



Labour

Information on **LABOUR STANDARDS**

5A COMPASSIONATE CARE LEAVE

Part III of the *Canada Labour Code* (Labour Standards)

The *Canada Labour Code* provides for compassionate care leave in Division VII of Part III.

The following questions and answers will be of interest to employers and employees under federal jurisdiction. Pamphlet 1 of this series describes the types of businesses covered by the Code. It is available from any Labour Program office and on the labour.gc.ca website.

1. What is meant by compassionate care leave?

Employees are entitled to up to 8 weeks of compassionate care leave to provide care and support to a gravely ill family member. A certificate is required from a qualified medical practitioner, stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

2. Who is entitled to take compassionate care leave?

All employees without exception.

3. Is the employer required to continue wage payments while the employee is absent?

No. The Code provides job security only. There is no provision for paid leave of absence. Some employees, however, may be entitled to cash benefits under the *Employment Insurance Act*.

Information about eligibility and benefits may be obtained at any local Human Resource Centre of Canada.

4. Who is considered to be a “family member”?

The following classes of person are included in the definition of “family member” for compassionate care benefits:

- the employee’s spouse or common-law partner; the employee’s child(ren) or the child(ren) of the employee’s spouse or common-law partner; and a parent of the employee or spouse or common-law partner of the parent;
- a child of the individual’s parent or a child of the spouse or common-law partner of the individual’s parent;
- a grandparent of the individual or of the individual’s spouse or common-law partner or the spouse or common-law partner of a grandparent of the individual;
- a grandchild of the individual or of the individual’s spouse or common-law partner or the spouse or common-law partner of a grandchild of the individual;
- the spouse or common-law partner of the individual’s child or of the child of the individual’s spouse or common-law partner;
- a parent, or the spouse or common-law partner or a parent, of the individual’s spouse or common-law partner;
- the spouse or common-law partner of a child of the individual’s parent or of a child of the spouse or common-law partner of the individual’s parent;
- a child of a parent of the individual’s spouse or common-law partner or a child of the spouse or common-law partner of the parent of the individual’s spouse or common-law partner;
- an uncle or aunt of the individual or of the individual’s spouse or common-law partner or the spouse or common-law partner of the individual’s uncle or aunt;
- a nephew or niece of the individual or of the individual’s spouse or common-law partner or the spouse or common-law partner of the individual’s nephew or niece;
- a current or former foster parent of the individual or of the individual’s spouse or common-law partner;
- a current or former foster child of the individual or the spouse or common-law partner of a current or former foster child of the individual;
- a current or former ward of the individual or of the individual’s spouse or common-law partner;

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- a current or former guardian or tutor of the individual or the spouse or common-law partner of the individual's current or former guardian or tutor;
 - in the case of an individual who has the serious medical condition, a person whether or not related to the individual by blood, adoption, marriage or common-law partnership, whom the individual considers to be like a close relative;

this means that the person who has the serious medical condition may designate any individual who is not included in the definition of "family member" but who is considered to be like a close relative. This will allow the designated individual to claim compassionate care benefits; and

- in the case of an individual who is the claimant, a person, whether or not related to the individual by blood, adoption, marriage or common-law partnership, who considers the individual to be like a close relative;

this means that any individual who is not listed in the definition of "family member", but who considers the person who has the serious medical condition to be like a close relative, may claim compassionate care benefits.

NOTE: "Common law partner" means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year.

5. Is each family member entitled to 8 weeks of compassionate care leave to care for the same person?

No. However, the entitlement of up to 8 weeks of compassionate care leave may be shared by two or more employees under federal jurisdiction. The total amount of leave that may be taken by two or more employees in regard to the same family member is 8 weeks in the 26 week period.

6. Is a doctor's certificate required in order to take compassionate care leave?

Yes. If the employer requests in writing a medical certificate within 15 days of an employee's return to work, the employee must provide one. The certificate must have been issued by a qualified medical practitioner, stating that the family member has a serious medical condition and as a result, there is a significant risk of death within 26 weeks.

7. What happens if the family member is still gravely ill at the end of 26 weeks?

Under such circumstances, an employee is entitled to a further period of up to 8 weeks of compassionate care leave. A qualified medical practitioner would be required to issue another certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

8. What happens to the employee’s job upon return from compassionate care leave?

The employee must be reinstated in her or his former position or be given a comparable position in the same location and with the same wages and benefits.

9. Could an employee ever receive lower pay upon returning to work?

Yes. If, during a leave period, the wages and benefits of a group of employees are reduced as part of a reorganization plan, an employee who is reinstated in that group will receive no more than the wages and benefits that the employee would have received if she or he had been at work during the reorganization.

Likewise, if wages and benefits for the employee’s group are increased during leave, the employee would be entitled to the increases upon return to work.

10. Do pension, health and disability benefits and the seniority of the employee accumulate during leave?

Yes. These benefits continue during the leave period, provided an employee pays any contributions that would normally have been paid. Likewise, the accumulation of seniority continues during the absence.

11. What if an employee chooses not to pay normal contributions related to pension, health and disability benefits for the leave period?

Non-payment of contributions for the leave period has no impact on the employee’s employment status. These benefits may lapse during the leave period, but employment upon reinstatement is considered to be continuous with employment before the leave, for purposes of calculating future benefits.

12. Is the employer required to continue its contributions to the pension, health and disability benefits plan while the employee is on leave?

Yes. The employer must pay at least the same share of contributions as if the employee were not on leave, unless the employee does not pay her or his contributions.

13. Is an employee on leave entitled to receive information about opportunities for employment, training and promotion?

Yes. If the employee has submitted a written request.

14. Can an employer dismiss or lay off an employee because the employee has taken or intends to take compassionate care leave?

No. An employer may not dismiss, suspend, lay off, demote or discipline an employee because the employee has taken or intends to take compassionate care leave. The employer also cannot take this leave into account in any decision to promote or train an employee.

15. When a collective agreement does not provide for compassionate care leave, is the employer still obliged to grant it?

Yes.

This pamphlet is provided for information only. For interpretation and application purposes, please refer to Part III of the *Canada Labour Code* (Labour Standards), the *Canada Labour Standards Regulations*, and relevant amendments.

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