

Compassionate Care Leave Provisions in Employment Standards Legislation in Canada

Jurisdiction	Status of Legislation	Maximum Leave Duration ¹	Eligibility Requirements			Sharing of Leave Between Caregivers ²	Fractioning of Leave ³	Family Members for Whom Employees May Take Compassionate Care Leave	Seniority / Benefits Protected
			Service ⁴	Notice ⁵	Medical Certificate				
Federal	In force since Jan. 4, 2004	8 weeks	N/A	N/A	If requested in writing by employer within 15 days of return to work	Yes	Periods of at least one week each	See Annex A	Seniority: Yes ⁶ Benefits: Yes ⁷
British Columbia	In force since April 27, 2006	8 weeks; A further period of leave is possible ⁸	N/A	N/A	Required – must be provided as soon as practicable	No	Periods of at least one week each	See Annex A	Seniority: <i>Not specified</i> ⁹ Benefits: Yes ¹⁰
Manitoba	In force since Jan. 4, 2004	8 weeks	30 days	One pay period before starting leave (or less in some cases) ¹¹ ; 48 hours before ending leave ¹²	Required – must be provided as soon as possible ¹³	No	One or two periods of at least one week each	See Annex A	Seniority: <i>Not specified</i> Benefits: Yes ¹⁴
New Brunswick	In force since Jan. 4, 2004	8 weeks ¹⁵	N/A	Employer must be advised “as soon as possible”	If requested in writing by employer within 15 days of return to work	Yes	Periods of at least one week each	See Annex A	Seniority: Yes ¹⁶ Benefits: <i>Not specified</i>
Newfoundland and Labrador	In force since Dec. 16, 2004	8 weeks ¹⁷	30 days	Employer must be notified 2 weeks before leave ¹⁸	If requested in writing by employer within 15 days of return to work	Yes	Periods of at least one week each	See Annex A	Seniority: <i>Not specified</i> Benefits: No (unless otherwise agreed) ¹⁹

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Nova Scotia	In force since Jan. 4, 2004	8 weeks ²⁰	3 months	Employer must be notified "as soon as possible"	If requested in writing by employer	No	Periods of at least one week each	See Annex A	Seniority: <i>Not specified</i> Benefits: Yes (at employee's cost) ²¹
Nunavut	In force since Jan. 4, 2004	8 weeks	N/A	N/A	If requested in writing by employer within 15 days of return to work	Yes	Periods of at least one week each	See Annex A	<i>Not specified</i>
Ontario	In force since June 29, 2004	8 weeks; A further period of leave is possible ²²	N/A	Employer must be advised in writing (notice must be provided "as soon as possible" if employee must begin leave prior to giving notice)	If requested by employer – must be provided as soon as possible	Yes	Periods of at least one week each	See Annex A	Seniority: Yes Benefits: Yes ²³

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			Service ⁴	Notice ⁵	Medical Certificate				
Prince Edward Island	In force since Dec. 16, 2003	8 weeks ²⁴	N/A	N/A	If requested in writing by the employer within 15 days of return to work	Yes	Periods of at least one week each	See Annex A	<i>Not specified</i>
Quebec	In force since May 1, 2003	12 weeks (per 12 months) (104 weeks in certain cases) ²⁵	3 months	Employer must be advised "as soon as possible"	If requested by employer, a document justifying the absence must be provided	No	<i>Not specified</i>	See Annex A	Seniority: <i>Not specified</i> Benefits: Yes ²⁶
Saskatchewan	In force since Feb. 3, 1995 (Amendments in force since June 17, 2004)	12 weeks per 52-week period ²⁷ (extension to 16 weeks in some cases ²⁸)	13 weeks	N/A	If requested in writing by employer	No	<i>Not specified</i>	See Annex A	<i>Not specified</i>
Yukon	In force since Jan. 4, 2004	8 weeks	N/A	N/A	If requested in writing by employer before leave starts or within 15 days of return to work	Yes	Periods of at least one week each	See Annex A	<i>Not specified</i>

Annex A

Jurisdiction	Family Members for Whom Employees May Take Compassionate Care Leave
Federal	<p>The employee's spouse or common-law partner,²⁹ child (including a child of the employee's spouse or common-law partner); or parent (including the spouse or common-law partner of the parent). <i>(Canada Labour Code, s. 206.3)</i></p> <p>As of June 14, 2006, an employee may also take leave for:</p> <ul style="list-style-type: none"> • A child of a parent of the employee (<i>i.e., a sibling of the employee</i>) • A child of the spouse or common law partner of a parent of the employee (<i>i.e., a step-sibling of the employee</i>); • The spouse or common law partner of a child of a parent of the employee (<i>i.e., a sibling-in law of the employee</i>); • The spouse or common law partner of a child of the spouse or common law partner of a parent of the employee (<i>i.e., a step-sibling-in-law of the employee</i>); • A child of a parent of the employee's spouse or common law partner, or a child of the spouse or common law partner of that parent (<i>i.e., a sibling-in-law or step-sibling-in-law of the employee</i>); • A grandparent, grandchild, aunt, uncle, niece or nephew of the employee or of the employee's spouse or common-law partner; • A current or former foster parent, foster child, ward or guardian of the employee; • The spouse or common law partner of a child, grandparent, grandchild, uncle, aunt, niece, nephew, current or former guardian or current or former foster child of the employee; • A parent of the employee's spouse or common-law partner, or the spouse or common law partner of that parent (<i>i.e., a parent-in-law or step-parent-in-law of the employee</i>); • The spouse or common law partner of a child of the spouse or common law partner of the employee (<i>i.e., a step-child-in-law of the employee</i>); • A current or former foster parent or ward of the employee's spouse or common-law partner; and • A person who considers the employee to be, or whom the employee considers to be, "like a close relative." <p><i>(Regulation 2006-135 under the Employment Insurance Act)†</i></p>

Jurisdiction	Family Members for Whom Employees May Take Compassionate Care Leave
British Columbia	<p>The employee's spouse, child, parent, guardian, sibling, grandchild, or grandparent, or a person who lives with the employee as a member of his/her family.</p> <p><i>(Employment Standards Act, ss. 1(1) and 52.1)</i></p> <p>As of October 20, 2006, an employee may also take leave for:</p> <ul style="list-style-type: none"> • A step-sibling of the employee; • An aunt, uncle, niece or nephew of the employee; • A current or former foster parent of the employee • A current or former foster child of the employee; • A current or former guardian or ward of the employee; • The spouse of a sibling, step-sibling, child, step-child, grandparent, grandchild, aunt, uncle, niece or nephew of the employee; • The spouse of a current or former foster child of the employee; • The spouse of a current or former guardian of the employee; • A parent or step-parent of the employee's spouse; • A sibling or step-sibling of the employee's spouse; • A child of the employee's spouse; • A grandparent or grandchild of the employee's spouse; • An aunt, uncle, niece or nephew of the employee's spouse; • A current or former foster parent of the employee's spouse; • A current or former ward of the employee's spouse; and • Any person who considers the employee to be, or whom the employee considers to be, "like a family member." <p><i>(Compassionate Care Leave Regulation under the Employment Standards Act)</i></p>

Jurisdiction	Family Members for Whom Employees May Take Compassionate Care Leave
Manitoba	<p>The employee's spouse or common-law partner,³⁰ child (including a child of the employee's spouse or common law partner), or parent (including the spouse or common-law partner of a parent).</p> <p>(<i>Employment Standards Code</i>, s. 59.2(1))</p> <p>As of January 31, 2007, an employee may also take leave for:</p> <ul style="list-style-type: none"> • A sibling or step-sibling of the employee or of his/her spouse or common-law partner; • An uncle, aunt, niece or nephew of the employee or of his/her spouse or common-law partner; • A grandchild or grandparent of the employee or of his/her spouse or common-law partner; • A parent of the employee's spouse or common-law partner; • A current or former foster parent, foster child, ward or guardian of the employee or of the employee's spouse or common-law partner; • The spouse or common-law partner of any of the individuals mentioned above; and • Any person whom the employee considers to be "like a close relative". <p><i>Employment Standards Regulation</i> under the <i>Employment Standards Act</i>, ss. 22 and 32(2).</p>
New Brunswick	<p>A person in a <i>close family relationship</i> with the employee. The <i>Employment Standards Act</i> defines a "close family relationship" as a "relationship between persons who are married to one another, between parents and their children, between siblings and between grandparents and their grandchildren, and includes a relationship between persons who, though not married to one another and whether or not a blood relationship exists, demonstrate an intention to extend to one another the mutual affection and support normally associated with those relationships first mentioned".</p> <p>(<i>Employment Standards Act</i>, ss. 1 and 44.024)</p>
Newfoundland and Labrador	<p>The employee's spouse or cohabiting partner,³¹ child (including a child of the employee's spouse or cohabiting partner), or parent (including the spouse or common law partner of a parent).</p> <p>(<i>Labour Standards Act</i>, s. 43.13)</p>

Jurisdiction	Family Members for Whom Employees May Take Compassionate Care Leave
Nova Scotia	<p>The employee's spouse or common-law partner,³² child (including a child of the employee's spouse or common-law partner), or parent (including the spouse or common-law partner of a parent).</p> <p><i>(Labour Standards Code, s. 60E)</i></p>
Nunavut	<p>The employee's spouse, common-law partner,³³ child (including a child of the employee's spouse or common-law partner), or parent (including the spouse or common-law partner of a parent).</p> <p><i>(Labour Standards Act, s. 39.1)</i></p> <p>As of June 14, 2006, an employee may also take leave for:</p> <ul style="list-style-type: none"> • A child of a parent of the employee <i>(or a sibling of the employee)</i> • A child of the spouse or common law partner of a parent of the employee <i>(or a step-sibling of the employee)</i>; • The spouse or common law partner of a child of a parent of the employee <i>(or a sibling-in law of the employee)</i>; • The spouse or common law partner of a child of the spouse or common law partner of a parent of the employee <i>(or a step-sibling-in-law of the employee)</i>; • A child of a parent of the employee's spouse or common law partner, or a child of the spouse or common law partner of the parent <i>(or a sibling-in-law or step-sibling-in-law of the employee)</i>; • A grandparent of the employee; • A grandchild of the employee; • An aunt, uncle, niece or nephew of the employee; • A current or former foster parent, foster child, ward or guardian of the employee; • The spouse or common law partner of a child, grandparent, grandchild, uncle, aunt, niece, nephew, current or former guardian or current or former foster child of the employee; • A parent of the employee's spouse or common-law partner, or the spouse or common law partner of that parent <i>(a parent-in-law or step-parent-in-law of the employee)</i>; • The spouse or common law partner of a child of the spouse or common law partner of the employee <i>(step-child-in-law of the employee)</i>; • A grandparent, grandchild, uncle, aunt, nephew or niece of the employee's spouse or common law partner; • A current or former foster parent or ward of the employee's spouse or common-law partner; and • A person who considers the employee to be, or whom the employee considers to be, "like a close relative." <p><i>(Regulation 2006-135 under the Employment Insurance Act)†</i></p>

Jurisdiction	Family Members for Whom Employees May Take Compassionate Care Leave
Ontario	<p>The employee's spouse (including a person living with the employee in a conjugal relationship outside marriage); the employee's parent, step-parent or foster parent; or a child, step-child or foster child of the employee or his/her spouse.</p> <p><i>(Employment Standards Act, 2000, s. 49.1(3))</i></p> <p>As of October 6, 2006, an employee may also take leave for:</p> <ul style="list-style-type: none"> • A sibling or step-sibling of the employee; • A grandparent or step-grandparent of the employee or of the employee's spouse; • A grandchild or step-grandchild of the employee or of the employee's spouse; • A parent-in-law or step-parent-in-law of the employee; • A sibling-in-law or step-sibling-in-law of the employee; • A son-in-law or daughter-in-law of the employee or of the employee's spouse; • An uncle or aunt of the employee or of the employee's spouse; • A nephew or niece of the employee or of the employee's spouse; • The spouse of the employee's grandchild, uncle, aunt, nephew or niece; • A foster parent of the employee's spouse; and • Any person who considers the employee to be "like a family member," on condition that the employee provide the employer upon its request with a copy of the document provided to the government of Canada for the purpose of claiming compassionate care benefits under the <i>Employment Insurance Act</i>, in which it is stated that the employee is considered to be like a family member. † <p><i>(Regulation 476/06 (Family Medical Leave – Prescribed Individuals) under the Employment Standards Act, 2000)</i></p>

Jurisdiction	Family Members for Whom Employees May Take Compassionate Care Leave
Prince Edward Island	The employee's spouse, common-law spouse, child, parent, brother or sister. <i>(Employment Standards Act, s. 22.3(1))</i>
Quebec	The employee's spouse (including a person living with the employee in a <i>de facto</i> union) ³⁴ , child (including a child of the employee's spouse), parent (including the spouse of a parent), brother, sister or grandparent. <i>(Act respecting labour standards, s. 79.8)</i>
Saskatchewan	The spouse ³⁵ , child (including the child of the employee's spouse), parent, sibling or grandparent of the employee or the employee's spouse, if this person is dependent on the employee. <i>(Labour Standards Act, ss. 29.3 and 44.2)</i>
Yukon	The employee's spouse, ³⁶ parent, child (including a child to whom the employee stands in the place of parent), sibling, father of a spouse, mother of a spouse, step-mother, step-father, grandparent, grandchild, son-in-law, daughter-in-law, or any relative permanently residing in the employee's household or with whom the employee resides. <i>(Employment Standards Act, s. 60.1)</i>

*In all of the jurisdictions mentioned—except for Quebec and Saskatchewan—the patient must be suffering from a serious medical condition with a significant risk of death within 26 weeks in order for the employee to qualify for leave. In Quebec, leave may be taken if the family member has a serious illness or has had a serious accident (but there is no requirement that the person be likely to die). In Saskatchewan, leave may be taken if the family member is dependent on the employee and is suffering from a serious illness or serious accident.

† Under the federal *Employment Insurance Act* and Regulations, claimants who meet eligibility requirements can take up to six weeks of compassionate care benefits within a 26-week period (or such shorter period as may be prescribed) to provide care or support to a “family member”, as defined, where the latter, as attested by a medical certificate, has a serious medical condition with a significant risk of death within that period. Regulation 2006-135 under the *Employment Insurance Act*, which came into force on June 14, 2006, prescribes an extensive list of family members in respect of whom an employee may claim compassionate care benefits. Under this Regulation, a person who considers the employee to be like a close relative is included in the definition of “family member”. Before this Regulation came into force, an employee could only claim compassionate care benefits in respect of his/her spouse or common law partner, child (including a child of the employee's spouse or common-law partner) or parent (including a spouse or common law partner of the parent). For further information regarding these amendments, please refer to p. 2 of the document entitled *Highlights of Major Developments in Labour Legislation, 2005-2006*, available at: http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/clli/dllc/01Developments_in_Labour_Legislation_in_Canada.shtml&hs=lzl

An employee's eligibility to claim compassionate care benefits under Employment Insurance³⁷ is distinct from his/her eligibility to take compassionate care leave under employment standards legislation. Nonetheless, the definition of "family member" in the employment standards legislation of the federal jurisdiction and Nunavut incorporates by reference any person prescribed as a "family member" for the purposes of compassionate care benefits under the Employment Insurance program. Therefore, when Regulation 2006/135 came into force, the family members listed for the purposes of Employment Insurance automatically became part of the definition of "family member" in the employment standards legislation of the federal jurisdiction and Nunavut.

It should be mentioned that Nunavut's *Labour Standards Act* also incorporates by reference any persons prescribed for the definition of "family member" under the *Canada Labour Code*. Thus, if regulations were made under the *Canada Labour Code* prescribing individuals as "family members", the changes would automatically be incorporated into Nunavut's legislation.

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Notes:

¹ In the federal jurisdiction, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Ontario, Prince Edward Island and Yukon, leave must be taken within a specified 26-week period, generally starting on the first day of the week in which a medical certificate attesting to the family member's medical condition is issued. However, leave in these jurisdictions (except Manitoba) automatically ends on the last day of the week in which the family member's death occurs. In Newfoundland and Labrador, under exceptional circumstances, an additional period of three days- to be taken immediately after the end of the week during which the death occurred - can be provided by order of the Director of Labour Standards.

² Refers to whether or not the leave must be shared between employees who provide care or support to the same person.

³ Refers to the number and minimum duration of periods, if applicable, in which compassionate care leave may be taken.

⁴ Refers to the minimum length of service that an employee must have completed with his/her current employer to qualify for leave.

⁵ Refers to the minimum period of notice that an employee must give to his/her employer before starting the leave. In New Brunswick, the notice will also have to indicate the anticipated duration of the leave.

⁶ The *Canada Labour Code* provides that seniority continues to accrue during a period of compassionate care leave. An employee also has the right, upon written request, to be informed in writing of every employment, promotion and training opportunity that arises during the period in which he/she is on leave and for which he/she is qualified.

⁷ Seniority and pension, health and disability benefits continue to accumulate during the leave period, provided the employee makes his/her contributions (if any) within a reasonable time. When calculating other benefits, employment before and after the leave is deemed to be continuous.

⁸ If the family member survives past the 26-week period specified in the medical certificate, the employee is entitled to take another period of compassionate care leave provided he/she furnishes his/her employer with another medical certificate. Moreover, the right to compassionate care leave is in addition to the five unpaid days per year of family responsibility leave that is provided for under British Columbia's *Employment Standards Act*. Family responsibility leave can be used to meet responsibilities related to the care, health or education of a child in the employee's care or the care or health of any other member of the employee's immediate family.

⁹ However, it should be noted that the periods of employment before and after the leave are deemed to be continuous for the purposes of calculating appropriate notice of termination and entitlement to annual vacation.

¹⁰ The employee is entitled to all increases in wages and benefits to which he/she would have been entitled had he/she not taken leave. Moreover, the employer is required to continue to make payments to a pension, medical or other plan when the latter is taking compassionate care leave, provided that the employee pays his/her share of the cost (where applicable).

¹¹ A shorter notice period may be given where circumstances so require.

¹² If the employee decides to end his/her leave before it has expired.

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- ¹³ In addition to stating that the family member has a serious medical condition with a significant risk of death within 26 weeks, the required medical certificate must also indicate that the family member requires the care or support of one or more family members.
- ¹⁴ In Manitoba, employment before and after the leave is deemed to be continuous for the purpose of pension and other benefits.
- ¹⁵ Furthermore, under the *Employment Standards Act* of New Brunswick, an employee is entitled to three unpaid days per year of family responsibility leave, which can be used to meet responsibilities related to the health, care or education of a person in a close family relationship with him/her.
- ¹⁶ Seniority continues to accrue during the leave (unless the employee would have been dismissed, suspended or laid off had he/she not been granted leave). Moreover, the employee is deemed to have been continuously employed during the leave.
- ¹⁷ Furthermore, under Newfoundland and Labrador's *Labour Standards Act*, an employee with at least 30 continuous' days of service with his/her employer is entitled to take up to seven unpaid days of family responsibility and/or sick leave per year.
- ¹⁸ The notice must also indicate the intended length of the leave. However, a valid reason for not providing the notice exempts the employee from this requirement.
- ¹⁹ Unless the employer and employee agree otherwise, the period of leave does not count towards the application of the rights, benefits and privileges provided under the *Labour Standards Act*. However, the period worked upon resumption is considered to be continuous with the period worked prior to the leave.
- ²⁰ Furthermore, under Nova Scotia's *Labour Standards Code*, an employee is entitled to three unpaid days' leave per year due to the sickness of a child, parent or family member or for medical, dental or other similar appointments during working hours.
- ²¹ In Nova Scotia, an employee has the option of maintaining, during the period of leave, a benefit plan in which he/she participated prior to the leave. However, he/she is required to pay the employer's share of the benefit plan cost, unless the employer agrees to continue his/her contribution. The employer is required to notify the employee in writing of the option to maintain a benefit plan and of the deadline for deciding whether or not to exercise that option.
- ²² Where the employee takes an 8-week period of family medical leave and the family member survives beyond the 26-week period specified in the medical certificate, the employee is entitled to take another period of family medical leave provided he/she furnishes his/her employer with another medical certificate. Furthermore, in addition to family medical leave, an employee whose employer regularly employs 50 employees or more can take up to 10 days per year of unpaid emergency leave which may be used, among other things, in case a family member or other prescribed individual (including a spouse, child, child of the spouse, parent, grandparent, grandchild, sibling or a relative who is dependent on the employee for care or assistance) has an illness, injury or medical emergency.
- ²³ Time spent on leave is to be included in the calculation of the employee's seniority and length of service. During the leave, the employee continues to participate in specified employment benefits—pension, life insurance, accidental death, extended health, and dental plans—unless he or she elects in writing not to do so. The employer must continue paying its share of premiums unless the employee gives written notice that he/she does not intend to pay his or her contributions, if any.
- ²⁴ Furthermore, under the *Employment Standards Act* of Prince Edward Island, an employee who has completed at least six months of continuous service with his/her employer is entitled to take up to three days of unpaid leave per year to meet responsibilities related to the care or health of a person who is a member of his/her immediate or extended family.
- ²⁵ An employee's absence may be extended to 104 weeks if a child of the employee under the age of 18 has a serious and potentially fatal illness. Moreover, under Quebec's *Act respecting labour standards*, an employee can take up to ten unpaid days per year of family responsibility leave to fulfill obligations relating to the care, health or education of his/her child or the child of his/her spouse, or because of the state of health of his/her spouse, father, mother, brother, sister or grandparent.
- ²⁶ In Quebec, an employee who continues to pay regular contributions is entitled to maintain his/her participation in any group insurance and pension plans recognized in his/her place of employment. The employer must also continue to pay its share of the cost.
- ²⁷ An employee can also take this leave due to his/her own serious illness or injury. In addition, it should be noted that an employee with at least 13 weeks' service is entitled to up to 12 unpaid days' leave per year for non-serious illness or injury (of the employee and/or a member of his/her immediate family), unless it can be demonstrated that the employee has a record of chronic absenteeism and there is no reasonable expectation of improved attendance.
- ²⁸ An employer is prohibited from dismissing, suspending, laying off, demoting or disciplining an employee because of absence (except for just cause) if, during the period of absence, the employee is receiving compassionate care benefits (or is serving the waiting period for benefits) under the Employment Insurance Program and his/her absence, in combination with absences due to his/her serious or non-serious illness or injury and/or that of a family member, does not exceed 16 weeks in total in a 52-week period.
- ²⁹ An employee's "common-law partner" is defined in the legislation as a person who is cohabiting with the employee in a conjugal relationship and who has done so for at least one year.
- ³⁰ Under Manitoba's *Employment Standards Code*, a "common law partner" of an employee is defined a person who is cohabiting with the employee in a conjugal relationship of some permanence.
- ³¹ A "cohabiting partner" is defined as either of two persons who are cohabiting and have cohabited continuously in a conjugal relationship outside marriage for at least one year.
- ³² The legislation defines an employee's "common-law partner" as a person who has cohabited with the employee in a conjugal relationship for at least one year.

³³ An employee's "common-law partner" is defined in the legislation as a person who is cohabiting with him/her in a conjugal relationship and who has done so for at least one year.

³⁴ Quebec's *Act respecting labour standards* defines "spouse" as "either of two persons who (a) are married or are in a civil union and cohabiting; (b) being of opposite sex or the same sex are living together in a *de facto* union and are the father and mother of the same child; (c) are of the opposite sex or the same sex and have been living together in a *de facto* union for one year or more".

³⁵ Under Saskatchewan's *Labour Standards Act*, a "spouse" of an employee includes a person who is cohabiting and has cohabited with the employee as spouses (a) for a continuous period of at least two years or (b) in a relationship of some permanence, if they are the parents of a child.

³⁶ A "spouse" includes a person who cohabits with the employee and with whom the employee has cohabited for the preceding 12 months.

³⁷ To qualify for compassionate care benefits, a claimant must have contributed to the Employment Insurance fund and worked at least 600 insurable hours in the previous 52 weeks or since the start of the last claim, whichever is shorter. In addition, the claimant must demonstrate that his/her regular weekly earnings from work have decreased by more than 40%.