

# New Leaves Of Absence Under Ontario's Employment Standards Act, 2000 Effective October 29, 2014



Effective October 29, 2014 the statutory leaves of absence offered to employees under Ontario's Employment Standards Act, 2000 (the ESA) will be expanded to include "family caregiver leave," "critically ill child care leave," and "crime-related death and child disappearance leave." This expansion comes as a result of the Employment Standards Amendment Act (Leaves to Help Families), 2013, also known as Bill 21, which received Royal Assent on April 29, 2014.

Notably, these leaves of absence will be in addition to "Family Medical Leave" (available when an employee's family member has a serious medical condition with a significant risk of death occurring within 26 weeks), as well as "personal emergency leave."

The following presents a brief summary of these new leaves:

## **Family Caregiver Leave**

Employees that need to provide care and support to a family member with a serious medical condition (which includes a chronic or episodic condition), albeit one without a significant risk of death within 26 weeks, will be entitled to up to 8 weeks of unpaid leave per calendar year. A "family member" is defined as:

- a parent, step-parent or foster parent of the employee or the employee's spouse;
- a child, step-child or foster child of the employee or the employee's spouse;
- a grand-parent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse;
- the spouse of a child of the employee;
- the employee's brother or sister;
- a relative of the employee who is dependent on the employee for care or assistance; and
- any individual prescribed as a family member.

If requested by the employer, an employee must provide a certificate issued by a qualified health practitioner stating that the family member has such a serious medical condition. Requests for this leave must be presented to the employer in writing. Employees are not required to take this leave in full week periods.

## **Critically Ill Child Care Leave**

Individuals that have been employed for at least 6 consecutive months will be entitled to up to 37 weeks of unpaid leave to provide care or support to their critically ill child. Similar to “family caregiver leave,” employees will not be required to take this leave in periods of entire weeks.

Notably, since Bill 21 was originally proposed, the definition of “critically ill child” has been modified to refer to a child, “whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.” A “child” is broadly defined as a “child, step-child, foster child or child who is under legal guardianship and who is under 18 years of age.”

Employers must be advised of an employee’s intention to take this leave in writing, and a medical certificate attesting to the illness of the child and outlining the period during which the child requires care or support must be issued by a qualified health practitioner and provided to the employer.

## **Crime-Related Child Death and Disappearance Leave**

With respect to “crime-related death and disappearance leave,” employees who have been employed for at least 6 consecutive months and are parents to a child who disappeared as a result of a crime will be entitled to up to 52 weeks of unpaid leave. Where it is probable, considering the circumstances, that an employee’s child died as a result of a crime, the employee will be entitled to 104 weeks of unpaid leave. For the purposes of this leave, a “child” is defined as a, “child, step-child or foster child less than 18 years of age” and a “crime” is “an offence under the Criminal Code, other than an excluded offence as prescribed by the regulations made under paragraph 209.4(f) of Canada Labour Code.” Where the employee is charged with the crime, or where it is probable, considering the circumstances, that the child was a party to the crime, the employee will not be entitled to the leave.

An employee who wishes to take this leave must advise his or her employer in writing and provide a written plan that indicates the weeks that will constitute the absence. This leave may be taken in a single period.

## **Our views**

As the ESA currently only provides for “family medical leave” as well as 10 days of unpaid “personal emergency leave,” the above-outlined leaves will significantly expand potential family-related leave entitlements under the ESA. Employers should mark October 29, 2014 on their calendars and ensure they are ready and prepared to respond to leave requests under these new provisions.

**Article by William Hockin**

**Stikeman Elliott LLP**