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## Opinion

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<b>To</b>	<b>Ms. Jodi Travers</b> Labour Relations Manager Electrical Contractors Association of Ontario		

*Privileged & Confidential*

Dear Ms. Travers:

You have asked us to prepare an opinion outlining the key differences between pregnancy leave and parental leave as it pertains to the Ontario *Employment Standards Act, 2000* (the “**ESA**”).

## Background

The principal agreement between the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario (the “**ECAO**”) and the International Brotherhood of Electrical Workers (“**IBEW**” or the “**Union**”) and the IBEW Construction Council of Ontario, expiring April 30, 2025 (the “**Principal Agreement**”) provides certain benefits, such as the continued payment of the premiums associated with the Health and Welfare Fund and contributions to the Pension Fund, to Union employees taking parental leave. However, the Principal Agreement makes no mention of, and provides no benefits to, Union employees taking pregnancy leave. Accordingly, ECAO contractors need not pay the premium costs associated with the Health and Welfare fund nor make regular contributions to the Pension Fund, for Union employees taking pregnancy leave.

IBEW has not bargained for any rights for employees taking pregnancy leave. As such, ECAO contractors should not provide any of the aforementioned benefits to employees on pregnancy leave, as doing so could negatively impact bargaining relations between the parties and result in various grievances.

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The ESA provides for a number of leaves of absences, such as pregnancy leave, parental leave, sick leave, family responsibility leave, and bereavement leave. These various leaves are similar but not identical. To be clear pregnancy leave and parental leave, while related, are not the same. Pregnancy leave is addressed at sections 46 to 47 of the ESA, whereas parental leave is outlined at sections 48 to 49 of the ESA. Below is a summary of the pregnancy leave and parental leave provisions.

### **Pregnancy Leave**

Pregnancy leave is only available to pregnant employees. To be eligible for pregnancy leave, the employee's due date must be fewer than 13 weeks after the employee commenced employment.

A pregnant employee is entitled to a maximum of 17 weeks of unpaid leave. However, if an employee has taken the full 17 weeks of leave but is still pregnant, the employee may continue on pregnancy leave until the birth of the child. Pregnancy leave must be taken in one consecutive block of time.

The pregnant employee must take pregnancy leave no earlier than (a) 17 weeks before her due date; and (b) the day on which the pregnant employee gives birth.

In order to take pregnancy leave, an employee must provide (a) at least two weeks notice before the day the leave is to begin; and (b) if requested by the employer, a medical note stating the employee's due date.

Pregnancy leave is available to an employee who has a miscarriage or stillbirth within the 17-week period preceding the employee's due date. However, the pregnancy leave of an employee who has a miscarriage or stillbirth ends on the later of (a) 17 weeks after the pregnancy leave began; or (b) 12 weeks after the miscarriage or stillbirth.

### **Parental Leave**

Parental leave is available to male and female employees who become parents following the birth of a child or obtaining "custody, care and control" (hereinafter "**custody**") of a child. To be eligible for parental leave, the employee must have been employed by the employer for at least 13 weeks.

A "parent" eligible for parental leave includes (a) a birth parent, (b) an adoptive parents, and (c) a person who is in a relationship of some permanence with a parent of the child and who plans on treating the child as their own, including same-sex partners.

If the employee took pregnancy leave, then unpaid parental leave ends 61 weeks after it began; if the employee did not take pregnancy leave, then unpaid parental leave ends 63 weeks after it began.

An employee who took pregnancy leave must begin parental leave immediately upon the completion of pregnancy leave, unless the child has not yet come into her custody. For all other employees, parental leave must begin no later than 78 weeks after the day the child is born or comes into the employee's custody for the first time. Parental leave must be taken in one consecutive block of time.

## Summary of Key Differences Between Parental Leave and Pregnancy Leave

Below is a reference chart summarizing the key differences between parental leave and pregnancy leave:

	Pregnancy Leave	Parental Leave
<b>Who is Eligible</b>	Only pregnant female employees	Male or female employees, following the birth or custody of a child (includes, <i>inter alia</i> , an adoptive parent)
<b>Length of Leave</b>	17 weeks	61 weeks for an employee who took parental leave; 63 weeks for all other employees
<b>Timing of Leave</b>	Earlier of (a) 17 weeks before due date, and (b) the date of birth	Leave must begin after pregnancy leave if applicable; for all other employees, leave must begin within 78 weeks of the child's birth or coming into custody of the child
<b>Notice to Employer</b>	Two weeks, unless birth occurs prior to due date, then employee shall notify employer within two weeks after stopping work  Employer can request a medical certificate confirming due date  Note that failure to give notice does not disentitle employee to the leave	Two weeks, unless the child comes into the employee's custody earlier than expected, then employee shall notify employer within two weeks after stopping work  Note that failure to give notice does not disentitle employee to the leave
<b>Return to Work</b>	Employee must provide four weeks' written notice if terminating their employment before the leave expires  Employer must provide the returning employee the same job the employee had before leave, or a comparable job if the same job no longer exists	Employee must provide four weeks' written notice if terminating their employment before the leave expires  Employer must provide the returning employee the same job the employee had before leave, or a comparable job if the same job no longer exists
<b>Miscarriage or Stillbirth</b>	An employee who has a miscarriage or stillbirth is eligible for pregnancy leave, as long as the miscarriage or stillbirth occurred within 17 weeks of the due date	An employee who has a miscarriage or stillbirth, or whose spouse or same-sex partner has a miscarriage or stillbirth, is not eligible for parental leave

We trust that the foregoing is of assistance and are available at your convenience to answer any questions you may have.

Yours truly,



Richard J. Charney

RJC/TB