

Changes to the Canada Labour Code – Paid Medical leave

Overview and examples of the application of the pending legislation

Background

In 2021, [Bill C-3](#) introduced several changes to the Canada Labour Code affecting federally regulated carriers. Most importantly, it introduced 10 days of paid medical leave to employees in the federal domain[1]. On April 28, 2022, Bill C-19 was introduced with revised wording in order to simplify the language [2].



These changes will take effect on December 1, 2022. This legislation will impact federally regulated industries, including trucking companies. Provincially regulated companies are not affected by the changes outlined below.

Summary of Medical leave with Pay Legislation*

Employees are entitled to 10 days of paid medical leave, for non-work-related illness or injury, once this legislation takes effect.

1. On December 1, 2022, all employees automatically become eligible to receive three days of paid medical leave 30 days after this legislation takes effect or after 30 days of continuous employment.
2. On the first day of each subsequent month, all employees will earn 1 additional day each month, up to a max of 10 days per year.
3. Medical leave should be based on their regular rate of wages for their normal hours of work, and that pay is for all purposes considered to be waged.
4. Employers may request a doctor's note after five days of consecutive leave.
5. The 100-employee provision of the legislation, will not be enacted, so all employees regardless of size will be required to provide paid medical leave. (Updated Nov 4, 2022)

*Employers should rely on the text of the Canada Labour Code, once the legislation is passed and not the summary provided in this document.

Leave with Pay

The legislation, taken from the text of [Bill C-19](#) states:

((1.2) Subject to subsection (1.21) and the regulations, an employee earns, as of the first day on which this subsection applies to the employee,

- (a) after completing 30 days of continuous employment with an employer, three days of medical leave of absence with pay; and
- (b) following the period of 30 days referred to in paragraph (a), at the beginning of each month after completing one month of continuous employment with the employer, one day of medical leave of absence with pay.

(1.21) Subject to the regulations, an employee is entitled to earn up to 10 days of medical leave of absence with pay in a calendar year.

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In short, existing employees are eligible for their first three days on January 1, 2023. New employees are required to work 30 consecutive days before becoming eligible for their first three days. After 30 days, both groups will earn one additional day per month up to 10 days total.

Case Study 1

John has been at XYZ Delivery Ltd. for several years. He will receive his first three days, on January 1st, 2023, 30 days after the legislation takes effect. He will then earn one day per month, granted at the beginning of each month. John will have a total of 10 days on August 1, 2023.

John is paid a salary of \$85,000 per year. The payroll department would need to calculate his hourly rate and pay out his regular wage of \$40.86 per hour.

Case Study 2

Jane started work with XYZ Delivery Ltd. on Jan 30, 2023. Jane receives three paid sick days on March 1, 2023, 30 days after her start date. Each month after that, she earns one additional day at the beginning of each month. By November 1, 2022, she will have accrued 10 days.

Jane works eight hours per shift and is paid \$27.00/hour. She also receives an additional \$3.00/hour night shift supervisor per-diem. Jane would receive \$30.00 per hour while she is sick.

Carry Over Rules

Medical leave does not expire, so employees are entitled to carry over any unused time each year. They may never bank more than 10 days of leave at one time, however, they may replenish used leave each year up to a banked max of 10 days.

(1.4) Subject to the regulations, each day of medical leave of absence with pay that an employee does not take in a calendar year is to be carried forward to January 1 of the following calendar year and decreases, by one, the maximum number of days that can be earned in that calendar year under subsection (1.21).

Case Study 3

John does not take any sick days in 2023. On Jan 1, 2024, his 10 days are carried over so he will remain at 10 days until he takes medical leave.

Case Study 4

In July 2023, Alex falls ill and spends a week in the hospital for appendicitis. He has accrued eight days at that time. His eight days would be reduced to three days, and he would accrue an additional two days for August and September, for a total of 10 days in 2023. On January 1, 2024, the remaining five days would carry over. In 2024, John would earn five additional days, maxing out at 10 days in 2024.

How to Manage Medical leave

The changes to the Code have provided employers with a few tools to help them effectively manage the use of paid medical leave. Employers should develop an effective medical leave policy along with Standard Operating Procedures (SOPs) on how the policy will be applied.

Division of Leave with Pay

(1.5) “The medical leave of absence with pay may be taken in one or more periods. The employer may require that each period of leave be of not less than one day’s duration.”

This means that the employer can require medical leave to be taken in full days. The decision to pay less than full days for medical leave is up to the employer. The employer will then need to determine how they will treat half days.

Certificate – Leave with Pay

(2) The employer may, in writing and no later than 15 days after the return to work of an employee who has taken a medical leave of absence of at least five consecutive days, require the employee to provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of their medical leave of absence.

Employers should spell out their expectations for employees to provide a doctor’s note in their policy. In addition, HR should ensure they provide a written notice to the worker requesting that doctor’s note when they are able to do so. Failing to request the note, will require the employer to simply pay out the medical leave with no means of verification.

Case Study 5

Masha is away for six days with a bad case of the flu. The employer may ask for a doctor’s note, in writing, when she returns. However, the decision to ask for a doctor’s note should be applied equally to all employees and not to select employees.

Policy

Employers will need to develop robust and effective medical leave policies. The policy will need to:

1. Clearly explain the rules and processes the company will follow in dealing with medical leave.
2. Provide guidance on how, when and to whom to report an illness too.
3. Explain when a doctor’s note/medical certificate will be required.
4. Make a clear distinction between non-work-related injury versus a workplace injury or illness covered by WCB.
5. Explain how partial sick days will be dealt with.
6. Provide examples of valid medical leave versus those activities that don’t qualify.
7. Specify the reporting requirements when calling in sick.
8. Explain how the company will deal with abuse of the policy as part of the overall Human Resources and Discipline Policy.
9. Explain the difference between the employee requesting to go home ill vs the employer telling the worker to go home because they are ill and/or not fit for duty.

Other controls

Management should track medical leave use in order to identify patterns of abuse. Abusers are habitual and may exhibit trends and patterns in their behaviour. For example, a worker may take the day before or after a holiday or weekend, in order to get a longer weekend. Workers may opt to call in sick when certain weather conditions are present. If a pattern of abuse is emerging, the issue should be dealt with by a competent HR professional.

At the same time, management should be aware that by being overzealous in their management of medical leave, they may run afoul of Human Rights, as medical issues are protected if they are deemed to be related to a disability. Inquiring about medical conditions can be tricky as well, due to privacy legislation.

Case Study 6

In April to June, Dave has taken one or two days each month. Upon investigation, it appears that Dave is often sick on days following his favourite NHL team's games. While this may be a coincidence, it warrants a discussion with Dave. At this point, the employer should evaluate if this is a performance management issue or if there are other issues to be considered.

Need Help? Contact AMTA

AMTA can provide members with one-on-one guidance on the information provided in this article. If you have any questions, please contact AMTA and our experienced staff will be happy to help. For your WCB, Safety, Compliance or Human Resources questions, please email Workplace Support Services at wss@amta.ca or call 1-800-267-1003.

Note: This version removes information related to the 100-person rule, as it has become clear that the government will not enact this provision. This became known to AMTA Nov. 4, 2022

References

- [1] Parliament of Canada. (17 December 2021), Bill C-3, <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-3/royal-assent>
- [2] Parliament of Canada. (9 June, 2022), Bill C-19, <https://www.parl.ca/legisinfo/en/bill/44-1/c-19>
- [3] Di Sauro, Giovanna. "Upcoming Changes to Medical Leave Obligations Under the Canada Labour Code | Insights | DLA Piper Global Law Firm." DLA Piper, 17 Oct. 2022, www.dlapiper.com/en/canada/insights/publications/2022/10/upcoming-changes-to-medical-leave-obligations-under-the-canada-labour-code.
- [4] Kahn, Fatimah. "Update on the Incoming Paid Medical Leave Under the Canada Labour Code." Update on the Incoming Paid Medical Leave Under the Canada Labour Code, 11 Oct. 2022, <https://hicksmorley.com/2022/10/11/update-on-the-incoming-paid-medical-leave-under-the-canada-labour-code/>