

How to Audit Your Reservist Leave Policy

written by Tina Tsonis | March 23, 2022



The 10 things you need to check to ensure compliance.

Employees serving in the Canadian Reserves may be called up at any moment for a foreign military operation, disaster relief, public disturbance or other emergency. They may also have to take time off to participate in mandatory military training. [Employment standards laws provide for reservist leave](#) to ensure that employees don't lose their job as a result of these absences. Here are the 10 things to check in vetting your own [reservist leave policy](#)—or create a new policy if you don't already have one.

1. Minimum Employment Service Required

Employees must have a minimum amount of continuous service with the same employer to qualify for reservist leave. Exceptions: In BC, all employees qualify for reservist leave regardless of prior employment time; the same is true in Nunavut as long as leave is for dealing with an emergency situation. Here are the eligibility employment minimums across Canada:

- **90 days/3 months:** FED, MB, NS, ON;
- **12 weeks:** Alberta;
- **13 weeks:** Saskatchewan;
- **6 months:** NB, NL, PEI, NWT, NU, YK; and
- **1 year:** Québec.

2. Employees Eligible for Reservist Leave

Leave is for reservists in the Reserves of the Canadian Forces. Thus, employees who are affiliated with the Canadian Forces but not part of the reserves, or who are part of the Reserves but not reservists, don't qualify; nor do employees who serve as reserves in the armed forces of a nation other than Canada.

3. Eligible Activities

The right to unpaid leave applies only to absences from work for the purpose of "service" with the Reserves, which is typically defined as including:

- Deployment for military operations in Canada or abroad, including preparation, training, rest or travel from or to an employee's residence;
- Canadian Forces military skills training;

- Training ordered by the government for reservists under Section 33(2)(a) of the *National Defence Act* (NDA);
- Duties called out on service to perform under Section 33(2)(b) of the NDA;
- Service in aid of a civil power called out to perform to deal with a riot or civil disturbance under section 275 of the NDA; and/or
- Treatment, recovery or rehabilitation for a physical or mental health problem resulting from any of the above services or activities.

4. How Long Reservist Leave Lasts

Reservist leave generally lasts as long as necessary for the employee to perform the required services. However, several jurisdictions impose limitations:

- **Federal:** Reservist leave may last no more than 24 months, unless leave is due to an emergency situation;
- **Nova Scotia:** Total reservist leave may not exceed 24 months in any 60-month period;
- **NB/NL/NT:** Employees taking reservist leave not eligible for second or subsequent reservist leave for 12 months after their return date; and
- **Québec:** Employees taking reservist leave longer than 12 months not eligible for second or subsequent reservist leave for 12 months after their return date.

5. Reservist Leave Notification Requirements

Employees generally must give employers advance written notification of their intent to take reservist leave, and its expected start and end date. Four weeks is the standard in most jurisdictions. Exceptions: Newfoundland requires 60 days' notice, while MB, ON and PEI require as much advance notice as reasonably possible without specifying a timeline. Of course, reservists may be called up on short notice. So, as with other kinds of leave where need may arise suddenly and unexpectedly, employees who can't provide 4 weeks' notice of reservist leave due to circumstances beyond their control need only furnish notice as soon as they reasonably can.

6. Required Verification of Reservist Leave

If the employer requests, employees must provide reasonable verification of their need for reservist leave, which typically includes manager or supervisor a written document from their commanding officer or other Reserves official verifying that the employee is a reservist and is required for service.

7. Required Notice of Changes to Return Date

While the initial notice lists the expected return date, employees on reservist leave must also notify the employer as soon as possible if that date changes. Several jurisdictions also impose a deadline for notification of return date changes, including:

- **Newfoundland:** 2 weeks;
- **PEI:** 3 weeks; and
- **FED/NB/NS/YK:** 4 weeks.

8. Reinstatement Requirements

Employees returning from reservist leave are entitled to be reinstated to the position they most recently held before going on leave, or if that position no longer exists, a comparable position at the same wages and benefits. Rules vary as to whether seniority and benefits entitlements continue to accrue during leave. In terms

of timing:

- **BC/NL/ON/PEI:** Employers may postpone reinstatement up to 2 weeks or 1 pay period, whichever lasts longer;
- **FED/AB:** Employers may postpone reinstatement up to 4 weeks if employee's return date changes and he/she doesn't provide the required 4 weeks' notice of the change; and
- **New Brunswick:** Employers may postpone reinstatement up to 2 weeks if employee's return date changes and he/she doesn't provide the required 4 weeks' notice of the change.

9. Potential for 'Undue Hardship' Exemption

In 5 jurisdictions—NB, NL and the 3 territories—employers who receive a request for reservist leave can apply to the government employment standards officer for an exemption on the grounds of “undue hardship.” While not specifically defined (except in Nunavut), “undue hardship” basically considers the impact that granting the leave would have on the employer's financial stability, profitability, employees, customers, clients and/or capacity to carry out its essential business purpose. Thus, for example, an employer might qualify for an exemption for an irreplaceable employee whose absence would force the company to shut down.

10. Ban on Reprisal & Retaliation

Employers may not terminate, demote, cut the pay or benefits or take other adverse employment action against employees for taking or asking about their reservist leave rights.