

# Compassionate Care Leave

**February 2014**

Part 2, Division 7.2 of the *Employment Standards Code* (Code) sets out the rules for compassionate care leave. This leave provides employees with unpaid, job-protected leave to care for a family member with a serious medical condition with a significant risk of death.

Part 5.1 of the *Employment Standards Regulation* expands the definition of a family member for the purposes of compassionate care leave.

## Definition of terms

### Adult interdependent partner

An adult who lives with another adult in a relationship of economic and domestic dependence for at least three years, or for less time if the adults have a child together as defined in the *Adult Interdependent Relationships Act*.

### Common-law partner

This means a person who lives with the employee for at least one year in a conjugal relationship.

### Partner

This means a spouse, common-law partner, or an adult interdependent partner.

### Physician

A physician who is providing care to the employee's family member, and is legally entitled to provide that care by the laws of that jurisdiction.

### Primary caregiver

This means a person with the primary responsibility in a family to give care or support to a seriously ill family member.

## Family member

The definition of “family member” is very broad and includes many family relationships. These family members may be in relation to the employee or to the employee’s partner (spouse, common-law partner, or adult interdependent partner).

The family members in relation to the employee include:

- Spouse, common-law partner, or adult interdependent partner;
- Child;
- Father or mother;
- Step-father, step-mother (spouse, common-law partner, or adult interdependent partner of the employee’s mother or father);
- Mother-in-law, father-in-law (see spouse’s mother or father, below);
- Brother, half-brother, step-brother, sister, half-sister, or step-sister;
- Grandfather or grandmother;
- Step-grandfather, step-grandmother (spouse, common-law partner, or adult interdependent partner of the employee’s grandmother or grandfather);
- Grandchild or step-grandchild;
- Grandchild’s spouse, common-law partner, or adult interdependent partner;
- Son-in-law, step-son-in-law, daughter-in-law, or step-daughter-in-law, whether by marriage, common-law partnership, or adult interdependent partnership;
- Brother-in-law, step-brother-in-law, sister-in-law, or step-sister-in-law, whether by marriage, common-law partnership, or adult interdependent partnership;
- Uncle, step-uncle, aunt, or step-aunt, whether by marriage, common-law partnership, or adult interdependent partnership;
- Nephew or niece;
- Spouse, common-law partner, or adult interdependent partner of the employee’s niece or nephew;
- Current or former foster parent;
- Current or former foster child;
- Spouse, common-law partner, or adult interdependent partner of the current or former foster child;

- Current or former ward;
- Current or former guardian;
- Spouse, common-law partner, or adult interdependent partner of the current or former guardian;
- A person to whom the employee is not related but considers to be like a close relative.

The family members in relation to the employee's partner include:

- Child;
- Grandchild;
- Grandfather or grandmother;
- Father or mother;
- Step-father or step-mother, whether by marriage, common-law partnership, or adult interdependent partnership;
- Brother, half-brother, step-brother, sister, half-sister, or step-sister;
- Uncle or aunt;
- A current or former foster parent;
- A current or former ward.

## **Compassionate care leave entitlements**

Under the Code, an employee who is the primary caregiver is entitled to compassionate care leave to give care or support to a seriously ill family member who is at risk of death within 26 weeks. The ill family member is not required to live in Alberta.

## **Employee eligibility for leave**

An employee must have worked for an employer for a period of at least 52 consecutive weeks before being entitled to leave. The employee can be either full-time or part-time; there is no limitation if the employee is part-time. The requirement is 52 consecutive weeks of employment for the same employer whether full-time or part-time.

## **Leave length**

The maximum amount of compassionate care leave which may be taken is eight weeks. The eight weeks of leave must fit into the 26-week window as established by the medical certificate. A leave may be broken into two different periods. The second period of leave must be taken before the 26-week window expires. A leave period must be at least one week long.

## Physician's certificate

Employees must give their employer a certificate issued by the physician who is caring for the ill family member in order to take compassionate care leave. The certificate is issued on behalf of the ill family member. The physician's certificate must contain the following information:

- The family member has a serious medical condition and there is a significant risk that the family member will die within 26 weeks. The 26 weeks is calculated by the earlier of:
  - The day the certificate is issued by the physician; or
  - The day the leave began, if it begins before the certificate was issued.
- The family member requires the care or support of one or more family members.

An example of a physician's certificate is the one used to claim Federal Employment Insurance benefits: [http://www.servicecanada.gc.ca/eforms/forms/esdc-ins5217\(2014-02-008\)e.pdf](http://www.servicecanada.gc.ca/eforms/forms/esdc-ins5217(2014-02-008)e.pdf).

## Notice to start leave

An employee must give two weeks' notice of the start date of the leave. However, depending on the circumstances, an employee may provide less than two weeks' notice. The medical certificate must be provided to the employer before the employee takes the leave, unless an emergency situation occurs.

## Notice to end leave

An employee must give two weeks' written notice of the date the employee will return to work. An employee and an employer may agree in writing to a return to work date with less than two weeks' notice.

## Postponement of leave

If the employee does not provide the employer with two weeks' written notice of the return to work date, or the employee and employer do not agree in writing on a return to work date with less than two weeks' notice, the employer may postpone the employee's return to work. The employer may postpone the employee's return to work for up to four weeks from the day the employee notifies the employer that he or she will be returning to work. This postponement must be in writing. The employee is not entitled to return to work until the day indicated by the employer. The employee is deemed to be on compassionate care leave during the period of postponement.

## Notice if not returning to work after leave ends

If an employee decides not to return to work at the end of the compassionate care leave, the employee must give the employer two weeks' written notice of the employee's decision not to return to work.

## Employment considered continuous

An employee who is on compassionate care leave is considered to be continuously employed for the purposes of calculating annual vacation and termination and other entitlements set out in the Code.

## Leave and vacation conflict

An employer must give the employee's annual vacation in 12 months after the employee becomes entitled to it. If this time falls during the period while the employee is taking compassionate care leave, the employee must use the remaining vacation time after the end of the compassionate care leave. The employer and employee may agree to allow the employee to take the vacation time on a later date.

## Obligations of the employer

Provided that eligibility requirements are met, an employer must grant compassionate care leave. An employer may not terminate the employment of, or lay off, an employee once leave begins, unless the employer suspends or discontinues the business. If the business has been suspended or discontinued during an employee's leave, the employee has hiring priority if the business starts up again within 12 months after the end of the leave.

## Employment insurance

Employment Insurance (EI) is a federal program that enables Canadians to receive benefits when they are not receiving wages due to being unemployed, ill, caring for a seriously ill family member while on compassionate care leave, or on maternity or parental leave. Questions regarding rules, procedures and the availability of benefits must be addressed directly to EI. The direct telephone number to inquire about Employment Insurance is **1-800-206-7218**. You can also visit the Service Canada website [www.servicecanada.gc.ca/eng/sc/ei/index.shtml](http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml) for additional information.

Note: The Government of Alberta's Employment Standards program cannot provide any information on EI benefits for compassionate care leave.

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