

# Organ Donation Leave Compliance Game Plan



Organ and tissue donation saves lives. But it also requires tremendous sacrifice, especially when the donor is a living person. In addition to losing a kidney, lung, or other body part, the donor has to take time from work to undergo surgery and recover. Organ donation leave assures that employees who are willing to serve as donors don't have to give up their jobs. There are currently 5 jurisdictions that provide for organ donation leave in their employment standards laws—Federal, Manitoba, Ontario, Québec, and Saskatchewan. But leave rules vary by jurisdiction. This can create compliance challenges for HR directors, particularly if your organization operates in more than one province. Here's a 12-step Game Plan for complying with the organ donation leave laws of your jurisdiction. Go to the HR Insider website for a [policy template](#) and instructions on how to tailor it to the laws of your province.

## **Step 1. Ensure Your Province's Employment Standards Laws Provide for Organ Donation Leave**

There are currently only 5 jurisdictions whose employment standards laws allow employees to take a leave of absence to undergo surgery for purposes of donating or transplanting an organ to another person—Federal, Manitoba, Ontario, Québec, and Saskatchewan. However, experts say that other provinces are likely to propose legislation to add organ donor leave to their own employment standards laws in the coming years.

## **Step 2. Ensure Employees Are Eligible for Organ Donation Leave**

Most jurisdictions that provide for organ donor leave require employees to have a minimum amount of service with their current employer to qualify for it:

- **30 days:** Manitoba;
- **3 uninterrupted months:** Québec;
- **13 weeks:** Ontario; and
- **13 consecutive weeks:**

Federally regulated employees covered by the *Canada Labour Code* ("CLC") qualify for unpaid organ donor leave regardless of how long they've worked for the company. However, they must have at least 30 days' employment to be eligible for **paid** leave.

### **Step 3. Ensure Employee Has Grounds to Take Organ Donation Leave**

Employees can't go on organ donor leave for just any medical procedure. Organ donor leave jurisdictions specifically define "organ donation" as a surgical procedure that an employee undergoes for purposes of donating or transplanting an organ or tissue to another person. Ontario limits the definition to particular kinds of organs, namely, all or part of a kidney, lung, the liver, pancreas, or small bowel.

### **Step 4. Require Employees to Provide Medical Certification of Organ Donation Leave**

Employers may and should require employees to verify their need for organ donor leave. "Hey, boss, I want to take a few months off to donate a kidney" isn't adequate certification. Require employees to submit medical certification from a recognized health care practitioner, which varies by jurisdiction.

**Table 1. Medical Certification Required to Document Organ Donor Leave Entitlement**

#### **JURISDICTION CERTIFICATION EMPLOYER MAY REQUIRE**

Federal	Certification from a "healthcare practitioner," defined as a person lawfully entitled, under a province's laws, to provide health services in the place they provide those services.
Manitoba	Medical certificate, defined as a signed statement of a duly qualified medical practitioner.
Ontario	Certificate confirming that the employee has undergone or will undergo organ donation surgery from a legally qualified medical practitioner, defined as: (i) a member of the College of Physicians and Surgeons of Ontario if the surgery is in Ontario, and (ii) a person qualified to practice medicine under the laws of the jurisdiction where the surgery will take place outside of Ontario.
Québec	Document attesting to the reasons for the absence/leave.
Saskatchewan	Certificate from a duly qualified medical practitioner or "nurse practitioner" (defined as a nurse entitled under The Registered Nurses Act, 1988 to practice in the nurse practitioner category) as to the reason for or extension of organ donation leave.

**Source:** Bongarde Media

Ask employees to provide medical certification before they go on or extend leave. Employees should then provide you the certification as soon as reasonably possible after receiving your request. However, under federal rules, employees have up to 15 days **after** returning from work to provide certification.

### **Step 5. Require Employees to Notify You of Organ Donation Leave**

Require employees to provide you with written notification of their intent to take organ donor leave and its expected start and end date. Four weeks is the required amount of notice in Saskatchewan and under federal laws; Ontario requires 2 weeks' notice. However, there's also some slack and leeway to notice rules.

**Table 2. Notice Employees Must Provide for Organ Donor Leave**

## **JURISDICTION NOTIFICATION REQUIREMENTS**

Federal	Employee must give employer at least 4 weeks' written notice of leave start day and expected duration; if there's a valid reason notice can't be given, employee must provide written notice as soon as possible.
Manitoba	Employee must give employer as much written notice as reasonable and practicable in the circumstances.
Ontario	Employee must give employer at least 2 weeks' written notice before beginning leave, if possible; If that's not possible, employee must advise employer in writing as soon as possible after beginning leave.
Québec	Employee must notify employer as soon as possible and state the reason for their absence.
Saskatchewan	Employee must give employer at least 4 weeks' written notice of the day on which they intend to leave and return from leave.

**Source:** Bongarde Media

## **Step 6. Ensure Employees Start & End Organ Donation Leave at the Proper Time**

Organ donor leave should start on the date of surgery, unless the medical professional who certifies leave indicates an earlier starting date, such as where the employee has to undergo certain medical treatment or preparation before surgery. There should also be a specific end date based on information in the medical certificate indicating how long the employee will need to recover from the surgery.

## **Step 7. Keep Organ Donation Leave to Maximum Specified Duration**

Organ donor leave can last up to 26 weeks in Manitoba, Ontario, Québec, and Saskatchewan. But there are some subtle differences. Thus, in Ontario and Manitoba, employees may take initial leave of up to 13 weeks and get one or more extensions after leave begins, provided that total extensions for the year don't exceed 13 weeks. As a result, employees in those provinces must furnish new notification and medical certification for each extension they seek. Under federal laws, organ donation is one form of medical leave that employees may take, provided that their total medical leave allotment for the year doesn't exceed 27 weeks.

## **Step 8. Let Employees End Organ Donation Leave Early**

Employees must notify employers in writing of changes to their leave dates. In Ontario, employees are allowed to end organ donor leave early so long as they provide the employer written notice at least 2 weeks before the date they want to end leave. In Manitoba, employees must provide early return notice of at least one pay period.

## **Step 9. Ensure Employees Receive Organ Donation Leave Pay to Which They're Entitled**

In Manitoba, Ontario, and Saskatchewan, organ donor leave is unpaid. In Québec, the first 2 days of organ donor leave are paid. And under the CLC, federally regulated employees accrue 3 days of paid medical leave (of which organ donor leave is one form) after completing 30 days of continuous employment. After that, they accrue an additional 1 additional paid day at the start of each month up to a maximum of 10 paid days per year. Employees may carry forward unused paid medical leave days to January 1 of the next year but can't go over the 10 paid days per year maximum.

## **Step 10. Let Employees Participate in Health Plans While on Organ Donation Leave**

You generally have to allow employees to continue participating in pension, health, insurance, disability, and other company plans while they're on organ donor leave, provided that those employees maintain their contributions to those plans. If employees don't make the necessary contributions, you don't have to contribute to the plans on their behalf. **Exception:** Ontario requires a hard opt-out. In other words, the employer is only off the hook for plan contributions if employees provide written notice that they don't intend to continue making contributions while they're on leave.

## **Step 11. Properly Reinstate Employees Returning from Organ Donation Leave**

Employers must reinstate employees returning from child death or disappearance leave to their previous jobs or a comparable position in terms of pay and benefits, and with no loss in seniority. In most jurisdictions, employees also continue to accrue benefits, vacation, and service time while they're on leave.

## **Step 12. Don't Retaliate Against Employees for Exercising Organ Donation Leave Rights**

Employers aren't allowed to terminate, demote, cut the pay or [benefits](#), or take other adverse employment action against employees for taking or asking about their organ donor leave rights.