

CONSULTATION PAPER ON A PERSONAL LONG-TERM LEAVE UNDER THE EMPLOYMENT STANDARDS ACT, 2000

Context

Under the Employment Standards Act, 2000 (ESA) there are fourteen leaves of absence that provide job protection to employees for various reasons. Employees, whether full-time, part-time, permanent, or contract, who are covered by the ESA, may be entitled to these leaves.

There have been calls for stronger job protection for employees living with serious illnesses, needing stability and job security. The government is seeking input on a potential new long-term unpaid job-protected leave of up to 27 weeks in the ESA. This would align Ontario's leave with the length of Federal Employment Insurance (EI) sickness benefits and provide Ontario workers the longest job-protected sick leave among the provinces.

The Federal government's EI sickness benefits can provide up to 26 weeks of financial assistance to eligible individuals. A medical certificate showing that a person is unable to work for medical reasons and for approximately how long is required. Medical reasons include illness, injury, quarantine or any medical condition that prevents a person from working.

Objectives

The purpose of the consultation paper is to seek input on a potential new unpaid long-term job-protected leave for employees experiencing serious or critical illness.

Your feedback on the questions below will provide valuable insight as the government explores this issue.

Proposals for Discussion

The government would like to know your views on two possible approaches:

- 1) Expand the existing critical illness leave under the ESA to critically ill employees. Align the length of the leave with EI sickness benefits (i.e., 26 weeks plus a one-week EI waiting period).
- 2) Create a new long-term job-protected leave for employees with a serious medical condition. Align the length of the leave with EI sickness benefits (i.e., 26 weeks plus a one-week EI waiting period).

For all approaches

Eligibility criteria: Employed by their employer for at least six consecutive months.

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Under the ESA, typically long-term leaves have longer length of service requirements. For example, the length of service requirement for the critical illness leave or child death leave is 6 consecutive months.

Evidence requirement: A medical certificate from a qualified health practitioner stating the employee is unable to work due to a serious medical condition or a critical illness would be required.

How the leave can be taken: For some leaves under the ESA such as family caregiver leave or critical illness leave, the ESA does not require that the weeks be taken consecutively or that the leave be taken in periods of entire weeks. However, if an employee takes any part of a week as leave, the employer may deem the employee to have taken one week of leave.

The same rule would apply to the two proposals. This means that the 27 weeks would not be required to be taken consecutively or in periods of entire weeks. However, if an employee takes any part of a week as leave, the employer may deem the employee to have taken one week of leave.

Proposals for Consideration

This paper contains two separate proposals for how an employee would be eligible for the leave. These are outlined below.

1. Critical illness

Currently critical illness leave can be taken by eligible employees to provide care or support to a critically ill child or adult. Critically ill is defined in the ESA. It means an individual's baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

"Baseline state of health" is a medical term, and it is for a qualified health practitioner to make the assessment as to whether an individual's "baseline state of health" has significantly changed.

This phrase excludes individuals with a chronic illness or condition that is their normal state of health, even if that normal state is considered to be life-threatening in the medium- to long-term.

Under the ESA's critical illness leave, an individual is considered to have a critical illness if a qualified health practitioner (as defined by the ESA) issues a certificate stating that the individual is critically ill.

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Under this first proposal, employees would be entitled to the leave if a medical practitioner issues a certificate stating that the employee is unable to work due to their critical illness.

2. Serious medical condition

The ESA does not define serious medical condition. However, under the ESA's family caregiver leave, an individual is considered to have a serious medical condition if a qualified health practitioner (as defined by the ESA) issues a certificate stating that the individual has a serious medical condition.

The individual does not need to be at significant risk of death to be considered to have a serious medical condition. The phrase is intended to include a condition that is chronic or episodic.

Under the second proposal, employees would be entitled to the leave, if a medical practitioner issues a certificate stating that the employee is unable to work due to their serious medical condition.

Both proposals align with the length of EI sickness benefits. The eligibility reasons for taking the leave under this second proposal is broader than the first proposal as it could be taken for chronic conditions and serious illnesses that are not necessarily life threatening. Under the first proposal, only an individual whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury can be eligible to take the leave. As evidence, a certificate from a qualified health practitioner would be required.

Questions

The government is interested in your views on the following questions:

What the government would like to know (Questions to employees)

- 1) Does your employer provide a long-term sick leave? If yes:
 - a. how many days are provided?
 - b. what are the eligibility reasons?

- 2) Have you ever needed to be absent from work due to a critical illness or serious medical condition as defined above? If yes, how long were you absent for and did you return to work with the same employer? Did you experience any barriers to taking an absence or returning to work after you had recovered?

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- 3) Based on the definitions provided, should the eligibility reason for a new long-term personal illness leave be for employees with a critical illness or a serious medical condition? Why?
- i. Critical Illness: an individual is considered to have a critical illness if a qualified health practitioner issues a certificate stating that the individual is critically ill, meaning an individual's baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.
 - ii. Serious Medical Condition: employees would be entitled to the leave, if a medical practitioner issues a certificate stating that the employee is unable to work due to their serious medical condition. Individual does not need to be at significant risk of death to be considered to have a serious medical condition. Serious medical condition can include a condition that is chronic or episodic.
- 4) Do you have any comments to provide about any other components of the two proposals such as evidence, length of service requirement, etc.?

What the government would like to know (Questions to employers)

- 5) Do you provide a long term leave to employees? If yes:
- a. how many days?
 - b. what are the eligibility reasons?
- 6) Do you agree that workers should not have to worry about their job while managing a critical or serious illness?
- 7) If you provide sick leave to employees, what do you do to manage the absence? For example, do you hire a replacement, request longer hours of work for current employees, etc.?
- 8) How would a long-term personal sick leave impact your business?
- 9) Based on the terms provided above, should the eligibility reason for a new long-term personal illness leave be for employees with a critical illness or a serious medical condition? Why?
- 10) What evidence of entitlement should be required to show eligibility for a long-term personal illness leave? Do you have any comments to provide about any other components of the two proposals such as evidence, length of service requirement, etc.?

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How to respond to this consultation paper

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour, Immigration, Training and Skills Development by:

Mail: ESA Leave Consultation, Employment, Labour and Corporate Policy Branch, 400 University Avenue, 15th Floor, Suite 1502, Toronto, Ontario, M7A 1T7

E-mail: ESA-Leave-Consultation@ontario.ca

Please provide your responses by: May 6, 2024

Your input will help us address the critical issues that have been raised.

Thank you for taking the time to participate.

Notice to Consultation Participants

Submissions and comments provided to the Ministry of Labour, Immigration, Training and Skills Development (the Ministry) are part of a public consultation process to solicit views on the scope of a potential long-term illness leave. This process may involve the Ministry publishing or posting to the internet your submissions, comments or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Do not include your name, any personal information about your diagnosis, or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission, this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission (such as that which may be found in a cover letter, on the outside of an envelope, or in the header or signature of an email) will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

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Personal information collected during this consultation is under the authority of the *Employment Standards Act, 2000* and is in compliance with subsection 38(2) of the *Freedom of Information and Protection of Privacy Act, 1990*.

If you have any questions regarding the collection of personal information as a result of this consultation, you may contact the Employment Rights and Responsibilities Office, 400 University Avenue, 15th Floor, Toronto, Ontario, M7A 1T7, or by emailing ESA-Leave-Consultation@ontario.ca.