

Negotiating in Silence: Experiences with Parental Leave in Academia

Négociier en silence : expériences du congé parental dans le milieu universitaire

Negociar en silencio: Experiencias con el permiso parental en Academia

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Résumé de l'article

Cet article présente une étude de cas sur les clauses de congé parental ou de maternité chez les professeurs d'une université canadienne de moyenne taille. Les congés parentaux ou de maternité et les avantages qui leur sont associés sont souvent tenus pour acquis, particulièrement parmi les employés syndiqués au Canada; toutefois cette recherche montre qu'une vigilance continue est de rigueur pour maintenir le niveau et l'équité de ces droits. Les données obtenues sont constituées d'auto-déclarations d'expériences facultaires dans l'élaboration d'accords en matière de congé durant la période 2000-2010. Les résultats font ressortir des inégalités dans l'octroi de tels congés entre les facultés, entre les départements et au sein de ceux-ci et parmi les personnes qui ont bénéficié de plus d'un congé. La plupart des inégalités observées sont le fait de négociations et de recherche de solutions individuelles « créatives » lorsque le congé était prévu débuter ou se terminer en plein milieu d'une session. Plusieurs de ces solutions ont eu pour effet de pénaliser des professeurs au moyen de tâches d'enseignement non assignées. Celles-ci se voyaient exigées ou se sentaient l'obligation de couvrir le temps d'enseignement avant ou après leur congé en faisant de l'enseignement en surplus, en utilisant des dérogations obtenus à même des fonds de recherche externes, en condensant leur enseignement, ou encore en débutant ou en terminant leur congé plus tôt que prévu.

Cette étude comporte des implications pour les syndicats qui doivent assurer vigilance et pertinence dans des environnements professionnels où prennent place des négociations individuelles et où le degré de conscience syndicale est plus faible. Elle fait également ressortir le fardeau qui repose sur les parents quand la responsabilité d'élever et d'éduquer les enfants est conçue comme un droit individuel plutôt que comme une question de reproduction sociale. Comme résultat de leur « choix » d'avoir un enfant et de prendre un congé parental, des professeurs peuvent ressentir de la culpabilité, de la peur et de l'anxiété reliées à leur statut professionnel et universitaire. À cause de telles émotions et devant une convention collective silencieuse, elles peuvent en venir à satisfaire aux besoins de l'université à leur propre détriment. L'article conclut par des recommandations sur la manière dont les syndicats de professeurs et professeurs en milieu universitaire peuvent mieux protéger les droits aux congés parentaux ou de maternité en améliorant le langage formel dans les énoncés de politique ou dans les conventions collectives.

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Negotiating in Silence: Experiences with Parental Leave in Academia

Johanna Weststar

This paper presents a case study of pregnancy/parental leave arrangements among faculty members at a mid-sized Canadian University from 2000-2010. The data show that leave arrangements were very inconsistent across faculties, across and within departments, and even for individual faculty members who had taken more than one leave. The majority of problematic cases were instances where a faculty member began or ended a leave in the middle of an academic term. Without specific language in their collective agreement, these faculty members often negotiated circumstances that carried individual penalties for duties that were unassigned in light of the leave. This research has implications for unions who must be particularly vigilant and active in professional environments where individual negotiation takes place and union consciousness is lower. It also emphasizes the burden placed on parents when the bearing and rearing of children is framed as an individual right rather than an issue of social reproduction. The paper uses data from a sample of collective agreements across Canadian universities to make recommendations to clarify the procedures for pregnancy and parental leave.

KEYWORDS: maternity leave, pregnancy leave, industrial relations, unions, women

Introduction

The right to pregnancy and parental leave is taken for granted by most working Canadians, particularly in unionized settings. If they have logged the requisite number of employment hours, Canadian parents-to-be can look forward to employment protection and income assistance if they take a leave of absence to care for their children. The leave component of this right is protected under provincial Employment Standards legislation and the benefits component is administered through the federal system of Employment Insurance (Service Canada, no date).

Pregnancy and parental leave receives periodic attention in the academic literature, primarily in the form of international comparisons of benefit levels and their association with labour market outcomes and societal norms (for example, see Ray, Gornick and Schmitt, 2010; Tremblay, 2010). It is often embedded in the broader topic of family-friendly state and employer practices that have gained popularity with the increasing participation of women in the formal,

paid workforce, the aging workforce, and concerns about work-life balance (Tremblay, 2010). Despite this research, some claim that there remains a lack of understanding of the specific lived experiences of men and women with young children. As Finkel and Olswang (1996: 126) wrote, the rearing of children “has been a problem only to those who experience it, and they...[have been] under subtle pressure to keep it invisible.” This invisibility of the demands of child rearing is more persistent in workplaces that are dominated by masculine norms and remain largely male-dominated. One such workplace is that of the academy, where employment and advancement follow a male model requiring long hours, travel, and possible relocation (Fothergill and Feltey, 2003), even as more women of child bearing age enter the faculty ranks (Panofsky, 2003).

To better understand the specific lived experiences of parents, this article will examine the actual implementation of pregnancy and parental leave policy in Canadian universities and colleges. These leaves are codified in employment standards legislation and specific components are often reinforced and expanded through Collective Bargaining Agreements (CBAs) between universities and faculty unions.¹ However, there remains considerable silence in CBAs over the practical implementation and implications of pregnancy and parental leaves. This research explores the negotiated and often contested terrain that exists between the individual, the employer and the union in policy implementation. It presents the experiences of a sample of faculty members at a mid-sized Canadian university as well as an overview of pregnancy and parental leave language in a sample of faculty CBAs across Canada.

This paper begins with a discussion of the statutory leave entitlements in Canada, the relevant literature pertaining to pregnancy and parental leave as a protected right, and the limited literature on pregnancy and parental leave in academia. The paper then describes the sample, procedures and results. The remainder of the paper includes a discussion of the results and recommendations for solving some of the problems identified in the research. It concludes with limitations and suggestions for further research.

Relevant Literature

Statutory Entitlements to Leave

For those who are eligible, Canada provides pregnancy and parental leave programs that fall in the middle range of those offered by industrialized countries (OECD, 2011). The statutory entitlements that Canadian parents receive are less progressive than Norwegians, for instance who can receive 44 weeks at full-pay that can be shared by the parents, and a further year of unpaid leave (Sümer *et al.*, 2008; OECD, 2011). However, Canadian entitlements are much better than those in the United Kingdom where mothers can receive 6 weeks at 90% pay, 20

weeks at a lesser flat rate, and 13 weeks unpaid leave (Sümer *et al.*, 2008; OECD, 2011) or in the United States where mothers receive no paid leave and only 12 weeks of unpaid leave (OECD, 2011; World Legal Rights Database, 2011). In Canada, pregnancy and parental leave is administered under the federal Employment Insurance (EI) Act. As summarized by Calder (2006), there are two complementary components. The leave component entitles eligible claimants to take leave from their job to have, or adopt a child, or to stay home with their child for one year. During this year their job is protected by provincial Employment Standards Acts and federally by the Canada Labour Code. Biological mothers are eligible for 17 weeks of pregnancy leave and either parent (biological or adoptive) can take or share parental leave for up to 35 weeks. The benefits component entitles eligible claimants to receive compensation for the time when they are absent from work to have, adopt or stay home with a child. In practice, individuals who have worked at least 600 hours in the previous 52 weeks are eligible to receive employment insurance at a rate of 55% of insurable taxable income up to a yearly maximum of \$44,200 (Service Canada, no date).

Through the lobbying efforts of women and the labour movement, the payment of pregnancy benefits through the then Unemployment Insurance regime has been in place in Canada since 1971; adoptive parents were added in the mid-1980s and parental leave was introduced after a Charter challenge in 1992 (Cox, 2004; Campbell, 2006; Tremblay, 2010). Recent revisions make it possible for the self-employed to receive a form of paid leave (Service Canada, no date b). Also, many Canadian workers receive supplemental benefits through employer policies or collective bargaining. These supplemental benefits can include salary top-ups beyond the amount received through EI and flexibility about the timing of leaves. Some specific examples at Canadian colleges and universities will be discussed later in this paper.

Problematizing Statutory Rights: Individual Choice or Social Responsibility?

As commonly perceived, pregnancy and parental leave provisions exist to make it easier for parents to retain an attachment to the labour market (Tremblay, 2010). In countries with progressive leave policies these statutory rights are generally taken for granted and regularly exercised. As Sümer *et al.* (2008) noted, in Norway, it is generally accepted that parents use their full right to a leave of absence; parents have a high sense of entitlement and are well-informed about their rights. The authors concluded that knowledge of statutory entitlements and a secure workplace that respects those entitlements are at the root of parents' ability to make use of their rights. They contrasted the Norwegian case with the UK and Portugal. The statutory leave entitlements are more limited in these

countries and are therefore exercised less fully. Workers in the UK case have “little sense of entitlement to workplace support” and parents in the Portuguese case “often have to give up their statutory rights due to high work pressure” (Sümer *et al.*, 2008: 371-372). Parents in both countries reported feeling guilty when asking to exercise their rights to pregnancy or parental leave and many, ostensibly by choice, took shorter leaves or lesser salaries than they were entitled. In Portugal, many mothers subordinated family planning to work priorities; they tried to be available for work even while on pregnancy leave and childbirth was often timed to correspond with the ebb and flow of the work schedule and load (Sümer *et al.*, 2008). In the case of the UK and Portugal, a parent wishing to exercise her statutory entitlements to leave had to enter into a range of individual negotiations with managers and colleagues. These negotiations existed within the context of organizational attitudes and priorities and were further dependent on the status and power of the negotiating employee.

These cases of Norway, the UK and Portugal reveal a critical component to the discourse on pregnancy and parental leave: the locus of responsibility for social reproduction. As Brandth and Kvande (2001) concluded, it is easier for parents to make use of family friendly policies when they are formulated as a universal right for all parents. This is eroded when the policies require explicit or implicit individual negotiation within the workplace. In the UK, parents and their employers “conceptualize having a child as a private issue and tend to develop individual arrangements for work-family reconciliation... Since having a child is conceptualized as a private problem, mothers feel guilty for demanding special arrangements...” (Sümer *et al.*, 2008: 379). The Canadian system has also been criticized for not acknowledging the social value of women’s reproductive labour and taking for granted a woman’s domestic obligation (Picchio, 1992; see also Ray, Gornick and Schmitt, 2010), though the scheme in Quebec is considered more progressive (Tremblay, 2010). As Calder (2006) noted, early versions of the Canadian law required women to prove that they had been working at the time of conception and revisions in the mid-1990s essentially doubled the working time required to gain eligibility. Also the regime is built on the full-time, full-year, male breadwinner model. “The way in which married women and pregnant employees were treated, particularly in the post-World War II period signalled that not only was the male employee the norm, but that the female employee was to be viewed with suspicion.” (Calder, 2006: 106; see also Campbell, 2006). The tone of the legislation has implicitly signalled that women are only working to gain benefits and game the system, their salary does not make a substantial contribution to the household, and having a family is a private burden. Social reproduction is interpreted through a lens of individual responsibility and obligation (Ray, Gornick and Schmitt, 2010). It is “left outside of political analysis of the economy and ignored as a site of struggle” (Calder, 2006: 114; see also Campbell, 2006).

In 2005 the Supreme Court of Canada deliberated on what Cox (2004) deemed the central question of who should bear the collective social and economic costs of raising children in Canada. In *Reference re Employment Insurance Act (Can.), ss. 22 and 23* (2005 SCC 56), the majority decision noted the qualitative difference in being absent from work for economic reasons and being absent for reasons related to child rearing and asserted the social value in procreation: “Both pregnancy and parental leave benefits, the Court finds ‘relate to the function and reproduction of society’” (Calder, 2006: 114). This language notwithstanding, the right to pregnancy and parental leave in Canada remains couched as a personal right and therefore retains the baggage of personal choice (Brannen and Nilsen, 2005). The implication from the SCC ruling has not filtered into the collective consciousness. “It is your right to take leave” has not become “it is our duty to structure policies in a way that best support those who contribute to society through birthing and rearing children.” The statutory entitlement to parental leave in Canada also lacks universality and suffers from inequality because it is housed in the Employment Insurance regime where access to protected leave and supplementary benefits is dictated by particular standards of labour force attachment (Campbell, 2006).

Pregnancy and Parental Leave in Academia

From 1999-2003, Robin Wilson published a number of articles with *The Chronicle of Higher Education* that reported on the challenges that pregnancy poses for female academics and their departments in American universities (1999, 2001a, 2001b, 2002, 2003a, 2003b). According to Wilson (2003a), most universities and colleges handle such circumstances on an *ad hoc* basis and have no formal norms or policies about how a department should handle a faculty member’s absence due to parental leave. She described a range of scenarios, such as the Chairperson requesting that other full-time professors cover courses as a sort of departmental service, not offering the courses typically taught by the faculty member on leave, the Chairperson requesting a temporary hire from the senior administration, or making team teaching arrangements. It is important to note that some of these solutions are more prevalent in the US because of the very short pregnancy leaves.

Later in 2003, the *Journal of the Association for Research on Mothering* published an eclectic special issue on Mothering in the Academy that showcased the experience of Canadian academics. These articles paint a picture of struggle for mothers in the academy as they balance the needs of their young families with the demands of an academic job in a male-dominated milieu. The experiences documented by Wilson and others preview many of the results of this study. Specifically with regard to pregnancy and parental leave, many women

plan births to suit the academic year, and encounter a variety of opinions and presumptions around childbirth and child rearing. Academic mothers who take leave report high degrees of tension with respect to tenure and promotion as their productivity and visibility often suffers under the demands of a young family. The case of younger, male, untenured faculty negotiating parental leave is also gendered due to entrenched social stigmas toward stay-at-home dads (Brescoll and Uhlmann, 2005; Doucet, 2006; Winter and Pauwels, 2006). Due to systemic stereotypes of parents with young children, both women and men must reconcile assumptions about their professional commitment with their needs and desires as parents (Fothergill and Feltey, 2003; Wilson, 2003b). Pregnant women must also navigate the feminist discourse that rejects pregnancy as an illness in a way that also respects and acknowledges their own physical and emotional needs (for example, Rich, 1976). Within this environment women and men feel pressure to be accommodating rather than demanding with respect to their rights as parents (Fothergill and Feltey, 2003; Toepell, 2003; Wilson, 1999).

This pressure is often felt individually, despite the fact that the majority of faculty members in Canadian universities are represented by faculty unions and covered by negotiated CBAs. The majority of these CBAs contain clauses on pregnancy and parental leave that supplement the minimum legislated entitlements. Bischooping (2003) provides a review of the contract language across Canadian universities. This information is now somewhat dated, but remains illustrative. What becomes immediately clear is the range in negotiated benefits across universities in terms of the length of leaves, the benefit levels, and the flexibility of timing. According to Bischooping (2003), some exemplary leaves are found at the University of Northern British Columbia (17 weeks pregnancy and 35 weeks parental topped up to 100%), and both the University of New Brunswick and Carleton University (95% top up for 17 weeks pregnancy and 35 weeks parental). At McMaster University and the University of Calgary, faculty can take their leave in broken periods at the discretion of the Dean if the leave falls within the "continuous period of three months free from scheduled commitments to the University" (Bischooping, 2003: 81-82). Faculty at Concordia can take a reduced time appointment for up to 30 months to ease their transition back to work. Similarly, CBAs at the Université du Québec à Montréal and Université de Sherbrooke do not assign new preparations to faculty members following their leave and the Université de Montréal allows a teaching load reduction of one half-year course per year until children are two years old.

As Bischooping (2003: 77) notes, "contract language pertaining to mothers may be read as source of official discourse about motherhood, children and families that has significant consequences for women's subjective experiences and material well-being." It clearly reflects the recruitment and retention strategies

of specific universities (i.e., UNBC) and the social values of specific locations (i.e., Québec). As the discussion below will illustrate, the absence of specific contract language and the resulting individual negotiation that takes place within that space also informs the discourse about parenthood and has significant implications for expectant parents, the representational capacity of unions, and the principles of equity. Without clear context for the norms of the university, these faculty members can experience such emotions as anxiety, fear, guilt, and embarrassment as they discuss the details of their pregnancy and attempt to arrange their leave (Toepell, 2003; Wilson, 1999, 2003a, 2003b).

Sample and Procedures

The data for this study were gathered in two phases. The first phase consists of a survey of a mid-sized Canadian university. A short email was sent to members of the university's faculty association. It asked faculty members to reply if they had been on pregnancy or parental leave in the past 5-6 years or were due to take a leave in the upcoming year. This approach yielded a sample of 20 faculty members. Seventeen were women who had taken pregnancy and/or parental leave and three were men who had taken parental leave. The faculty members spanned the academic departments of the university. Some faculty members reported their leave arrangements for one child while others had had multiple experiences. In all, the data includes the experience of 28 leave arrangements that took place between January 2000 and March 2010. The time frame was extended from the initial 5-6 years for two reasons: 1) some faculty had children within 5-6 years, but also reported on their experiences with earlier pregnancies; 2) some faculty responded to the email even though their experiences were outside of the 5-6 year window. There was no theoretical or methodological reason to exclude these experiences. The pregnancy and parental leave clause in the collective agreement did change slightly over this time to double the post-natal leave (which is not considered in this study) and increase the supplemental benefits for parental leave.

Basic data were collected about each leave arrangement over email or telephone. Respondents were asked about the timing of their leaves (start and end), the rationale behind the timing of their leaves, to whom they spoke in arranging their leaves (i.e., Department Chair, Dean, senior administration, faculty association, human resources), the teaching arrangements that were made, if any, and how they generally felt about the arrangement of their leave(s). Due to the small sample size, the core issues are reported while identifying information such as department and exact timing of leaves is removed.

The second phase of the study was conducted *post hoc*. The data consist of pregnancy and parental leave clauses from CBAs at 39 Canadian colleges and

universities, one association representing university teachers at all Canadian Military Colleges, and one union representing academic staff at community colleges in Ontario. This sample was selected from the listing of 75 member associations of the Canadian Association of University Teachers (CAUT) which is the national representational body for post-secondary educators. Five member associations were excluded from the sample population because they are not the direct bargaining agent of full-time faculty (i.e., BC Federation of Post-Secondary Teachers). Therefore, the sample size represents 58.6% of the population. Associations were not randomly selected, rather they were chosen for inclusion based on the desire to achieve representation on a provincial level and also include examples of small and large institutions. For each province, the universities sampled represent at least 50% of the total population of associations who are CAUT members.

Results

Of the 28 leave arrangements in the case study sample, 13 were coded as containing one or more 'problematic' situations. This resulted in the coding of 25 problematic situations. These actions were grouped into the following themes and will be elaborated in turn (count in parentheses):

- Creative Solutions (6)
- Condensed Course (2)
- Use of Course Release (2)
- Teaching Overload upon Return (2)
- Early Leave or Holiday Time (2)
- Early Return (2)
- Work While on Leave (4)
- Unclear Collective Agreement and/or Union Advice (5)

Creative Solutions

This category includes all instances of co-workers, Department Chairs, Deans or senior administration presenting potential solutions to the staffing problem created by a faculty member taking leave in the middle of an academic term. The solutions offered were an act of creative brainstorming by colleagues and superiors who did not have a clear sense of the statutory entitlements, the collective agreement, or the norms and past practices at the university. One faculty member was surprised at the befuddled reaction from the Chair and said, "Has no one ever had a baby at this University before? It is not as if we are reinventing the wheel!" (Faculty Member (FM) 7). Another faculty member seemingly confirms this lack of awareness of the issue, "To my knowledge there was no precedent, so we were kind of making it up along the way" (FM4). The 'we' in this case

included the Chair, the Dean and the Academic Vice-President. It was suggested to one faculty member who had a due date about three weeks before the end of term that she could assign final presentations (rather than papers or an exam). Someone could videotape these presentations for the faculty member to watch and mark later (presumably while she was on leave). It was suggested to another that she could perhaps use her upcoming sabbatical time as part of her leave.

Faculty members received very mixed messages with respect to the practice of teaching up to the due date and having someone else complete the course (i.e., a part-time instructor paid for the remainder of the course, a full-time faculty member filling in pro bono to help out, a mentoring arrangement with graduate students). In practice, only one faculty member started a course and did not complete it, but the course was very near to done and a part-time instructor essentially took over the final grading of student presentations. In the majority of cases, the faculty members who were to begin pregnancy or parental leave in the middle of a term were not assigned teaching duties for that entire term. One faculty member was told unequivocally by colleagues that she should not be assigned teaching in that term and that she could pick up some extra administrative duties instead.

Also coded in this category were instances of lack of understanding about the normative rights of pregnancy and parental leave (i.e., one year of leave to be scheduled and accommodated at the time of the employee's choosing) and the demands of new parenthood. A Dean first suggested to one faculty member that she could teach up to her due date and then take about three weeks off before resuming her work responsibilities. Also included were instances where faculty members explicitly reported planning their pregnancy around the academic schedule. In the sample, six leaves began between May 1 and the end of August. Of these, only one faculty member indicated that she had explicitly timed her pregnancy that way (and this is the only case coded here); however a few of the others acknowledged that their leave arrangements were less complicated because of the summer due dates.

Condensed Course

Two faculty members reported condensing their courses so as to fit them in before their due dates. This was made more possible because the courses were seminar or graduate level courses. In one case, the last day of classes was a few days before the due date and a final paper was assigned. The faculty member marked these papers after the baby was born and in the first month of her leave. In the second case, a faculty member was able to double up the lectures of a graduate level course each week and complete it in half the time. A part-time instructor was hired to finish the course by grading the student presentations.

Use of Course Release

On two occasions faculty members were required to use course releases that they had earned through the acquisition of external research funding. Both faculty members began their leaves in mid-term and were not placed on the teaching schedule for the entire term. Their course releases then were used to 'pay' for the teaching relief that they were granted prior to the start of their leaves.

Teaching Overload upon Return

On two occasions faculty members were required to teach a 3-credit course overload when they returned from their leave. As above, the leaves began mid-term and the faculty member was not assigned teaching duties for the whole term. In practice these faculty members received approximately 5-8 weeks of teaching relief prior to the commencement of their leaves, yet they were required to teach a complete course upon their return (12-13 weeks plus the exam period) to 'make-up' the time.

Early Leave or Holiday Time

One faculty member began her leave at the beginning of the academic term, even though her due date was not until the end of the term. She did this in order to avoid being put on the teaching schedule so as "not to disrupt the academic year" (FM11). Another faculty member took holiday time during the first month of the academic term up to the beginning of the pregnancy leave. The faculty member notes that she took this holiday time so she would not teach that term. The faculty member explains that it was not a formal request or requirement to use up the holiday time in this way, but she experienced an underlying tension. "...there was never any mention of this on paper. This is what I proposed to my chair and/or (perhaps more importantly) how I rationalized it in my head. If it sounds unclear and awkward, well, it was.... I didn't feel pressured by my department, but...I felt obligated, for, shall we say optics, to make sure that time was 'covered'" (FM9).

Early Return

A number of faculty members in the sample did not take their full year of statutory entitlement. Under the CBA at their university, the employer top-up of salary beyond EI does not last for the entire year. As such, some faculty members returned to work early due to financial considerations. In other instances, faculty members returned to work after six to nine months so that they could share some of the leave with their spouse. These were not coded as 'early return'. The two cases that were coded were instances where the faculty members returned to work before using their full entitlement to parental leave for non-financial reasons. One faculty member returned to work on a special project that was time-

sensitive. Another returned after 12-14 weeks because she was afraid about the tenure and promotion process. She was worried about her visibility and wanted to be seen as a team player. This faculty member reports being very overwhelmed when she did return and, in hindsight, she regrets the decision.

Work While on Leave

Participants in the study were not specifically asked about doing academic work while on leave, but in four instances this information was volunteered. The range of work done was quite broad. Faculty members described working on conference organizing committees, revising book manuscripts, writing book chapters, marking student work, and supervising graduate students.

Unclear Collective Agreement and/or Union Advice

In each case the faculty members were asked with whom they consulted in the process of arranging their leaves and a number referred to the faculty union or the CBA. In some instances the response was positive. Faculty members noted that the “spirit of the Collective Agreement is clear” (FM3) and that they “just followed the Collective Agreement” (FM1). Others said that the CBA was somewhat vague, but it did provide enough information to be a guide, and that the CBA was useful for obtaining information about pay and the official process to follow to apply for leave. The faculty union advised one individual not to agree to use a course release for a buy-out to teaching. It must be noted that this occurred a few years following the cases where faculty members did use course releases.

Despite these cases, a number of faculty members had negative comments. One never read the CBA saying that it was “foreign” to her (FM2). Others said that the language of the relevant clauses was confusing with respect to the differences between pregnancy and parental leave and how long leaves were with and without supplementary benefits. One faculty member spoke to an executive member of the faculty union about the University norms for accommodating leaves that begin mid-term. The faculty member was given vague advice to the effect that it varies and ultimately the faculty member has the upper hand and should exercise her rights. One of the faculty members who negotiated overload teaching to ‘pay’ for teaching relief checked these arrangements with the faculty union and was told, “We’re okay with your arrangements if they are to your satisfaction” (FM4).

Positive Cases

In a few cases the faculty members reported arrangements that directly alleviated concerns over teaching assignments. Two faculty members were not assigned teaching duties during the term in which their leave commenced and one was also not assigned teaching duties during the term in which her leave ended (as it

was also mid-term). They were not required to make up this teaching release with any specified administrative duties, teaching overloads, or other releases. One faculty member recounts being told, "...since teaching constitutes only 33% of my job description, I don't have to teach in that term but carry on with other duties until my leave commences" (FM6). Another was assigned a lighter teaching load (seminar classes) upon return from leave to help the transition back to work.

A surprising finding in this data was that the vast majority of faculty members were satisfied with the leave arrangements they had made. For some, this satisfaction wore off over time. The two individuals who were required to use their research releases to buy-out their teaching came to that arrangement through mutual agreement with their Chairs and Dean. One came to regret and resent this arrangement when it came time to arrange leave for a subsequent child and she realized that it was not the norm. The other became aware of the inequity of her situation through her participation in this study. Up to that point she assumed that the use of research releases to make up for teaching duties not assigned was the common practice of the university. In the most striking case, the faculty member who was required to teach an overload upon return from leave stated, "I was grateful for the arrangements...I found them to be generous" (FM4).

Post Hoc Summary of CBAs at 41 Canadian Universities/Colleges

This *post hoc* analysis was conducted to identify language that spoke to the issues that arose under the eight themes identified in the case study data above. There were six instances of language pertaining to creative solutions. One stated that faculty can rearrange their teaching schedules for two years following a leave; four allowed for alternative teaching/working arrangements such as the assignment of other duties in place of teaching; and one said that nothing in the article precludes the faculty member and the Dean from making other arrangements. There was no explicit mention of condensing courses or using course releases, but there were seven instances of language regarding overload or changed workload. Five forbid the use of overloads or any rearrangement of normal teaching terms. For example, the CBA at Dalhousie University states, "There shall be no increase in the Member's workload following a pregnancy, paternity, parental or adoption leave to make up duties not assigned or not performed because of such leave." The remaining two instances could be interpreted as permissive stating that duties might be reassigned or postponed to the following term or year, and that faculty may have to rearrange their teaching in subsequent terms if their *parental* leave precluded teaching in two terms. There was one instance of language pertaining to vacation time which stated that this time could be used as part of or as an extension to the leave period. There were two instances of language that directly stipulated the timing for a return from leave, but they

both pertain to the unique circumstance of extended leave beyond the traditional legislated period. In these cases faculty either must return at the start of an academic term or are strongly encouraged to do so. One CBA stated that “members are not expected to work during the period of leave”, but went on to state that they can apply for research grants if they wish and that they must make arrangements for graduate and lab supervision, where applicable.

With respect to silence in the CBA, seven did not specify with whom the faculty member was to arrange their leave and six referred only to the entire institution – the University, the Corporation, or the Employer. Seven agreements did not specify a notice period for arranging a leave. Only eight of the CBAs expressly stated that pregnancy/parental leave can be taken at a time of the employee’s choosing. There were seven instances of language that clarified the process above and beyond those mentioned above. For example, one included the statement that, “Provisions for arrangements for teaching and/or other duties shall be the responsibility of the University and not the responsibility of the Member concerned.” Others stipulated how the teaching component of a faculty member on leave would be covered (i.e., by the hiring or rearranging of part-time or full-time faculty), or allowed for accommodations if complications or other risk factors arose.

Discussion

The main finding from the case study research is the complete lack of consistency in leave arrangements over time, across faculties/departments and both between and for individuals. The practices for administering pregnancy and parental leave did not seem to improve over time as problematic cases occurred throughout the date range of the sample. There was no noticeable pattern of practices within departments or faculties. Some individual faculty members had different leave arrangements for subsequent children and faculty members within the same department experienced different leave arrangements. In this small sample, there did not seem to be a gender effect, as both men and women experienced problematic inconsistencies. Data from the review of CBAs across Canadian universities also show great policy variation across institutes of higher learning. These findings support Wilson’s (2003a) conclusion about ad hoc decision-making and a lack of formal policies. The various particulars contained in CBAs at different universities also show that many of these clauses enter bargaining as a result of specific localized incidents, rather than through a uniform policy-oriented approach (though this is not uncommon for many items that make it to a collective bargaining table).

This lack of consistency is due to the individual negotiation that occurs within academic work environments, and arguably, other workplaces with autonomous,

highly-skilled knowledge workers. The academic working environment is idiosyncratic due to the unstructured and relatively unsupervised nature of the work and the different demands and norms of academic disciplines. Academics are autonomous with relatively high bargaining power and engage in individual negotiation even within the framework of a CBA. It is therefore the role of the faculty union to manage and oversee this individual negotiation within the system of collective representation to protect group interests without inhibiting the ability of faculty members to achieve favourable differentiated working arrangements.

In the face of individual negotiation, the primary issue that faculty associations face is one of equity, or fairness. Given the nature of academia, it is likely not possible or even desirable to achieve complete equality of working conditions across all faculty members. However, it should be the goal of faculty unions to remove the idiosyncracies that emerge from arbitrary or uneven application of rules, rather than from individual negotiation around the terms and conditions salient to the specific nature of any given academic's work. In this context, the individual negotiation that is taking place in pregnancy and parental leave arrangements is one that promotes inequity within and across universities and also reinforces the discourse of these leaves as individual choice and responsibility.

This inequity manifests primarily with respect to teaching assignments. The only consistent finding across the data was that faculty members who had due dates outside of the regular academic term (May-August) experienced the least difficulty and confusion in arranging their leaves. While staffing considerations due to regular and accepted academic activities conform to the rhythms of the academic calendar, those due to pregnancy/parental leave do not. Sabbaticals do not begin and end in the middle of a term. Teaching releases are granted on the basis of course credits. Pregnancy and childbirth is not predictable; though, as noted earlier, many academics and other workers attempt to accommodate their employer and time pregnancies to place the birth at an optimum time in their work schedule (Wilson, 1999; Toepell, 2003; Sümer *et al.*, 2008). This inconvenience of timing is not addressed in employment legislation and was not addressed in the CBA of the case study site. On the face of the law, the right to parental leave is the same regardless of when that leave is to begin. However, the cases in this study show that individual faculty members bear the responsibility for their inconvenient timing and this burden influences their ability to negotiate equitable leave arrangements.

The source of continuing inequity then is the silence of the CBA and either the lack, or inconsistent application, of faculty union oversight. When a CBA is silent and does not specifically allow or deny an action, any action in the space of that silence is a 'management right.' However, this does not mean that unions cannot and do not work to influence those rights through informal

channels or by removing the silence by formally adding or clarifying clauses in the CBA. Also, CBA silence and the notion of management rights do not permit the undercutting of other relevant legislation. Through oversight the faculty union is also responsible for challenging management on these digressions. This system of oversight only works, however, when the faculty union is aware of or sensitive to the problem. In the data presented here, a number of cases would have warranted a grievance, yet the faculty union was rarely consulted by faculty members. In the few instances of reported consultation, the faculty union was not sensitive to the issues that expecting faculty members experience. In one case the faculty union undermined its own position as bargaining agent and reinforced the norms of individual negotiation by telling the faculty member, if it is okay with you it is okay with us. In this instance they were also insensitive to the inequity of assigning teaching overload to a faculty member who had not been assigned earlier teaching duties due to parental leave. In essence this person was penalized for exercising a right enshrined in employment standards and human rights legislation. In another case, the faculty association inserted the hard line of 'this leave is your right, take it when you choose' into the silence of the CBA. In principle, this statement is true, but when given without supporting examples and norms, it falls flat for many faculty members.

The hard line of 'rights' does not fill the silence of a CBA. It does not acknowledge the idiosyncratic environment or grey area in which faculty members navigate the opinions and preferences of their colleagues, Chair, Dean and senior administration. Within this grey area faculty members balance their own desires and needs with the norms and expectations of their professional identity, their commitment to their work, their feelings of ownership over course offerings, the opinions of their colleagues, and the teaching, research and service duties that constitute that work environment. Faculty members must balance their sense of individual autonomy with their departmental commitments and pressures: the need to be visible, to be seen as a team player, to pull their weight in teaching and service allocations. They must maintain collegiality with their colleagues who include the Chair, the Dean and the senior administration. Regardless of the power in the discourse of the right to pregnancy/parental leave, it is not easy to just walk away from an academic job (or other project-based work for that matter). As noted in the literature review and affirmed by some of the cases, faculty members who seek pregnancy or parental leave occupy a more tenuous bargaining position due to their real and/or perceived vulnerabilities and the universality of rights is eroded in the face of explicit or implicit negotiation. When a CBA or employer policy is silent on important procedural details, faculty members have no context in which to evaluate their own needs against the norms of their institutions. As a result they can experience negative emotions as

they discuss the details of their pregnancies and attempt to arrange their leaves (Toepell, 2003; Wilson, 1999, 2003a, 2003b). They tend to question less and accept more. It is therefore less surprising that when the specificities of these rights are not known or fully appreciated, when the faculty union is complicit or uninvolved, and when the arrangements made in other cases are not known, many faculty members remain grateful to the administration for even the most inequitable leave arrangements.

Recommendations

Two practical recommendations stem from this research. The first is for faculty unions to become more integral and relevant to their members as a source of support and information. This is an ongoing challenge faced by all unions, particularly as union density declines and individualism remains rooted in dominant social discourse. In the specific case of pregnancy and parental leave, faculty unions must forge a stronger and more personal connection with younger members so that it is the natural first step to consult the union on matters of leave arrangements. In this way the faculty union will not be left out of these important individual negotiations and can use informal and formal channels to influence Chairs, Deans and senior administrators toward equitable policy applications.

The second, stronger recommendation is to reduce or eliminate inconsistent and arbitrary application by increasing the codification of rules in formal written documents. This could involve a policy document from the faculty association that provides guidelines to its members about: a) the exact process to follow when arranging a leave; and b) what is and is not a reasonable and lawful arrangement. Though the university would not be obligated to abide by this document, it would place individual negotiating faculty members on the same page, normalize the process of asking for accommodations, increase the advocacy power of the union, and encourage managerial consistency. This could also include the negotiation of stronger and clearer language in the collective agreement. It is here that the *ad hoc* review of CBAs is particularly informative. A number of best practices emerge:

1. CBAs should clearly indicate with whom faculty members engage when negotiating their leaves and under what timelines such negotiations should take place. This eliminates the run-around and conflicting opinions that some faculty members experienced when speaking to Chairs, Deans, senior administration and/or Human Resources.
2. CBAs should state that leave shall be taken "at the employee's discretion." This explicitly codifies that right from employment standards and alleviates some of the pressure to be accommodating to the operational needs of

the department, faculty, students, etc. The aforementioned clause that it is the employer's responsibility to make provisions to deal with an employee's absence also helps to shift that mental and emotional burden from the faculty member.

3. CBAs should state those arrangements that are absolutely prohibited. This could be a general statement such that faculty members will not be penalized for any duties not assigned or completed as a result of their leaves. This could also be a specific statement prohibiting practices such as teaching overload or rearrangement of teaching and research terms to make up for duties not assigned.
4. CBAs should indicate the procedure for leaves that begin/end outside of an academic term. In the available examples this language typically indicates that alternative teaching and/or working arrangements, or the assignment of other duties, can be made through consultation between the member and the Chair and approval of the Dean. This still leaves room for individual negotiation to suit the particulars of each case, but brings that negotiation process into the open and makes it more readily grievable.

The above best practices and exemplars aside, the parties engaged in drafting a CBA must strike a difficult balance. They attempt to achieve clarity by saying enough, but can often maintain advantageous interpretation by not saying too much. As part of this research representatives from the Canadian Association of University Teachers (CAUT) were consulted about their interpretations of appropriate leave arrangements and the grey area that a silent CBA invites. One representative was resistant to the idea of expanded CBA language or even union policy guidelines about pregnancy/parental leave norms. It was felt written language that attempts to educate members on what can and cannot be reasonably expected of them could become codified by the administration as standard practice for all. For example, the CBA or policy guidelines might say that faculty could be asked to teach up until their leave commenced wherein a substitute teacher would complete the course. This request does not contravene any labour standards around pregnancy/parental leave rights (it is common in primary and secondary school systems and has been used in universities (Wilson, 2003b) and might be a satisfactory arrangement for a particular faculty member and her/his department. However, it might not be a satisfactory arrangement for all faculty members (i.e., higher course loads, higher risk pregnancies) and some may have the bargaining power to be able to negotiate full release from teaching for the term. Therefore, it is valid and necessary to caution that adopting a set of guidelines to flesh out areas of 'reasonable behaviour' may actually codify practices that are less flexible and less desirable to some faculty members.

Conclusion

This paper presents a case study of pregnancy and parental leave arrangements among faculty members at a mid-sized Canadian university. Pregnancy/parental leave is often taken for granted as a universal right, particularly among unionized employees in Canada; however, this research shows that continued vigilance is required to maintain the standard and equity of this right. Data on pregnancy/parental leave arrangements over a ten year period show wide variation and inequity across faculties, across and within departments, and even for faculty members who took more than one leave. Inequity was most present across those cases when the leave date did not correspond with the start or end of an academic term. Where faculty members were not assigned teaching duties for the entire term in which their leave was to begin, many were penalized for that accommodation in that they were required to teach overload courses upon their return, use course releases earned through research, or they chose to begin leave earlier or use holiday time through a sense of obligation to account for or 'cover-off' the non-teaching time.

This research has important implications for unions who must be particularly vigilant and active in professional environments where individual negotiation takes place and union consciousness is often lower. This paper also emphasizes the burden placed on parents when the bearing and rearing of children is framed as an individual right rather than an issue of social reproduction. As a result of their 'choice' to have a baby and take an associated leave of absence, faculty members experience guilt, fear and anxiety related to their professional and collegial status. These negative emotions are an individual and largely invisible burden; in attempts to mitigate these feelings, faculty members can accommodate the needs of the university to their own detriment.

Two recommendations stem from this research. First, unions in professional settings must work hard to achieve relevance with their membership beyond the bread and butter issues and on an on-going basis. As well, unions in professional settings where individual negotiation is regularly carried out (i.e., around leave arrangements, salaries, merit pay, teaching allotments and schedules) must increase their vigilance to ensure that these negotiations maintain equity and do not undermine the rights of the membership as codified in policy documents, CBAs, or labour legislation. Second, and relatedly, faculty unions must be conscious of maintaining advantageous interpretation in their pregnancy/parental leave language, but should attempt to codify clearer procedures and norms for negotiating these arrangements. At the very least, they should adopt a set of principles around what is an absolutely unacceptable arrangement and educate their membership and the administration accordingly. A stronger step would be for faculty unions to further specify the formal rules around pregnancy and parental

leave codified in their CBAs. This paper presents numerous examples of contract language from CBAs at other Canadian universities that would have addressed many of the challenges experienced by faculty members in this case study.

This study is limited by the small sample size of the faculty case study and the lack of perspective from Chairs, Deans and senior administrators. It also does not delve deeply into the particulars of the faculty union in this case, or the perspectives of individuals who were Union Executives at the times when problematic leave arrangements were occurring. Additional research across more than one university could examine these issues further. As well, it would be useful to include more marginalized groups, such as academics in part-time, sessional, contract or post-doc employment scenarios.

Note

- 1 Not all faculty groups at Canadian universities and colleges are legally unionized, and among those that have this legal status, many retain the label faculty association. For the purpose of this paper, however, the term faculty union will be used.

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SUMMARY

Negotiating in Silence: Experiences with Parental Leave in Academia

This paper presents a case study of pregnancy/parental leave arrangements among faculty members at a mid-sized Canadian university. Pregnancy/parental leaves and associated benefits are often taken for granted, particularly among unionized employees in Canada; however, this research shows that continued vigilance is required to maintain the standard and equity of these rights. The data consist of self-report accounts of faculty experiences in making leave arrangements over the period 2000-2010.

The results show inequity in leave arrangements across faculties, across and within departments and for individuals who had more than one leave. Much of this inequity stemmed from individualized “creative” negotiations and problem-solving when the leave was scheduled to begin or end in the middle of an academic term. Many of these solutions penalized faculty members for unassigned teaching duties. Faculty members were requested or felt personally obligated to “cover-off” the teaching time before or after their leave by teaching course overloads, using course releases earned through external research grants, condensing courses, or beginning and/or ending the leave earlier than required.

This research has implications for unions who must maintain vigilance and relevance in professional environments where individual negotiation takes place and union consciousness is lower. It also emphasizes the burden placed on parents when the bearing and rearing of children is framed as an individual right rather than an issue of social reproduction. As a result of their “choice” to have a baby and take an associated leave of absence, faculty members can experience guilt, fear and anxiety related to their professional and collegial status. Due to these emotions, and faced with a silent collective agreement, faculty members can accommodate the needs of the university to their own detriment. The paper concludes with recommendations for how faculty unions can better protect pregnancy and parental leave rights through improved formal language in policy documents or collective agreements.

KEYWORDS: maternity leave, pregnancy leave, industrial relations, unions, women

RÉSUMÉ

Négocier en silence : expériences du congé parental dans le milieu universitaire

Cet article présente une étude de cas sur les clauses de congé parental ou de maternité chez les professeurs d’une université canadienne de moyenne taille. Les congés parentaux ou de maternité et les avantages qui leur sont associés sont souvent tenus pour acquis, particulièrement parmi les employés syndiqués

au Canada; toutefois cette recherche montre qu'une vigilance continue est de rigueur pour maintenir le niveau et l'équité de ces droits. Les données obtenues sont constituées d'auto-déclarations d'expériences facultaires dans l'élaboration d'accords en matière de congé durant la période 2000-2010. Les résultats font ressortir des inégalités dans l'octroi de tels congés entre les facultés, entre les départements et au sein de ceux-ci et parmi les personnes qui ont bénéficié de plus d'un congé. La plupart des inégalités observées sont le fait de négociations et de recherche de solutions individuelles « créatives » lorsque le congé était prévu débiter ou se terminer en plein milieu d'une session. Plusieurs de ces solutions ont eu pour effet de pénaliser des professeures au moyen de tâches d'enseignement non assignées. Celles-ci se voyaient exigées ou se sentaient l'obligation de couvrir le temps d'enseignement avant ou après leur congé en faisant de l'enseignement en surplus, en utilisant des dérogations obtenus à même des fonds de recherche externes, en condensant leur enseignement, ou encore en débutant ou en terminant leur congé plus tôt que prévu.

Cette étude comporte des implications pour les syndicats qui doivent assurer vigilance et pertinence dans des environnements professionnels où prennent place des négociations individuelles et où le degré de conscience syndicale est plus faible. Elle fait également ressortir le fardeau qui repose sur les parents quand la responsabilité d'élever et d'éduquer les enfants est conçue comme un droit individuel plutôt que comme une question de reproduction sociale. Comme résultat de leur « choix » d'avoir un enfant et de prendre un congé parental, des professeures peuvent ressentir de la culpabilité, de la peur et de l'anxiété reliées à leur statut professionnel et universitaire. À cause de telles émotions et devant une convention collective silencieuse, elles peuvent en venir à satisfaire aux besoins de l'université à leur propre détriment. L'article conclut par des recommandations sur la manière dont les syndicats de professeures et professeurs en milieu universitaire peuvent mieux protéger les droits aux congés parentaux ou de maternité en améliorant le langage formel dans les énoncés de politique ou dans les conventions collectives.

MOTS-CLÉS : congé de maternité, relations industrielles, syndicats, femmes

RESUMEN

Negociar en silencio: Experiencias con el permiso parental en Academia

Este texto presenta un estudio de caso de implementación de acuerdos de permiso parental /permiso de embarazo de los miembros de la facultad en una universidad de talla mediana en Canadá. Los permisos de embarazo-maternidad-paternidad y los beneficios asociados son a menudo dados por sentado, particularmente por los empleados sindicalizados en Canadá; sin embargo, esta investigación muestra que la vigilancia continua es requerida para mantener el estándar y la equidad de

estos derechos. Los datos provienen de relatos de las experiencias de obtención de disposiciones de permisos durante el periodo 2000-2010.

Los resultados muestran la inequidad de las disposiciones de permiso en diferentes facultades, entre los departamentos y entre individuos que tenían más de un permiso. La mayor parte de esta disparidad proviene de negociaciones individualizadas “creativas” y de formas de resolución de problemas cuando el permiso fue programado al comienzo o en medio de una sesión académica. Muchas de estas soluciones penalizaron a los miembros de facultad imponiéndoles cargas de enseñanza no previstas. Los miembros de facultad fueron solicitados o se sintieron personalmente obligados a “cubrir” el tiempo de enseñanza antes o después de su permiso; para ello, tuvieron que aceptar sobrecargas de cursos, usar liberaciones del dictado de clases ganadas por medio de becas externas de investigación, condensar cursos, o comenzar y/o terminar su permiso antes que previsto.

Esta investigación tiene implicaciones para los sindicatos que deben mantener la vigilancia y la importancia en los medios profesionales donde la negociación individual ocurre y donde la conciencia sindical es más débil. Se enfatiza también la presión ejercida sobre los padres cuando el cuidado y crianza de los niños es considerado más como un derecho individual que como una cuestión de reproducción social. Como un resultado de haber “escogido” de tener un bebe y de tomar un permiso asociativo de ausencia, los miembros de facultad pueden experimentar culpabilidad, miedo y ansiedad respecto a su estatuto profesional y colegial. Debido a estas emociones, y confrontados a un convenio colectivo silencioso, los miembros de facultad pueden acomodar las necesidades de la universidad en su propio detrimento. Este texto concluye con recomendaciones sobre cómo los sindicatos de facultad pueden proteger mejor los derechos de permisos de embarazo-maternidad-paternidad mejorando el lenguaje formal en los documentos de políticas o en los convenios colectivos.

PALABRAS CLAVES: permiso de maternidad, permiso de embarazo, relaciones industriales, sindicatos, mujeres.