

Domestic Violence Leave

Effective June 1st, 2016 employees who are victims of domestic violence may be entitled to this leave. Domestic violence leave gives job protection to eligible employees to take time off work for specified purposes to address the situation of violence in the home.

What is domestic violence?

The meaning of domestic violence is set out in *The Domestic Violence and Stalking Act*. Under the definition, domestic violence is:

- an intentional, reckless or threatened act or omission that causes bodily harm or property damage
- an intentional, reckless or threatened act or omission that causes a reasonable fear of bodily harm or property damage
- conduct that reasonably, in all the circumstances, constitutes psychological or emotional abuse
- forced confinement
- sexual abuse

What types of situations would meet the definition of domestic violence?

The *Domestic Violence and Stalking Act* describes situations of domestic violence as instances of violence that occur by one person against another person who:

- lives or has lived with him or her in a spousal, conjugal or intimate relationship
- has or had a family relationship with him or her, in which they have lived together
- has, or previously had, a family relationship with him or her, in which they have not lived together
- has or had a dating relationship with him or her, whether or not they have ever lived together
- is the other biological or adoptive parent of his or her child, regardless of their marital status or whether they have ever lived together.

Who can take domestic violence leave?

An employee who is a victim of domestic violence and has worked for the same employer for at least 90 days is entitled to the leave.

For what purposes can domestic violence leave be used?

Employees can use domestic violence leave to:

- seek medical attention for themselves or their minor child for a physical or psychological injury or disability caused by the domestic violence
- obtain services from a victim services' organization
- obtain psychological or other professional counselling
- temporarily or permanently relocate to a safe place
- seek legal help or law enforcement assistance, including participating in any civil or legal proceeding related to the domestic violence.

How long is domestic violence leave?

There are two parts to domestic violence leave. One part of the leave allows employees to take up to 10 days in consecutive or intermittent days in a 52 week period, as needed by the employee. The other part allows employees to take up to 17 weeks in a 52 week period in one continuous period. Employees can take the leave in any order that meets their individual circumstances.

Are employees paid while on domestic violence leave?

Employees are entitled to be paid for up to five days of domestic violence leave in a 52 week period. It is the employee's responsibility to notify the employer of the days to be paid. The amount paid to the employee must be no less than the wages he or she would normally earn for their regular hours of work.

How do employers calculate the amount an employee on domestic violence leave is entitled to?

Employees must be paid at least the wages they would normally earn for their regular hours of work on that day. Employees whose regular hours of work or wages vary are entitled to be paid 5% of their total regular wages (ie. without overtime) in the 4 weeks immediately prior to the day of leave.

Can employers provide additional leave or paid days of leave?

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

Can the employer use paid benefits that are greater than the minimum standards to pay an employee on domestic violence leave?

Yes. Some employers pay benefits that are not required under *The Employment Standards Code*, such as paid sick leave. These benefits can be used for the paid days of the domestic violence leave

Can employees take leave for part of a day?

When an employee takes part of a day for domestic violence leave, the employer may count that as a full day of the leave. Employers do not have to accommodate an employee taking the leave in part days, as long as they allow the employee to take the leave.

How does an employee start domestic violence leave?

When taking paid days, employees must provide reasonable verification of the need for the leave. The employer may request verification from the employee for unpaid days of leave.

How much notice is required?

Employees must give their employer as much notice as is reasonable and practicable in the circumstances.

Is verification needed from the employee for domestic violence leave?

Employees must provide reasonable verification of the need for the leave when taking paid days. Employers may also require an employee to provide verification for unpaid days of leave.

What is reasonable verification for domestic violence leave?

Reasonable verification will be different from case to case. The intent is to confirm the employee is taking the leave to deal with a specified purpose related to the domestic violence.

Who decides what type of leave an employee is taking?

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

When employees request time off, the employer should ask whether they are advising of a leave available under *The Employment Standards Code* or asking for approval for time off. 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.

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

No. Employers cannot terminate or lay off employees for taking or requesting a leave.

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

Employees must be allowed to return to their job, or comparable job, with the same or greater pay and benefits when they return from leave. Employees who have been refused by their employer can file a complaint with Employment Standards within six months after the date the employee should have been reinstated.

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 not less than the pay and benefits the employee earned immediately prior to the leave.

What is a period of employment?

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.

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.

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