



28 November 2017 (revised)

# Leaves of Absence: Growing in Volume and Complexity

The overlap between personal and work priorities is well documented and has been a leading concern for Canadian employers for many years. The work/life balance equation is now more difficult to solve as, in many workplaces, the technology-based, 24/7 economy further erases an already blurry line. In recent years, public employment and social policy has added new variables to the calculation as laws and government benefit programs are regularly amended to support workers in situations where personal obligations compete with work.

Employers must now manage a complex array of legislated leaves of absence. Legal compliance, human resource policy, and integration with government financial benefit programs is particularly challenging for those with locations in multiple provinces, as a distinct set of protected leaves, eligibility requirements, and benefits continuation directives exists in each legal jurisdiction. Ontario and Alberta are

currently undergoing substantive employment standards reform. This Information Bulletin will focus on new or amended leaves of absence in those provinces, and the policy, administrative, and employee benefit challenges that arise as a result. The provisions featured take effect on 1 January 2018 or as indicated.

New or amended  
leaves of absences



9 Alberta  
6 Ontario

# New or amended leaves of absence in effect 1 January 2018

## Ontario

On 1 June 2017, and based on recommendations made by the Changing Workplaces Review report, the government of Ontario introduced, Bill 148, The Fair Workplaces, Better Jobs Act, 2017. The legislative proposals included broad ranging amendments to the provinces' employment standards and labour relations acts respectively, in an effort to address workplace and economic changes that have impacted traditional norms and practices for Ontario workers.

**Personal emergency leave (amended)** – Provisions for personal emergency leave (PEL), which currently apply only in workplaces with 50 or more employees, will apply to all employers. Workers are entitled to 10 days of PEL per year, two of which are paid.

Where PEL is taken in regard to illness, employers will be prohibited from requesting a physician or "sick" note to justify the absence

**Child death leave (new)** – A new, separate leave for a period of up to 104 weeks is available for parents of a child who dies from any cause.

The existing leave for crime-related death or disappearance of a child remains, but the entitlement is increased from up to 52 weeks to up to 104 weeks.

**Family medical leave (amended)** – Family medical leave is available to those who require a period of time away from work to provide care or support to a prescribed family member who is gravely ill with a significant risk of death. This amendment brings the duration of family medical leave into alignment with available employment insurance benefits for compassionate care.

The entitlement to family medical leave increases from up to eight weeks in a 26-week period to up to 27 weeks in a 52-week period.

**Pregnancy leave (amended)** – The entitlement to the more limited six weeks of pregnancy leave in certain circumstances (e.g. still-birth or miscarriage) is increased from 6 to 12 weeks.

**Parental leave (amended)** – Effective 3 December 2017, the entitlement to parental leave is increased from 35 weeks to 61 weeks for employees who take pregnancy leave and from 37 weeks to 63 weeks otherwise.

This amendment brings the duration of parental leave into alignment with the availability of expanded employment Insurance (EI) parental benefit program parameters, which are in effect as of 3 December 2017.

**Domestic or sexual violence leave (new)** – Domestic or sexual violence leave provides that an employee who has been employed by an employer for at least 13 consecutive weeks is entitled to up to 10 days and up to 15 weeks of unpaid leave if the employee or a child of the employee experiences domestic or sexual violence or the threat of domestic or sexual violence. The leave can be taken under prescribed circumstances.

## Alberta

Bill 17, the Fair and Family-friendly Workplaces Act, was introduced on 24 May 2017. Bill 17 makes extensive amendments to the Alberta Employment Standards Code, including the introduction of seven new job-protected leaves of absence and amendments to existing leave of absence provisions. Some of these new leaves are also in response to the new expanded EI benefits. Along with the changes outlined below, employers should be aware that the service requirement for all job-protected leaves (except reservist leave) will be reduced from one year to 90 days of employment.

**Death or disappearance of a child leave (new)** – Up to 52 weeks leave is available to the parent of a child who has disappeared and it is probable, considering the circumstances, that the child disappeared as a result of a crime; or, a period of up to 104 weeks if the employee is the parent of a child who has died and it is probable, considering the circumstances, that the child has died as the result of a crime.

**Critical illness of a child leave (new)** – Up to 36 weeks of leave is available for the purpose of providing care or support to a critically ill child.

**Long-term illness and injury leave (new)** – 16 weeks of leave per calendar year is available related to illness or injury of the employee (in line with the employment insurance sickness benefit program). Medical evidence may be requested.

**Domestic violence leave (new)** – Up to 10 days per calendar year for employees coping with domestic violence. The leave can be taken under prescribed circumstances.

**Personal and family responsibility leave (new)** – Up to five days of leave in a calendar year for the health of the employee, or for the employee to meet his or her family responsibilities in relation to a family member.

**Bereavement leave (new)** – Three days of leave in a calendar year on the death of a family member.

**Citizenship ceremony leave (new)** – Up to a half-day to attend a citizenship ceremony to receive a certificate of citizenship.

**Maternity (revised)** – 16 weeks of leave (increased from 15 weeks to account for the new one week waiting period of employment insurance).

A pregnant employee whose pregnancy ends other than as a result of a live birth within 16 weeks of the estimated due date is entitled to maternity leave. (new).

**Compassionate care (revised)** – 27 weeks of leave (increased from eight weeks).

## Continuing benefits through a leave of absence

Leaves of absence governed by employment standards legislation are typically unpaid, though there may be exceptions, and provide job-protected time off for various reasons. In Canada, rules regarding benefits continuation during a legislated leave of absence vary from province to province based on applicable employment standards. In general, Alberta employers are not required to continue benefits through a leave of absence; whereas, in Ontario, except for reservist leave, benefits must continue, along with related employer contributions if any, unless the employee elects in writing not to continue their benefits for the duration of the leave. Employers should review policy and practices to ensure legal compliance. Where insurance contracts or employer provided benefits are more generous than the legal minimum, it may be necessary to ensure that benefits policy with respect to continuation of benefits during a leave is applied consistently among employee groups.

## Administrative complexity and employee communication

As the variety and length of leaves of absence grow, so too does the administrative complexity of leave policy. Employers should take the time to review not only policy, but also manuals, benefits booklets, and employee web portals, to ensure that each new leave type is addressed and that policy is applied consistently. Where collective bargaining is a factor, the language of existing agreements may need to be reviewed to ensure that it addresses any new obligations resulting from the range of new or amended leave provisions in Alberta and Ontario, and across the country.

## Final thoughts

Leave administration has always been a complex matter for Canadian employers. Differing provincial rules and integration with public programs like EI is an ongoing challenge. Employers and their employees should be mindful that federal EI program benefits and job-protected leave under employment standards, may run parallel to each other, but are separate and distinct programs that may or may not provide an exact compliment.

The number of new leaves, their length, and their nature intensify already complex administrative and workforce management processes. Employees may be on leave for a longer period of time, with more frequency, and for ever more challenging personal reasons. The task of leave administration may expand by default to assisting employees as they navigate complex life challenges. Being aware of the privacy and human rights obligations that arise from this involvement is critical, as it ensures that Employee Assistance Programs or other mental health supports are brought into employer policy appropriately. Training for human resource and line managers will also play an increasingly critical role in ensuring that well-defined policies are administered with the required consistency and sensitivity.

These amendments will bring many changes for employers in Alberta and Ontario, but all employers should be tuned in to the rapidly shifting range and nature of job-protected leaves of absence. Action should be taken sooner than later to ensure the law is applied accurately and consistently, and that related employee benefit and workforce management issues have been addressed in full.

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