

# Leaves of Absence Quiz



## QUESTION

What are the two most important components of an unpaid leave of absence?

- A. Employees must tell their employers what leave they are taking.
- B. The employee's employment continues during the leave of absence.
- C. Employers are not required to pay wages to employees while on leave.
- D. Employees should be returned to the job they had before the leave. If the job is no longer available, they must be given a job with the same or greatest pay in benefits when they return to work from the leave.

## ANSWER

B and D

## PREAMBLE

A leave of absence is applicable when the employee's required time off is not covered under their employer's existing benefits. Depending on the type of leave, the employee may be granted the time off with or without pay. For example, leaves for maternity and caring for a sick family members are unpaid. Shorter leaves such as for bereavement or voting are considered paid leaves by most of the provinces.

Certain leave policies are governed nationally, while the majority of leaves are set by provincial and territorial legislation. In both cases, the leave policy must comply with a set of minimum standards.

In Canada, employees may request work leaves – time away from their jobs to take care of unusual circumstances and other life events. Typical reasons for leave requests include: pregnancy/maternity, parental responsibilities, family emergencies, illness, bereavement and voting. Less common leaves may be required for employees that are called to serve on a jury, or to report for military duties.

## COVID-19 ISSUES

The impact of the novel coronavirus (COVID-19) continues to be felt globally, governments across Canada are taking measures to help alleviate the resulting

pressures on their workforces. To assist employers to prepare and respond effectively to the ever-changing situation, there are the new rules and regulations with respect to leave of absences, starting with the federal government.

All of the provincial governments have enacted legislation to deal with the issues related to COVID-19 and Leaves.

The Federal government legislation parameters are very broad.

For example, employees may take this leave if they are being quarantined or asked to self-isolate as a result of COVID-19, required to provide care to a family member as a result of COVID-19, or are otherwise unable or unavailable to work for reasons related to COVID-19. To take this leave, employees must:

- a. provide their employer with written notice, as soon as possible, of the reason for the leave and the length of leave they intend to take; and
- b. notify their employer in writing, as soon as possible, of any changes to the length of the leave.

A medical note substantiating an entitlement to the leave is not required. As a part of the CLC amendments, medical certificate requirements for taking a compassionate care leave, critical illness leave or medical leave are suspended until September 30, 2020.

All pension, health and disability benefits must be continued for the length of the COVID-19 leave. If the employee is responsible for a portion of the premiums, he or she must pay those contributions for the period of any leave within a reasonable time unless he or she advises that benefits will be discontinued within a reasonable time after commencing the leave.

An employee is entitled, on written request, to be informed in writing of every employment, promotion or training opportunity that arises during the period they are on a COVID-19 related leave for which they are qualified.

An employer is prohibited from dismissing, suspending, laying off, demoting or disciplining an employee because the employee intends to take or has taken a COVID-19 related leave or taking such an intention or absence into account in any decision to promote or train the employee. However, if an employee is unable to perform the work previously performed by them after taking the leave, then the employer may assign that employee to a different position with different terms of employment.

## **WHY IS IT RIGHT**

### **LEAVES AVAILABLE TO EMPLOYEES**

<b>Type of Leave</b>	<b>Qualifying Period</b>	<b>Length of Leave</b>	<b>Reason for Leave</b>
Maternity Leave	7 months	17 weeks	For an employee expecting to give birth to a child
Parental Leave	7 months	63 weeks	For parents to care for their new child

Family Leave	30 days	3 days	For an employee to deal with family responsibilities or personal illness
Bereavement Leave	30 days	3 days	For an employee to deal with the death of a family member
Compassionate Care Leave	90 days	28 weeks	For an employee to care for a seriously ill family member
Long-term Leave for Serious Injury or Illness	90 days	17 weeks	For an employee who has a long-term serious injury or illness
Interpersonal Violence Leave	90 days	10 days and 17 weeks	For an employee to address a situation of violence in the home
Leave for Citizenship	30 days	4 hours	For a new Canadian to receive their certificate of citizenship
Leave Related to the Death or Disappearance of a Child	30 days	52 weeks; 104 weeks	For parents dealing with the death or disappearance of a child that occurred as a result of a crime
Leave for a Reservist	7 months	When needed for service	For an employee in the Canadian Forces Reserve who needs time to serve
Leave for Organ Donation	30 days	13 weeks	For an employee to donate an organ or tissue
Leave related to Critical Illness	30 days; 90 days	37 weeks; 17 weeks	For family members to provide care and support to a critically ill child; For family members to provide care and support to a critically ill adult

## ELIGIBILITY AND QUALIFICATION

All employees are eligible if they meet the qualifying period of employment for the leave.

Each leave has various lengths of time an employee must be employed before they can qualify to take a leave. For all leaves, employees must be employed by an employer for a certain length of time before they can take a leave.

All leaves have specific requirements that must be met for an employee to be able to take the leave. For more information on a specific leave, see the fact sheets on our website or contact Employment Standards.

## LENGTH OF LEAVE

Each leave has a certain length of time that employees can take time off from work.

Some leaves like Family Leave are as short as three days and others like Leave related to the Death or Disappearance of a Child can be as long as 104 weeks.

## WHY IS EVERYTHING ELSE WRONG

## **FOURTEEN TOPICS RELATING TO EMPLOYEE'S TAKING LEAVE**

### **1. Who decides what type of leave an employee takes?**

Employees tell their employers what leave they are taking. The employer will need enough detail to show the time off work meets the requirements of the leave.

When employees require time off, the employer should ask whether they are advising of a leave available under The Employment Standards Code. Employers do not control when employees can take a leave provided by law, but they do control other types of time off work.

### **2. Family Members**

Family is defined very broadly for Employment Standards' purposes. Children, stepchildren, parents, grandparents, spouses, common law spouses, brothers, sisters, step-brothers, step-sisters, aunts, uncles, nieces and nephews are all considered family members. The definition also includes those who are not related, but whom the employee considers to be like a close relative.

### **3. Definitions of a parent for Leave Related to the Death or Disappearance of a Child**

For these leaves, a "parent" is defined as:

- A parent of a child;
- The spouse or common-law partner of a parent of a child;
- A person with whom the child was placed for the purposes of adoption;
- The guardian or foster parent of a child; or,
- A person who has the care, custody or control of a child, and is considered to be like a close relative, whether or not they are related.

### **4. Termination or laid off for taking a leave provided by The Employment Standards Code**

No. Employers cannot terminate or lay-off employees because they have taken or requested a leave. Employers may not discriminate or attempt to punish employees for taking a leave.

### **5. Payment to employees when on leaves**

No. Employers are not required to pay wages to employees while on leave. For all leaves, the legislation only requires employers to provide the time off and allow employees to return to their job when the leave has ended. Employers can, and often do, give greater benefits than those provided for in the legislation.

However, other federal programs may provide income replacement. Employees should contact the federal government to find out what types of leaves have income replacement.

The only exception under *The Employment Standards Code* where an employer is required to pay a portion of a leave is under the Domestic Violence Leave.

### **6. Programs to pay employees while on leave**

The federal government has income support programs to cover certain types of leave.

#### **7. The employee's job is no longer available**

Generally, employees should be returned to the job they had before the leave. However, if the job is no longer available, they must be given a similar position with the same or greater benefits and pay.

There may be some situations where employers do not have a position available for reasons completely unrelated to the leave. For example, employees who are on unpaid leave would not necessarily be protected from losing their jobs if the employer shut down part of their operations and reduced their workforce based on a seniority system.

Employers must show the leave has no impact on the decision to lay-off or terminate the employment.

#### **8. Employer refusal to bring the employee back to work**

Employees must be allowed to return to their job, or a comparable job, with the same or greater pay and benefits when they return from leave. Employees who are not reinstated by their employer can file a complaint with Employment Standards no later than six months after the date the employee should have been reinstated.

#### **9. Unpaid leave and vacations**

An employee's vacation entitlement remains the same as prior to the leave and cannot be reduced because they have taken a leave. An employee may also defer taking vacation. See the Vacations & Vacation Pay page for details on earning and paying vacation.

#### **10. Pension and other benefits while an employee is on leave**

Employment is considered continuous during a legislated leave of absence from work. This means an employee is still employed, though not earning wages for the period of the leave. When employees return from the leave, they are still entitled to any pension and other benefits they had before the leave. As well, their years of service include the time away on the leave.

#### **11. Period of employment defined**

The period of employment is the length of time from when an employee starts working for an employer until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment (a layoff, an unpaid leave), seasonal employment, and when an employee returns to work for the same employer after a break of less than two months.

Employees who work in a seasonal industry and return to work with the same employer each season have continuous service. Each consecutive season they return adds one more year of service to their total period of employment.

#### **Definition – Leave of Absence**

A leave of absence is time allowed away from work, generally requested by an employee, to cover unusual circumstances occurring in the employee's life. The leave of absence is used when the employee's time off from work is not covered under an employer's existing benefits such as sick leave, paid vacation, paid holidays and paid time off.

### **Application for unpaid leave of absence**

Application for an unpaid leave of absence often occurs when an employee has used up his or her existing paid time off. The unpaid leave of absence does not extend the employee's pay during the leave of absence but it ensures other continuity that is critical for employees. For example, an unpaid leave of absence allows an employee to continue coverage by certain employer-provided benefits.

### **12. Most Important Component of an Unpaid Leave of Absence**

The most important component of a leave of absence is that the employee's employment continues during the leave of absence. Either by law or by choice, depending on the circumstances, many employers also continue an employee's health insurance during a leave of absence.

The employee may need to pay for other benefits such as dental insurance or life insurance during an unpaid leave of absence.

A leave of absence is either paid or unpaid (most frequently) and some leaves of absence are required by law. A leave of absence is also allowed by employers, on a case by case basis in most employer policies.

### **13. Reasons Employees Ask for a Leave of Absence**

Parents, for example, may want to request an unpaid leave of absence to extend their absence from work past the normal period of time allowed for parental leave by the company. Another example of a leave of absence involves giving an employee a paid leave of absence as required time away from work while an employer investigates allegations of wrongdoing by the employee. (Until allegations are proved, the employee receives pay.)

In another common example of why an employee might request an unpaid leave of absence, the employee was designated as the estate administrator by a relative. When the person dies, bereavement leave will not generally cover all of the time the employee has to invest in taking care of the deceased's estate.

In a final example, employers have granted an unpaid leave of absence to a new employee who requires the time to move their family members across the country and into a new home. (Many employee benefits are accrued, so the new employee might not have the time built up in their paid leave bank that is needed to orchestrate the move.)

### **14. Asking for an Unpaid Leave of Absence**

You've learned what you need to know about an unpaid leave of absence from work and you've decided that you need to take one. This is how you can ask for unpaid leave. You will want to take these two steps to achieve an official unpaid leave of absence from work.

## **Give your employer as much notice as you possibly can.**

The employer is going to have to make sure that your vital job components are covered by other employees during your absence. He will appreciate that you have kept him informed along the way so that he is not blindsided by your last minute request for an unpaid leave of absence.

For example, your grandparent is dying and you are the designated estate administrator. Let your employer know that you will have this family obligation to deal with the estate when you realize that your grandparent is likely dying. Keeping your employer abreast of the turn of events is professional, respectful, and likely to signal positive messages about you as an employee.

In a second example, you are fairly certain that you will want to remain home with your infant child for a period of time after your family medical leave benefits are used up. Your household has a second income so you can afford to take unpaid leave. Let the employer know as soon as you are considering the possibility. This is the professional way to approach an extended leave of absence. Employers appreciate when employees don't blindsides them with a request for an unpaid leave of absence.

Unpaid leaves of absence are not like an employee benefit such as negotiating a flexible schedule. To do that, you need the employer to see some benefit for the employer in granting your request. With an unpaid leave, you may find yourself in the position of having to ask for leave even when taking leave would not be your choice.

Know the state and international laws where you live. In some cases, your employer may not even have the right to refuse your request.

Ask politely for an unpaid leave of absence and provide a full explanation about why you need the leave and when you plan to return to work.

Your employer will appreciate a face-to-face notification rather than an email or text message. He will also appreciate the transparency of any request you make so that he knows what is going on in your life. If you have kept the employer in the loop, your request will not take him by surprise.

Brainstorm with your manager or employer how to cover your job while you are on the leave of absence.

## **Let your colleagues, coworkers, and customers know that you are taking an unpaid leave of absence.**

You do not need to tell them why you are taking the leave. But, since they will have to pick up the slack while you are off, you will want to tell them when you plan to return. You will also want to tell your customers who they can contact while you are out on your leave of absence.

You can comfortably ask for an unpaid leave of absence using these three steps. Think of your employer's interests as well as your own and unpaid leave of absence should have no negative impact on your career success and progress.