

TIPS ON UPDATING YOUR LEAVE OF ABSENCE POLICIES

The Province of Ontario currently has eleven (13) different types of job-protected Leaves of Absence for employees. Employers should have a clear policy in both their Employee Handbook and HR Manual regarding the compulsory leaves under the Employment Standards Act. (ESA)

The organization's leaves of absence policy should outline the following:

- The specific eligibility criteria for each leave
- The procedure for requesting a leave of absence
- Notice required
- Documentation required
- The procedure for requesting an extension to a leave
- The procedure for returning early from a leave

The leaves listed below are non-discretionary. Employees are entitled to take these leaves and the employer must grant the time off. Each leave has a different purpose, length of entitlement, and/or eligibility criteria. Employees may be entitled to more than one leave for the same event as each type of leave is considered a separate right.

The 13 job protected leaves are:

- Pregnancy Leave
- Parental Leave
- Sick Leave
- Bereavement Leave
- Family Responsibility Leave
- Family Caregiver Leave
- Family Medical Leave
- Critically Illness Leave (dual leaves child or adult)
- Organ Donor Leave
- Child Death Leave
- Crime-related Child Disappearance Leave
- Domestic or Sexual Violence Leave
- Reservist Leave

As a best practice, always consult the Ministry of Labour website to ensure that your policies accurately reflect the current requirements for each leave.

https://www.labour.gov.on.ca/english/es/pubs/brochures/br_leaves.php

When an employee is on a leave, employers are required under the ESA to;

- Continue contributions to an employee's group benefit plan (not applicable to Reservist Leave unless the employer postpones the employee's reinstatement)
- To ensure the employee continues to accrue service and seniority during the leave
- Reinstatement the employee following a compulsory leave
- Reinstatement the employee to a comparable position if the original job has been eliminated

- Exceptions to benefits applies to Reservist Leave only

Employers can choose to provide a greater right or benefit than the ESA minimum requirements by choosing to:

Pay an employee for the full mandatory leave

Pay for part of a mandatory leave

Provide top-up benefits to supplement EI (employment insurance)

To grant discretionary unpaid leaves for example educational leaves etc.

It is important to note that if your organization currently provides a benefit that exceeds the minimum ESA standard, then that practice applies not the ESA standard.

The information contained in this handout is intended as a general guide only and Organizations must modify and customize the document to create their own policy. It is essential that you have a lawyer review those sections that are heavily legislated or where common law principles apply. The content of this is provided for information purposes only. No legal liability or other responsibility is accepted on behalf of Bernardi HR Law or TJ Solutions.