Keeping Up with New Laws: 9 Things to Include in Your Child Death & Disappearance Leave Policy



As provinces make sweeping changes to ESA laws, employers face the challenge of revising their HR policies to keep up. While changes to wage, hours and other bread-and-butter rules will require little more than minor tweaking of current policies, other changes will require whole new policies. Exhibit A: the new employee rights to unpaid leave to deal with a child's death and disappearance. Even if you already have a child leave policy in place, ESA changes are coming down so fast that you may have to revise it.

What's At Stake

A century ago, missing work to deal with a family crisis was a ticket to the unemployment line. But as work-life balance emerged as an important social value, the laws were changed. Unpaid leave freed up employees to care for family members and deal with other personal emergencies without forfeiting their jobs. But one particularly harrowing crisis was overlooked: the crime-related disappearance or death of a child. In recent years, 11 of 14 jurisdictions have added (or are in the process of adding) such leave to their ESA laws. And expect the remaining three (BC, Northwest Territories and Nunavut) to do likewise in the not too distant future.

Bottom Line: Child disappearance/death leave is here to stay and your organization needs a policy for dealing with it.

9 Key Provisions to Include

Here are 9 things to include in your Model Crime-Related Child Disappearance/Death Policy.

1. **Policy Statement**

Acknowledge that letting employees take leave to deal with the death or disappearance of a child is not only a legal but a moral obligation consistent with the values of your organization [Policy, Sec. 1].

2. **Eligibility Criteria**

Indicate which employees are eligible for unpaid child death or disappearance leave.

Under ESA laws, leave is allowed only if all 4 of the following conditions are met:

i. The employee has worked for you for at least the minimum service time specified;

ii. The child is under 18;

iii. The employee is a "parent," which includes biological, adopted, foster and common-law parents; and

iv. The death or disappearance is the "probable result" of a crime (unless the parent is charged with the crime).

[Policy, Secs. 2 and 3].

3. **How Long Leave Can Last**

Under most ESA laws, leave for a child's crime-related disappearance can last up to 52 weeks; leave for a crime-related death can last 104 weeks. (Exception: In New Brunswick, 37 weeks is the maximum for both.) What starts as 52-week disappearance leave may evolve into 104-week death leave if, heaven forbid, the child is found dead. But make it clear that leave times are aggregate, not consecutive. In other words, the combined leave for the death or disappearance of the same child due to the same event can't exceed 104 weeks [Policy, Sec. 4].

Exception: Ontario Bill 148

If and when the Ontario Fair Workplaces, Better Jobs Act, 2017, takes effect, employees in Ontario will be able to take both the current 104 weeks of leave and a separate leave of 104 weeks due to the same child's crime-related death or disappearance.

4. **When Leave Must Begin**

Child death and disappearance leave is meant to be taken immediately, i.e., no later than the first week after the disappearance or death occurs [Policy, Sec. 4].

5. **No Separate Installments**

Say that employees must take leave all at once and can't break it into separate installments [Policy, Sec. 4].

6. **Notification Process**

Require employees to provide written notification of leave as soon as possible, including the leave's:

- Starting date;
- Expected length; and

You're also allowed to require employees to provide "reasonable documentation" verifying the child's crime-related death or disappearance, provided that you make the request in writing [Policy, Sec. 5(b)].

7. **Post-Leave Changes Affecting Return Date**

Require employees to report any changes affecting their return date as soon as possible. Your policy should also address some basic scenarios that may take place after leave begins:

Scenario	Consequences
Missing child found alive	Leave ends within 14 days after child found (or sooner if 52-week maximum would be exceeded)
Missing child found dead	Leave can run up to 104 weeks
It becomes clear that death or disappearance isn’t crime-related	Leave ends immediately
Parent is charged with crime related to the death or disappearance	Leave ends on date parent is charged

[Policy, Sec. 6].

8. **Reinstatement Notification**

As noted above, employees must list the expected return date when providing written notice of leave. But you should also require employees to provide new notice if they want to return early based on the ESA requirements of your jurisdiction [Policy, Sec. 8].

9. **Reinstatement Rights**

Employees returning from leave are legally entitled to be reinstated to their previous jobs or a comparable position in terms of pay and benefits. Your policy should also explain whether seniority, benefits and vacation accrue during leave based on what your ESA laws say [Policy, Sec. 9].