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Parental leaves for parents of twins

Board allows both parents in multiple birth families to receive coverage

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The Employment Insurance Board of Referees recently released a groundbreaking decision with the potential to help thousands of families dealing with the formidable challenges of caring for multiple newborns.

In what has come to be known as the "twins case," (*Martin v. Canada Employment Insurance Commission*, Board of Referees No. 09-0129, Sept. 14, 2009, unreported) the board acknowledged that both parents in multiple birth families experience an interruption of earnings as a consequence of their children's births and therefore can both receive up to 35 weeks of employment insurance (EI) parental leave coverage. For years, the Employment Insurance Commission, which manages the EI system, maintained as public policy that parents of multiples could at most split one 35-week parental leave claim.

In practical terms, in the case of multiples, this interpretation meant that one parent would generally be forced to work and the other would bear the entire burden of child care for multiple newborns. As industrialized countries appreciate more and more the importance of facilitating meaningful child care, the twins case is a genuine highlight for parental leave policy in Canada.

In late April, Christian Martin became the father of twin girls. It was his expectation that, like his wife, he too could claim parental leave benefits to care for one of the daughters. Martin and his wife, Paula Critchley, had been employed full-time for years and had paid the maximum in EI premiums. It stood to reason, for Martin, that when it came time for him to reasonably absent himself from work, such as in the case of the twin birth, that he would be entitled to an EI benefit.

Martin took a leave of absence and applied for EI benefits. His claim was denied on the basis that the *Employment Insurance A*ct only recognized one 35-week parental leave claim resulting from a "single pregnancy" irrespective of whether there are multiple children for whom each parent could make a claim. As Critchley had already been awarded a 35-week claim, Martin could not ask for anything more.

Martin appealed to the board to remedy what he felt was an incorrect interpretation of the Act, one which resulted in unfairness to parents of multiples.

In allowing Martin's appeal, the board recognized the enormous challenges involved in caring for two newborns. The board asked whether Martin qualified for a 35-week benefit period given the wording of s. 12(4) of the Act, which provides that "The maximum number of weeks for which benefits may be paid... for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is 35."

The board found that the Act is structured to benefit individual "claimants" who have paid premiums for insurance coverage. For instance, s. 12(1) speaks of benefit periods "for a claimant" and benefits paid "to a claimant." Ultimately, the Board decided that although s. 12(4) of the Act does not specifically refer "to a claimant" but rather a "single pregnancy," the only reasonable interpretation of this section is that each eligible claimant (i.e. parent) is entitled to a maximum 35 weeks of insurance coverage for one or more children resulting from a single pregnancy.

In reaching their conclusion, the board appreciated that the central concern of the Act, with respect to parental leave, is to address the interruption of earnings experienced by claimants as a natural consequence of the birth of children. This consideration is significant because it acknowledges the substantial responsibilities naturally arising for both parents in providing care to their newborn(s): the presence of the

added responsibilities of twins compelled an interpretation of the Act that enabled Martin and Critchley to care for their additional child.

In assessing the potential effects of this decision, it is important to highlight the limitations inherent in the Act. Where three or more children are born, both parents will still be limited to personal maximums of 35 weeks of parental leave benefits. The Act does not address the economic costs of newborns, but simply recognizes that two eligible claimants (the parents) each get a claim because of the presence of two interruptions in earnings. And, as the Act is an insurance scheme, only eligible claimants will be allowed to make a claim (that is, people who have worked the requisite hours before the birth).

Despite those limitations, for parents of multiples, the ability to have both parents at home for up to 35 weeks to juggle the significant demands of twins, triplets or more, represents a truly meaningful step forward for parental leave policy in Canada.

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