

Letter of Understanding

Between

The University of Victoria

And

The University of Victoria Faculty Association

Re: Parental Leave: Shared Supplementary Top-Up Benefit

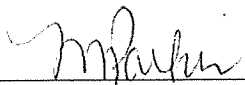
Whereas the Collective Agreement ss. 38.6, 38.9, 38.10 and 38.15 have required Members who are birth parent and co-parent to share the Supplementary Top-Up benefit;

And whereas the Parties have recognized recent caselaw suggesting this may be discriminatory;

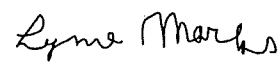
The parties hereby agree that:

Article 38 (Maternity, Parental and Adoption Leave) shall be amended, effective April 1, 2022, to read as indicated in Schedule A to this Letter of Understanding.

SIGNED this 16th day of May 2022.



Michele Parkin
Associate Vice-President
Faculty Relations and Academic Administration
University of Victoria



Dr. Lynne Marks
President
University of Victoria Faculty Association

38. Maternity, Parental and Adoption Leave

- 38.1 This Article applies to the following categories of Members who are referred in this Article as "Eligible Members":
- a) Faculty Members who hold a Regular Academic Appointment;
 - b) effective July 1, 2020, Faculty Members with Limited-Term appointments of at least one year in duration with at least 0.8 FTE;
 - c) Members who hold a Regular Librarian Appointment;
 - d) effective July 1, 2020, Librarians with Limited-Term appointments of at least one year in duration with at least 0.8 FTE.
- 38.2 University supplementary top-up benefits described in this Article are contingent on the Member applying for the maximum Employment Insurance ("EI") benefits available to the Member under the *Canada Employment Insurance Act*, and all leaves are subject to the provisions and regulations of both the *BC Employment Standards Act* and the *Canada Employment Insurance Act*. The relationship between University supplementary top-up benefits and EI benefits is described in s. 38.4.

Maternity and Parental Leave: Birth Mother

- 38.3 An Eligible Member who is the birth mother of a newborn child is entitled to the following types of leave and supplementary top-up benefits.
- 38.4 The birth mother is entitled to 17 consecutive weeks of Maternity Leave from the University. The Leave can commence up to 12 weeks before the expected birth date, but no later than the actual birth date.
- 38.4.1 During the first one week of leave (which is the waiting period for Employment Insurance benefits) the University will pay the Eligible Member a University supplementary top-up benefit equal to 95% of the Member's regular salary, providing the Member has made application for EI maternity benefits.
- 38.4.2 During the remainder of Maternity Leave, to a maximum of 16 weeks, the University will pay the Eligible Member a University supplementary top-up benefit equal to 95% of the Member's regular salary, less any amount of EI maternity leave benefits for which the Member is eligible.
- 38.4.3 Further unpaid Maternity Leave of up to six consecutive weeks will be granted where the birth mother is unable to return to work for reasons related to the birth, as certified by a qualified medical practitioner.
- 38.5 The birth mother is entitled to 61 consecutive weeks Parental Leave from the University beginning immediately after the end of the Maternity Leave.
- 38.5.1 During the first 18 weeks of Parental Leave the University will pay the birth mother a University supplementary top-up benefit equal to 95% of the Member's regular salary, less any amount of EI parental benefits for which the Member is eligible.

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- 38.5.2 The remaining 43 weeks of Parental Leave are without pay from the University, however the birth mother may be eligible for continued Employment Insurance parental benefits during this period.
- 38.5.3 For the last week of Parental Leave, regardless of the length of Parental Leave chosen, the Member will receive from the University the equivalent of one week at 55% of average weekly EI insurable earnings to reflect the one-week reduction in the EI benefit waiting period.
- 38.5.4 Where a Member is eligible for the Employment Insurance (EI) Parental Sharing Benefit, the duration of the Parental Leave available under this Article is extended by:
- a) five weeks where the Member has elected to receive the standard parental benefit of 35 weeks, such that the total Parental Leave is extended to 40 weeks; or
 - b) eight weeks where the Member has elected to receive the extended parental benefit of 61 weeks, such that the total Parental Leave is extended to 69 weeks.
- 38.5.5 In special cases where a child has a physical, psychological or emotional condition certified by a qualified medical practitioner and requires an additional period of parental care, Parental Leave without pay may be provided for up to five additional weeks beginning immediately after the end of the Parental Leave.
- 38.6 The birth mother and co-parent as defined in s. 38.8 can share the 61 weeks of EI parental benefits (69 weeks if eligible for EI Parental Sharing Benefit). ~~Where the co-parent is also an Eligible Member, the birth mother may assign one or more weeks of the 18-week University supplementary top-up benefit to the co-parent, providing the co-parent also applies for the EI parental benefits during this period.~~
- 38.7 The total number of weeks of Maternity Leave with a University supplementary top-up benefit, Parental Leave with a University supplementary top-up benefit, and Parental Leave without pay for a birth mother is limited to 78 weeks, unless extended under s. 38.4.3 and s. 38.5.5.

Parental Leave: Co-Parent

- 38.8 For the purposes of this Article, "co-parent" means the birth father of a newborn child or another person who is recognized by the birth mother of a newborn child as her life partner and who will act as a parent in relation to the child, but excludes an adoptive parent. An Eligible Member who is the co-parent of a newborn child is entitled to the following types of leave and supplementary top-up benefits.
- 38.9 The co-parent is entitled to 62 consecutive weeks Parental Leave of absence from the University that may be taken anytime within 18 months of the birth.
- 38.9.1 During the first one week of leave (which is the waiting period for Employment Insurance benefits) the University will pay the Eligible Member a University supplementary top-up benefit equal to 95% of the Member's regular salary, providing the Member has made application for EI Parental Leave benefits.
- 38.9.2 During the remainder of Parental Leave, to a maximum of 16 weeks, the University will pay the Eligible Member a University supplementary top-up benefit equal to 95% of the Member's regular salary, less any amount of EI maternity leave benefits for which the Member is eligible.

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~~Where the birth mother is not an Eligible Member, or where the birth mother has assigned all parental University supplementary top-up benefits to the co-parent under s. 38.6, then during a period not exceeding the first 18 weeks of Parental Leave benefits, the University will pay the co-parent a University supplementary top-up benefit equal to 95% of the Member's regular salary, less any amount of EI parental leave benefits for which the Member is eligible.~~

38.9.2 ~~Where the birth mother is an Eligible Member and assigns a portion of the parental University supplementary top-up benefits to the co-parent under s. 38.6, then for the portion of the 18 weeks assigned, the University will pay the co-parent a University supplementary top-up benefit equal to 95% of the co-parent Member's regular salary, less any amount of EI parental leave benefits for which the Member is eligible.~~

38.10 ~~Where the birth mother is an Eligible Member who has opted to take all of the parental University supplementary top-up benefit then any Parental Leave of absence taken by the co-parent will be without pay for a maximum period of 43 weeks within the 18 months after the child's birth. In special cases where a child has a physical, psychological or emotional condition certified by a qualified medical practitioner and requires an additional period of parental care, Parental Leave without pay may be provided for up to five additional weeks beginning immediately after the end of the Parental Leave.~~

~~38.11~~ 38.9.3 Where a Member is required to serve the one-week waiting period for Employment Insurance parental benefits, for the last week of Parental Leave, regardless of the length of Parental Leave chosen, the Member will receive from the University the equivalent of one week at 55% of average weekly EI insurable earnings to reflect the one-week reduction in the EI benefit waiting period.

~~38.12~~ 10 Where a Member is eligible for Employment Insurance (EI) Parental Sharing Benefit, the duration of the Parental Leave available under this Article is extended by:

- a) five weeks where the Member has elected to receive the standard parental benefit of 35 weeks, such that the total Parental Leave is extended to 40 weeks; or
- b) eight weeks where the Member has elected to receive the extended parental benefit of 61 weeks, such that the total Parental Leave is extended to 69 weeks.

~~38.11~~ In special cases where a child has a physical, psychological or emotional condition certified by a qualified medical practitioner and requires an additional period of parental care, Parental Leave without pay may be provided for up to five additional weeks beginning immediately after the end of the Parental Leave.

Parental Leave: Adoptive Parents

~~38.13~~ 12 An Eligible Member who is a parent of a newly adopted child is entitled to the following leave and supplementary top-up benefits.

38.1413 An adoptive parent is entitled to 62 consecutive weeks Parental Leave from the University that may be taken anytime within one year after the child is placed with the parent.

38.143.1 During the first one week of leave (which is the waiting period for Employment Insurance benefits) the University will pay the Eligible Member a University supplementary top-up benefit equal to 95% of the Member's regular salary, providing

the Member has made application for EI parental leave benefits for a period of at least 18 weeks.

38.14~~3~~.2 During the next 17 weeks Parental Leave the University will pay the Eligible Member a University supplementary top-up benefit equal to 95% of the Member's regular salary, less any amount of EI parental benefits that the Member is eligible for.

~~38.15~~ Where both adoptive parents are Eligible Members, they may divide the 18 weeks of University supplementary top-up benefits provided in s. 38.14. Where the parents share parental EI benefits, only a one-week waiting period must be served.

38.16~~4~~ The remaining 44 weeks of Parental Leave are without pay from the University to be taken within 18 months after the child is placed with the parent; however, an adoptive parent may be eligible for continued EI parental benefits during this period.

38.17~~5~~ Additional Parental Leave without pay may be provided to parents of an adopted child for a maximum of five additional weeks, which can be taken in any combination before the commencement or after the end of Parental Leave. This additional leave may not be unreasonably withheld.

38.18~~6~~ Where a Member is required to serve the one week waiting period for Employment Insurance parental benefits, for the last week of Parental Leave, regardless of the length of Parental Leave chosen, the Member will receive from the University the equivalent of one week at 55% of average weekly EI insurable earnings to reflect the one-week reduction in the EI benefit waiting period.

38.19~~7~~ Where a Member is eligible for Employment Insurance (EI) Parental Sharing Benefit, the duration of the Parental Leave available under this Article is extended by:

- a) five weeks where the Member has elected to receive the standard parental benefit of 35 weeks, such that the total Parental Leave is extended to 40 weeks; or
- b) eight weeks where the Member has elected to receive the extended parental benefit of 61 weeks, such that the total Parental Leave is extended to 69 weeks.

Employment Insurance Act and Supplementary Top-Up Benefits

38.20~~18~~ All University supplementary top-up benefits payable by the University under this Article must in be accordance with the plan that has been filed by the University with Canada Employment and Social Development Canada pursuant to the *Employment Insurance Act* regulations. All payments by the University will commence when the Member provides proof that the Member is receiving Employment Insurance benefits, or that they are disqualified from Employment Insurance maternity or parental benefits because of an insufficient number of insurable weeks. Notwithstanding any other Section in this Article, the University supplementary top-up benefits are equal to 95% of regular salary, less the amount of EI maternity or parental benefits that the Member is receiving, or the amount of EI benefits that the Member would have received if the Member qualified for EI benefits at the rate of fifty-five (55%) of average weekly EI insurable earnings. The Employment Insurance Commission cannot provide such proof until after the leave has commenced and the University has issued a Record of Employment form. Hence, University supplementary top-up benefits will be made retroactively. To avoid additional delays in qualifying for benefits, Members should request the Record of Employment form from the Payroll department in Accounting be sent electronically to the Employment Insurance Office

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as soon as it is available. If the amount of any EI benefits received by an Eligible Member is subsequently reassessed under either the *Employment Insurance Act* or the *Income Tax Act*, there is no recourse to the University with regard to any amount required to be repaid by the Member.

Personnel Benefit Programs

38.219 During any period of leave with University supplementary top-up benefits under this Article, the Member is required to pay their share of the cost of personnel benefits programs in which the Member is enrolled during the full term of the leave. Likewise, the University will continue to pay its share of the cost of the personnel benefits program of the Member. During any periods of unpaid Parental Leave, the Member may continue any or all of the personnel benefits programs in which the Member is enrolled. The University will continue to pay its share of the cost of the benefits that the Member chooses to continue.

Further Leave of Another Type

38.220 An application for further Leave Without Salary, Sick Leave (with regard to any medical complications related to the pregnancy, birth or termination of pregnancy), Compassionate Care Leave, Compassionate Leave Without Salary, or Special Leave may be made prior to, during, or after the Maternity or Parental Leave periods. Any such application must be made in accordance with the provisions of the applicable Article governing that type of leave.

38.231 The Member is expected to request leave through the Chair of their Department (University Librarian in the case of a Librarian) in writing, providing at least four weeks notice.