

Test Your HR I.Q.: Do Brand New Employees Get Family Leave?



SITUATION

Faith Fullchild moves back home to Ontario to be closer to her 82-year-old dad. 2 weeks after she begins her new job, dad gets hit by a minivan and is hospitalized for a week. It's now clear that he can no longer care for himself and has only months to live. Faith asks her new employer for 8 weeks of family medical care leave to care for her dad and provides a doctor's certificate stating that he has a serious medical condition with a significant risk of death and will need daily care for 2 months. Faith asks her sister, Wanda to take over caring for dad after her 8 weeks are up. But Wanda has also started a new job in Québec the week before and under the province's law won't be entitled to any family medical leave in 8 weeks. Faith and Wanda have each worked at least 600 insurable hours over the previous 12 months; and each sister's employer provides only minimum family medical leave required under employment standards laws.

QUESTION

Which, if either, sister qualifies for unpaid family medical leave?

- A. Neither has worked long enough for their current employer to qualify for leave.
- B. Both because they've both worked at least 600 insurable hours in the past 12 months.
- C. Only Faith because she works in Ontario.
- D. Only Wanda because she work in Québec.

ANSWER

C. Faith can take 8 weeks of family medical leave now but Wanda can't take leave until she's been in the job at least 3 months.

EXPLANATION

Employment standards laws allow employees to take unpaid family medical leave (sometimes called "compassionate care leave") to care for an ill or injured family

member. But rules vary by jurisdiction. This example, which is purely hypothetical, illustrates one of the key differences: whether *new* employees can take leave.

Some jurisdictions require employees to put in a minimum period of continual service with the employer before accruing the right to take family medical leave. Thus, in Québec, employees must have at least 3 months of uninterrupted service to qualify for compassionate care leave. Other provinces allow for new employees to take unpaid family medical leave *regardless of previous service*. Thus, in Ontario, new employees get up to 8 weeks leave as long as they get a “qualified health practitioner” to certify in writing that the family member has a serious medical condition involving threat of death.

Result: Although both sisters have been with their new employers for only a short time, Faith, who works in Ontario qualifies for family medical leave and Wanda, who works in Québec, doesn’t.

WHY WRONG ANSWERS ARE WRONG

A is wrong because under Ontario law, Faith is entitled to 8 weeks of family medical leave even though she’s only worked for her new Ontario employer 4 weeks when her dad gets out of the hospital.

B is wrong because the requirement that employees work a minimum of 600 insurable hours affects only their entitlement to compassionate care benefits under Employment Insurance, not to unpaid leave under provincial employment standards law.

D is wrong because by the time Faith’s 8 week leave ends, Wanda will have been with her current employer only 9 weeks—3 weeks short of the minimum 12 weeks required to qualify for family medical leave in Québec.

SHOW YOUR LAWYER

Québec *Labour Standards Act* § Div. V.1

Ontario *Employment Standards Act* § 49.1