

Ontario proposes three new categories of unpaid job-protected leave – Family Caregiver Leave, Critically Ill Child Care Leave, and Crime-Related Child Death and Disappearance Leave

Date : March 1, 2013

On March 5, the Ontario government introduced Bill 21, the *Employment Standards Amendment Act (Leaves to Help Families), 2013* which, if passed, will amend the *Employment Standards Act, 2000* (the “ESA”) to provide job-protection for the following three new categories of unpaid leaves of absence:

- Family Caregiver Leave
- Critically Ill Child Care Leave
- Crime-Related Child Death and Disappearance Leave

Bill 21, currently in second reading, applies to all employees covered by the ESA regardless of full-time or part-time status. The leaves of absence that would be created by Bill 21 are in addition to Family Medical Leave currently set out in the ESA. The existing Family Medical Leave is available when an employee's family member has a serious medical condition with a significant risk of death occurring within 26 weeks. In such circumstances an employee is entitled to up to eight weeks of unpaid job-protected leave.

FAMILY CAREGIVER LEAVE

Bill 21 provides that an employee may take an unpaid leave of absence of up to eight weeks to care for a family member who is suffering from a serious medical condition. In order to be eligible for the Family Caregiver Leave, a “qualified health practitioner” must issue a certificate stating that the family member has a serious medical condition. A qualified health practitioner is defined in Bill 21 as follows:

“qualified health practitioner” means a person who is qualified to practise medicine under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (4) or, in the prescribed circumstances, a member of a prescribed class of health practitioners

Bill 21 also requires that the family member suffering from the serious medical condition must be one of the following individuals:

- 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

Other individuals may be added to this list through regulation if Bill 21 is passed.

The Family Caregiver Leave can only be taken in periods of entire weeks beginning on a Sunday and ending on a Saturday. In order to take the leave, an employee must provide the employer with written notice and, if requested by the employer, the certificate from the qualified health practitioner. The Family Caregiver Leave is proposed to be available in addition to the current Family Medical Leave provided for in the ESA.

CRITICALLY ILL CHILD CARE LEAVE

The Critically Ill Child Care Leave proposed by Bill 21 would be available to employees with six consecutive months of employment with the employer. In order to be eligible, a qualified health practitioner must issue a certificate that:

- states that the child is a critically ill child who requires the care or support of one or more parents; and
- sets out the period during which the child requires the care or support.

In the context of the Critically Ill Child Care Leave, a “qualified health practitioner” is defined as follows:

“qualified health practitioner” means a person who is qualified to practise medicine under the laws of the jurisdiction in which care or treatment is provided to a critically ill child or, in the prescribed circumstances, a member of a prescribed class of health practitioners

Under Bill 21, the maximum leave that would be available to an employee to provide care for a critically ill child is 37 weeks. If the certificate from the qualified health practitioner sets out a

shorter time for which the child requires care or support, then that period of time would be the maximum available.

Similar to the Family Caregiver Leave, the proposed Critically Ill Child Care Leave must be taken in full week periods commencing on Sunday and ending on Saturday. Unlike the Family Caregiver Leave, the Critically Ill Child Care Leave can be broken up into two or more periods, provided however that the total number of weeks does not exceed the maximum number of weeks the employee is entitled to.

There are a number of further limits placed on the Critically Ill Child Care Leave in Bill 21. For example, the total amount of leave that may be taken by an employee in respect of the same child, or children who are critically ill as a result of the same event, is 37 weeks.

In order to take the Critically Ill Child Care Leave, Bill 21 states that an employee must provide written notice to the employer that he or she will be taking the leave, and must submit a written plan that indicates the weeks in which the leave will be taken. The employee is also required to provide the certificate from the qualified health practitioner to the employer upon request.

CRIME-RELATED CHILD DEATH OR DISAPPEARANCE LEAVE

Bill 21 provides an additional category of leave for the death or disappearance of a child, where such death or disappearance is a result of a crime. For the purposes of Bill 21, the term “child” is defined to mean “a child, step-child or foster child who is under 18 years of age”, while a “crime” will generally refer to a crime under the *Criminal Code*. In the case of a death or disappearance of a child as a result of a crime, in order to be entitled to the leave, the employee must have worked for the employer for a minimum of six consecutive months.

In the case of the death of a child, an employee eligible for the leave is entitled to an unpaid leave of absence of up to 104 weeks. In the case of the disappearance of a child, the unpaid leave is limited to 52 weeks. The leave is unavailable where the employee is charged with the crime, or if it is probable, considering the circumstances, that the child was party to the crime. Bill 21 also states that if it becomes probable based on the circumstances that the death or disappearance was not the result of a crime, the leave ends upon the day in which it no longer seems probable.

Where an employee is on leave for a crime-related disappearance of a child, and the child is found within the 52 week period, the employee is entitled to remain on leave for an additional 14 days from the day the child is found. In the unfortunate circumstance where the child is found dead, the employee is entitled to extend the leave to a maximum period ending 104 weeks from the day the child disappeared.

Bill 21 sets out a number of additional items related to these leaves. For example, the leave for crime-related child death can only be taken during the 105-week period that begins in the week the

child dies. Similarly, the leave for the crime-related disappearance of the child is only available during the 53-week period that begins in the week the child disappears. Therefore in order to be entitled to the maximum leave provided for in Bill 21, an employee must commence the leave in the week immediately following the crime-related death or disappearance of the child.

In order to take the Crime-Related Death or Disappearance of a Child Leave, an employee must advise the employer in writing. The employee is also required to provide the employer with a written plan that indicates the weeks that he or she will be taking the leave, and where the employer requests it, provide reasonable evidence to support the employee's entitlement to the leave.

In our view

The Family Caregiver Leave section of Bill 21 is similar to that which was introduced in 2011 through Bill 30, entitled *Family Caregiver Leave Act*. Bill 30 expired on the order paper when the Legislature was prorogued in October of 2012. Second reading debate of Bill 21 started on March 18th and is scheduled to resume on April 8th. Bill 21 is stated to come into force on the day that is six months after the day it receives Royal Assent. As such, if Bill 21 is passed into law, employers will have a fairly short period of time to become familiar with the rules surrounding these new categories of job-protected leaves of absence.

For further information, please contact [Sophie Gagnier](#) at (613) 940-2756.