and practice management.

The firm is bound by 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.]**

The firm is also bound by legal obligations under Alberta's *Employment Standards Code (ESC)* and the federal *Employment Insurance Act (EIA)*, which outline minimum pregnancy and parental leave and benefit entitlements for employees, including associates, who have met the eligibility requirements specified in those Acts. **[Firms that develop a policy applicable to jurisdictions outside of Alberta should refer to the applicable legislation in those jurisdictions.]**

This policy outlines associates' entitlement to pregnancy and parental leave, and benefits, provided by the firm, as well as associates' rights under the *ESC* and the *EIA*. **[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 associates to ensure continued high quality client services during an associate's absence.

Definitions

“Income benefits supplement” is income provided by the firm to the associate in addition to *EIA* benefit payments to bring the associate's income during a leave to a total that approaches his or her salary.

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

Application of Policy

This policy applies to all eligible associates of the offices of the firm located in Alberta.

ARTICLE ONE

Pregnancy Leave – Eligibility and Entitlement

1. A) 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: The firm allows [**insert number of weeks. For consistency with ESC, period should not be shorter than 15 weeks.**] weeks' pregnancy leave to associates who are pregnant or who have given birth.

Option 2: The firm allows [**insert number of weeks. For consistency with ESC, period should not be shorter than 15 weeks.**] weeks' pregnancy leave to associates who are pregnant or who have given birth, and who have been employed at least 52 weeks at the firm.

Option 3: The firm allows [**insert number of weeks. For consistency with ESC, period should not be shorter than 15 weeks.**] weeks' pregnancy leave to associates who are pregnant or who have given birth, and who have been employed at least [**insert length of minimum period at firm. To ensure consistency with ESC, period should not exceed 52 weeks at the firm.**].

- B) Associates may begin a pregnancy leave no earlier than 12 weeks before the estimated date of delivery. An associate who takes pregnancy leave must take a period of at least 6 weeks immediately following the date of delivery, unless she and the firm agree to shorten the period by the associate giving the firm a medical certificate indicating that resumption of work will not endanger the associate's health.

ARTICLE TWO

Income during Pregnancy Leave

2. The firm will continue to provide the associate with the equivalent of **[insert percentage of salary]** of her salary during the **[insert length]** week pregnancy leave period, either as income or as an income benefits supplement to *EI* benefits.

ARTICLE THREE

Parental Leave – Eligibility and Entitlement

3. A) 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: An associate who is a parent, as defined under this policy, is eligible for a parental leave.

Option 2: An associate who is a parent, as defined under this policy, is eligible for a parental leave if the associate has been employed at the firm at least 52 weeks.

Option 3: An associate who is a parent, as defined under this policy, is eligible for a parental leave if the associate has been employed at the firm **[insert length of time for eligibility. For consistency with the ESC, length of time should not exceed 52 weeks]**.

- B) The firm allows parental leaves for the following period: **[insert length of leave. Period should not be shorter than 37 weeks.]** . **[Once started, the parental leave has to be taken all at one time.]** **[A birth mother who takes a pregnancy leave must begin her parental leave immediately after the pregnancy leave ends.]**

ARTICLE FOUR

Income during Parental Leave

4. The firm will continue to provide the associate with the equivalent **[insert percentage of salary]** of her or his salary during **[insert length]** weeks of the parental leave period, either as income or as income benefits supplement to *EIA* benefits.

ARTICLE FIVE

Process to Request Pregnancy and/or Parental Leave

5. An associate must provide the **[insert position, such as a practice group leader]** and/or the **[insert position such as the director of human resources]** with adequate notice before beginning a pregnancy leave or a parental leave so that the firm and the associate may address professional and client obligations. The firm may request a certificate from a medical practitioner stating the child's due date.

ARTICLE SIX

Process When a Birth Mother Must Stop Working Earlier than Planned

6. If a pregnant employee must stop working 12 weeks or less before her due date due to a complication caused by her pregnancy, or because of a birth, she must provide the **[insert position, such as a practice group leader]** and/or the **[insert position such as the director of human resources]** with adequate notice so that the firm and the associate may address professional and client obligations. The firm may request a medical certificate supporting the associate's inability to work and stating the child's due date, or a medical certificate stating the due date and the actual date of birth.

ARTICLE SEVEN

Pregnancy, Parental and Illness Benefits under the EIA

7. A) Associates may be eligible for pregnancy, parental or illness benefits under the *EIA* and are encouraged to contact their Service Canada Centre for further information about their entitlements.

B) An associate who experiences a pregnancy-related illness earlier than 12 weeks before her due date, or after the pregnancy /parental leave, may avail herself of the firm's policies applicable to that situation.

ARTICLE EIGHT

Reinstatement and Transition Back to Work

8. A) An associate absent on pregnancy/parental leave is entitled to be reinstated upon her or his return to active employment in the most recently held position, if it still exists, or a comparable position, if it does not exist.

B) To ensure a smooth transition back to work, an associate on leave should contact the **[insert the firm's human resources department or the relevant department]** and the **[insert position such as the practice group leader]** at least **[insert number]** weeks in advance of her or his return so that appropriate arrangements can be made.

ARTICLE NINE

Benefits and Vacations

9. A) An associate on pregnancy/parental leave continues to participate in the **[insert list of group benefit plans]** and receive **[insert list of benefits]** unless they elect in writing not to do so.

- B) Access to the **[insert the employee assistance program]** continues and an associate is encouraged to use these services to assist with family life transitions, return to work transitions, childcare issues and any other concerns that may arise.

- C) An associate on pregnancy/parental leave continues to take part in **[insert information about the pension plan]** and the firm will match the contribution, unless the associate elects in writing not to do so.

ARTICLE TEN

Compensation and Year Level

10. 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: The firm adopts an experiential progression approach to salary, billing rates, year level and partnership consideration. Compensation, billing rates, year level and partnership consideration are individually assessed, based on the following factors: **[insert factors such as the performance of the associate while not on leave, the years of active practice, the practical experience and legal skills, the quality of services offered to clients and the associate's performance reviews]**. When making such a determination, the firm will rely on the views of **[insert appropriate committee or position]**.

Option 2: Associates who take a leave under this policy will be entitled to the salary and will return to the year level they would have been entitled to if actively at work during the period of pregnancy/parental leave. If the firm reviews compensation and year levels while the associate is on leave, any applicable salary adjustments for associates of the same **[level of experience or year of call]** will be, upon return from the leave, retroactive to the date of the adjustment.

Option 3: Associates who take a leave under this policy will be entitled to the salary or year level they would have been entitled to if actively at work during the period of pregnancy/parental leave. If the firm reviews compensation and year levels while the associate is on leave, any applicable salary or year level adjustments for associates of the same **[level of experience or year of call]** will be effective on the date of the return from the leave.

Option 4: Associates who take a **[insert number of months, e.g., 6 months]** leave under this policy will be entitled to the salary and return to the year they would have been entitled to if actively at work during that period of pregnancy/parental leave. If the firm reviews salary and year levels while the associate is on the **[insert number of months e.g., 6 months]** leave, any applicable salary and year level adjustments for associates of the same **[level of experience or year of call]** will be, upon return from the leave, retroactive to the date of the adjustment. Salary or year level for longer leaves will be discussed on an individualized basis, in consultation between the **[insert appropriate position]** and the associate. The following factors will be taken into account to establish the salary level of associates on leave for the period exceeding **[insert number of months, e.g., 6 months]: [insert factors such as the performance of the associate while not on leave, the years of active practice, the practical experience and legal skills, the quality of services offered to clients and the associate's performance reviews]**.

Option 5: Salary increases and year levels are subject to the discretion of the **[name of committee]**.

ARTICLE ELEVEN

Bonuses

11. 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: Associates who take a leave under this policy will be considered for a bonus for any year or part year for which the firm pays bonuses and in which the associate worked leading up to or after the leave. In considering the level of bonus, the firm will take into account the same criteria, such as **[list the applicable criteria]**, applicable to all associates. The firm will consider the **[applicable criteria]** during the period prior to the leave to make a decision regarding eligibility for a bonus. The bonus will be prorated based on the number of months that the associate worked at the firm during the bonus period in question. The same principles apply if the period of leave straddles the second bonus period.

Option 2: Associates who take a leave under this policy will be considered for a bonus for any year or part year for which the firm pays bonuses and in which the associate worked leading up to or after the leave. In considering the level of bonus, the firm will take into account the same criteria, such as **[list the applicable criteria]**, applicable to all associates. The firm will consider the **[applicable criteria]** during the period prior to the leave to make a decision regarding eligibility for a bonus. The same principles apply if the period of leave straddles the second bonus period.

Option 3: Associates who take a leave under this policy will be considered for a bonus for any year or part year for which the firm pays bonuses and in which the associate worked for at least **[insert length of time]** during the bonus period. In considering the level of bonus, the firm will take into account the same criteria, such as **[list the applicable criteria]**, applicable to all associates. The firm will consider the **[applicable criteria]** during the period prior to the leave to make a decision regarding eligibility for a bonus. The bonus will be prorated based on the number of months that the associate worked at the firm during the bonus period in question. The same principles apply if the period of leave straddles the second bonus period.

Option 4: Associates who take a leave under this policy will be considered for a bonus by using the same criteria, such as **[list the applicable criteria]**, as the criteria applicable to associates who have worked less than the full bonus period, such as **[insert lateral hires, medical leaves, and other applicable situations]**. The bonus will be prorated based on the number of months that the associate worked at the firm during the bonus period in question. The same principles apply if the period of leave straddles the second bonus period.

ARTICLE TWELVE

Performance Reviews

12. 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: If the associate is on leave during a performance review, reasonable efforts will be made for the performance review to be conducted during **[insert length of time]** prior to the leave, or alternatively within **[insert length of time]** months following the return, as may be appropriate. The review covers the associate's performance prior to the leave, but does not necessarily include a review of the performance during the period preceding and following the leave during which the associate may be reasonably expected to be ramping down and ramping up her or his practice.

Option 2: The purpose of a performance review is to provide constructive feedback to associates while also allowing the associate to provide her or his feedback to the firm. If an associate is on leave during a performance review, reasonable efforts will be made to accommodate the associate to allow her or him to participate in the performance review. The **[insert appropriate position such as partner , supervising lawyer, team leader or director of associates]** will communicate with the associate to identify how best to accommodate the associate on leave, such as allowing the associate to attend the review in person, to participate by phone or waiting until the associate returns from leave. If the associate cannot participate in the performance review during the leave, the firm will make every effort to conduct the review immediately upon the return from the leave.

ARTICLE THIRTEEN

Billing Rates

13. [The firm reserves the right to determine the appropriate billing rate of the associate 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 FOURTEEN

Eligibility for Admission to Partnership

14. A) 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: It is understood that each associate will be required to meet the firm's requirements for admission to partnership, such as [**list the firm's requirement**]. The fact that an associate has taken one or more pregnancy and/or parental leaves will not, in and of itself, delay consideration for admission to partnership when those requirements have been met.

Option 2: The firm relies on experience and years of practice to make partnership decisions. It is understood that each associate will be required to meet the firm's requirements for admission to partnership, such as [**list the firm's requirement**]. The firm will consult with the associate who has taken one or more pregnancy and/or parental leaves to agree on the period required by the associate to be eligible to be considered for partnership. The progression of the associate towards the eligibility for partnership will be based on the agreement between the associate and the firm.

- B) Some firms have adopted clauses that are similar to the following:

The associate's billings and billable hours for the affected period will be annualized by the firm after a review of all the facts and with the agreement of the associate concerned. These annualized billings and billable hours will be calculated from the monthly average achieved by the associate during a 12-month period prior to the commencement of the leave. The aim of the annualization is to present the statistics as they would have been if no pregnancy or parental leave had occurred. Note that an associate would be winding down her or his practice immediately prior to the commencement of the leave and that that period may not reflect the billings and billable hours typically maintained by the associate.

ARTICLE FIFTEEN

Firm Support to Associates and Responsibilities of Associates

15. A) When a request for leave is made, the **[insert name of position or committee]** will work with the associate to ensure that client matters are professionally managed. At least **[insert timeline]** before the leave, the firm and the associate will determine how best to provide assistance to ensure that high quality services continue to be offered to clients and the needs of the associate are met. The firm will always act in a manner that recognizes the privacy, confidentiality, comfort, autonomy and dignity of the associate. Both the firm and the associate will cooperate in the process, show willingness to be flexible and be responsible for ensuring that the clients' needs are met. The firm and the associate will discuss and agree upon issues such as:
- a. staffing requirements that would ensure continuity of service during the leave;
 - b. the process by which client files, if applicable, are transferred and handled during the leave of absence;
 - c. the process by which the associate's responsibilities, if applicable, are transferred and handled during the leave, such as committee responsibilities and pro bono responsibilities;
 - d. the process by which an associate, if she or he wishes to, will continue to have up-to-date information on the development of files;
 - e. the process by which an associate, if she or he wishes to, will continue to participate in firm activities while on leave;
 - f. the process for the return of ongoing client files, or for the ramp up of the practice, upon the return to work;
 - g. support or assistance that may be required by the associate upon return from the leave, such as professional development or continuing legal education, availability of rooms to breastfeed, flexibility of work schedule, opportunities to work from home;
 - h. flexible work arrangements;
 - i. timelines for partnership consideration;
 - j. other reasonable accommodation requested by the associate returning to work after pregnancy/parental leave;

B) The following are examples of firm support and processes provided in policies:

Option 1: The associate must make appropriate arrangements to ensure files are adequately transferred. The practice group leaders will assist with reintegration into practice upon return from leave.

Option 2: It is the responsibility of the associate to develop a memorandum directed to the appropriate individuals in the firm, outlining the background and status of outstanding matters and identifying the designated lawyers who will be handling the matters during the leave. The department head must approve the memorandum. The associate, wherever possible, must meet with the designated lawyer to review matters and to contact each client affected by the leave.

Option 3: The firm assists associates with reintegration into practice. The firm recognizes that each associate must be considered individually in order to determine the support required to ensure that they will return to a productive career while balancing work and life demands. Where the associate requires a family status or marital status accommodation upon return, she or he may request it from the firm and negotiate appropriate arrangements. The associate who requests the accommodation will cooperate and discuss the process for the return of client files upon return to work, workload issues and possibility of reduced workload or hours, required support (space to breastfeed, flexibility of work schedule, opportunities to work from home) and other reasonable accommodation.

If alternate work arrangements are negotiated, the firm and the associate will agree on the following: length of alternate work arrangement; expectations in terms of workload and billable and non-billable hours; proposed work schedule, indicating the days when the associate will be available; use of the firm's facilities and resources including office space and secretarial support and other administrative matters; economic consequences of the arrangement to the firm; impact of the arrangement on the associate's compensation.