



# Employment Standards Act

## Special leave without pay

Updated February 2020



# Special leave without pay

The *Employment Standards Act* (the “Act”) gives an employee the right to take a leave of absence if they have suffered the loss of a family member or are managing the care of a critically ill child or family member.

The types of leaves allowed under the Act include:

- Sick leave;
- Bereavement leave;
- Compassionate care leave;
- Leave related to the critical illness of a child;
- Leave related to the critical illness of an adult; and
- Leave related to the disappearance or death of a child.

The Act only covers an employee’s right to take a leave of absence. Financial benefit related to a leave of absence is administered under the federal *Employment Insurance Act*. For more information, call Service Canada at 1-800-206-7218.

An employer may offer benefits or leaves that are better than those outlined under the Act. If these benefits and leaves form part of the employment contract, they may be enforceable under the Act.

## Definitions

The Act defines some words in a specific way. The relevant sections must be read with these definitions in mind.

The Act's definition of "family member" comes from the *Employment Insurance Regulations*. "Family member" includes many relationships, such as the spouse or common-law partner of the employee, the child or the employee, or a person who the employee considers to be like a close relative or who considers the employee to be like a close relative.

(see subsection 58.01(1) of the Act and subsection 1(3) of the *Employment Insurance Regulations*)

The Act's definition of "critically ill child" comes from the *Employment Insurance Act*. "Critically ill child" means a person who is under 18 years of age at the time and whose life is at risk as a result of an illness or injury.

(as defined by subsection 1(6) of the *Employment Insurance Regulations*)

The Act's definition of "critically ill adult" comes from the *Employment Insurance Regulations*. "Critically ill adult" means a person who is 18 years of age or older at the time and whose life is at risk as a result of an illness or injury.

(see subsection 1(7) of the *Employment Insurance Regulations*)

The Act defines a "week" as the period between midnight on Saturday and midnight of the following Saturday.

(as referenced by relevant sections of the Act)

## Sick leave

An employee is entitled to one day of sick leave for every month they have worked, up to a maximum of 12 days. This calculation is not affected if the Employee has been absent from work due to illness or injury.

(see subsection 59(2) of the Act)

An employee's absence from work due to illness or injury is not cause for termination if they have earned the sick leave. (see subsection 59(1) of the Act)

An employer may require that the employee submit a certificate from a qualified medical practitioner or nurse practitioner.

(see subsection 59(3) of the Act)

## Bereavement leave

If an employee's family member dies, the employee is entitled to leave without pay for up to one week provided that the funeral falls within that week.

(see subsection 60(2) of the Act)

If an employee is designated by the family of a deceased member of a First Nation as the person responsible for organizing the funeral potlatch, the employee is entitled to leave without pay of up to one week.

(see subsections 60(3) and (4) of the Act)

## Compassionate care leave

An employee may take an unpaid leave of absence of up to 28 weeks to care for or support a family member if:

- The employee gives their employer a certificate issued by a qualified medical practitioner or nurse practitioner that states that the family member has a serious medical condition with a significant risk of death within 26 weeks from the day the certificate is issued.

(see subsections 60.01(2) and (6) of the Act)

The leave starts the first day of the week that the certificate was issued and ends the last day of the week in which the family member dies or 52 weeks have passed.

(see subsections 60.01(3) of the Act)

The employee must take the leave in periods of at least one week.

(see subsections 60.01(4) of the Act)

If two or more employees take compassionate care leave to care for or support the same family member, together, they may take up to 28 weeks of leave.

(see subsection 60.01(5) of the Act)

## **Leave related to critical illness of a child**

An employee who is a family member of a critically ill child may take a leave of absence of up to 37 weeks to care for or support the child if:

- The employee has completed six months of continuous employment;
- The employee gives their employer a certificate from a qualified medical practitioner or nurse practitioner that states that the child is critically ill and needs the care or support of one or more family members, and that sets out the period for which the child needs the care or support; and
- The employee gives their employer at least two weeks of written notice of their plan to take this leave before the leave starts (unless circumstances require a shorter notice).

(see subsections 60.02(2) and (7) of the Act)

The employee must take the leave in periods of at least one week.

(see subsection 60.02(6) of the Act)

The leave starts on the first day of the week in which the certificate was issued and ends the last day of the week in which either the child dies or 52 weeks have passed. This period may be extended if the employee is caring for two or more critically ill children.

(see subsections 60.02(3) and (4) of the Act)

If two or more employees take this leave to care for or support the same critically ill child, they may take up to a combined total of 37 weeks of leave.

(see subsection 60.02(5) of the Act)

## **Leave related to critical illness of an adult**

An employee who is a family member of a critically ill adult may take a leave of absence of up to 17 weeks if:

- The employee has completed six months of continuous employment with an employer;
- The employee requires the leave to care for or support critically ill family member;
- The employee gives their employer a certificate issued by a qualified medical practitioner or a qualified nurse practitioner that states that the family member is critically ill, requires support, and sets out the period during which the family member requires this support; and
- The employee gives their employer written notice at least two weeks before they intend to take the leave (unless circumstances require shorter notice).

(see subsections 60.02.01(2), (3), (7) and (8) of the Act)

The leave starts on the first day the certificate was issued. It ends the last day of the week when either the critically ill adult dies or 52 weeks after the certificate was issued. If two or more employees take leave to care for the same critically ill adult, their combined total must not be longer than 17 weeks.

(see subsections 60.02(4) and (5) of the Act)

The employee must take the leave in periods of at least one week.

(see subsection 60.02(6) of the Act)

## Leave related to the death or disappearance of a child

An employee is entitled to a leave of absence of up to 104 weeks if:

- The employee has completed six months of continuous employment with the employer;
- The employee is the parent of a child who has died and it is likely that the death was the result of a crime;
- The employee gives their employer written notice at least two weeks before they intend to take the leave (unless circumstances require a shorter notice).

(see subsection 60.03(2) and (7) of the Act)

The employee must take the leave in periods of at least one week.

(see subsection 60.03(6) of the Act)

The employee's entitlement begins on the day that their child died and ends 104 weeks after the day of the child's death. If two or more employees take this leave, their combined total must not be longer than 104 weeks.

(see subsections 60.03(5) and (8) of the Act)

An employee is entitled to a leave of absence of up to 52 weeks if:

- The employee has completed six months of continuous employment with the employer;
- The employee is the parent of a child who has disappeared and it is likely that the death was the result of a crime; and
- The employee gives their employer written notice at least two weeks before they intend to take the leave (unless circumstances require a shorter notice).

(see subsections 60.03(2) and (7) of the Act)

The employee's entitlement begins on the day that the child disappeared and ends 52 weeks after the day the disappearance occurred. If two or more employees take this leave, their combined total absence must not be longer than 52 weeks.

(see subsections 60.03(5) and (8) of the Act)

An employee charged with the crime relating to the death or disappearance of their child is not entitled to either of these leaves.

(see subsection 60.03(4) of the Act)

## **For more information**

This fact sheet is prepared for general information purposes.

Please refer to the relevant provisions of the Act, which can be found at [http://www.gov.yk.ca/legislation/acts/emst\\_c.pdf](http://www.gov.yk.ca/legislation/acts/emst_c.pdf) or contact an Employment Standards Officer at 667-5944 or by email at [employmentstandards@gov.yk.ca](mailto:employmentstandards@gov.yk.ca).