

Ontario Government Announces Changes To Requirement For Medical Notes Under The Employment Standards Act, 2000



The Ontario government [announced](#) that it will be introducing legislation to amend the Ontario *Employment Standards Act, 2000* (ESA) to prohibit employers from requiring a doctor's note to substantiate unpaid sick leave days that employees are entitled to under the ESA.

PROPOSED CHANGES TO SICK LEAVE PROVISIONS UNDER THE ESA

Under the ESA, non-unionized employees can take up to three unpaid days of leave each calendar year due to personal illness, injury, or medical injury. Employers may require an employee to provide "evidence reasonable in the circumstances" that they are eligible to take such leave.

What is considered "reasonable in the circumstances" will depend on the facts of the situation, such as the duration of the leave, whether there is a pattern of absences, whether any evidence is available, and the cost of the medical evidence.

The government's announcement indicates that employers will maintain the ability to require reasonable evidence from an employee that they were sick, which can include an attestation or a declaration. However, this will not include a doctor's note. Based on the announcement, it appears that the changes will not affect an employer's ability to request medical documentation or evidence for other reasons, such as substantiating an accommodation under the Ontario *Human Rights Code*.

Similar changes were announced last year in Nova Scotia. Effective July 1, 2023, Nova Scotia employers can no longer request a medical note unless an employee is absent for more than five working days or has already had two absences of five or fewer working days in the previous 12-month period. When employees are required to provide a medical note, they can provide a note from any regulated health care provider who is providing care, such as nurses, dentists, physiotherapists, or social workers.

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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