



CLEO

| Employment Series

Taking time off work:

For new and expecting parents



August 2023

If you speak French

In many cases, you have the right to government services and legal proceedings in French, including hearings before French-speaking decision-makers.

If you have a legal problem, you can ask a lawyer or a community legal clinic about your French language rights.

Si vous parlez français

Il existe de nombreuses situations où vous avez droit à des services gouvernementaux et à des procédures juridiques en français. Ainsi, vous pouvez avoir droit à ce qu'une audience à laquelle vous êtes partie soit tenue devant un décideur qui parle français.

Si vous avez un problème juridique, vous pouvez demander à un avocat ou à un intervenant d'une clinique juridique communautaire de vous informer des droits linguistiques liés au fait de parler français.

Table of Contents

Introduction	1
Part 1: Leaves of absence	2
Pregnancy leave	2
Parental leave	3
How much time off can I take?	4
How do I take my pregnancy or parental leave?	4
What if I have to stop work early?	5
What if I want to take a shorter leave?	6
Can I do any paid work while I am on leave?	7
What happens to my job and benefits?	7
Part 2: Employment Insurance (EI) benefits	10
How do I qualify for these EI benefits?	10
Maternity benefits	11
Parental benefits	12
How do I apply for EI benefits?	14
Can I earn money while I am getting EI?	16
Can I get EI benefits if I am outside Canada?	17

(continued)

Table of Contents

Can I apply for other EI special benefits?	17
What if I do not agree with a decision about EI?	17
Chart: Leaves and benefits for new and expecting parents	20
Part 3: Where can I get more information and help?.....	24

III Introduction

If you are going to have a baby or adopt a child, Ontario law says that you can take time off work without losing your job. This is called taking a **leave**.

Your employer **does not** have to pay you during a leave. But they have to give you back your job or give you a similar job when you return.

If you have worked enough hours to qualify for Employment Insurance (EI), you can get **EI benefits** for some of the time you are on leave. The most you can get is **\$650 a week**.

There are 2 types of leaves and benefits for new parents.

Parental leave and benefits are for parents who have a newborn child or who have just adopted a child. For adopting parents, the child can be any age under 18.

Pregnancy leave and **maternity** benefits are only for people who are pregnant or who have just given birth.

For a summary of what leaves and EI benefits you can get, read the chart on [pages 20 to 23](#).

This booklet has **3 parts**:

- **Part 1: Leaves of absence**
([pages 2 to 9](#))
- **Part 2: Employment Insurance (EI) benefits**
([pages 10 to 23](#))
- **Part 3: Where can I get more help and information?**
([page 24 to 25](#))

Part 1: Leaves of absence

The rights described in this section come from **Ontario's Employment Standards Act (ESA)**. These rights apply to most workers in Ontario.

They do not apply in workplaces that are regulated by the Government of Canada, for example, banks, airlines, and broadcasting.

Workers in those industries are covered by the Canada Labour Code. They also have rights to parental and pregnancy leave but some of the rules are different.

For more information, go to [canada.ca](https://www.canada.ca) and search for **federal labour standards**.

III Pregnancy leave

Pregnancy leave is sometimes called maternity leave.

If you started working for your employer at least 13 weeks before your due date, the law says that your employer must let you take a pregnancy leave.

But your employer does **not have to pay you** during the leave.

How long can my pregnancy leave be?

Your employer must let you take at least **17 weeks** of pregnancy leave.

But if you have a miscarriage or a stillbirth, your leave can continue for at least 12 weeks after that happens. This means that your leave could be longer than 17 weeks.

When can I start my pregnancy leave?

You can choose when to take your pregnancy leave, but there are some limits.

Earliest you can start: Usually, the earliest you can start your pregnancy leave is 17 weeks before your baby is due. But if your baby is born earlier than that, you must start your leave on the date of the birth.

Latest you can start: You must start your pregnancy leave no later than your due date. If your baby is born before your due date, you must start your leave on the date of the birth.

III Parental leave

Any new parent who has worked at least 13 weeks for their employer can take parental leave. This includes all new parents, not just the parent who gives birth. It also includes anyone who:

- is in what the law calls “a relationship of some permanence” with a parent of the child, and
- is going to treat the child as their own.

Each parent can take a full parental leave, either at the same time as another parent or at a different time.

Parents who give birth can take both pregnancy leave and parental leave.

When can I start my parental leave?

Usually, a parent who takes pregnancy leave must begin their parental leave as soon as the pregnancy leave ends.

But if your baby has not come into your care by then, you can wait until that happens before starting your parental leave.

For example, your baby might have to stay in the hospital after your pregnancy leave ends.

Other parents can start their parental leave any time within 78 weeks, which is about 18 months, after the date their child:

- is born, or
- first comes into their care.

How much time off can I take?

A parent who gives birth can take up to **61 weeks** of parental leave. With the **17 weeks** of pregnancy leave, their total leave can be up to **78 weeks**.

All other parents can take up to **63 weeks** of parental leave.

How do I take my pregnancy or parental leave?

You must give your employer a letter that says the day you want to start your pregnancy or parental leave. Your employer must get the letter at least 2 weeks before you want your leave to start.

If you are taking both pregnancy leave and parental leave, make sure your letter gives the start date for each leave. Or you can give your employer 2 separate letters.

Parents who want to take pregnancy leave must also give their employer a medical note that says when the baby is due, if their employer asks for one.

Can I change the date when my leave starts?

If you change your mind about when you want to start your leave, you must give your employer a new letter telling them this.

To start your leave **earlier**, you must give your employer the new letter at least 2 weeks before you want your leave to start.

To start your leave **later**, you must give your employer the new letter at least 2 weeks before the date you first said that your leave was going to start.

III What if I have to stop work early?

If you have a medical emergency, you might have to:

- stop work right away, and
- take your **pregnancy leave** with less than 2 weeks' notice.

If this happens, you must send your employer a new letter within 2 weeks after you stopped working. You must also send a medical note if they ask for one.

Your letter must say the date you had to stop working. The medical note must include:

- the date of the birth, stillbirth, or miscarriage, if any of these happened, or
- the medical reasons for why you cannot work and your due date.

You can start your **parental leave** earlier than planned if your newborn or adopted child arrives earlier than expected.

If this happens, you must send your employer a new letter within 2 weeks from the day you stopped working. This letter must include the date you started your parental leave.

Keep copies of all the letters you send, and a record of the dates you sent them or gave them to your employer.

III What if I want to take a shorter leave?

You have the right to end your pregnancy or parental leave before you have taken all the weeks you are entitled to. To do this, give your employer a letter telling them when you plan to return to work.

You must give them this letter at least 4 weeks before the day you want to return to work.

You can also end your leave at any time if you and your employer both agree.

III Can I do any paid work while I am on leave?

If you do any work for **your employer**, they might be able to say that you have ended your leave. This could happen even if you do only part-time or temporary work for them.

You can work for a **different employer** while you are on leave and this will not end your leave.

But working for **any employer** while you are on leave could affect your Employment Insurance (EI) benefits. Read more on page 16.

Your leave does not last longer if you work. The date that your leave ends stays the same.

III What happens to my job and benefits?

While you are on pregnancy or parental leave, your employer does **not** have to pay your wages or salary.

But they must continue to give you the **workplace benefits** you usually get, as long as you continue to pay your share. For example, this could be health coverage or a pension plan.

If you passed the **probation period** in your job, your seniority or length of service continues to increase while you are on leave. But if you were still on probation when you started your leave, you have to finish it when you return to work.

When your leave is over, your employer must give you your old **job back**, with no cut in pay. If the pay for your job has gone up since you went on leave, you must get the higher amount.

If your old job no longer exists, your employer must give you a similar job with no cut in pay.

Problems taking a leave or getting your job back

It is a good idea to get help from your union or to get legal advice if your employer:

- will not let you take a leave
- makes it hard for you to take a leave
- will not give you your job back

If you cannot solve the problem with your employer, you can make an Employment Standards claim **or** a human rights claim.

Employment Standards claim

You must make an Employment Standards claim within 2 years of the date your employer breaks the law. CLEO's booklet **Your rights at work** has more about this. Read it online or order it for free at cleo.on.ca/rights-work.

You can read about making a claim on the Government of Ontario website. Go to ontario.ca and type **ESA** in the search box.

Or call the Employment Standards Information Centre at **1-800-531-5551**. For TTY, call **1-866-567-8893**.

Human rights claim

You might be able to apply to the Human Rights Tribunal of Ontario.

For more information, call **1-866-598-0322**. For TTY, use Bell's Relay Service at **1-800-855-0511**. Or visit tribunalsontario.ca/hrto.

You should start your application to the Tribunal within **one year** of when your employer:

- refused to let you take a leave
- made it hard for you to take a leave
- did not give you your job back

You **cannot** make both an Employment Standards claim and a human rights claim. It is a good idea to get legal advice to help you decide which claim is better in your situation.

Part 2: Employment Insurance (EI) benefits

Employment Insurance (EI) has **maternity** and **parental** benefits. You might be able to get these benefits if your weekly earnings have gone down by more than 40% because you are:

- pregnant, or
- caring for your new child.

If you are self-employed, you can apply for these benefits if you:

- made at least \$8,255 in self-employed earnings after taxes in 2022,
- paid EI premiums for at least 12 months, and
- signed up for EI's self-employed program.

The amount you have to make to qualify may change from year to year. But it is always based on the past year's earnings.

To pay premiums as a self-employed worker, you must set up a MyServiceCanada account. To do this, go to canada.ca/en and type **MSCA** in the search box.

III How do I qualify for these EI benefits?

Usually, you need to have worked **at least 600 hours** in the last 12 months. In some cases, you can go back more than 12 months.

But if you got EI benefits any time in the last 12 months, you can only count the time since those benefits started.

Any hours you were on paid leave count as hours worked.

If you got a violation for breaking EI rules any time in the past 5 years, you need **more than 600 hours**.

A violation is a penalty Service Canada gives you if you tell them something related to your EI claim that you know is not true or accurate.

III Maternity benefits

Only people who give birth can get EI maternity benefits. Maternity benefits are sometimes called pregnancy benefits.

You cannot start your maternity benefits earlier than 12 weeks before your due date. And usually you cannot continue to get them later than 17 weeks after your baby was due or was born, whichever is later.

Most people must wait one week before they get EI. This means that you do not get EI benefits for the first week you are off work.

You can get maternity benefits for up to 15 weeks. Because of the one-week waiting period, you must take at least 16 weeks off work to get the full 15 weeks of maternity benefits.

Your pregnancy leave through the Employment Standards Act can be up to 17 weeks. This means that if you take all of the leave you are allowed to take, there will be 2 weeks when you do not get EI benefits. Read more about pregnancy leave on [page 2](#).

Most parents get 55% of what they were earning before they started getting EI. The most they can get is \$650 a week.

III Parental benefits

EI parental benefits are for biological parents, parents who adopt, and others who the law sees as parents.

You can choose to get **standard** or **extended** benefits.

Standard benefits

You can get parental benefits for up to **35 weeks**. You will get 55% of what you earned before getting EI, up to \$650 a week.

You can get these benefits for 52 weeks after the week:

- your child is born, or
- your adopted child comes to live with you.

But if your child is in the hospital during that time, you can get one extra week for each week they are in the hospital.

If all of the parents have worked enough hours to get EI parental benefits, they can share these benefits. If you share, you can get an **extra 5 weeks** of benefits.

You can share the 40 weeks any way you like, as long as no one takes more than 35 weeks. For example, the parents could divide the time in equal parts or one parent could take more.

Extended benefits

If you choose extended benefits, you can get parental benefits for up to **61 weeks**. You will get 33% of what you earned before getting EI, up to \$390 a week.

You can get these benefits for up to 78 weeks, which is about 18 months, after the week:

- your child is born, or
- your adopted child comes to live with you.

But if your child is in the hospital during that time, you can get one extra week for each week they are in the hospital.

If all of the parents have worked enough hours to get EI parental benefits, they can share up to **69 weeks** of benefits.

You can share them any way you like, as long as no one takes more than 61 weeks. For example, the parents could divide the time in equal parts or one parent could take more.

What is the Family Supplement?

The Family Supplement is an extra amount you get if:

- you, or your spouse or common-law partner, get the Canada child benefit (CCB), and
- your annual family income is \$25,921 or less.

This can increase your benefits to as much as 80% of what you earned before getting EI. But the most you can get is still \$650 a week.

If you and your spouse or common-law partner both get EI benefits at the same time, only one of you can get the Family Supplement.

Usually, it is better if the one who gets less EI gets the Family Supplement.

III How do I apply for EI benefits?

You need to fill out an application online. You can do this at a Service Canada Centre.

To find the form, go to canada.ca/en/services/benefits/privacy-notice.

If you are not able to apply online or have trouble with the online form, contact Service Canada at **1-800-622-6232**. For TTY, call **1-800-926-9105**.

When you apply, you need the following information for all of your jobs in the last 52 weeks:

- names and addresses of your employers
- dates you worked for them
- detailed reasons for why you left

You also need:

- your Social Insurance Number and another piece of identification with your photo if possible,
- your banking information so your EI payments can go into your bank account,
- your mailing address, and

- the dates and what you were paid for each of your highest-paid weeks in your qualifying period.

CLEO's booklet **Employment Insurance** has more about this in the section **How much will I get from EI?** Read it online or order it for free at cleo.on.ca/EI.

You have to sign a statement that says when your baby is due or was born.

If you are adopting, the statement says when the child came to live with you or is coming to live with you. And it gives the name of the adoption agency.

The full list of what you need is part of the online EI application form.

Do I need my Record of Employment?

It is easier to apply for EI if you have your Record of Employment (ROE). You will need an ROE for every employer you worked for in the past 12 months.

If your employer sends your ROE to the government online:

- they do not have to give you a copy, and
- you do not need a copy to apply for EI.

But you can get a copy from Service Canada if you want one.

To see your ROE online, you need to have a MyServiceCanada account. You can access your account or set one up at servicecanada.ca.

It is easier to apply for EI with the ROE. But you should **apply for EI right away**, even if you do not have your ROE yet. You will need proof of your employment, such as pay stubs and T4 slips.

If you do not apply within 4 weeks after your employment ends, you will probably get fewer EI payments.

If you are having problems getting your ROE, call the Employment Insurance Telephone Information Service at **1-800-206-7218**. For TTY, call **1-800-529-3742**.

CLEO has a tool that creates a letter you can send to your employer asking for your ROE. Go to stepstojustice.ca/asking-for-roe.

III Can I earn money while I am getting EI?

Yes. But half of what you earn each week is taken off your EI benefits.

This applies as long as you do not earn more than 90% of the average weekly earnings your benefit was based on. All of the money you earn **above** that 90% is taken off your benefits.

Some employers have benefits for employees who go on EI parental or maternity benefits. These are sometimes called EI top-up plans or supplemental unemployment benefits.

If the government has approved your employer's plan, EI will not take any of that money off your benefits.

For more information, read **Can I do any paid work while I am on leave?** on [page 7](#).

III Can I get EI benefits if I am outside Canada?

Yes. You can get maternity and parental benefits if you are out of the country.

But you must tell Service Canada that you are leaving.

III Can I apply for other EI special benefits?

Yes, you can get other EI special benefits immediately before or after your maternity benefits or parental benefits.

For example, you can get sickness benefits if:

- you are sick
- you were sick before your child was born
- you have a miscarriage or stillbirth within the first 19 weeks of your pregnancy

And if your new child is sick, you might be able to get the family caregiver benefit for children.

III What if I do not agree with a decision about EI?

You can appeal most decisions about your EI claim.

The first step is to ask Service Canada for a **reconsideration** of the decision. This means that you ask them to review and change their decision.

You can ask for a reconsideration if Service Canada:

- refuses to give you benefits or you think the amount is too low
- tells you to pay back some benefits
- gives you a penalty or sends you a warning letter

You must ask for the reconsideration in writing. You must make sure Service Canada gets it within **30 days** of when you got the decision.

If you miss this deadline, you can ask for an extension. But you must give a good reason for why you were late.

How do I ask for a reconsideration?

You have to use a form called Request for Reconsideration. You can get this form online at ei.gc.ca. Or go to canada.ca and type **ins5210** in the search box.

After you fill out and sign the form, you must take it to your local Service Canada Centre or mail it to a regional Service Canada Centre. The mailing address for Ontario is:

Service Canada
PO Box 2602
Mississauga, Ontario L4T 0B1

What happens when I ask for a reconsideration?

Someone from Service Canada will contact you to talk about your EI claim. You can give them any new information you have and explain why you think the decision should be changed.

Read more about reconsiderations at [ei.gc.ca](https://www.ei.gc.ca).

Service Canada could:

- keep the original decision
- change the decision completely
- make some changes to the decision

They will tell you their decision in a letter.

If you do not agree with Service Canada's decision, you may be able to appeal to the Social Security Tribunal. There is more in CLEO's booklet **Employment Insurance**. Read it online or order it for free at [cleo.on.ca/EI](https://www.cleo.on.ca/EI).

Leaves and benefits for new and expecting parents

The **chart** on the next page lists the main points about ESA leaves and EI benefits.

Leaves and benefits for new and expecting parents

Ontario's Employment Standards Act gives **unpaid** pregnancy and parental **leaves**. Parents can also get **paid** Employment Insurance (EI) maternity and parental **benefits**.

Reason for time off	Who's eligible	Pregnancy leave	EI maternity benefits	Important dates
Pregnancy	<p>People who are pregnant or have just given birth.</p> <p>To take the leave, you worked for the employer for at least 13 weeks before your due date.</p> <p>To get EI benefits, your weekly earnings went down by more than 40%.</p>	<p>Lasts up to 17 weeks.</p> <p>(See page 3 for the special rules about miscarriage and stillbirth.)</p>	<p>You get 55% of your normal salary, up to \$650 a week.</p> <p>Last up to 15 weeks.</p>	<p>Earliest you can:</p> <ul style="list-style-type: none"> • start your leave is 17 weeks before your baby's due date or on the day your baby is born, whichever is earlier • get EI benefits is 12 weeks before your baby's due date or the week your baby is born, whichever is earlier <p>Latest you can:</p> <ul style="list-style-type: none"> • start your leave is on the baby's due date, or on the day your baby is born if they are born early • get EI benefits is 17 weeks after your baby's due date, or 17 weeks after the week your baby is born if they are born early * <p>* To get the full 15 weeks of benefits, apply no later than one week after your baby is due or is born.</p>

Reason for time off	Who's eligible	Parental leave	EI parental benefits	Important dates
<p>Newborn or newly adopted child</p>	<p>To take the leave, you worked for the employer for at least 13 weeks.</p> <p>Applies to any parent of the child, including someone who is:</p> <ul style="list-style-type: none"> • in a "relationship of some permanence" with the parent of the child, and • going to treat the child as their own. <p>To get EI benefits, your weekly earnings went down by more than 40%.</p> <p>Applies to biological parents, parents who adopt, and others who the law sees as parents.</p>	<p>Lasts up to 61 weeks if you gave birth.</p> <p>Lasts up to 63 weeks if you did not give birth.</p>	<p>Standard benefits:</p> <ul style="list-style-type: none"> • 55% of your normal salary, up to \$650 a week • last up to 35 weeks <p>You get an extra 5 weeks if you share with another parent. But no one can take more than 35 weeks.</p> <p>Extended benefits:</p> <ul style="list-style-type: none"> • 33% of your normal salary, up to \$390 a week • last up to 61 weeks <p>You get an extra 8 weeks if you share with another parent. But no one can take more than 61 weeks.</p>	<p>Earliest you can start your leave or get EI benefits is the day your child:</p> <ul style="list-style-type: none"> • is born, or • comes into your care. <p>Latest you can:</p> <ul style="list-style-type: none"> • start your leave is 78 weeks after the day your child is born or comes into your care • apply for EI benefits and get the maximum amount is 16 weeks after the week your child is born or comes into your care

Part 3: Where can I get help and more information?

Contact **your union** or one of the places listed below.

For legal help and advice, contact a **community legal clinic**.

To find the clinic nearest you, visit Legal Aid Ontario's website at legalaid.on.ca/legal-clinics. Or call Legal Aid Ontario at **1-800-668-8258**. For TTY, call **711**.

The **Workers' Action Centre** gives workers free information and advice.

Visit workersactioncentre.org or call their Workers' Rights Information Line at **1-855-531-0778**.

Pro Bono Ontario has a free legal advice hotline that offers 30 minutes of help and advice over the phone.

Visit probonoontario.org/hotline or call **1-855-255-7256**.

The **Ontario Legal Information Centre** offers a free 30-minute meeting with a lawyer by video or by phone. They give legal information and referrals but do not give legal advice.

Visit legalinfocentre.ca/en or call **1-844-343-7462**.

For help with an application to the Human Rights Tribunal of Ontario, contact the **Human Rights Legal Support Centre**.

Visit hrlsc.on.ca or call them at **1-866-625-5179**. For TTY, call **1-866-612-8627**.

For more information and help with EI, contact your **Member of Parliament (MP)**.

Find your MP at ourcommons.ca/en.

For more information on **EI and leaves of absence**, visit stepstojustice.ca/emp-and-work.

This booklet gives only general information. You should get legal advice about your own situation.

Published by:

CLEO (Community Legal Education Ontario/Éducation juridique communautaire Ontario)

With funding from:

Legal Aid Ontario
Department of Justice Canada

CLEO has more free publications on Employment and Work and other legal topics.

We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away.

For our Discard List, or to order or view our publications online, visit cleo.on.ca. You can reach us by phone at **416-408-4420**.

CLEO's **Steps to Justice** website has step-by-step information about common legal problems, including leaves and other workers' rights.

Visit stepstojustice.ca/employment-and-work.



CLEO | August 2023