

Leaves and Jury Duty - Do you know your entitlements?



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Leaves and Jury Duty

It is important to know what leaves of absence you are entitled to under the *Employment Standards Act R.S.B.C. 1996, c. 113* (the "ESA") as well as the statutory obligations owed to you by your employer if you are called for jury duty.

Pregnancy Leave

The ESA provides minimum standards which must be met by employers. One available leave of absence available to all pregnant employees, regardless of their length of employment, is pregnancy leave. The pregnancy leave of absence is without pay, unless you have a separate agreement with your employer. An employee is entitled to up to 17 weeks of a leave of absence without pay, which may begin at any time up to 11 weeks prior to the expected date of delivery. If the birth is delayed beyond the expected date, this has no effect on the length of the leave, unless it would exceed 17 weeks. As part of the total of 17 weeks, the employee is entitled to six consecutive weeks after the actual date of the birth of the child. Please note that this period can be shortened on the request of the employee. If the employee does not take the leave before the birth of the child, the employee is still entitled to take 17 consecutive weeks of unpaid pregnancy leave.

If the employee's pregnancy is terminated through miscarriage or abortion, the employee is entitled to up to six weeks consecutive leave without pay. In addition, if the employee is unable to return to work for reasons related to

the birth of the child or termination of the pregnancy, further leaves may be taken as long as the total leave of absence does not exceed a total of 6 additional consecutive weeks.

An employee who wishes to take a pregnancy leave must provide their employer with a written request at least 4 weeks before the day the employee proposes to begin the leave. A note dated and signed by the employee which clearly states the nature of the request and the start and finish date of the leave is considered to be sufficient as long as it is properly received by the employer.

Many employees are not aware that the period of the pregnancy leave is determined by the employee and not the employer. As long as the employee meets the requirements set out in the ESA, the employer must grant the leave.

Parental Leave

Both mothers and fathers, adopting or new parents, are entitled to leaves of absence without pay to care for newborn or newly-adopted children. Similarly with pregnancy leave, the right to parental leave is available for all employees regardless of how long they have been employed.

Employees are entitled to apply for parental leave as long as they are the mother or father of an expected newborn child or an adopting parent of a child placed or about to be placed with the parent for the first time.

One period of full parental leave is available for each parent. Note that in the case of multiple

births, the employee is not entitled to double the parental leave entitlement.

Duration:

If the birth mother has taken a pregnancy leave, then she is entitled to up to 35 consecutive weeks of parental leave without pay. The parental leave must begin immediately following the end of the pregnancy leave, unless the employer and employee agree otherwise. Alternatively, if the mother did not take pregnancy leave, then the mother is entitled to up to 37 consecutive weeks of parental leave which may begin any time between the child's birth and 52 weeks after the event.

As per a birth father and adoptive parents, they are entitled to up to 37 consecutive weeks of parental leave which in the former case may begin any time between the child's birth and 52 weeks after the event or in the latter case, within 52 weeks after the child is placed with the parent.

A written request to the employer for parental leave must be made separately from pregnancy leave.

Family Responsibility Leave

Family responsibility leave is an employee-initiated unpaid leave of up to 5 days in an employee's employment year, based on the starting date. The leave does not have to be as result of an emergency but it must be related

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to the health, and in the case of a child, education, of a member of the employee's immediate family.

Under the ESA, "immediate family" means the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee and any person who lives with the employee as a member of the employee's family. It also includes common-law spouses, step-parents and step-children and same sex partners and their children as long as they live with the employee as a member of the employee's family.

The leave is supposed to help employees deal with family problems that conflict with job responsibilities. It does not carry forward from year to year and since it is a statutory entitlement, it is not at the discretion of the employer. Note that any time taken off on any day (even one hour) qualifies as one day for the purposes of this section under the ESA.

Compassionate Care Leave

All employees are entitled to up to 8 weeks of unpaid leave within a period of 26 weeks to care for a gravely ill family member. This leave is available to all employees, regardless of how long they have been employed. The employee must provide their employer with a certificate from a medical practitioner, stating that the family member has a serious medical condition with a significant risk of death within 26 weeks. If the employee takes the leave and the family member is still alive within the 26 week period, the employee may obtain a new certificate which will entitle the employee to a further 8 weeks of leave within a subsequent 26 week period.

A "family member" is a member of the employee's immediate family (listed in the Family Responsibility Leave) as well as the following list of people in relation to the employee:

- a step-sibling;
- an aunt or uncle;
- a niece or nephew;
- a current or former foster parent;
- a current or former foster child;
- a current or former ward;

- a current or former guardian; or
- the spouse of:
 - o a sibling or step-sibling;
 - o a child or stepchild;
 - o a grandparent;
 - o an aunt or uncle;
 - o a current or former foster child; or
 - o a current or former guardian;

In relation to the employee's spouse:

- a parent or step-parent;
- a sibling or step-sibling;
- a child;
- a grandparent;
- a grandchild;
- an aunt or uncle;
- a niece or nephew;
- a current or former foster parent; or
- a current or former ward; and
- any individual with a serious medical condition who is like a close relative to the employee

Note that for the purposes of this section in the ESA, a "week" commences on a Sunday so if the employee begins the leave in the middle of the week, it will be considered to be a full week even though it is less than 7 days.

The employee must provide the employer with a copy of the certificate as soon as practicable; however, due to the nature of this leave, the employee is not disentitled from taking the

leave because they do not have the medical certificate at hand.

The leave ends on the last day of the week in which the family member passes away, or at the end of the 26 week period, whichever comes first.

Bereavement Leave

An employee is entitled to an unpaid leave of absence of up to 3 days to grieve, attend a funeral, and take care of issues relating to the death of a member of their "immediate family" (defined in the aforementioned section entitled Family Responsibility Leave).

Note that the days of the unpaid leave do not have to be consecutive and the employee does not have to take a full 3 days. An employer may request that an employee provide proof of death and the nature of the relationship.

Jury Duty

If an employee is required to attend court as a juror, the employee is entitled to an unpaid leave unless the employer and employee agree otherwise.

With all the above-mentioned leaves of absence and jury duty, it is important for employees to know that an employer cannot terminate an employee or change a condition of employment without the employee's written consent. As soon as the leave ends, the employer must place the employee in the position the employee held before taking the leave or jury duty or in a comparable position. Further, while the employee is on leave or while serving on jury duty, the employment is deemed continuous for the purposes of calculating annual vacation entitlement and additional pension, medical or other benefits to which the employee is entitled. The employee is entitled to all increases in wages and benefits that they would have been entitled to had the leave not been taken or the attendance as a juror not been required.

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