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Via email: Jean-Yves.Duclos@parl.gc.ca

The Honourable Jean-Yves Duclos, P.C., M.P.
Minister of Families, Children and Social Development
House of Commons
Ottawa, ON K1A 0A6

Dear Minister Duclos:

Re: Employment Insurance extended parental benefits

I am writing on behalf of the Canadian Bar Association Labour and Employment Law Section (CBA Section) with respect to Employment Insurance (EI) extended parental benefits. Employees may make an irrevocable choice about the level of parental benefits they will receive, without realising that they may not be entitled to a corresponding length of parental leave under provincial or territorial employment standards legislation.

The CBA is a national association of over 36,000 lawyers, law students, notaries and law teachers. Among our primary objectives are improvements in the law and the administration of justice, and promoting the rule of law. The CBA Section includes both lawyers who act for unions and who act for employers. The Section addresses issues related to law and practice affecting labour-management relations and employment standards.

As of December 2017 EI claimants may choose to receive parental benefits over a longer period at a reduced rate of 33% of average weekly earnings rather than 55% of average weekly earnings. The parental benefit is available "in accordance with the election under section 23" for 35 or 61 weeks (section 12(3)(b) of the *EI Act*). When claimants begin their parental benefit, they elect the time period for the benefit. Section 23 stipulates that this election is irrevocable once the benefits have started:

Election by claimant

(1.1) In a claim for benefits made under this section, a claimant shall elect the maximum number of weeks referred to in either subparagraph 12(3)(b)(i) or (ii) for which benefits may be paid.

Irrevocability of election

(1.2) The election is irrevocable once benefits are paid under this section or under section 152.05 in respect of the same child or children.

The *EI Act* stipulates only the period of benefits a parent may access, not the period of leave employees are entitled to take from work. However, to access the full 61 weeks of parental benefits, a parent must take at least 62 weeks of leave (taking into account the one week waiting period before EI benefits start).

The *Canada Labour Code* now allows employees covered by the federal legislation to take up to 63 weeks of parental leave. However, the vast majority of employees in Canada fall under provincial or territorial employment standards legislation. Only Newfoundland, New Brunswick, Ontario, Manitoba and British Columbia have amended their parental leave provisions to entitle employees to parental leave for the full duration required to access the 61 weeks of extended parental benefits, and there is draft legislation in Quebec. In other provinces and territories, employees can take this length of parental leave only if their collective agreement provides for, or their employer otherwise agrees to, an extended leave.

If an employee makes an irrevocable election for 61 weeks of parental benefits and then discovers their employer will not grant them 62 weeks of parental leave, the employee will receive parental benefits at the 33% level, but for a shorter time period. If they return to work after 37 weeks of leave (the period of leave permitted in employment standards legislation in many jurisdictions), they will miss out on a considerable portion of EI parental benefits that they cannot recover.

Most employees are likely not aware that their employer may deny their request for a 62 week parental leave in jurisdictions where the employment standards legislation does not provide for this extended period.

We urge the federal government to clearly inform claimants, at the time they make their election for a lower rate of benefits over an extended period, that not all provinces and territories have enacted legislation that permits a corresponding duration of leave.

Please let us know if you require any clarification of this issue. We look forward to receiving your response.

Yours truly,

(original letter signed by Sarah MacKenzie for Gail Gatchalian)

Gail Gatchalian
Chair, CBA National Labour and Employment Law Section