

New Leaves of Absence under the ESA

EFFECTIVE OCTOBER 29, 2014, BILL 21 WILL COME INTO FORCE, ADDING THREE ENTIRELY NEW LEAVES OF ABSENCE TO THE EXISTING LIST OF AUTHORIZED LEAVES UNDER THE *EMPLOYMENT STANDARDS ACT 2000* (THE “ESA” OR THE “ACT”).



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Peter Straszynski is a partner in our Employment & Labour Group. He assists employers with all of their labour and employment issues, from the hiring to the post-termination stages of employment, in both the union and non-union settings.

Current leaves under the *ESA* include “pregnancy” and “parental” leaves, “organ donor” leave, “personal” and “declared” emergency leaves and “reservist” leave. The *Act* specifies the criteria required to qualify for, and the permitted duration of these leaves of absence.

New Leaves Effective October 29, 2014

Effective October 29, 2014, The *Act* will provide for the following new leaves of absence, introduced by Bill 21: the *Employment Standards Act Amendment Act (Leaves to Help Families), 2013*:

Family Caregiver Leave

Employees that need to provide care to family members with a “serious medical condition” will be entitled to up to 8 weeks of leave without pay. “Family member” includes:

- 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 individual prescribed as a family member for the purposes of the *Act*.

The employer may require a medical certificate. This leave need not be taken all at once, but must be taken in full weeks.

Critically Ill Child care Leave

Employees with at least 6 consecutive months of service are entitled to up to 37 weeks unpaid leave to provide care to a critically ill child. The definition of "critically ill child" mirrors that contained in the *Employment Insurance Act*, but is more broad, extending to "step-child" and "foster-child". Employers may require a medical certificate.

Crime-Related Child Death and Disappearance Leave

Employees with at least 6 months consecutive service are entitled to unpaid leave of up to 52 weeks where their child has disappeared due to crime, and up to 104 weeks in the event of death resulting from crime. Exceptions include situations where the employee is charged with the crime or the child is a party to the crime.

Rules Respecting Leaves

With respect to most authorized leaves under the *Act*, employers are obligated to continue benefits

coverage unless the employee elects in writing not to have coverage maintained.

Workers returning from a leave of absence authorized under the *ESA* are entitled to be reinstated to their exact position, unless that position no longer exists, in which case they are entitled to be placed in a position that is "comparable" in all respects. This reinstatement obligation is not breached where the employment is "ended solely for reasons unrelated to the leave".

If you would like more information about leaves of absence under the *Act*, please contact us any time.