

Three New Leaves For Ontario Workers To Take Effect October 29, 2014



Last August, we advised of proposed amendments to the *Ontario Employment Standards Act, 2000*, S.O. 2000, c. 41 (“ESA”) that would establish three new leaves for Ontario employees:

- Family Caregiver Leave,
- “Critically Ill Child Care Leave, and
- Crime-related Child Death or Disappearance Leave

The Bill containing the amendments – the *Employment Standards Amendment Act (Leaves to Help Families), 2014* – received Royal Assent on April 29, 2014 and the new leaves will now take effect on October 29, 2014.

Family Caregiver Leave

Beginning October 29, 2014, all employees will be entitled to up to eight (8) weeks per calendar year of Family Caregiver Leave to care for a family member who has been certified by a “qualified health practitioner” (which includes not only physicians, but also registered nurses and psychologists) as having a “serious medical condition”.

Family Caregiver Leave applies to care for the following specified family members:

- 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 grandparent, 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 other individual prescribed as a family member going-forward.

However, leave can also be taken to care for any “relative of the employee who is dependent on the employee for care or assistance.” In addition, there is no minimum service requirement to be eligible and the term “serious medical condition” is not defined, meaning Family Caregiver Leave could apply to a fairly broad range of

medical conditions.

In all instances, employees will have to obtain a certificate from a qualified medical practitioner stating that the family member in question has a serious medical condition and produce the certificate to their employer if it is requested. The medical condition in question may be either chronic or episodic.

Employees wanting to take Family Caregiver Leave will be required to advise their employer in writing of their intention to do so, either before taking leave or "as soon as possible after beginning it" if advance notice could not be provided.

Critically Ill Child Care Leave

Employees will be entitled to up to 37 weeks leave to care for his or her critically ill child. To qualify for the leave, the employee must have been employed by his or her employer for at least six (6) consecutive months. As with family caregiver leave, the weeks taken for critically ill child care leave need not be taken consecutively.

"Child" for the purposes of this leave includes a child, step-child, foster child, or a child who is under legal guardianship, and who is under 18 years of age. The child must also qualify as "critically ill", meaning a child "whose baseline health has significantly changed and whose life is at risk as a result of illness or injury."

The employee is obligated to obtain a certificate from a qualified medical practitioner, which must be disclosed to the employer on demand, stating that the child is critically ill requiring the care or support of one or more parents for a particular duration of time. Employees must also advise their employers in writing of their intention to take Critically Ill Child Care Leave

Crime-Related Child Death or Disappearance Leave

Finally, under the new amendments, parents of a child that has disappeared as the probable result of a crime will be eligible for up to 52 weeks of leave. Parents of a child that has died as the probable result of a crime will be eligible for up to 104 weeks of leave.

"Child" is defined to include a child, step-child, or foster child who is under 18 years of age. As with Critically Ill Child Care Leave, employees must have been employed by the employer for a minimum of six consecutive months in order to be entitled to Crime-Related Child Death or Disappearance leave.

Unlike the other new leaves, Crime-Related Child Death or Disappearance Leave will be generally required to be taken in a single period. Employees will also be required to advise their employer in writing of their intent to take the leave and provide a written plan of when they intend to take the leave.

Employer Implications

These three new unpaid leaves of absence will be in addition to the seven existing unpaid leaves under the *ESA*. The existing leaves are as follows:

- Pregnancy Leave;
- Parental Leave;
- Family Medical Leave;
- Organ Donor Leave;
- Personal Emergency Leave;
- Emergency Leave, Declared Emergencies; and
- Reservist Leave.

It is worth remembering that all leaves of absence under the *ESA* are in addition to every employer's duty to accommodate an employee's family status and marital status, up to the point of undue hardship, under the *Ontario Human Rights Code*, R.S.O. 1990, c. H.19. Recent case law indicates that this duty includes allowing employees time-off and/or a flexible work schedule when necessary to care for elderly parents, children (especially special needs children), and/or a pregnant spouse. For more information on this topic, see McMillan's prior bulletin on family status discrimination.

Since the circumstances where employees are entitled to take unpaid time-off work to address situations involving their family members continue to expand, employers would be well-advised to treat these situations with care, and seek legal counsel whenever they are unsure as to their legal obligations.

Employers may wish to review their own leave and attendance policies to determine whether changes need to be made as a result of the new statutory leave provisions in the *ESA*. Employers should also consider how (or if) the new leave provisions need to be integrated into employment contracts and/or collective agreements.

McMillan LLP's Employment and Labour Relations Group would be pleased to advise further on the potential impacts of the new *ESA* leaves and how your business can adapt to these changes.

Last Updated: July 19 2014

Article by Lyndsay A. Wasser and Kyle Lambert

McMillan LLP