

TOPPING UP OR TAPPING OUT?

By *Jennifer Paterson*

The government's move to extend parental leave benefits to 18 months means employers with top-up programs have some decisions to make as they face the possibility of added costs.

While the federal government's plan to extend parental benefits under the employment insurance program to 18 months is a welcome move for some working parents, it could create a number of issues for employers that provide top-up programs to their staff.

PARENTAL BENEFITS FOR FEDERAL GOVERNMENT EMPLOYEES

Employees who work for the federal government receive a top-up benefit of 93 per cent of earnings for 52 weeks, even during the waiting period for employment insurance, according to the most recent collective agreement with the Public Service Alliance of Canada. The leave and benefits provisions are consistent across every department in the core federal public service.

The collective agreement doesn't yet reflect the extension of employment insurance benefits to 18 months. "Any changes to maternity and/or parental leave provisions in collective agreements could only be discussed with bargaining agents once legislative changes to EI have received royal assent and are in force," the Treasury Board's media relations office stated in an email to *Benefits Canada*.

With the potential to create added costs and administrative complexities, the change to a longer benefit period could present a threat to top-up programs, according to Rachel De Grâce, manager of advocacy and legislative content at the Canadian Payroll Association. "Employers, unless they're bound by a collective agreement, don't have to offer a top-up plan. We feel going to 18 months at lower EI benefits is going to discourage employers from either introducing or maintaining their top-up plan."

The cost of topping up

The federal government's changes allow parents to choose between the existing employment insurance rate — 55 per cent of average weekly earnings for 12

months — and 33 per cent over the extended period.

At Raymond James Ltd., an investment firm with 1,000 staff across Canada, the top-up program boosts the replacement rate to 70 per cent for 17 weeks.

"The actual cost of the top-up program is the increment between the 55 and the 70 per cent," says Deborah Best, vice-president of human resources, noting the organization is likely to reduce its top-up benefit to provide for about 50 per cent of earnings for employees who choose the 18-month option.

The simplest solution for employers is to mirror the federal program by offering the same amount of top-up benefit but spread over 18 months, says Sheila Block, senior economist at the Canadian Centre for Policy Alternatives. "If they mirror the federal program, then that's a way to extend the benefit without increasing the cost."

Another option would be to continue the current top-up rate for the traditional 12 months and then amend the coverage for the rest of the leave, says Nora Spinks, chief executive officer of the Vanier Institute of the Family. In that scenario, an employer could choose to offer no top-up benefit for the final six months.

The costliest option, of course, is to offer the same top-up benefit for the full 18 months. Consider, for example, an employer that offers a 90 per cent top-up benefit for 12 months. Where it previously paid 35 per cent to close the gap between the 55 per cent employment insurance rate and its own benefit, the cost would jump to 57 per cent to cover those taking 18 months of leave at 33 per cent of earnings from the government program. "Not only would they be topping up a greater percentage but they'd be topping up that amount for potentially the full 18 months," says De Grâce.

Contractual complexities

Typically, employee contracts, handbooks or workplace policies outline the provisions for top-up programs. In unionized environments, collective agreements set out the rules. De Grâce says she has seen top-up plans that don't reference a specific period of time. "It simply says: 'You are entitled to a top-up of up to 100 per cent of your pre-leave salary.' So the legal interpretation of that might hold the employer responsible for topping up at the higher rate for a longer period of time."

Elizabeth Reid, an employment lawyer at Boughton Law Corp. in Vancouver, says the majority of contracts she has seen have a set time frame but she agrees that more general provisions will create legal problems. "It's a good opportunity for people to review their policies," she says.

Another impetus to revisit policies is the fact that the federal changes, as noted by many critics, don't necessarily help all employees, given that low- and middle-income workers are unlikely to be able to afford to stretch the same employment insurance benefits across 18 months. "Depending on the industry, I think the very individualistic kind of solution that this appears to be could very well create contractual problems in the workplace, in terms of differentiated benefits possibly being preferred by different categories of workers, and typically it is lower- and medium-paid workers who are more likely to not be able to take advantage of this," says Kathleen Lahey, a law professor at Queen's University.

In the case of Raymond James, Best says it will have to amend its documentation and wording once the government finalizes its legislation. "As soon as we see the EI wording, we'll amend our documentation and wording to read similar, in terms of the process."

Additional costs

In addition to topping up employment insurance benefits, some employers also take responsibility for employee contributions to retirement savings and health benefits plans during parental leave. "We have seen collective agreements and company policies that do provide for that," says De Grâce.

"So we feel that, although the government doesn't get involved with the employer-employee negotiations around benefits, here they are coming in and changing the ground upon which these benefits were negotiated."

Companies will have to adjust their administrative processes as well, since most top-up plans align with the payroll system based on the employment insurance level of 55 per cent, adds De Grâce. "Because this would be a choice for each employee, they would have to notify the employer . . . and the internal programming would have to be adjusted accordingly."

Ultimately, some critics of the government's parental benefits extension say that if the priority is to provide flexibility to working parents, the coming changes are the wrong solution. "The real solution is improving every form of funding and support for childcare, and it should be done as a matter of real urgency," says Lahey.

"The more women in paid work, the more tax revenue the government gets," she adds. "And it also means that women themselves will need fewer income support payments during their working lives and during their retirement years." 

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LATEST FIGURES ON TOP-UP PROGRAMS

262,000

Number of employed new mothers who reported receiving paid maternity and/or parental leave benefits through employment insurance and the Quebec Parental Insurance Plan

51,000

Number of employed new mothers who received an employer top-up benefit

19 weeks

Average length of employer top-up programs

80%

Percentage of employed new mothers receiving top-up benefits whose payments were for less than six months

8%

Percentage of employed new mothers in the private sector who received an employer top-up benefit, compared with 48% in the public sector

Source: Statistics Canada report on employer top-up programs, 2010

