

Long-Term Illness Leave Now In Effect For Ontario Employees



On June 19, 2025, a new leave of absence benefit was implemented under the *Employment Standards Act, 2000*. Section 49.8 now provides qualifying employees with Long-Term Illness Leave.

Eligibility Requirements for Long-Term Illness Leave

Employees who have worked for provincially regulated employers for at least 13 weeks are now entitled to Long-Term Illness Leave if they meet both of the following requirements:

1. The employee will not be performing the duties of their position because of a serious medical condition; and
2. A “qualified health practitioner” (defined as a physician, registered nurse, psychologist, or a member of a prescribed class of health practitioners) issues a certificate that: (a) states that the employee has a serious medical condition; and (ii) sets out the length of time the employee will not be performing the duties of their position because of the serious medical condition.

Note that while the ESA contains a definition of “critically ill” under the Critical Illness Leave provisions of s.49.4, it does not define “serious medical condition” other than to say that the serious medical condition may be chronic or episodic.

Length of Long-Term Illness Leave

Long-Term Illness Leave may cover up to 27 weeks of absence in a 52-week period. If the required certificate sets out a shorter period of time during which the employee cannot perform the duties of their position, the employee will only be able to take leave for that shorter period noted on the certificate.

Long-term illness leave may be extended beyond the initial period if another certificate is issued, provided the total time off does not exceed 27 weeks in the 52-week period beginning with the first week of the absence. The fact that the entire leave need not be in consecutive weeks will be particularly useful for employee with episodic disabilities, for whom being disabled from work might be less predictable.

Practical Considerations

Additionally, employers and employees should note that being afflicted with a serious medical condition is not enough to access the Long-Term Illness Leave. The serious medical condition must be the reason why the employee will not be performing the duties of their position. If they are not performing the duties of their position for reasons unrelated to the serious medical condition, the leave does not apply.

It is curious that there is no minimum length of absence under the Long-Term Illness Leave entitlement. Presumably, an employee can be prevented from performing the duties of their position due to a serious medical condition lasting a single week and still be entitled to access this leave.

Perhaps most importantly, employers should remember that Long-Term Illness Leave under the ESA has no impact on existing obligations pursuant to the *Human Rights Code*. Under the human rights regime (and this is true in every jurisdiction) employers are required to engage in the accommodation process up to the point of undue hardship when an employee presents with a disability. The accommodation process includes determining what accommodation may be reasonable in the circumstances. A job-protected leave of absence certainly is an accommodation. There are also situations in which an employee may be temporarily disabled from performing the duties of their position, but other duties are available in the workplace that properly suit the employee's capabilities. Human rights jurisprudence indicates that the employee is required to attempt that reasonable accommodation, or else risk being found to have failed in their own duties under the accommodation process. There very well could be cases therefore where an employee is unable to perform the duties of their position and would be entitled to the Long-Term Illness Leave under the ESA, but the *Human Rights Code* would require them to attempt other modified duties.

Whatever the circumstances, employers have an obligation to handle their employees' requests to access certain legal entitlements in good faith. This obligation includes properly obtaining and assessing medical information, applying it to the employees' entitlements under the ESA, as well as understanding how the Human Rights Code impacts a given situation.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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