

Leaves and Jury Duty

The *Employment Standards Act* requires employers to grant employees the following periods of **unpaid** leave. An employee does not need to work for a specified period to qualify for leave.

Pregnancy leave

A pregnant employee is entitled to up to 17 consecutive weeks of unpaid pregnancy leave. This leave may start no earlier than 11 weeks before the expected birth date, and must end no earlier than six weeks after the birth date unless the employee requests a shorter period.

If pregnancy leave is not requested until after the birth of a child or after termination of the pregnancy, the employee is entitled to up to six consecutive weeks of leave beginning on the date of birth or termination date.

An initial period of leave may be extended up to six consecutive weeks if an employee is unable to return to work for reasons relating to the birth or termination of a pregnancy.

A request to return from leave earlier than six weeks from the birth must be made in writing at least one week before the proposed return date.

An employer may require an employee to provide a doctor's certificate in support of a request for leave or a leave extension.

Parental leave for birth and adopting parents

A birth mother who takes pregnancy leave is entitled to 35 consecutive weeks of unpaid parental leave. A birth mother must begin her parental leave immediately after her pregnancy leave ends, unless she and the employer agree otherwise.

A birth mother who does not take pregnancy leave, a birth father, or an adopting parent is entitled to up to 37 consecutive weeks of unpaid parental leave. The leave can begin anytime within 52 weeks of the birth or placement of the child.

An initial period of parental leave may be extended up to five consecutive weeks if the child requires an additional period of parental care.

An employer may require an employee to provide a doctor's certificate or other evidence that the employee is entitled to the leave or leave extension.

Request for Leave

The Act says that a request for pregnancy or parental leave must be made in writing at least four weeks before the proposed start date. However, the courts and the Employment Standards Tribunal have said that failure to give written notice does not affect the employee's entitlement to the leave. Employees are encouraged to tell their employers the date they will be going on leave well in advance and to put it in writing to avoid misunderstandings.

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Family responsibility leave

An employee is entitled to up to five days of unpaid leave in each employment year to meet responsibilities related to the care, health or education of any member of the employee's immediate family.*

“Employment year” means a year beginning on the date the employee commenced employment.

Family Responsibility Leave does not accumulate from year to year.

Compassionate care leave

*An employee can take up to eight weeks of unpaid leave within a 26 week period for a gravely ill family member.

*The employee must obtain a medical certificate which states that the family member is gravely ill with a significant risk of death within 26 weeks.

“Family member” means someone who is:

- in relation to an employee:
 - a member of an employee's immediate family
 - an employee's aunt or uncle, niece or nephew, current or former foster parent, ward or guardian
 - the spouse of an employee's sibling or step-sibling, child or step-child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster child or guardian
- in relation to an employee's spouse:
 - the spouse's parent or step-parent, sibling or step-sibling, child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster parent, or a current or former ward; and
- anyone who is considered to be like a close relative regardless of whether or not they are related by blood, adoption, marriage or common law partnership.

Bereavement leave

An employee is entitled to up to three days of unpaid leave on the death of a member of the employee's immediate family.* These days do not have to be consecutive, or start on the date of death.

*“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.

Jury duty

An employee who is required to attend Court as a juror is considered to be on unpaid leave for the period of the jury duty.

Employment considered continuous

If an employee is on any of the leaves referred to in this factsheet or on jury duty, employment is considered continuous for the purposes of calculating annual vacation and termination entitlements, as well as for pension, medical or other plans of benefit to the employee.

An employer must continue to make payments to any such plans unless the employee chooses not to continue with her or her share of the cost of a plan. The employee is also entitled to all increases in wages and benefits that the employee would have received if not on leave.

Conditions of employment to remain the same during leave

An employer may not terminate an employee, or change a condition of employment, because of a leave or jury duty without the employee's written consent.

Return to work

When the leave or jury duty ends, an employee must be returned to his or her former position or to a comparable position. It is the employer's responsibility to contact the employee to make arrangements for the employee's return to work.
