How to Audit Your Compassionate Care Leave Policy



10 things to check to ensure compliance.

Caring for an elderly parent care or other close family member who's on the verge of death is an emotionally harrowing experience; less than a decade ago, employees who missed work time to meet this obligation also risked losing their jobs. Today, the right to take unpaid compassionate care leave 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 province. Here are the 10 things to check to vet your own compassionate care leave policy – or create a new policy if you don't already have one.

1. Minimum Employment Service Required for Eligibility

In many provinces, employees must have a minimum amount of continuous service with you to qualify for compassionate care leave. At a minimum, make sure your eligibility requirements include any employee who's eligible under the employment standards rules of your province:

- **All employees:** In BC, NB, ON, QC, the 3 territories and federal jurisdiction, employees can take compassionate care leave regardless of how long they've been employed;
- **90 days/3 months:** AB, MB, NS, PEI;
- **30 days:** Newfoundland; and
- **13 weeks:** Saskatchewan

2. Eligible Family Members

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. It can't be just any family member. You must look up the employment standards law of your own jurisdiction to see how it defines the relationship that must exist between the employee and family member for purposes of compassionate care leave eligibility. While parents, spouses and children are universally covered, the scope of other "family members" varies significantly. In 7 jurisdictions (Fed, NS, ON, PEI, SK, NT, NU), the definition extends beyond blood, marriage and adoption to unrelated individuals who consider the employee to be like a member of the family.

3. Required Medical Certification

In most jurisdictions, 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.

4. How Long Leave Can Last

The maximum duration of compassionate care leave is 28 weeks. **Exceptions:** 27 weeks is the maximum in AB, BC and NT; 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.

Compliance Pointer: Keep in mind that compassionate care leave typically overlaps with but counts separately from other forms of unpaid caregiving leave required by 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.

5. When Leave Can Be Taken

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.

6. Leave Notification Requirements

Employees generally must give employers written notification of their intent to take leave (2 weeks in AB and NL; 1 pay period in MB) and how long it's expected to last before taking leave or, if that's not doable, as soon as possible after leave begins. Once leave starts, they must notify employers of changes to their return date.

7. Leave Verification Requirements

Employees must provide a copy of the written medical certificate if the employer requests it.

8. Employee Right to Reinstatement

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 BC and NT, 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, MB and SK are the exceptions; however, in SK, the maximum accrual period for all leaves, including combined leaves, is 78 weeks).

9. Employee Right to Continue Benefit Plans Participation

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 the employee doesn’t opt out and maintains his/her own contributions.

10. Ban on Reprisal and Retaliation

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.