Ontario Considering 27-Week Personal Illness Leave



The Ontario government is conducting a consultation on amending the *Employment Standards Act, 2000* (ESA) to include an unpaid 27-week personal long-term illness leave, which would align with the length of federal Employment Insurance (EI) sickness benefits. Currently, the ESA provides for three unpaid days of personal leave per year for illness, injury, or medical emergency.

The government is considering two possible approaches:

1. Expand the existing critical illness leave in the ESA to apply to critically ill employees and align the leave with the length of EI benefits. "Critically ill" means that the individual's baseline state of health has significantly changed, and their life is at risk. This definition would exclude individuals with a chronic illness or condition that is their normal state of health.
2. Create a new leave for employees with a "serious medical condition." This approach would not require the employee to be at significant risk of death and would include a condition that is chronic or episodic. It appears that under this second possible approach, there may be materially more situations in which employees could access the leave.

Comments on the consultation are due on May 6, 2024.

Provincially regulated employers in Ontario should monitor the progress of the consultation. If the proposed leave is passed into law, it will create new protections for employees and new obligations for employers, continuing a general trend consistent with other employment-related legislative changes introduced by the current provincial government. As with other protected leaves under the ESA, one might expect the proposed legislation to include protections for employees from reprisal, as well as the right to continue participating in certain benefit plans during the leave.

Under the *Human Rights Code*, employers are prohibited from making adverse employment decisions because of a protected ground, including disability (except in cases where there is a bona fide occupational requirement or undue hardship). However, the proposed statutory job-protected leaves being considered under the ESA would go further in terms of requiring employers to reinstate employees who qualify for and avail themselves of the leave to their previously held position, or a comparable position if such previously held position no longer exists.

Employers should plan for managing their workforces in light of employees utilizing the potential new leave, and the potential cost of providing benefits continuance during such period. Employers should also plan to revise any policies setting out statutory leave entitlements and consider the intersection of the new statutory leave with any existing paid sick leave and short-term and long-term disability policies.

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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