

Compassionate Care Leave Compliance Game Plan



Caring for an elderly parent care or other close family member who's on the verge of death is an emotionally harrowing experience; until fairly recently, employees who took time from work to meet their family care obligations also risked losing their jobs. Today, the right to take unpaid leave for what's called compassionate care is a fixture of employment standards laws in all parts of Canada (although Ontario and Québec don't use that term). But [leave rules vary by jurisdiction](#). This creates compliance challenges for HR directors, particularly if your organization operates in more than one jurisdiction. Here are the 10 things you must do to meet your legal obligations and respect employees' compassionate care leave rights. (Go to the HR Insider website for a template [Compassionate Care Leave Policy](#) that you can adapt for your own situation.)

Step 1. Verify that Employee Is Eligible for Compassionate Care Leave

In most jurisdictions, any employee covered by the employment standards law may take unpaid leave to provide care or support for a family member who has a serious medical condition and faces a significant risk of death within a specified period, typically 26 weeks, regardless of how long they've worked for the company. However, in 5 provinces employees must have a minimum amount of continuous service with their employer to be eligible for compassionate care leave:

- **90 days:** Alberta and Manitoba;
- **3 months:** Nova Scotia;
- **30 days:** Newfoundland; and
- **13 weeks:**

Step 2. Verify that Compassionate Care Leave Covers Particular Family Member

Generally, employees can take compassionate care leave only to provide care or support to a family member at significant risk of death within 6 months. And it can't be just any family member or relative. Employment standards regulations list specific

relationships between the employee and the employee's spouse or common law partner for whom an employee can exercise compassionate care leave rights. While they vary widely by jurisdiction, these connections are pretty broad, covering parents, grandparents, children, siblings, uncles, aunts, nieces, nephews and others, depending on the province. In most jurisdictions, the list of family relationships also includes individuals not related to the employee by blood or marriage but whom the employee regards as like a member of the family (and vice-versa).

Step 3. Ensure Employee Provides Proper Notice of Compassionate Care Leave

Employees generally must give employers notification of their intent to take compassionate care leave, the reasons for it and how long they expect the leave to last. Once leave begins, they must provide notice of expected changes in the return date. Notice requirements are much stricter in some jurisdictions than others.

Table 1. Compassionate Care Notice Requirements by Jurisdiction

Jurisdiction*	Required Notice
Federal	<p>Employee must give employer written notice:</p> <ul style="list-style-type: none"> • As soon as possible of reasons for and length of leave; • As soon as possible of any change in the length of the leave; and • At least 4 weeks' notice of changes of over 4 weeks, unless there's valid reason 4 weeks' notice can't be provided <p>Employee must give employer:</p> <ul style="list-style-type: none"> • Written notice listing estimated date of return within 2 weeks or as soon as "reasonable and practicable in the circumstances"; • Notice of any change in the estimated return date; • 1 week's notice of return; and • 2 weeks' notice of desire to terminate employment
Alberta	<p>Employee must give employer medical certification of need for leave "as soon as practicable"</p>
British Columbia	<p>Employee must give employer:</p> <ul style="list-style-type: none"> • Notice of least one pay period, unless circumstances necessitate a shorter period; and • At least 48 hours' notice of expected return date to end leave early (unless sides agree on different notice terms)
Manitoba	<p>Employee must give employer notice of anticipated leave start and return date "as soon as possible"</p>
New Brunswick	<p>Employee must give employer at least 2 weeks' written notice unless there's a valid why that notice can't be provided:</p> <ul style="list-style-type: none"> • Before leave is to begin listing the length of leave; and • Any changes to the length of the leave
Newfoundland	<p>Employee must notify employer of intention to take leave "as soon as possible"</p>
Nova Scotia	<p>Employee must notify employer in writing of intent to take leave before leave begins, but if that's not possible, "as soon as possible" after leave begins</p>
Ontario	<p>Employee must give employer a copy of the medical certificate before or after taking leave</p>
Prince Edward Island	<p>Employee must notify employer "as far as possible in advance" of intended leave start and return date</p>
Saskatchewan	<p>Employee must submit request for compassionate leave listing expected duration of leave to employer</p>
Northwest Territories	

Note:

* Québec, Nunavut and Yukon don't specify how, when or whether employees must provide notice of compassionate care leave

Step 4. Ensure Employee Provides Medical Certification of Need for Leave

Compassionate care leave is allowed only if a qualified medical professional issues written certification attesting that the family member has a serious medical condition and is at significant risk of death within 26 weeks. The definition of who's qualified to provide medical certification varies. Thus, certification from a physician is required in Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Northwest Territories and under federal law, whereas certification can come from either a physician or nurse practitioner in Alberta, British Columbia, Newfoundland, Ontario, Québec, Nunavut and Yukon.

Table 2. Healthcare Practitioner Qualification Requirements by Jurisdiction

Jurisdiction	Who's Qualified to Certify Medical Need for Compassionate Care Leave
Federal	A health care practitioner, or person lawfully entitled to provide health services in the place they provide those services
Alberta	A physician or nurse practitioner
British Columbia	A medical practitioner or nurse practitioner
Manitoba	A physician
New Brunswick	A qualified medical practitioner qualified to practice medicine
Newfoundland	A medical or nurse practitioner
Nova Scotia	A qualified medical practitioner
Ontario	A physician, registered nurse or other qualified health practitioner
Prince Edward Island	A medical practitioner
Québec	A professional working in the health and social services sector and governed by the Professional Code (chapter C-26)
Saskatchewan	A duly qualified medical practitioner or nurse practitioner
Northwest Territories	A qualified medical practitioner
Nunavut	A medical practitioner, or if there's no qualified medical practitioner who's a resident in a Nunavut community, by a registered nurse, nurse practitioner or temporary certificate holder under the Northwest Territories' Nursing Profession Act
Yukon	A qualified medical or nurse practitioner

The dynamics of verification also differ:

- **Mandatory:** In Alberta, British Columbia, Manitoba, Québec and under the *Canada Labour Code* for federally regulated employers, employees must furnish medical certification regardless of whether employers ask for it; and
- **Employer Must Ask:** In the other provinces and territories, employees don't have to provide the employer medical certification unless the employer specifically asks for it. New Brunswick, Newfoundland, Prince Edward Island, Nunavut and

Yukon specify that the employee must provide the requested copy of certification no later than within 15 days of the date they return to work; in Ontario, certification must be provided "as soon as possible."

Step 5. Determine How Long Compassionate Care Leave Can Last

The maximum duration of compassionate care leave is 28 weeks. **Exceptions:** 27 weeks is the maximum in Alberta, BC and Northwest Territories; 8 weeks is the maximum in Nunavut; and Québec uses a graduated scale ranging from 10 to 104 weeks, depending on the ailing person's medical condition, age (thus, the 104-week maximum applies to children) and degree of relation. Note that 2 or more employees working for the same company who want to care for the same family member must divide the yearly allotment between them. In other words, they don't get 28 weeks apiece to care for the family member.

Step 6. Ensure Employee Takes Compassionate Care Leave During the Required Period

Employees can take compassionate care all at once or in installments of at least one week in duration. Leave typically starts the week the employee gets the medical certification and ends after the allotted weeks expire or sooner if the family member dies. If the family member is still alive, the employee may be able seek a new leave without producing a medical certificate. **Exception:** Only 1 compassionate leave per year is allowed in Saskatchewan. In many provinces, the window for taking leave closes after 52 weeks.

Step 7. Respect Employee's Overlapping Family Care Leave Rights

Keep in mind that an employee who has to care for or support a seriously injured or ill family member may qualify not only for compassionate care leave but also other family care leaves provided for under employment standards laws, including critically ill child and adult care leave. In addition, many provinces also provide for days off so that employees can meet family responsibilities, including but not limited to caregiving:

- 10 days: Québec, including the first 2 as paid days;
- 5 days: Alberta and BC; and
- 3 days: MB, NB, ON, PEI.

Rule of thumb: It's up to the employee to tell the employer which kind of leave they're taking. While you can't insist that they take a different kind of leave, you can verify that they qualify for the kind of leave they've requested be it compassionate care or another form of leave.

Step 8. Reinstate Employees Who Return from Compassionate Care Leave

Employers must reinstate employees [who return](#) from leave to the same or a comparable position with at least the same wages, benefits and seniority as when leave began. In British Columbia and Northwest Territories, employees are entitled to any increases in wages and benefits they'd have received had they not been on leave; the same is

true for federally regulated employees but only if those wage and benefit increases resulted from a corporate reorganization. Although employment is deemed to be continuous once it resumes, in most provinces it doesn't count toward vacation and other employment standards accruals (BC, Manitoba and Saskatchewan are the exceptions; however, in Saskatchewan, the maximum accrual period for all leaves, including combined leaves, is 78 weeks).

Step 9. Respect Employees' Right to Continue Participating in Benefits Plans During Leave

Five jurisdictions (Fed, BC, ON, PEI, SK) require employers to allow employees to continue participating in and maintain contributions toward company benefit plans while they're on leave, provided that employees don't opt out and that they maintain their own contributions during leave time.

Step 10. Don't Retaliate Against Employees for Taking Compassionate Care Leave

Employers aren't allowed to terminate, demote, cut the pay or benefits or take other adverse employment action against employees for taking or asking about their compassionate care or other employment standards leave rights.