



## Other Employment Standards Leaves

### 1. Family Responsibility Leave

Family responsibility leave gives employees time off to deal with the health, care or education needs of a person in a close family relationship. Employers are required to give employees, upon request, leaves of absence without pay for up to three days per year.

### 2. Compassionate Care Leave

Compassionate care leave gives employees leaves of absence without pay for up to twenty-eight (28) weeks to care for a person in a close family relationship who is critically ill and has a significant risk of dying.

#### How does an employee qualify for Compassionate Care Leave?

In order for an employee to qualify for compassionate care leave, the employee must have a written note from a certified medical practitioner stating that a person in a close family relationship has a serious medical condition that carries a significant risk of death within the next twenty-eight (28) weeks and requires care and support.

In addition to these requirements, other conditions apply:

- should the person in a close family relationship die, the compassionate care leave expires and bereavement leave may then be taken by the employee;
- the leave may be broken up over the twenty-eight (28)-week period, and may only be taken in periods of at least a one-week duration;
- the leave may be shared by two or more employees, but the total leave period taken by the employees may not exceed twenty-eight (28) weeks; and
- there is no length of service requirement for employees to access compassionate care leave.

#### Does an employee have other options for compensation while on Compassionate Care Leave?

The government of Canada offers a program under Employment Insurance that covers Compassionate Care Leave. To contact them you may refer to our website for a list of website addresses and telephone numbers under "other links".

### 3. Bereavement Leave

In the event of the death of a person in a close family relationship, an employer must give an employee a leave of absence without pay of up to five consecutive days. Bereavement leave is to begin no later than the day of the funeral.

### 4. Sick Leave

An employee who has worked for the same employer for more than 90 days must be given, upon request, leaves of absence without pay as sick leave of up to five days during a twelve month calendar period.

#### Does an employer have the right to request a physician's note from an employee on sick leave?

Where an employee, due to an illness or injury, requests a leave of absence of four or more consecutive calendar days, the employer can require the employee to provide the employer with a medical certificate certifying that the employee is incapable of working due to illness or injury.

### 5. Court Leave

#### Must an employer give a leave of absence where an employee is summoned to serve on a jury or to act as a witness?

Yes, where an employee is summoned or selected to serve on a jury or to act as a witness in a court proceeding, the employer must give the employee a leave of absence without pay for the period of time the employee is absent from work for this purpose.

### 6. Leave for members of the Reserves

#### Who is eligible?

An employee who is a member of the Reserves with the Canadian Forces who has been in the employ of the employer for a continuous period of at least three months and who is selected for service is entitled to and shall be granted a leave of absence without pay by the employer for the purpose of that service.

#### What periods of services are eligible?

- a) deployment to a Canadian Forces operation, inside or outside Canada, or engagement, inside or outside Canada, in a pre-deployment or post-deployment activity required by the Canadian Forces in connection with such an operation
- b) deployment to address a national emergency
- c) training that members of the Reserves are ordered to take under paragraph 33(2)(a) of the *National Defence Act* (Canada)
- d) military skills training
- e) time spent in travel from or to a member of the Reserve's resident in relation to an activity referred to in paragraph a), b), c) or d)

- f) rest in relation to an activity referred to in paragraph a), b), c) or d)
- g) time spent in treatment, recovery or rehabilitations in respect to a physical or mental health problem that results from an activity referred to in paragraph a) b) c) or d)

**How long can a leave of absence for periods of services be?**

An employee who is a member of the Reserves may take up to a total of 24 months of leave of absence within any 60-month period. This does not apply to a leave of absence taken as a result of a national emergency.

**How much notice shall an employee give to the employer of his intentions to take this leave?**

An employee shall give written notice to the employer at least four weeks before the anticipated commencement date of the leave or if the employee receives notice that they are selected for service less than four weeks before the commencement of that service, as soon as the circumstances permit after receiving the notice.

**What shall the notice include?**

The notice shall include the commencement date of the leave of absence and the employee's expected date of return to work.

An employer may require the employee to provide the employer with a certificate from an official with the Reserves stating that the employee is a member of the Reserves and has been selected for service, and, if possible, the expected start date and end dates for the period of service.

If circumstances beyond the employee's control require a change in the dates specified in a notice, the employee shall advise the employer of the change.

**Is it possible to extend a leave that is in progress and if so, what is required?**

Yes, if circumstances beyond the employee's control require the leave to be extended beyond the date specified, the employee shall provide a written notice to this employer at least four weeks prior to the amended expected date of return to work or if the employee receives notice of the requirement to amend the expected return to work date less than four weeks before that date, as soon as practicable after the employee receives the notice.

An employer is not required to extend the leave beyond the date that would result in the employee's total period of leave of absence exceeding 24 months from the commencement date of that leave.

If the employee does not provide notice within the specified time frame of an amended date of return, the employer may postpone the employee's date of return to work by up to four weeks after the date on which the employee gives notice to the employer. However, an employer shall not postpone an employee's date of return if the postponement would result in a return to work date that is earlier than the amended expected return to work date of the employee.

**Can an employer refuse to grant a leave or extend a leave?**

An employer may apply to the Director to be exempted from the application of the provisions under the *Employment Standards Act*, if granting the leave or the extension would:

- a) adversely affect the health or safety of the workplace or the public, or
- b) cause the employer undue hardship

A person affected by a decision of the Director with respect to an application of exemption may make a written request to the Director, within 14 days after the notice of the decision, to refer the matter to the Board. Within 10 days after receiving this request, the Director shall refer the matter to the Board.

**Is an employee protected as a member of the Reserves?**

An employer shall not dismiss, suspend or lay off an employee or refuse to employ a person for the sole reason that the employee or person is a member of the Reserves.

**What happens when a leave of absence ends?**

When an employee reports for work on the expiration of the period of leave granted, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

**7. Death or Disappearance Leave (child)**

**Eligibility:**

- An employee who is the parent of a child under 18 years old who has died as the probable result of a crime is entitled to an unpaid leave of up to thirty-seven (37) weeks.
- An employee who is the parent of a child who has disappeared as the probable result of a crime is entitled to an unpaid leave of up to thirty-seven (37) weeks.

- An employee is not entitled to the leave if they are charged with the crime.
- If both parents are employees of the same employer, they are both entitled to the leave.
- Employees may end the leave early by giving the employer written notice before they wish to return to work.

**Duration of leave:**

- The period during which the employee may take the leave begins on the day that the death or disappearance occurs and ends thirty-seven (37) weeks after that day.
- If the child is found alive within the leave period, the employee is entitled to continue taking leave for fourteen (14) days after the child is found.
- If the child is found dead, or dies as a result of the circumstances of a disappearance, the employee is entitled to take up to thirty-seven (37) weeks of unpaid leave from the day the child is found dead.
- Where it is no longer probable that a child's death or disappearance is the result of a crime, a leave ends fourteen (14) days after that day, unless the employer and employee agree to an earlier return to work.

**Notice requirements:**

- Employees must give their employers written notice of their intention to take a leave as soon as possible.
- If possible, the information to be provided to the employer includes the anticipated commencement date and duration of the leave.
- The employer may require the employee to provide evidence that is reasonable in the circumstances of the employee's entitlement to the leave.
- If circumstances beyond the employee's control require a change in the duration of the leave, the employee shall advise the employer of the change. The total leave may not exceed thirty-seven (37) weeks.
- The employee shall provide the employer with written notice as soon as possible that circumstances have changed.

**8. Critically Ill Child Leave**

Employers are required to provide an unpaid leave of up to thirty-seven (37) weeks to allow parents or other family members to provide care and support for a critically ill child who is under 18 years old.

**Eligibility:**

- An employee who is a parent or other family member of a critically ill child under 18 years old is entitled to the leave.

- If both parents or other family members are employees of the same employer, the leave of absence may be taken wholly by one of the employees or be shared by the employees. The aggregate amount of leave that may be taken by the two employees shall not exceed to thirty-seven (37) weeks.
- **Notice requirements:**
- Employees must give their employers written notice of their intention to take a leave as soon as possible.
- If possible, the information to be provided to the employer includes the anticipated commencement date of the leave, the anticipated duration of the leave, and a doctor's certificate.
- If circumstances beyond the employee's control require a change in the duration of the leave, the employee shall advise the employer of the change.
- The leave ends the last day of the week in which either the child dies or at the expiration of the thirty-seven (37) weeks.

**9. Critically Ill Adult Leave (March 16, 2018)**

Employers are required to provide an unpaid leave of up to sixteen (16) weeks to allow parents or other family members to provide care and support for a critically ill adult who is 18 years of age or older.

**Eligibility:**

- An employee who is a parent or other family member of a critically ill adult who is 18 years or older is entitled to the leave.
- If both parents or other family members are employees of the same employer, the leave of absence may be taken wholly by one of the employees or be shared by the employees. The aggregate amount of leave that may be taken by the two employees shall not exceed sixteen (16) weeks.

**Notice requirements:**

- Employees must give their employers written notice of their intention to take a leave as soon as possible.
- If possible, the information to be provided to the employer includes the anticipated commencement date of the leave, the anticipated duration of the leave, and a doctor's certificate.
- If circumstances beyond the employee's control require a change in the duration of the leave, the employee shall advise the employer of the change.
- The leave ends the last day of the week in which either the adult dies or at the expiration of the sixteen (16) weeks.



## 10. Domestic Violence, Intimate Partner Violence or Sexual Violence Leave (Sept 1, 2018)

Employers are required to grant the employee leaves of absence in each calendar year, not to exceed the total of the following:

- c) up to 10 days, which the employee may take intermittently or in one continuous period, and
- d) up to 16 weeks in one continuous period.

The first five days of this leave are paid and the balance of leave is unpaid leave.

The rate of pay an employee is to be paid shall be an amount equal to the wages the employee would have earned if the employee had worked the regular hours of work for the applicable period.

If the wages of an employee vary from day to day, the rate of pay an employee is to be paid shall be at least equivalent to the employee's average daily earnings exclusive of overtime for the days on which the employee worked during the 30 calendar days immediately preceding the leave.

### Eligibility:

- The employee requesting the leave must have been in the employ of the employer for more than 90 days.
- The employee or a child of the employee is a victim of domestic violence, intimate partner violence or sexual violence, and the leave of absence is taken for any of the following purposes:
  - a) to seek medical attention for the employee or the child of the employee for a physical or psychological injury or disability caused by the domestic violence, intimate partner violence or sexual violence;
  - b) to obtain victim services for the employee or the child of the employee from a qualified person or organization;
  - c) to obtain psychological or other counseling from a qualified person for the employee or the child of the employee;
  - d) to relocate temporarily or permanently;
  - e) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, intimate partner violence or sexual violence; and
  - f) for any other purposes related to or resulting from the domestic violence, intimate partner violence or sexual violence.

### Notice requirements:

When the employee advises the employer of his or her intention to take a leave of absence, the employee shall provide the employer in writing with the purposes for which the leave is to be taken, with reference to one or more of the above specific purposes.

### Confidentiality and disclosure of documentation:

All documentation or other material received in relation to the employee's leave of absence, is confidential and shall not be disclosed unless

- a) the employee has consented in writing,
- b) the disclosure is made to an officer, employee or agent of the employer who needs the records in the performance of their duties, or
- c) the disclosure is authorized or required by law.

### Additional resources:

For more information regarding domestic violence, intimate partner violence or sexual violence and the impact on the workplace, please contact Women's Equality Branch via e-mail at [web-edf@gnb.ca](mailto:web-edf@gnb.ca) or visit their website at <http://www.gnb.ca/women>.

## General Information on Other Leaves

Employers shall not suspend, layoff, penalize, dismiss or otherwise terminate an employee during the leave for reasons arising from the leave alone. Nor shall the employer impose disciplinary measures or discriminate against an employee for seeking a leave and/or the actions of the employer are in any way an attempt by the employer to evade any responsibility imposed on him under this Act or any other Provincial or Federal Act or regulation.

An employee granted a leave of absence under the *Employment Standards Act* is deemed to have been continuously employed with the same employer during the leave of absence.

## Definitions

**“close family relationship”** the relationship between persons who are married to one another, between parents and their children, between siblings and between grandparents and their grandchildren, and includes a relationship between persons who, though not married to one another and whether or not a blood relationship exists, demonstrate an intention to extend to one another the mutual affection and support normally associated with those relationships first mentioned.”

**“critically ill child”** means a person who is under 18 years of age on the day on which the qualified medical practitioner certifies that the person’s baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

**“critically ill adult”** means a person who is 18 years or older on the day on which a qualified medical practitioner certifies that the person’s baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

**“qualified medical practitioner”** means a person who is entitled to practice medicine under the laws of a jurisdiction in which care or treatment of a critically ill child or adult is provided.

**“parent”** means a person who, in law, is the parent of, has the custody of or is the guardian of a child or a person with whom a child is placed for the purposes of adoption.

**“family member”** means a family member as defined in the *Employment Insurance Regulations* under the *Employment Insurance Act* (Canada).

**“week”** means the period between midnight on Saturday and midnight on the immediately following Saturday.

**“crime”** means an offence under the *Criminal Code* (Canada).