

# Employee Organ Donation Leave Rights – Know The Laws of Your Province



Organ and tissue donation saves lives. But it also requires tremendous sacrifice, especially when the donor is a living person. In addition to losing a kidney, lung, or other body part, the donor has to take time from work to undergo surgery and recover. Organ donation leave assures that employees who are willing to serve as donors don't have to give up their jobs. There are currently 5 jurisdictions that provide for organ donation leave in their employment standards laws—Federal, Manitoba, Ontario, Québec, and Saskatchewan. But leave rules vary by jurisdiction in terms of:

- How long employees must work for a company to be eligible for organ donation leave;
- The number of organ donation leave days allowed per calendar year;
- Whether any of those days must be paid;
- The notice, if any, employees must provide to take organ donation leave; and
- The rights of employers to demand medical certification that the employee is planning organ donation surgery; and
- Employees' rights to accrue benefits, seniority, wage and vacation entitlements while on leave; and
- The employee's reinstatement rights.

Here's a summary of the organ donation leave rules in each part of Canada. Go to the HR Insider website for a complete [Organ Donation Leave Compliance Game Plan](#).

## **Organ Donation Leave Rights Across Canada**

### **ALBERTA**

*Employment Standards Code* doesn't provide for organ donor leave.

### **BRITISH COLUMBIA**

*Employment Standards Act* doesn't provide for organ donor leave.

## MANITOBA

**Entitlement:** Employees employed by same employer for at least 30 days get unpaid leave of up to 13 weeks for donating an organ, i.e., undergoing a surgical procedure to remove an organ or tissue for purposes of transplanting it into another individual.

**Notice + Certification:** Employee must give employer: (i) in writing, as much notice as reasonable and practicable in the circumstances, and (ii) a medical certificate stating the start date and end date of the period necessary for the employee to donate the organ and recover from the procedure.

**Extension of Leave:** a. Employees may extend the leave beyond the end date listed in the medical certificate by giving the employer: (i) written notice of at least one pay period before extending the leave, if reasonable and practicable in the circumstances; and (ii) a medical certificate stating that they need an additional specified period to recover from donating an organ and stating a time period the employee needs to recover; and b. Employees may get one or more extensions, provided that total extensions don't exceed 13 weeks.

**Ending Leave Early:** Employees may end leave early by giving the employer written notice at least one pay period before the day they want to end the leave.

**Reinstatement:** Employer must reinstate the employee to the same or a comparable position with no less than the wages, vacation entitlement, and other benefits earned immediately before leave began, unless the employer lays off the employee, terminates their employment, or fails to reinstate for reasons unrelated to the leave.

*(Employment Standards Code, Part 2, Division 9)*

## NEW BRUNSWICK

*Employment Standards Act* doesn't provide for organ donor leave.

## NEWFOUNDLAND & LABRADOR

*Employment Standards Act* doesn't provide for organ donor leave.

## NOVA SCOTIA

*Employment Standards Act* doesn't provide for organ donor leave.

## NORTHWEST TERRITORIES AND NUNAVUT

*Employment Standards Act* doesn't provide for organ donor leave.

## ONTARIO

**Entitlement:** Employees employed for at least 13 weeks who undergoes surgery for organ

donation (defined as all or a part of a kidney, liver, lung, pancreas, or small bowel) to another person gets unpaid leave of up to 13 weeks.

**Certification:** Employer may require an employee to provide a certificate from a legally qualified medical practitioner (defined as: (i) a member of the College of Physicians and Surgeons of Ontario if the surgery is in Ontario, and (ii) a person qualified to practice medicine under the laws of that jurisdiction where the surgery will take place) confirming that the employee has undergone or will undergo organ donation surgery.

**Notice:** Employee must give employer at least 2 weeks' written notice before beginning or extending the leave, if possible; If employee must begin or extend the leave before advising the employer, they must advise the employer in writing as soon as possible after beginning or extending the leave.

**Leave Start & End:** Leave starts on the day the employee undergoes surgery or earlier day in the legally qualified medical practitioner certificate and ends on a date no later than 13 weeks after it begins.

**Extension of Leave:** Employee may extend leave by up to 13 weeks if a legally qualified medical practitioner issues a certificate stating that the employee isn't yet able to perform the duties of the position because of the organ donation and won't be able to do so for a specified time; Leave may be extended more than once, provided that total extensions don't exceed 13 weeks—in other words, total organ donor leave may last no longer than 26 weeks.

**Ending Leave Early:** Employee may end leave early by giving the employer written notice at least 2 weeks before the day the employee wants to end the leave.

**Benefits During Leave:** Employees continue to participate in life insurance, accidental death, extended health, and dental plans during leave unless they elect in writing not to do so; Employers must maintain contributions in those plans during leave unless the employee provides written notice that they don't intend to pay the employee's own contributions.

**Reinstatement:** Employer must reinstate the employee to the same or a comparable position at a pay rate of whichever of the following is greater: (i) the rate the employee most recently earned with the employer; and (ii) the rate the employee would be earning had they worked throughout the leave.

*(Employment Standards Act, Part XIV)*

## PRINCE EDWARD ISLAND

*Employment Standards Act* doesn't provide for organ donor leave.

## QUÉBEC

**Eligibility:** Employees with at least 3 months of uninterrupted service with the employer get up to 26 weeks' organ donation leave.

**Paid Leave:** Organ donor leave includes 2 paid days unless employees already used paid days: (i) to fulfil family obligations relating to the care, health, or education of their child or their spouse's child or as an informal caregiver, (ii) owing to sickness, or (iii) after an accident, domestic violence, sexual violence, or criminal

offence.

**Notice & Certification:** Employee must notify employer as soon as possible and state the reason for their absence and employer may request a document attesting to the reasons for the employee's absence.

**Benefits During Leave:** Leave may not affect an employee's participation in group insurance and pension plans recognized in the employee's place of employment, "subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer".

**Reinstatement:** a. Employer must reinstate the employee to their former position with the same benefits, including the wages to which they'd have been entitled had they not taken leave; b. If the employee's original position no longer exists, the employer must recognize all the rights and privileges to which the employee would have been entitled had the employee been at work at the time the position ceased to exist; and c. Exceptions: Subsections a. and b. don't prevent an employer from dismissing, suspending, or transferring an employee for good and sufficient cause.

*(Labour Standards Act, Secs. 79.1 to 79.6)*

## SASKATCHEWAN

**Eligibility:** Employees who've worked for an employer for more than 13 consecutive weeks get up to 26 weeks' unpaid organ donation leave.

**Notice:** Employees must provide employer at least 4 weeks' written notice of the day on which they intend to leave and return from organ donation leave.

**Certification:** Employer may require employees to provide a certificate from a duly qualified medical practitioner or nurse practitioner as to the reason for or extension of organ donation leave.

**Benefits During Leave:** Employees continue to be entitled to participate in a medical, dental, disability or life insurance, registered retirement savings, pension, accidental death or dismemberment, or any similar plan while on organ donation leave, providing that they keep making the required contributions to those plans while on leave.

**Leave Rights:** Employees continue to accrue seniority, vacation entitlement, and recall rights while on organ donation leave or a combination of leaves up to a maximum of 78 weeks.

**Reinstatement:** Employer must reinstate employees to the same job they held before going on leave or, if the leave was longer than 60 days, a comparable job; in either case, reinstatement must be without any loss of accrued seniority or benefits or reduction in rate of pay.

*(Saskatchewan Employment Act, Part II, Subdivision 11)*

## YUKON TERRITORY

*Labour Standards Act* doesn't provide for organ donor leave.

## **FEDERAL**

**Entitlement:** All employees, regardless of how long they've been employed, get up to 27 weeks of unpaid medical leave, including for organ and tissue donation.

**Paid Leave:** Employees accrue 3 days of paid medical leave at regular wage rate after completing 30 days of continuous employment and 1 additional paid day at the start of each month after that up to a maximum of 10 paid days per year; Employees may carry unused paid medical leave days forward to January 1 of the next year but can't go over the 10 paid days per year maximum.

**Leave Periods:** Paid days may be taken in one or more periods but employer may require that each period be at least one full day.

**Notice:** **a.** Employee must give at least 4 weeks' written notice of leave start day and expected duration, unless there's a valid reason why that notice can't be given, in which case the employee must provide written notice as soon as possible; and **b.** Employee must also provide written notice of any change in leave length as soon as possible.

**Certification:** Employer may require employee to provide a certificate from a healthcare practitioner to verify need for medical leave lasting more than 5 days confirming that employee was unable to work and employee must provide certification within 15 days of returning to work.

**Benefits During Leave:** Employees continue to accrue seniority and, if they maintain their required contributions, pension, health, and disability benefits during leave.

**Leave Rights:** Employees are entitled, on written request, to be informed in writing of every employment, promotion, or training opportunity for which they're qualified that arises during their leave.

*(Canada Labour Code, Division XIII)*