



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and Regulation for purposes of interpretation and application of the law.

May 2018

Leaves and Jury Duty

The *Employment Standards Act* requires employers to grant employees the following periods of unpaid leave. An employee does not need to work for a specified period to qualify for leave.

Maternity leave

A pregnant employee is entitled to up to 17 consecutive weeks of unpaid maternity leave. This leave may start no earlier than 13 weeks before the expected birth date, and must end no earlier than six weeks after the birth date unless the employee requests a shorter period.

If maternity leave is requested after the birth of a child, the employee is entitled to up to 17 consecutive weeks of leave beginning on the date of birth.

If maternity leave is requested after termination of a pregnancy, the employee is entitled to up to six consecutive weeks of leave beginning on the termination date.

An initial period of leave may be extended by up to six consecutive weeks if an employee is unable to return to work for reasons relating to the birth or termination of a pregnancy.

An employer may request a doctor's or nurse practitioner's note stating the expected or actual birth date or termination date or reasons for requesting additional leave.

If an employee on leave asks to return from leave earlier than six weeks after the birth, an employer

may require the employee to provide a doctor's or nurse practitioner's certificate stating the employee is able to resume work.

Parental leave

A birth mother who takes pregnancy leave is entitled to 61 consecutive weeks of unpaid parental leave. A birth mother must begin her parental leave immediately after her pregnancy leave ends, unless she and the employer agree otherwise.

A birth mother who does not take pregnancy leave and other parents are entitled to up to 62 consecutive weeks of unpaid parental leave. The leave can begin anytime within 78 weeks of the birth or placement of the child.

An initial period of parental leave may be extended up to five consecutive weeks if the child requires an additional period of parental care.

An employer may require an employee to provide a doctor's or nurse practitioner's certificate or other evidence that the employee is entitled to the leave or leave extension.

Request for Leave

The Act says that a request for pregnancy or parental leave must be made in writing at least four weeks before the proposed start date. However, the courts and the Employment Standards Tribunal have said that failure to give written notice does not

Continued ...



affect the employee's entitlement to the leave. Employees are encouraged to tell their employers the date they will be going on leave well in advance and to put it in writing to avoid misunderstandings.

Family responsibility leave

An employee is entitled to up to five days of unpaid leave in each employment year to meet responsibilities related to the care, health or education of any member of the employee's immediate family.* "Employment year" means a year beginning on the date the employee commenced employment.

Family Responsibility Leave does not accumulate from year to year.

Bereavement leave

An employee is entitled to up to three days of unpaid leave on the death of a member of the employee's immediate family.* These days do not have to be consecutive, or start on the date of death.

*"Immediate family" means the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee; and any person who lives with the employee as a member of the employee's family.

Compassionate care leave

An employee can take up to 27 weeks of unpaid leave within a 52 week period to care for or support a gravely ill family member.

The employee must obtain a medical certificate which states that the family member is gravely ill with a significant risk of death within 26 weeks.

"Family member" means, in addition to someone who is a member of the employee's immediate family*:

- in relation to an employee:
 - o an employee's step-sibling, aunt or uncle, niece or nephew;

- o a current or former foster parent, foster child, ward or guardian; or
- o the spouse of a sibling or step-sibling, child or step-child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster child or guardian.
- in relation to an employee's spouse:
 - o a parent or step-parent, sibling or step-sibling, child, grandparent, grandchild, aunt or uncle, niece or nephew;
 - o a current or former foster parent or ward; and
- anyone who is considered to be like a close relative regardless of whether or not they are related by blood, adoption, marriage or common law partnership.

Jury duty

An employee who is required to attend court as a juror is considered to be on unpaid leave for the period of the jury duty.

Reservists' leave

An employee who is a reservist is entitled to unpaid leave if the employee is deployed to a Canadian Forces operation outside Canada, is engaged in pre- or post-deployment activities either inside or outside Canada, or is deployed inside Canada to assist in dealing with an emergency or its aftermath.

An employee who is a reservist is entitled to 20 days unpaid leave in a calendar year if the employee is engaged in Canadian Forces training activities or travelling to or from training. If an employee participates in more than one training activity, the entitlement is 20 days in total.

The employee must give the employer four weeks' written notice of the date the leave will begin and end. However, in the case of a deployment, if the employee receives less than four weeks' notice, he or she must give the employer as much notice as is practicable.

Continued ...

If a deployment is extended, the employee must give the employer notice four weeks before the date the leave was to have ended, or as soon as practicable. If a training activity is extended, the employee must give the employer notice four weeks before the date the leave was to have ended. If the employee proposes to return to work earlier than originally specified, the employee must give the employer at least one week's notice.

Leave respecting disappearance of child

If an employee's child disappears in circumstances where it is likely that the disappearance is the result of a crime, the employee is entitled to up to 52 weeks of leave. The employee may take leave in different units of time with the employer's consent.

The leave ends 14 days after the child is found alive, the date the child is found dead, (in which case the employee is entitled to leave respecting the death of a child), at the end of the 52 weeks off, or if the employee has taken time off in different units, the last day of the last unit of time.

The leave ends if it becomes probable that the child's disappearance was not the result of a crime or the employee is charged with a crime in relation to the child's disappearance.

Leave respecting death of child

If an employee's child dies, the employee is entitled to up to 104 weeks of leave. The employee may take leave in different units of time with the employer's consent.

The leave ends at the end of the 104 weeks off, or if the employee has taken time off in different units, the last day of the last unit of time.

The leave ends if the employee is charged with a crime in relation to the child's death.

Employment considered continuous

If an employee is on any of the leaves referred to in this factsheet or is on jury duty, employment is considered continuous for the purposes of calculating annual vacation and termination entitlements, as well as for pension, medical or other plans of benefit to the employee.

With the exception of reservists' leave, an employer must continue to make payments to any such plans unless the employee chooses not to continue with his or her share of the cost of a plan.

The employee is entitled to all increases in wages and benefits that the employee would have received if not on leave.

Conditions of employment to remain the same during leave

An employer may not terminate an employee, or change a condition of employment, because of a leave or jury duty without the employee's written consent.

Return to work

When the leave or jury duty ends, an employee must be returned to his or her former position or to a comparable position. It is the employer's responsibility to contact the employee to make arrangements for the employee's return to work.