June 2018

CAUT BriefingNote

EI Parental Sharing Benefit

The federal government announced changes to the Employment Insurance (EI) program in Budget 2018 that have an impact on collective agreements. The Canadian Association of University Teachers (CAUT) recommends that academic staff associations review their agreements and negotiate any changes needed to ensure that members can take advantage of the improved provisions.

The federal budget proposed a new Parental Sharing Benefit (see Table 1). The benefit extends the maximum duration of EI parental leave benefits for two-parent families when both parents take a minimum of five weeks of leave. At the standard benefit rate of 55% of weekly insurable earnings for 12 months, parents will receive an additional 5 weeks of leave if the parental leave is shared. In cases where the parents have elected to take extended parental leave benefits at the lower benefit rate of 33% of weekly insurable earnings, the sharing benefit will extend parental leave by eight weeks. The benefit takes effect in June 2019.

"Use-it-or-lose-it" second parent leaves already exist in several jurisdictions and have been found to increase significantly the percentage of new fathers who take parental leave. For example, over 80% of new fathers in Quebec claim at least the dedicated paternity/same-sex partner benefits available under the Québec Parental Insurance Program. Outside of Quebec, only 12% of new fathers take parental leave.[1]

Encouraging parents to share parental leave has significant benefits for all parents and an important impact on gender equality. Sharing of parental leave affords new mothers greater flexibility in determining

Table 1
Parental Leave Benefit

Benefit*	One parent	Two parent
Regular Benefits 55% (max. $547/week)	35 weeks leave	40 weeks leave (5 weeks min. leave/parent)
Extended Benefits 33% (max. $328/week)	61 weeks leave	69 weeks leave (8 weeks min. leave/parent)

* Percentage of insurable earnings.

1. Lero, Donna S. *Current Stats on Paternity Leave and Fathers' Use of Parental Leave and Income Support In Canada and Québec*. Centre for Families, Work and Well-Being, University of Guelph. June, 2015. The QPIP provides paternity leave benefits for 3 weeks at 75% of insurable earnings or 5 weeks at 70%. This is in addition to parental leave benefits

when to return to work. Fathers who take any parental leave are more likely to share in childcare responsibilities after the leave period has ended; a more equitable division of family responsibilities in turn reduces some sources of inequity in the workplace.[2]

Academic staff associations outside Quebec should negotiate changes to parental leaves in order to allow eligible members to take advantage of the Parental Sharing Benefit. CAUT suggests the following language be added to existing parental leave articles:

Where a member is eligible for the Employment Insurance (EI) Parental Sharing Benefit, the duration of the parental leave available under this article is extended by:

a) five weeks where the member has elected to receive the standard parental benefit of 35 weeks, such that the total parental leave is extended to 40 weeks; or

b) eight weeks where the member has elected to receive the extended parental benefit of 61 weeks, such that the total parental leave is extended to 69 weeks.

During the period of additional parental leave, the employer will pay the difference between any EI benefits received by the member and 100% of the member's nominal salary.

Example:
Muhammed's partner Sophia has just given birth to their child. The couple have decided to share parental leave under the standard benefit plan. Instead of being entitled to collect EI parental benefits at 55% of insurable earnings for 35 weeks, Muhammed and Sophia can now share 40 weeks of benefits.

Muhammed's collective agreement requires his employer to top up EI parental benefits to 100% of salary for 17 weeks. His academic staff association negotiates a new Parental Sharing Benefit article that adds a five week extension to the top-up period for members who take advantage of the Parental Leave Sharing Benefit.

Muhammed decides to take 25 weeks of parental leave. His salary is topped up by the employer for the first 22 weeks of this leave. For the remaining 3 weeks, he receives only his EI benefits. Sophia must take at least five of the remaining 15 weeks of EI parental benefits.

EI & the "working while on a claim" rules

The 2018 federal government also announced in its 2018 budget that the "Working While on a Claim" Pilot Project would be made permanent for those collecting EI for certain reasons, including regular EI, and illness, maternity, parental, caregiver, and compassionate care leave. The new rule will allow persons who are receiving EI to keep a portion of their benefits to supplement income earned from casual or part-time work. Persons on EI who engage in casual or part-time work will be able to choose if they want the default rule or the optional rule to apply.

Under the default rule, persons can keep 50 cents of EI benefits for every dollar earned in wages, up to a maximum of 90% of their previous weekly insurable earnings. Above this cap, benefits are reduced dollar-for-dollar. The "default rule" will automatically apply to a person's EI claim.[3]

Under the "optional rule", persons can keep the equivalent of up to roughly one day's pay (defined as $75 or 40% of their benefit rate, whichever is greater) without any deduction from their EI benefits. Any amount earned above this amount will be deducted dollar-for-dollar from their benefits.[4]

The choice as to which rule to invoke while on EI will be an individualized calculation. Members should be advised to calculate how much income they would retain under each rule and to contact Service Canada if they require assistance.

2. International Labour Association. *Maternity and Paternity at Work: Law and Practice across the World.* 2014, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf

3. Service Canada, March 8, 2018, https://www.canada.ca/en/employment-social-development/programs/ei-list/ei/working-while-claim.html#2

4. Ibid.

The income caps above are based on a percentage of maximum weekly insurable earnings rather than on an employee's actual salary. At the 2018 rates, the maximum that an employee could take home is $895 per week under the default rule or $766 per week under the optional rule before benefits are reduced dollar-for-dollar.

Due to these low caps, the Working While on Claim program is an inadequate substitute for fully-paid illness, pregnancy, parental, and caregiver leaves. However, associations that are not currently in a position to negotiate employer top-ups to 100% of salary for the full duration of these leaves may consider whether their members could benefit from terms that would allow them to elect to work on a reduced load during the unpaid portion. In addition, while members should never be pressured to work while on a leave, some academic staff may desire to work part-time if they can do so on terms that allow them to balance their professional work with their parenting or caregiving responsibilities. Associations may wish to explore possibilities for negotiating appropriate reduced load arrangements for members who want them.

In some cases, existing collective agreement language may not make it possible for a member to request a reduced workload while receiving EI, or there may be some other hindrance to taking advantage of less than full-time work while on leave. Language allowing temporary workload reductions should be constructed in order to allow members to take advantage of their legal ability to work while on a leave and/or EI. In particular, associations should ensure that collective agreement language allows for benefits to continue while a member is working at a reduced workload and receiving EI, and that members who take advantage of this option are treated equitably in terms of career progress, evaluation, seniority, and any other entitlements related to years of service.

Associations that represent contract academic staff (CAS) should also consider the impact that the Working While on Claim program may have on CAS members, whose income and workload may vary throughout the year and who frequently experience periods of unemployment. For example, a CAS member who regularly teaches courses only during the fall and winter terms and earns a much smaller amount from part-time work during the summer may now be able to keep more of that income while receiving EI benefits.

Associations that represent CAS should inform their members that the new Working While on Claim rules may affect them and encourage these members to consult with Service Canada. In addition, associations must protect members' EI eligibility and ensure that the hours of work reported on each member's Record of Employment (ROE) adequately capture the amount of time required to do the job (see CAUT Bargaining Advisory No. 37 *"Deemed Hours" for Employment Insurance Benefits).*

Example: Default rule

Ava needs a six month leave of absence to take care of her terminally ill mother. She qualifies for 26 weeks of EI compassionate care benefits. Ava's collective agreement does not provide paid compassionate care leave. Ava also wants to remain engaged with professional activities that are important to her.

Ava arranges to teach a one-semester course and to keep serving on the university's Truth and Reconciliation Action Committee during her compassionate care leave. She also arranges respite care so she can spend one afternoon per week on her research. Ava, her association, and her Dean agree that this represents 25% of her normal workload and that her salary will be pro-rated.

Ava's normal salary is $104,000, or $2000 per week. During her reduced load, she will earn $500 per week. Ava's normal salary is above the maximum insurable earnings limit of $51,700, so her insurable earnings are $994 per week.

Ava calculates that she will earn more under the default rule. During each week of her leave, Ava can take home her salary of $500 and the following EI benefit:

EI maximum benefit = $547 (55% of insurable earnings)

Default rule	Retained EI benefit	Total*
Ava keeps 50 cents of EI benefits for every dollar she earns in wages, up to 90% of her weekly insurable earnings.	$297	$797

Optional rule	Retained EI benefit	Total*
Ava can earn up to 40% of her benefit level ($219). Everything above that is deducted from her EI benefit.	$266	$766

* Total = $500 + retained EI benefit.

Example: Optional Rule
Chris is a sessional instructor, who during the fall and winter semesters, taught five one-semester courses and earned $33,000, averaging $943 per week in insurable earnings. In accordance with the agreement negotiated with the academic staff association, Chris' employer reports 230 hours per course for EI purposes, so Chris meets the regional qualification hours for EI.

During the summer semester, Chris is only able to find retail work for 20 hours per week at $12.50/hour, or $250 per week.

Chris calculates that more will be earned under the optional rule. During the summer, Chris can take home weekly wages of $250, plus:

EI maximum benefit = $547 (55% of insurable earnings)

Default rule	Retained EI benefit	Total†
Chris keeps 50 cents of EI benefits for every dollar earned in wages, up to 90% of weekly insurable earnings.	$394	$497

Optional rule	Retained EI benefit	Total†
Chris can earn up to the equivalent of 40% of the benefit level in wages ($208). Everything above that is deducted from the EI benefit.	$497	$747

† Total = $250 + retained EI benefit.

Conclusion

Adequate paid leave and flexible working arrangements for employees with parenting and caregiving responsibilities are essential to realizing equity in the workplace. The Employment Insurance program provides limited income protection for employees who take pregnancy, parental, and caregiving leaves and for precarious workers experiencing periods of un- or underemployment. Collective agreements may supplement Employment Insurance to provide additional protection for members. Associations should review the announced changes and their existing collective agreement language with a view to negotiating any necessary improvements.