Domestic Violence Leave Policy



The following Model Policy is based on the domestic violence provisions of Bill 148 (now Section *49.7 of ESA) that took effect on Jan. 1, 2018. The good news is that because Bill 148 has emerged as the template for other jurisdictions, the Model will be fairly easy to adapt no matter where your organization is located or which employment standards laws apply to it. Note that the Model Policy provides for only the minimum domestic violence (which in Ontario is called "domestic and sexual violence") leave rights the ESA requires. So make sure your policy accounts for any additional or more generous benefits provided by your own organization.*

1. **POLICY STATEMENT**

The management of ABC Company recognizes that employees may face situations of domestic violence or abuse in their personal lives. ABC Company also recognizes that domestic violence and abuse can result in harms adversely affecting work performance, including not only severe physical and psychological injury but total dislocation of personal and family lives requiring time away from work.

ABC Company is committed to providing employees unfortunate enough to fall victim to domestic violence the time off and support they need to get help, recover and get back to normal life. Accordingly, ABC Company has adopted this Policy to ensure that employees who experience domestic violence get the personal leave they need and are entitled to under the Ontario *Employment Standards Act* (ESA).

2. **DEFINITIONS**

For purposes of this Policy:

- **"Child"** means a child, step-child, foster child or child under legal guardianship, and who is under age 18;
- **"Eligible employee"** means an employee that has been employed by ABC Company for at least 13 consecutive weeks; and
- **"Week"** means a period of seven consecutive days starting Sunday and ending Saturday.

3. **GROUNDS FOR TAKING LEAVE**

Eligible employees are entitled to take a leave of absence if the employee or child of the employee experiences actual or threatened domestic or sexual violence, and the leave is taken for any of the following purposes:

- To seek medical attention for a physical or psychological injury or disability suffered by the employee or his/her child as a result of the domestic or sexual violence;
- To obtain services from a victim services organization;
- To obtain psychological or other professional counselling;
- To relocate temporarily or permanently; or
- To seek legal or law enforcement help, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.

Exception: The above right to leave does **not** apply if the employee was the one who committed the domestic or sexual violence triggering the need for leave.

4. **DURATION OF LEAVE**

The length of leave under this Policy shall be as provided under Section 49.7(4) of the ESA, i.e., for each calendar year:

- Up to 10 days of leave under Section 49.7(4)(a); and
- Up to 15 weeks of leave under Section 49.7(4)(b).

The entitlement to domestic violence leave under this Policy is in addition to and not a substitute for the employee's entitlement to Family Medical Leave, Family Caregiver Leave, Critical Illness Leave, Child Death Leave, Crime Related Child Disappearance Leave and Personal Emergency Leave provided for under Part XIV of the ESA and the applicable ABC Company leaves of absence policy.

5. **PAID LEAVE**
6. **First 5 Days Paid**

Time taken for domestic violence leave under this Policy shall be unpaid with the exception of the first five (5) days taken during each calendar year which will be paid in accordance with subsection b. below.

1. **Pay Rate for Paid Leave Days**

The rate of pay for the first five days of domestic violence leave in a calendar will be either:

- The wages the employee would have earned had he/she not taken leave; or
- Where the employee earns commissions, a piece work rate or other performance-based wages, the

greater of:

- The employee's hourly rate, if any; and
- The minimum wage that would have applied for the number of hours the employee would have worked had he/she not taken leave.

1. **No Right to Premium Pay**

Where a paid day of domestic violence leave falls on a day or time of day during which overtime pay and/or a shift premium would be payable by ABC Company, the employee will not be entitled to more than his/her regular rate for domestic leave taken, nor will the employee be entitled to the shift premium. In addition, the employee will not be entitled to premium pay for a paid day of domestic violence leave falls on a public holiday.

6. **HOW LEAVE MUST BE TAKEN**
7. **Leave Deemed Taken in Entire Days**

The 10 days of domestic violence leave under Section 4(i) of this Policy must be taken in full-day increments and any partial days of leave taken will count as one full day of leave. Example: Employees who take the morning off to get counselling for domestic violence will be deemed as having taken one full day of domestic violence leave even if they return to work in the afternoon.

1. **Leave Deemed Taken in Entire Weeks**

The 15 weeks of domestic violence leave under Section 4(ii) of this Policy must be taken in full-week increments and any partial weeks of leave taken will count as one full week of leave. Example: Employees who take Monday and Tuesday off to get counselling for domestic violence will be deemed as having taken one full week of domestic violence leave even if they return to work on Wednesday and work the rest of the week.

7. **EMPLOYEE DUTY TO NOTIFY**

Employees intending to take domestic violence leave under this Policy must provide ABC Company the appropriate notification depending on whether the employee is taking days of leave under Section 4(i) or weeks of leave under Section 4(ii).

1. **Notification for Days of Leave Under Section 4(i)**

An employee who wants to take domestic violence leave under Section 4(i) must, if possible, advise ABC Company before taking the leave. If prior notification is impossible, the employee must notify ABC Company of the leave as soon as possible after beginning it.

1. **Notification for Weeks of Leave Under Section 4(ii)**

An employee who wants to take domestic violence leave under Section 4(ii) must, if possible, advise ABC Company **in writing** before taking the leave. If prior notification is impossible, the employee must notify ABC Company **in writing** of the leave as soon as possible after beginning it.

8. **EMPLOYEE DUTY TO PROVIDE EVIDENCE**

In the interest of verifying employees’ entitlement to leave, ABC Company may require employees taking domestic violence leave under this Policy to furnish reasonable evidence documenting their need for the leave.

9. **CONFIDENTIALITY**

In recognition that domestic violence is an extremely sensitive issue, ABC Company will take measure to protect the confidentiality of records produced by or provided to ABC Company in relation to an employee’s taking of leave under this Policy. However, ABC Company may disclose such records where such disclosure is permitted or required by law, including but not limited to where:

- The employee consents to the disclosure;
- The disclosure is made to an officer, employee, consultant or agent of ABC Company who needs the record to perform his/her duties; or
- The disclosure is otherwise authorized or required by law.

10. **RETURN TO WORK AFTER LEAVE ENDS**

When employees return to work after taking domestic violence leave under this Policy, ABC Company will reinstate them to the position they most recently held or, if such position no longer exists, to a comparable position at either: i. their most recent wage level; or the wage rate they would be earning if they had worked through the leave, whichever is higher, and with no loss of seniority or benefits.