



Labour

Information on **LABOUR STANDARDS**

5C LEAVE RELATED TO DEATH OR DISAPPEARANCE

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

The *Canada Labour Code* provides for leave related to death or disappearance of a child 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 on the labour.gc.ca website.

1. What is meant by leave related to death or disappearance?

An employee, whose child is under 18 years of age and has disappeared or died as a result of a probable crime under the *Criminal Code*, is eligible to take up to 52 weeks of leave in the case of a missing child, and up to 104 weeks of leave if the child has died.

2. Who is entitled to leave related to death or disappearance?

An employee who has completed six consecutive months of continuous employment with the same employer and is considered to be a legal parent, adoptive parent, a person with whom the child was placed for the purpose of adoption and an individual with legal custody or guardianship of the child who has died or disappeared is entitled to the leave.

3. Who is not entitled to the leave related to death or disappearance?

An employee is not entitled to the leave if the employee is charged with the crime or it is probable, considering the circumstances, that the child was a party to the crime.

4. 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 financial assistance from the Federal Income Support for Parents of Murdered or Missing Children grant.

Information about Federal Income Support for Parents of Murdered or Missing Children grant may be obtained from Service Canada by visiting their website at www.servicecanada.gc.ca/pmmc, calling their toll free number at 1-877-842-5601 or visiting a Service Canada Centre.

5. When can leave be taken and how much leave is provided under the Code?

The leave of absence can be taken on the day on which the death or disappearance occurs and it ends no later than 104 weeks after the day on which the death occurs, or 52 weeks after the day on which the disappearance occurs. If a missing child is found, then the leave of absence ends 14 days after the day on which the child is found, but no later than the end of the 52-week period.

The employee can request leave at a later date, if he or she did not ask for leave immediately following the event. However, the period in which the leave may be taken ends 104 weeks after the day on which the death of the child occurs, or 52 weeks after the day on which the child disappears.

6. Can the leave end earlier than the Code prescribed entitlements?

Yes. The employee can change the length of the leave by notifying the employer in writing as soon as possible. If the length of the leave is longer than four weeks, the employee must provide the employer with at least four weeks' notice in advance, unless there is a valid reason why that cannot be done.

Also, the leave will end on the day on which the circumstances are such that it is no longer probable that the death or disappearance was the result of a crime.

7. Can leave related to death or disappearance be divided in shorter periods?

Yes. The leave can be taken in shorter, non-consecutive periods. However, the period within which the leave can be taken will not be extended.

For example, an employee could take 30 weeks of leave where his or her child has been murdered; decide to return to work for 60 weeks; and then resume leave for the remaining 14 weeks to attend a criminal trial related to the child's murder.

8. Can both parents take leave related to death or disappearance?

Yes. Both parents can take leave at the same time, or one after the other, as long as the combined duration of the leave does not exceed 52 weeks for a missing child and 104 weeks for a child who has died.

For example, where a child has disappeared, each parent could take 26 weeks of leave at the same time, or any other combination of leave that does not exceed a total of 52 weeks.

9. Can both parents take the maximum number of weeks for any of the leaves if they work for different employers?

No. If both parents wish to take one of the leaves and are employed by employers under the jurisdiction of Part III of the *Canada Labour Code*, they must share the leave.

10. What happens if two or more children of the employee are missing or murdered?

If two or more children of an employee disappear or are murdered as a result of the same event, the employee is eligible for only one leave of 52 or 104 weeks respectively. However, if two or more children of an employee disappear or are murdered as a result of different events, the employee will be eligible for separate leaves with respect to each affected child.

11. What must an employee do to obtain leave?

The employee must advise the employer in writing as soon as possible of the reasons for the leave and the length of leave that he or she plans to take. The employee must also notify the employer in writing of any change in the length of leave as soon as possible. If the leave is for a period longer than four weeks, the employee must give the employer at least four weeks' notice of any change in the length of leave, unless there is a valid reason why this cannot be done.

If the leave is for a disappeared child who is then found dead, the employee has to notify his or her employer in writing as soon as possible if he or she intends to change the type of the leave.

12. Is the employee required to give any additional documentation to the employer to qualify for leave?

If an employer so requests, an employee must provide a proof of entitlement, such as a police report.

13. Must the body of the employee's child be found in order to qualify for the 104-week leave for parents of murdered children?

In order for a parent to qualify for the 104-week leave, it will be necessary to establish that the child has died, and that death was the result of a probable crime. Although this normally requires finding the

child's body, there may be cases where the child's death and the criminal nature of that death, are clear despite the inability to find or identify the child's remains.

14. If a missing child is found dead, can a parent who has previously taken leave related to disappearance of child take a new 104-week leave (e.g. if the body is found after the child's disappearance)?

If a child who disappeared is subsequently found dead as a result of probable crime within 52 weeks after the child's disappearance, the employee will be entitled to the 104-week leave, starting from the day the child disappeared. In this case, the employer would have to be notified of the change in the duration of the leave.

If a child is found to have died as result of a probable crime more than 52 weeks after the child's disappearance (after the employee is no longer entitled to leave related to a child's disappearance), the employee would be entitled to a new leave of 104 weeks starting on the day the child has been found dead and ending 104 weeks after that day (assuming that the death was the result of a probable crime).

However, if the child's body is found after the death had already been established and the parents had taken a leave related to the death of child, parents would not be entitled to a new leave.

If a child who disappeared is subsequently found alive, the leave taken as the result of a child's disappearance would have to end 14 days later.

15. What happens to the employee's job upon return from leave related to death or disappearance?

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

16. Can an employer postpone an employee's return to work?

No, the employer must reinstate the employee once the leave ends.

However, if an employee takes a leave of more than four weeks but requests to end the leave earlier without giving at least four weeks' written notice, the employer may postpone the employee's return to work. The employee's return to work can be postponed for a period of up to four weeks after the day on which the employer was informed of the new end date. In that case, the employer must inform the employee of this decision and the period of postponement is considered to be part of the leave.

17. 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 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.

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

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

19. 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, for purposes of calculating future benefits.

20. 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 was not on leave, unless the employee does not pay her or his contributions.

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

Yes. On the written request of the employee, the employer must inform the employee who is on leave of every employment, training or promotion opportunities that arise during the period of leave.

22. Can an employer dismiss or lay off an employee because the employee has taken or intends to take leave related to death or disappearance?

No. An employer may not dismiss, suspend, lay off, demote or discipline an employee because the employee has taken or intends to take leave related to death or disappearance. The employer also cannot take the employee's intention to take the leave into account in any decision to promote or train the employee.

23. When a collective agreement does not provide for leave related to death or disappearance, is the employer still obliged to grant it?

Yes, provided the employee meets the requirements of the Code.

This publication 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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