

Long-Term Leave for Serious Injury or Illness

Employees who are suffering from a serious injury or illness which will prevent them from being at work for at least two weeks may be entitled to this leave. Long-term leave for serious injury or illness provides time off work and protects employees from lay-off or job termination during the period of the leave.

Who can take long-term leave for serious injury or illness?

Employees who have worked for the same employer for at least 90 days and have a serious injury or illness that prevents them from being at work for at least two weeks are entitled to the leave.

How long is the leave and how must it be taken?

Eligible employees are entitled to take long-term leave for serious injury or illness for up to 17 weeks in a 52-week period. The leave must be taken in one continuous period unless the employer and employee agree to a different arrangement, or there are different terms set out under collective agreement.

What verification is needed?

For an employee to be eligible for the leave, a physician must issue a certificate with evidence to verify that the employee is expected to be incapable of being at work for at least two weeks due to a serious illness or injury.

It is in the employee's best interest to provide the employer with as much evidence as is reasonable in the circumstance to support the need to take the leave so that both parties understand what leave is being requested.

When must the employee give the medical certificate to the employer?

Employees must give the medical certificate from the physician to the employer as soon as possible. The time frame will depend on individual circumstances, and may change from case to case.

How much notice is required to take the leave?

Employees are required to give the employer as much notice as is reasonable and practicable. In some cases, employees know ahead of time that they will need time off work related to a serious injury or illness. In others, the need for time off work will be sudden and unexpected, and it may not be possible to provide any notice.

Can employers provide additional leave or paid days of leave?

Yes. Employers can give greater benefits than those provided for in the legislation.

Who decides what type of leave an employee is taking?

Employees tell their employers what leave they are taking. The employer will need enough detail to show the time off work meets the requirements of the leave.

When employees require time off, the employer should ask whether they are advising of a leave available under The Employment Standards Code. Employers do not control when employees can take a leave provided by law, but they do control other types of time off work.

What if employees want to end the leave early?

Employees can end the leave earlier than 17 weeks if they give the employer at least two weeks' notice in writing before the day they intend to return to work. Employers and employees may agree to a different schedule for returning to work.

Do employees need to provide a medical note to confirm their fitness for work before returning from long-term leave for serious injury or illness?

The employer may require the employee to provide a medical note to confirm that the employee is fit to return to work.

Can employees be terminated or laid off because they take a leave?

No. Employers cannot terminate or lay off employees because they took or requested a leave.

What if the employer refuses to bring the employee back to work?

Employees must be allowed to return to their job, or a comparable job, with the same or greater pay and benefits when they return from leave. Employees who are not reinstated by their employer can file a complaint with Employment Standards no later than six months after the date the employee should have been reinstated.

Do employees get paid when on leave?

No. Employers are not required to pay wages to employees while on leave. For all leaves, the legislation only requires employers to provide the time off and allow employees to return to their job when the leave has ended. Employers can, and often do, give greater benefits than those provided for in the legislation.

However, other federal programs may provide income replacement. Employees should contact the federal government to find out what types of leaves have income replacement.

The only exceptions under *The Employment Standards Code* where an employer is required to pay a portion of a leave is under the Domestic Violence Leave and the COVID-19 Vaccination Leave.

What if the employee's job is no longer available?

Generally, employees should be returned to the job they had before the leave. However, if the job is no longer available, they must be given a similar position with the same or greater benefits and pay.

There may be some situations where employers do not have a position available for reasons completely unrelated to the leave. For example, employees who are on unpaid leave would not necessarily be protected from losing their jobs if the employer shut down part of their operations and reduced their workforce based on a seniority system.

Employers must show the leave has no impact on the decision to lay-off or terminate the employment.

What happens to pension and other benefits while an employee is on leave?

Employment is considered continuous during a legislated leave of absence from work. This means an employee is still employed, though not earning wages for the period of the leave. When employees return from the leave, they are still entitled to any pension and other benefits they had before the leave. As well, their years of service include the time away on the leave.

What happens when the leave ends?

Employees must be returned to the position the employee occupied when the leave began or to a comparable position, with no less than the pay and benefits the employee earned immediately prior to the leave.

What is a period of employment?

The period of employment is the length of time from when an employee starts working for an employer until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment (a layoff, an unpaid leave), seasonal employment, and when an employee returns to work for the same employer after a break of less than two months.

Employees who work in a seasonal industry and return to work with the same employer each season have continuous service. Each consecutive season they return adds one more year of service to their total period of employment.

Layoffs and Periods of Employment

It is important to know how to determine an employee's period of employment because wages in lieu of notice is based on their length of employment.

When layoffs are longer than 8 weeks in a 16-week period, they become terminations and wages in lieu of notice is required. The employment is deemed to have been terminated without notice on the first day of the layoff.

The actual date on which a layoff began does not change because a state of emergency is declared or a state of emergency ends. For example:

- If an employee was laid off on February 18, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on February 18, 2020.
- However, if an employee was laid off on July 8, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on July 8, 2020.

Will the information about the leave be confidential?

Unless it is required by law or the employee has given consent, employers cannot disclose information related to a leave except to other persons in the workplace, who need to know in order to carry out their duties.

Are there programs to pay employees while on leave?

The federal government has income support programs to cover certain types of leave. To learn more, call Service Canada toll-free at 1 800 O-Canada (1-800-622-6232).

For more information contact Employment Standards:

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including The Employment Standards Code, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

**Available in alternate formats
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