



# *Session 44*

*Employment law 4*

*Leave and rights*

## *Paternity leave and conditions*

Paternity leave concerns absence from work on leave for the purpose of caring for the child or supporting the mother.

During and after paternity leave, the employee is entitled to benefit of the terms and conditions of employment which would have applied if he had not been absent. The employee is bound by obligations arising under those terms and conditions.

- Canada: replaced by parental leave ranging from 12 to 52 weeks combined unpaid leave i.e. paternal and maternal
- Switzerland: paid leave 1 day on childbirth in addition to 5 days to be taken within 3 months from childbirth.

## *Maternity leave and conditions*

During maternity, pregnant women and the mothers who breast-feed can not be occupied without their assent. On simple notice, pregnant women can leave work. Further, mothers who breast-feed must be given time necessary for the feeding.

Employers are required to avoid risks by altering working conditions or hours of work. If this is not feasible, the employer can suspend the employee from work for so long as is necessary to avoid such risk.

## Maternity leave and conditions (cont.)

- Canada: the length of leave is generally 17 or 18 weeks – 15 weeks of which are paid by the Employment Insurance (EI), in addition to unpaid parental leave up to 52 weeks.
- Switzerland: mothers can not be occupied during the 8 weeks which follow childbirth; then, and until the 16th week, they can be occupied only if they agree to it; during the 8 weeks which precede childbirth, pregnant women can not be occupied between 20 o'clock and 6 o'clock (LTr, art 35a): the employer has to propose an equivalent work between 6 o'clock and 20 o'clock (this obligation also applies for period among the 8th and the 16th week after the childbirth).

## *Respect of the employee*

Employers need to protect, respect, within the working relations, the personality of the worker. Employers need to show consideration towards the health of employees and seek to maintain high moral standards.

In particular employers need to ensure that workers are not sexually harassed, and that they do not face discrimination under such circumstances.

## Discrimination

Discrimination is prohibited on a number of grounds that include age; ancestry; citizenship; color; ethnic origin; family and marital status; language; mental and physical disability; pardon for record of offences; pardoned conviction; place of origin; political beliefs; race; record of conviction; religion or creed; same-sex partnership status; sex; sexual orientation; social condition; source of income.

Prohibited grounds for discrimination must be respected not only on the job but also in employment interviews, hiring practices and advertisements. Thus, only job-related requirements – bona fide occupational requirements, can be used for selecting employees with the additional limitation of the duty to accommodate i.e. that the requirement does not have an adverse effect on a social group.

## *Pay equity*

Pay equity aims at reducing the disparity in wages (LEg art 1; PE, s. 4(1)) by the adoption of two approaches:

- Equal pay for equal work: male and female employees are paid the same wage for work requiring similar levels of skill, effort and responsibility.
- Equal pay for work of equal value: wages are based on new job descriptions that must be gender neutral where the value of work is calculated on the basis of skill, effort, responsibility, and working conditions.

# Harassment

Harassment can be defined as a course of vexatious (abusive or distressing) comment or conduct that is known or ought reasonably to be known to be unwelcome. Types:

- Sexual harassment can be seen as a form of discrimination, involving relationships of unequal power and contains elements of coercion, but it may also involve relationships among equals
- Racial harassment may be seen as a hostile or offensive act or expression by a person or group of one racial or ethnic origin against a person or group another, or incitement to commit such an act, on racial grounds



There are other forms of harassment, which can cause misery for those who suffer them: intimidation, threats, abuse or victimization, insults or ridicule about a person's work attitudes, character or personal life, derogatory remarks concerning personal or physical characteristics or appearance, persistent teasing, and constant unfounded criticism of the performance of work tasks.