

Taking parental leave? You have options!



Planning for parental leave might seem overwhelming when you are thinking about leaving your practice for an extended period, particularly if you've never taken leave before. You may have questions about the process of taking time off and how this will impact your professional liability insurance. Do I still pay premiums? What if someone steps in to handle my files? Can I still do legal work while on leave? What happens when I return to practice? What can go wrong with my files while I'm on leave? Below are answers to some of the more frequent questions you may have about your professional liability insurance.

Exemption from payment of insurance premium levies

Lawyers going on parental leave may be eligible for exemption from payment of insurance premium levies, if for the applicable period they:

1. will not engage in the practice of law in Ontario;
2. are on a temporary leave of absence (which may be up to 5 years for family or illness related reasons); or
3. are acting only as estate trustees, trustee for *inter vivos* trusts, or attorney for property who will not otherwise engage in the practice of law in Ontario.

Lawyers who claim an exemption under category (1) or (3) as described above are provided with Run-Off Insurance (standard limit being \$250,000 per claim and in the aggregate) at no charge, including Innocent Partner Coverage. See the 2015 Professional Liability Insurance for Lawyers Program Guide for details on eligibility criteria and coverage.

Lawyers who apply for the category (2) temporary leave exemption (e.g., parental leave) at the outset of the policy year are provided with the full limit coverage of \$1 million per claim/\$2 million in the aggregate provided under the base program.

Exempt lawyers can also apply to increase their insurance coverage by:

- increasing or “buying-up” their Run-Off Coverage limits;
- increasing their Innocent Party Coverage Sublimit;
- securing Excess Insurance Coverage; or
- purchasing the standard insurance coverage.

Locums

A *locum* is a lawyer who stands in for another practitioner while he or she is away from his or her practice, whether for parental or any other type of leave. It is the *locum's* responsibility to ensure they have E&O coverage that properly accommodates their *locum* work, as well as their own law practice. The *locum's* policy coverage would respond to claims arising from *locum* work. Under LAWPRO's optional Excess program, *locums* and their *locum* work would be expected to have coverage under the excess policy carried by the “contracting firm” (the firm that hires the *locum*). How *locums* are treated under excess policies will differ depending on the insurer. If planning on taking a temporary leave of absence, lawyers should confirm what, if any, excess coverage is available through their firm and if the

policy extends coverage to firm lawyers on leaves of absence.

Pro Bono work

In general, lawyers under exemption cannot provide professional services while on leave. They may, however, do certain *pro bono* legal work while under exemption. If the lawyer has applied for exemption and also provides *pro bono* professional services through a LAWPRO approved PBLO program¹, the policy would apply to *pro bono* professional services the insured provides while on exemption.

If you provide *pro bono* professional services for a not-for-profit organization (not associated with one of the approved PBLO programs), you should contact LAWPRO as you may qualify for exemption. However, unlike the LAWPRO approved PBLO programs, you will not be insured for these *pro bono* professional services.

Part Time Practice Option

Practicing on a part time basis may appeal to lawyers wishing to ease back into practice from parental leave. Lawyers eligible for the Part Time Practice Option benefit from a discount equal to 50 per cent of the base premium, up to a maximum of \$1,675, and still receive the standard coverage.

¹ For a list of LAWPRO approved PBLO programs: lawpro.ca/insurance/pdf/LawPRO_approved_ProBonoProjects.pdf

The Part Time Practice Option is available to lawyers who:

- restrict their practice to 20 hours per week on average for each week actually worked and 750 hours per year of “professional time”;
- have gross billings of \$75,000 per year or less; and
- have not reported a claim under the LAWPRO liability insurance program with a repair and/or indemnity payment in the last five years.

Common claims relating to parental leaves and how to avoid them

The claims experience shows that lawyers taking extended leaves of absence face increased vulnerability to claims as a result of inadequate file supervision or transfer procedures and missed deadlines.

Develop and follow procedures for seamless transfer of files

Failing to follow firm file transfer procedures can lead to unnecessary confusion. For example, when a lawyer went on maternity

leave she inadvertently left one of her files off her list of files to be redistributed. A status notice arrived at her office and the office receptionist forwarded the notice to another lawyer in the office. The other lawyers in the office ignored the status notice and eventually an Order Dismissing the Action for Delay arrived at the office.

Not all files will be in perfect order at all times and occasionally lawyers procrastinate tackling burdensome files. When going on leave, make sure to be frank with the successor lawyer or the lawyer who will be assigning the files as to why the matter is in the state that it's in, and what steps need to be taken.

Write detailed file transfer memos

Disorganized files can result in important details being missed. For instance, a lawyer had been negotiating a tolling agreement with opposing counsel. The terms of the agreement were oral or contained in emails that the lawyer had printed and placed on the correspondence spike but not diarized. The first lawyer's undertaking wasn't identified by the firm, the terms of it were breached and significant damages resulted. A good practice is to include a detailed file transfer memo to each file.

Ensure employees are appropriately supervised

In another unfortunate instance, a lawyer on leave let her office remain open while the lawyer's long time clerk handled all of the real estate transactions on her behalf. The lawyer allowed the clerk to use the lawyer's Teraview® Personal Security Package (PSP), sign the lawyer's name on documents or cheques, and conclude numerous real estate transactions in the lawyer's absence. Besides being a clear contravention of the *Rules of Professional Conduct*, this put the clients at serious risk.

Lawyers should not be relying solely on staff to handle files in their absence: At the end of the day it is the lawyer who will be facing a malpractice claim.

The good news

With the proper planning and the right coverage in place, you can manage the risks of claims associated with extended leaves of absence and enjoy a less stressful parental leave. ■

Bayly Guslits articulated at LAWPRO in 2014-2015.

Parental leave preparation checklist

- Ensure that your tickler system is effective, is being populated properly, and that staff have been well-trained in the use of the system.
- Consider using your tickler system or the “inactivity reports” or warnings that many law office accounting or practice management programs have to identify files in which nothing has happened for a specified period of time.
- Train staff to recognize status notices, and to bring them to the attention of counsel without delay.
- Ensure junior lawyers, clerks and staff are appropriately supervised; and pay attention to signs that suggest they are overwhelmed and at risk of missing deadlines.
- Be prepared for a planned parental leave by already having an action plan in place for unexpected work interruptions or emergencies.
- Keep your office and files organized so that the lawyer(s) taking over your files in your absence will be able to locate the information they need and understand what work remains to be done.
- Draft detailed file transfer memos that explain any upcoming limitation dates or other important dates in the file.
- Communicate with your clients about your absence well in advance. Tell them who will be handling their file while you are away. Put this conversation in writing, either in a letter or detailed notes to file.
- If you are going to be covered by Run-Off insurance while on leave, consider buying-up your coverage.
- Confirm your firm's excess insurance coverage will extend to you during your leave.
- If there is the potential for a malpractice claim, contact LAWPRO promptly.