Ontario Government Introduces Leaves for Caregivers

On March 5, 2013, new Ontario Labour Minister Yasir Naqvi introduced Bill 21, the *Employment Standards Amendment Act* (Leaves to Help Families), 2013 (Bill 21). If passed, Bill 21 would create three new unpaid leaves of absence under the *Employment Standards Act, 2000* (ESA): Family Caregiver Leave, Critically Ill Child Care Leave and Crime-Related Child Death and Disappearance Leave. As previously reported, the Government introduced similar amendments to those proposed in the Family Caregiver Leave section in the former Bill 30. Bill 30 died on the order paper with the prorogation of the Ontario legislature in October 2012.

Family Caregiver Leave

This new leave of absence provides that employees may take up to eight weeks of unpaid leave per calendar year to provide care or support to the following individuals:

- the employee's spouse;
- 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 for the purposes of this section.

To be eligible for Family Caregiver Leave, a qualified heath practitioner must issue a certificate stating that the employee's family member has a "serious medical condition." The employee would have to produce the medical certificate if requested by his or her employer. Family caregiver leave must be taken in full-week periods and employees must advise their employers in writing of the leave.

Critically Ill Child Care Leave

Under this new leave of absence, employees who have been employed for at least six consecutive months would be entitled to take up to 37 weeks of unpaid leave to provide care or support to a critically ill child of the employee. The definition of

“critically ill child” is the same as provided for in the *Employment Insurance Act* (EIA), with the addition of step-child and foster child. It is also specified that the definition of “critically ill child” applies to an injury if the EIA definition does not. There are provisions that deal with situations where an employee has more than one critically ill child or where a child dies. As with Family Caregiver Leave, the employee is required to advise his or her employer in writing.

Crime-Related Child Death and Disappearance Leave

Under this new leave of absence, employees who have been employed for at least six consecutive months would be entitled to an unpaid leave of up to 104 weeks where a child of the employee dies as the probable result of a crime. “Child” is defined as a child, step-child or foster-child who is under 18 years of age. Where it is probable, considering the circumstances, that an employee’s child disappeared as a result of a crime, the employee would be entitled to a leave of up to 52 weeks. There are certain exceptions to taking the leave, including where the employee is charged with the crime or where the child is a party to the crime.

New Leaves Versus Existing Rights

If passed, these new leaves would be separate from the current Family Medical Leave, which is available when a family member has a serious medical condition with a significant risk of death occurring within 26 weeks. All of these new leaves would exist in addition to an employee’s right to take other leaves provided for in the ESA.

Employment Insurance

Employees eligible for either Critically Ill Child Care or Crime-Related Child Death and Disappearance Leave may also be entitled to federal Employment Insurance for the duration of their leave.

Commentary

It is important to keep in mind the growing number of statutory leave requirements when structuring your operations and planning staffing levels. Similarly, it is important to review your internal policies and/or collective agreements to ensure they comply with the ESA leave of absence provisions. We will continue to monitor the progress of Bill 21 and report on any further developments.