

Do you know your
rights?

Supporting a positive workplace...

Labour Relations at work

Employment Standards
in Newfoundland and
Labrador

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Introduction

The *Labour Standards Act* (the *Act*) is designed to provide fundamental protection to individual workers and create a “level playing field” for employers in the labour market by establishing standard employment practices. The *Labour Standards Act* requires all employers establish conditions of employment that meet at least the legislated minimum standards in areas such as hours of work, minimum wage, leave entitlements, termination of employment, paid public holidays, vacation, etc. The minimum employment standards for the province of Newfoundland and Labrador are outlined in this booklet.

This booklet answers some of the most commonly asked questions on the practical application of the *Labour Standards Act*. It is meant as a **ready reference for general information only**. The reader is encouraged to contact the Labour Standards Division, at any of the numbers listed at the back of this booklet, for clarification on any of the topics presented or to **ensure the content is current**.

It is important to note the legislation does not prohibit terms and conditions of employment that are more beneficial than those set out in the *Act*. If employer practices, or terms in a collective agreement provide greater employment benefits, then those terms and conditions will govern the employment relationship.

Readers should be aware that the *Labour Standards Act* applies only in circumstances where a person is employed under a contract of service. This means the employer has the ability to control and direct how the employee carries out their duties. The legislation requires, upon hire, every employee receive a statement from their employer which outlines basic terms and conditions of employment such as the hours of work, rate of pay, vacation entitlements and termination date, if hired for a fixed term.

To review the *Labour Standards Act* please visit:

<http://assembly.nl.ca/Legislation/sr/statutes/l02.htm>

If you have any questions regarding how your personal information is collected or used, you may contact the ATIPP Coordinator of the Department of Advanced Education, Skills and Labour. A listing of all departmental coordinators and their contact information can be found at:

www.atipp.gov.nl.ca/info/coordinators.html

Benefit Eligibility

The minimum standards of employment apply to all employees regardless of the number of hours worked each week. The *Labour Standards Act* does not differentiate between full-time and part-time employees; however, some of the provisions depend on the length of time an employee has been employed with the same employer. Additional information on the benefits listed below can be found in the respective sections of this booklet.

BENEFIT	QUALIFIERS	ENTITLEMENT
<p>Paid Public Holidays</p> <ul style="list-style-type: none"> • New Year's Day • Good Friday • Memorial/Canada Day • Labour Day • Remembrance Day • Christmas Day 	<p><u>If holiday worked</u> no qualifiers.</p> <p><u>If holiday not worked</u> Employee must:</p> <p>(a) have been employed for at least 30 days.</p> <p>(b) work the scheduled shifts before and after the holiday.</p>	<p>Pay at twice regular rate or another day off with pay within 30 days or additional vacation day – employee's choice.</p> <p>Employee receives an average day's pay at their regular rate.</p> <p>If a holiday falls on the employee's normal day off, they receive the next work day off with pay or another day which the employee and employer agree on.</p>
Vacation Pay	<p>Employee must be employed for at least 5 days with the same employer.</p> <p>Employees with 15 years of continuous employment or more with the same employer.</p>	<p>4% of gross income.</p> <p>6% of gross income.</p> <p>Vacation Pay to be paid within 1 week of the termination of the employment or the day immediately before beginning vacation.</p>
Vacation Time	<p>Employed 12 months and worked 90% of their regular hours in the preceding 12 months.</p> <p>Employed 15 years continuous employment with the same employer.</p>	<p>2 weeks annual vacation.</p> <p>3 weeks annual vacation.</p>
Sick/Family Responsibility Leave	Employed by the same employer for at least 30 days.	7 days unpaid leave per year.

BENEFIT	QUALIFIERS	ENTITLEMENT
Pregnancy Leave	<p>Employed at least 20 consecutive weeks with the same employer.</p> <p>Employee to give 2 weeks written notice to the employer together with a medical certificate. Leave cannot start earlier than 17 weeks before the expected birth date.</p> <p>Employee to give employer at least 4 weeks written notice, if she intends to return to work prior to the end of 17 weeks.</p>	<p>17 weeks unpaid leave.</p> <p>Upon return to work, be placed in same or similar position with same duties, benefits and wages.</p>
Parental Leave	<p>Employed at least 20 consecutive weeks with the same employer.</p> <p>Where Pregnancy Leave is taken, Parental Leave has to be taken immediately after the Pregnancy Leave, unless the child has yet come into the care/custody of the parent.</p> <p>Parental Leave has to be taken within 35 weeks of the birth or the child coming into custody for the first time.</p> <p>Employee to give employer at least 4 weeks written notice, if they intend to return to work prior to the end of 35 weeks.</p>	<p>35 weeks unpaid leave.</p> <p>Upon return to work, be placed in same or similar position with same duties, benefits and wages.</p>
Adoption Leave	<p>Employed at least 20 consecutive weeks with the same employer.</p> <p>Employee to give 2 weeks written notice to employer of intent to take leave.</p> <p>Employee to give employer at least 4 weeks written notice, if they intend to return to work prior to the end of 17 weeks.</p>	<p>17 weeks unpaid leave.</p> <p>Upon return to work, be placed in same or similar position with same duties, benefits and wages.</p>

BENEFIT	QUALIFIERS	ENTITLEMENT
Bereavement Leave	<p>On the death of the spouse, child, grandchild, mother or father, brother or sister, grandparent or mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law of the employee.</p> <p>Employed for at least 30 days with the same employer.</p> <p>Employed for less than 30 days with the employer.</p>	<p>1 day off with pay and 2 days without pay.</p> <p>2 days without pay.</p>
Compassionate Care Leave	Employed at least 30 days with the same employer.	<p>Up to 28 weeks of unpaid leave to be taken within 52 weeks to provide care or support to a family member.</p> <p>Upon return to work, be placed in same or similar position with same duties, benefits and wages.</p>
Critically Ill Child Care Leave	<p>An employee who is a parent of a child under the age of 18 who is critically ill.</p> <p>Employed by the same employer for at least 30 days.</p> <p>Must provide a copy of a physician certificate confirming a critical illness which requires care or support from the employee.</p> <p>Employee must provide the employer with at least 2 weeks written notice of the intended amount and date leave will begin, unless there is a valid reason why that notice cannot be given.</p>	<p>Up to 37 weeks of unpaid leave to provide care or support.</p> <p>Upon return to work, be placed in same or similar position with same duties, benefits and wages.</p>

BENEFIT	QUALIFIERS	ENTITLEMENT
<p>Crime-Related Child Death or Disappearance Leave</p>	<p>An employee who is a parent of a child under the age of 18 who has disappeared or died and it is probable, considering the circumstances, that the child disappeared or died as a result of a crime under the federal <i>Criminal Code</i>.</p> <p>Employee has not been charged with the crime necessitating the leave.</p> <p>Employed by the same employer for at least 30 days.</p> <p>Must provide reasonable verification of the necessity of the leave as soon as possible.</p> <p>Employee must provide the employer with at least 2 weeks written notice of the intended amount and date leave will begin, unless there is a valid reason why that notice cannot be given.</p>	<p>Up to 52 weeks of unpaid leave in relation to the disappearance of a child and up to 104 weeks of unpaid leave in relation to the death of a child; however, the duration of the leave must be limited to that which is reasonably necessary in the circumstances.</p> <p>Upon return to work, be placed in same or similar position with same duties, benefits and wages.</p>
<p>Reservist Leave</p>	<p>Is a member of the Canadian Forces Reserves.</p> <p>Has been employed in civilian employment with same employer for at least 6 consecutive months.</p> <p>Is required to be absent from work for Canadian Forces service.</p> <p>Provides 60 days written notice (or less in special circumstances) of the intended date leave will begin and the anticipated date service will end.</p> <p>The employer has not been exempted by the Director of Labour Standards from having to provide the leave.</p>	<p>Unpaid leave for the required period of Canadian Forces service.</p> <p>Reinstated to employment terms and conditions that are not less beneficial than those that existed before the leave began.</p> <p>A second or additional unpaid service leave may be granted, if a period of at least 1 year has elapsed from the date the employee returned to work from the most recent service leave.</p>

BENEFIT	QUALIFIERS	ENTITLEMENT
<p>Notice of Termination of Employment</p> <p>(some exceptions apply such as the construction industry)</p>	<p>Employed with the same employer for:</p> <p>Less than 3 months.</p> <p>3 months or more but less than 2 years.</p> <p>2 years or more but less than 5 years.</p> <p>5 years or more but less than 10 years.</p> <p>10 years or more but less than 15 years.</p> <p>15 years or more.</p>	<p>No notice required.</p> <p>1 week written notice or 1 weeks pay in lieu of notice.</p> <p>2 weeks written notice or 2 weeks pay in lieu of notice.</p> <p>3 weeks written notice or 3 weeks pay in lieu of notice.</p> <p>4 weeks written notice or 4 weeks pay in lieu of notice.</p> <p>6 weeks written notice or 6 weeks pay in lieu of notice.</p>

Hours of Work

Hours of Work

What is a work week?

A work week is a period of 7 continuous days used by the employer or, if the employer doesn't designate a week, a period of 7 continuous days beginning after midnight on a Saturday.

How many days can an employee be required to work each week?

Employees must be granted 24 consecutive hours off work in each week of employment. Where possible, the day off should be a Sunday. There are exceptions in the case of:

- employees in undertakings excluded by regulation (the present regulation provides for the exclusion of employees covered by collective agreements, employees employed in a remote area and crew members of ferry boats)
- employees of employers exempted under Section 22 of the *Labour Standards Act*
- employees engaged in emergency work

How many hours a week can an employee work?

The regulation has set 40 hour as the “standard working hours” in a week. Time worked in excess of 40 hours is overtime and these hours must be paid at the minimum overtime rate.

Overtime provisions do not apply to agricultural employees.

How many hours a day (24 hour period) can an employee be required to work?

Except in the case of an emergency that constitutes an imminent hazard to life or property, an employer shall permit an employee to take and an employee shall take not less than 8 consecutive hours off work in each unbroken 24 hour period of employment. These 8 hours are in addition to the breaks required during the work day.

If an employee reports for a previously scheduled 8 hour shift and finds the shift cancelled, what payment are they entitled to receive?

If the employee reports for any shift of 3 hours or more and it is cancelled, they must receive payment for at least 3 hours.

If an employee works 2 hours a day, what should they be paid?

An employee scheduled to work 2 hours must be paid for the 2 hours worked.

If co-workers want to switch shifts, what impact may this have on overtime payments?

If an employer approves a written request from 1 or more employees and this change results in affected employee(s) working more than 40 hours in a week, the employer is not required to pay overtime to the employees involved.

What happens if an employee is called in to work and is not required to work at least 3 hours?

The employer shall either let the employee work at least 3 hours or pay the employee for any unworked portion of the 3 hours at the minimum wage rate or the minimum overtime wage rate, whichever is appropriate.

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Overtime

When is overtime to be paid?

Overtime is to be paid when an employee works in excess of the standard working hours which has been set as 40 hours per week.

Exemptions to overtime may be granted where:

- an employer approves a written request from 1 or more employees to switch shifts
- an employee is employed in farming, raising of livestock, or as a live-in housekeeper or baby-sitter where there is an arrangement for time off

Can overtime be banked?

An employee may receive 1½ hours of paid time off work for each hour of overtime worked instead of overtime pay where:

- an employee and employer agree to do so
- the time off shall be taken within 3 months of the date the overtime is earned unless the employer and employee agree to extend the time period
- payment or time off must be finalized within 12 months of the date the overtime is earned
- if the employment ends before the time off is taken, the employer shall pay the employee for all overtime hours worked within 7 days of termination

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Breaks

How many breaks or meal periods are employees entitled to receive?

Subject to some exceptions in the regulation, an employer shall permit an employee to take an unbroken rest period of 1 hour following each consecutive 5 hours of employment. Different rest periods may be established through a written employer/employee contract or a collective agreement. Unless the employer maintains the right of direction and control during a rest period, the employee does not have to be paid for their break.

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Meetings and Extra Duties

Are employees required to be paid for attending meetings or duties that cannot be completed during their "normal" work day?

Employees are required to be paid for time they spend at the workplace at the employer's request.

Examples of when employees should be paid are:

- attending a meeting that may be scheduled before the work day begins or at the end of the work day and requires mandatory attendance
- staying beyond the scheduled shift to conclude business such as closing cash, general cleaning, locking up, etc.
- attending training required by the employer

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Wages and Tips

Wages

What is the current minimum wage?

The current minimum wage \$11.00 per hour.

What is the overtime rate?

The current minimum overtime wage is \$16.50 per hour.

When should employees be paid?

The employer must pay an employee not less frequently than half monthly. All wages owing must be paid within 7 days of the end of the pay period.

How is an employee to be paid?

The employer must pay the wages:

- at the place of employment during regular working hours
- at the employee's normal residence
- by mail
- personal delivery
- by direct deposit into the employee's bank account with the employee's consent

The wage must be paid in a lawful Canadian currency or

- by cheque
- money order
- by direct deposit into the employee's bank account

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Deductions

What can be deducted from wages?

- Income Tax
- Canadian Pension Plan contributions
- Employment Insurance contributions
- Overpayment of wages
- Deductions for a group benefit plan in which the employee participates
- Savings plan deductions
- Overpayment on unused portions of travel advances
- Rental charges when the employee occupies the employer's premises
- Sums deducted or withheld by court order

Can deductions be made from an employee's wages for cash shortages, bad cheques, or charge cards?

The employer cannot deduct these charges from wages.

Can an employee be required to pay for uniforms?

An employer shall not require an employee to pay for a uniform where the uniform is unique to the employer's business operation and is identified with the employer's operation (logo).

If an employee damages an employer's product, property, or has an outstanding account with the employer, can the employer recover this loss by deducting from the employee's wages?

No, if an employee owes the employer for any of the above, the employer would have to take alternate measures to recover the sums owed.

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Vacation Pay

Who gets vacation pay?

An employee who has been employed for 5 work days or more.

How is vacation pay calculated?

Vacation pay is calculated as 4% of gross wages, including commissions and overtime for employees who have worked less than 15 continuous years with the same employer. Vacation pay is calculated as 6% of gross earnings for employees with 15 years or more of continuous employment with the same employer.

When must an employee receive vacation pay?

At least 1 day before going on vacation or within one week of termination. Employers also can pay vacation pay each pay period as long as the employee is advised and the amount of vacation pay is indicated in the employer's payroll.

If an employee does not qualify for an annual vacation, there is still an entitlement to vacation pay provided the employee has been employed by the employer for at least 5 work days.

An employee who qualifies for vacation pay must be paid the vacation pay within 1 week of the termination of employment.

Are there any deductions to be taken from vacation pay?

Vacation pay is subject to all statutory deductions for example:

- Employment Insurance contributions
- Income Tax
- Canada Pension Plan contributions

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Tips or Gratuities

Does an employee have to share a tip with an employer, a manager or supervisor of the employee or an employer's representative?

No, tips or gratuities are the property of the employee to whom or for whom they are given.

Where a surcharge or other charge is paid instead of a tip or gratuity, does this amount belong to the employee?

Yes, the amount paid shall be considered to be a tip or gratuity and is the property of the employee to whom or for whom it is given.

Can an employer make deductions from a surcharge or other charge which is paid instead of a tip or gratuity, or where the amount of the tip or gratuity is itemized on the record of a credit card or debit card payment?

Yes, the employer may deduct for statutory deductions.

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Annual Vacation, Public Holidays and Other Leave

Annual Vacation

Who qualifies for annual vacation?

To qualify for an annual vacation, an employee must have been employed with the employer for at least 12 continuous months and have worked at least 90% of the available working hours.

How many weeks of vacation does an employee receive?

An employee with less than 15 years of continuous service with the same employer, vacation time is 2 weeks per year.

An employee with 15 or more years of continuous service with the same employer, vacation time is 3 weeks per year.

When can vacation be taken by an employee?

The employer shall give the employee at least 2 weeks written notice of when vacation is to commence.

An employee who has less than 15 years of continuous employment with the same employer is entitled to 2 weeks vacation.

The employee shall be permitted to take in either:

- 1 unbroken 2 week period
- 2 unbroken periods of 1 week

An employee who has 15 years or more of continuous employment with the same employer is entitled to 3 weeks vacation.

The employee shall be permitted to take the vacation time in either

- 1 unbroken period of 3 weeks
- 2 unbroken periods of 2 weeks and 1 week respectively
- unbroken periods of 1 week

The employee must be permitted to take this vacation within 10 months of the time they qualify for it.

Can the employer cancel an employee's vacation if it was previously agreed to?

The employer may cancel an employee's vacation. If the employer and employee agree to the vacation in writing and the employer cancels the vacation they must compensate the employee for reasonable expenses that cannot be recovered by the employee as a result of the vacation being cancelled.

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Public Holidays

How many paid public holidays are there?

There are 6 public holidays throughout the year, they are:

- New Year's Day
- Good Friday
- Memorial Day (Canada Day)
- Labour Day
- Remembrance Day
- Christmas Day

Additional days may be proclaimed by the Lieutenant Governor-in-Council.

Different holidays may be set by collective agreements in substitution for those days designated under the *Labour Standards Act*.

If an employee works on a paid public holiday, what are they entitled to receive?

An employee who works on a paid public holiday is entitled to receive wages at twice their regular rate for the hours worked on the holiday or an additional day off with pay within 30 days or an additional vacation day. Employees do not have to meet any qualifiers to receive this benefit.

What if the employee works a lesser number of hours on the paid public holiday than they would normally have worked?

If an employee is required to work less hours on a paid public holiday than they would normally work, the employer is required to pay the employee at their regular rate of pay for the actual hours worked plus a regular day's pay.

Is an employee entitled to pay on a paid public holiday if they do not work on the paid holiday?

Yes, if an employee has been employed by the employer for at least 30 calendar days prior to the paid holiday and works their scheduled shift before and after the paid holiday. The employee is entitled to an average day's pay for the paid public holiday even though no work was performed on the day.

How is an employee to be compensated if a public holiday falls on a day the employee would normally be scheduled off work?

The employee shall not be required to work either on the first working day immediately after the public holiday or another day mutually agreed to by the employee and employer and this day shall be a paid day for the employee.

How is the employee who works shifts of varying hours and who does not work on the paid public holiday to be paid?

If an employee has been employed by the employer for at least 30 calendar days prior to the paid holiday and works their scheduled shift before and after the paid holiday, the employee is entitled to be paid for the paid public holiday.

To establish the rate at which the employee must be paid requires multiplying the employee's hourly rate of pay by the average number of hours worked in a day by the employee in the 3 weeks immediately preceding the holiday.

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Sick/Family Responsibility Leave

Who is entitled to sick/family responsibility leave?

An employee who has been employed with the same employer for a continuous period of 30 days is entitled to 7 days unpaid sick or family responsibility leave in a year.

Does the employee have to provide a note to the employer for sick leave?

An employee must provide a note to their employer, signed by a qualified medical practitioner, if on sick leave for 3 consecutive days or more.

Does the employee have to provide a note to the employer for family responsibility leave?

An employee must provide a written statement outlining the nature of the family responsibility leave where the employee is absent from work for 3 consecutive days or more.

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Pregnancy Leave

Who is eligible for pregnancy leave?

A pregnant employee who has been employed by the same employer for at least 20 consecutive weeks.

How much notice of their intention to take pregnancy leave must an employee give to their employer?

At least 2 weeks written notice must be given. As well, the employee must provide the employer with a certificate from a medical practitioner stating the estimated birth date.

How long can pregnancy leave last?

Up to 17 weeks of unpaid leave.

When does pregnancy leave begin?

Leave cannot start earlier than 17 weeks before the expected birth date.

What if the employee is forced to stop work because of miscarriage or still birth?

The employee is entitled to 17 weeks after the pregnancy leave began or 6 weeks after the still birth or miscarriage, whichever is later.

Is written notice required if the employee wants to end pregnancy leave early or does not intend to take parental leave?

Yes, 4 weeks written notice must be given before the employee returns to work.

What happens when the employee returns to work from pregnancy leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking pregnancy leave.

What effect does being on pregnancy leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on pregnancy leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

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Parental Leave

Who is eligible for parental leave?

An employee who has been employed by the same employer for at least 20 consecutive weeks and who is the parent of a child.

When does parental leave have to be taken?

Parental leave must begin within 35 weeks of the birth of the child or when the child comes into the care and custody of the parent for the first time.

Can an employee take pregnancy leave, go back to work for a time and then take parental leave?

No. Where an employee takes pregnancy leave, the parental leave must begin when the pregnancy leave ends, unless the child has not come into the care of the parent for the first time.

How long can parental leave last?

Up to 35 weeks of unpaid leave.

How much notice of their intention to take parental leave does an employee have to give their employer?

At least 2 weeks written notice must be given.

Can an employee return to work before the end of the 35 weeks?

Yes, however, 4 weeks written notice has to be given to the employer before the employee can return to work.

What happens when the employee returns to work from parental leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking parental leave.

What effect does being on parental leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on parental leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

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Adoption Leave

Who is eligible for adoption leave?

An employee who has been employed by the same employer for at least 20 consecutive weeks.

How much notice of their intention to take adoption leave must an employee give to their employer?

At least 2 weeks notice in writing or if the child comes into their custody sooner than expected, written notice of having taken adoption leave within 2 weeks of having stopped work.

How long can adoption leave last?

Up to 17 weeks of unpaid leave.

Are adoptive parents entitled to parental leave?

Adoptive parents are entitled to 35 weeks parental leave.

Can an employee return to work before the end of the 17 weeks?

Yes, however, 4 weeks written notice has to be given to the employer before the employee can return to work.

What happens when the employee returns to work from adoption leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking adoption leave.

What effect does being on adoption leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on adoption leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

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Bereavement Leave

Who is eligible for bereavement leave?

Bereavement leave must be provided to an employee in the event of the death of the employee's:

- spouse
- child
- grandchild
- mother or father
- brother or sister
- mother-in-law or father -in-law
- grandparent
- sister-in-law or brother-in-law
- son-in-law or daughter-in-law

How many days of bereavement leave can an employee take?

An employee who has been employed with the same employer for at least 30 days shall be given 3 days of bereavement leave consisting of 1 day paid leave and 2 days unpaid leave.

If an employee has been employed for less than 30 days, the employee is entitled to 2 days of unpaid leave.

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Compassionate Care Leave

What is compassionate care leave?

Compassionate care leave enables an employee to receive up to 28 weeks of unpaid leave to be taken within 52 weeks to provide care to a family member who has a serious medical condition and a significant risk of death.

Who is eligible for compassionate care leave?

An employee who has been employed by the same employer for at least 30 days qualifies for compassionate care leave.

For which family members can an employee take compassionate care leave?

An employee may take compassionate care leave to care for any of the following family members of either the employee's family or their spouses or common-law partner's family:

- child or step child
- wife, husband, co-habiting, common-law partner
- parent or step-parent
- siblings or step-siblings
- grandparents or step-grandparents
- grandchildren and their spouse or common-law partner
- "in-laws" either married or common-law
- aunts, uncles, nephews, nieces and their spouses or common-law partners
- current or former wards, and current or former guardians and their spouse or common-law partner

Other than relatives or family members, are there other individuals for whom an employee may take compassionate care leave?

Yes, an employee may take compassionate care leave to care for an individual with a serious medical condition who, although not related to the employee by blood, adoption, marriage, or common-law partnership, considers the employee to be like a close relative.

How much notice of their intention to take compassionate care leave must an employee give?

At least 2 weeks written notice is to be given to the employer before compassionate care leave is to begin. This notice should indicate the length of leave intended to be taken.

A medical certificate from a qualified medical practitioner is to be provided stating the family member has a serious medical condition with a significant risk of death within 26 weeks from the date the certificate is issued, or the day the leave began, if leave began before the certificate was issued.

Must an employee give written notice to change compassionate care leave?

At least 2 weeks written notice is to be provided to the employer for any change to the intended length of leave, unless there is a valid reason why notice cannot be given.

Does an employee have to take all 28 weeks at one time?

No, the leave may be broken up but it must be taken in minimum blocks of 1 week.

What happens when the employee returns to work from compassionate care leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking compassionate care leave.

What effect does being on compassionate care leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on compassionate care leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

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Critically Ill Child Care Leave

What is critically ill child care leave?

An unpaid leave of absence for the parent of a critically ill child to provide care or support to that child.

Who is eligible for critically ill child care leave?

An employee who:

- is the parent of a critically ill child
- will provide care or support to that child
- has been employed by the same employer for at least 30 days

What is the definition of a critically ill child?

A critically ill child is a person under the age of 18 whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

Who is considered to be a parent for the purpose of critically ill child care leave?

A parent is:

- a parent of a child
- the spouse or cohabiting partner of a parent of a child
- a person with whom a child has been placed for the purpose of adoption
- a foster parent of a child
- a person who has the care or custody of a child, and is considered to be like a close relative, whether or not that person is related to the child by blood or adoption

How long can critically ill child care leave last?

A parent may take up to 37 weeks to provide care or support to the critically ill child; however, the employee must limit the duration of the leave to that which is reasonably necessary in the circumstances.

What must an employee provide to verify that they are entitled to take critically ill child care leave?

An employee must provide the employer with a medical certificate from a qualified medical practitioner as soon as possible. The certificate must:

- state that the child is a critically ill child and requires the care or support of the employee
- set out the period during which the child requires that care or support

Must an employee give notice before beginning critically ill child care leave?

Yes. An employee must give written notice to his or her employer at least 2 weeks before they intend to take the leave, unless there is a valid reason why that notice cannot be given. The employee must include the length of leave they intend to take.

What happens when the employee returns to work from critically ill child care leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking critically ill child care leave.

What effect does being on critically ill child care leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on critically ill child care leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

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Crime-Related Child Death or Disappearance Leave

What is crime-related child death or disappearance leave?

An unpaid leave of absence for the parent of a child who has disappeared or died and it is probable, considering the circumstances that the child disappeared or died as a result of a crime.

Who is eligible for crime-related child death or disappearance leave?

An employee who:

- is the parent of a child who has disappeared or died and it is probable, considering the circumstances, that the child disappeared or died as a result of a crime
- has been employed by the same employer for at least 30 days

An employee does not qualify if they are charged with the crime necessitating that leave of absence.

Who is considered to be a parent for the purpose of crime-related child death or disappearance leave?

A parent is:

- a parent of a child
- the spouse or cohabitating partner of a parent of a child
- a person with whom a child has been placed for the purpose of adoption
- a foster parent of a child
- a person who has the care or custody of a child, and is considered to be like a close relative, whether or not that person is related to the child by blood or adoption

How long can crime-related child death or disappearance leave last?

A parent may take up to 52 weeks in relation to the disappearance of a child and up to 104 weeks in relation to the death of a child; however, the employee must limit the duration of the leave to that which is reasonably necessary in the circumstances.

What must an employee provide to their employer when taking crime-related child death or disappearance leave?

An employee must provide the employer with reasonable verification of the necessity of the leave as soon as possible.

Must an employee give notice before beginning crime-related child death or disappearance leave?

Yes. An employee must give written notice to their employer at least 2 weeks before they intend to take the leave, unless there is a valid reason why that notice cannot be given. The employee must include the length of leave they intend to take.

What happens when the employee returns to work from crime-related child death or disappearance leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking crime-related child death or disappearance leave.

What effect does being on crime-related child death or disappearance leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on crime-related child death or disappearance leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

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Reservist Leave

Who is eligible for reservist leave?

To qualify for the leave, an employee must:

- be a member of the reserves
- must have been employed by the employer for 6 consecutive months and
- must be required to be absent from work for the purpose of active deployment or training for active deployment

How much notice of their intention to take reservist leave must an employee give to their employer?

The employee must give 60 days written notice to the employer of their intention to take the leave and of their intention to return to work, including in this notice the date the leave is to begin and end.

In circumstances beyond the control of the employee, where the full 60 days notice cannot be provided, the employee should give as much notice as is reasonably practical.

Must an employee give written notice to extend reservist leave?

Notice requesting to extend the end date of the reservist leave must be in writing. Failure to provide sufficient notice, changing the date the leave is to end, may result in a 2 week or 1 pay period delay in re-employment, whichever is longer.

How long can reservist leave last?

The leave is to cover the reservist's period of service and may be extended beyond the date agreed upon if required and provided that written notice is given to the employer at least 2 weeks or 1 pay period, whichever is longer, before the end date is given.

How often can a reservist take this leave?

The employee can take additional reservist leave; however, the start date for each additional period of service must be at least 1 year after the date that the employee returned to work from the most recent reservist leave.

What happens when the employee returns to work from reservist leave?

Upon return to work an employee is to be placed in the same or similar position with duties, benefits and wages they had prior to taking reservist leave.

What effect does being on reservist leave have on an employee's entitlements under the *Labour Standards Act*?

Unless the employer and employee agree otherwise, the period spent on reservist leave does not count with respect to the accumulation of time for the purposes of notice of termination, vacation entitlement, or other benefits under the *Act*.

Does an employer have to hold the employees job?

Upon return to work an employee is to be placed in the same or similar position with the same duties, benefits and wages that they had prior to taking reservist leave.

Can an employer refuse to grant reservist leave citing “Undue Hardship”?

This matter may be mediated by the Labour Standards Division. Contact the Division for more information.

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Termination of Employment

Notice Period

Does notice of termination of employment have to be given in writing?

Yes, the notice of termination has to be in writing if an employee has been employed for 3 months or more.

What is the period of written notice that has to be given by the employer and the employee?

The period of notice to be given by either the employer or employee is based on continuous years of service:

Period of employment	Amount of advance written notice required
Less than 3 months	none
3 months up to 2 years	1 week
2 years but less than 5 years	2 weeks
5 years but less than 10 years	3 weeks
10 years but less than 15 years	4 weeks
15 or more years	6 weeks

May the vacation period form part of the notice period?

Unless both parties agree, the employer shall not require, nor shall the employee take vacation as the notice period.

Is notice of termination required in the construction industry?

In some instances notice is not required in the construction industry.

Does notice have to be given if the employer is only temporarily laying off an employee?

Yes, the same periods of advance written notice are required for termination of employment and must be provided for any temporary layoff exceeding 1 week.

Does the notice of termination provisions of the *Labour Standards Act* apply to collective agreements and written contracts of service?

Yes, but only if the collective agreement or the written contract of service is silent on notice, or if the period in the agreement or contract that is required to be given is not the same for the employer and employee.

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Termination Without Notice

Can an employee quit without giving the required notice?

There are circumstances when an employee can quit without giving notice but before an employee takes action, they should contact the Labour Standards Division. Some examples of circumstances that would justify an employee terminating employment without notice are:

- If the employer has
 - mistreated the employee
 - acted in a manner that might endanger the health or wellbeing of the employee
 - breached a material condition in the contract of service that, in the opinion of the Director, warrants notice not being given
- the employee allows the employer to keep wages in lieu of notice
- the person has been employed for less than 3 months

When may an employer terminate employment without giving notice?

Notice of termination is not required:

Where the employee

- has willfully refused to obey a lawful instruction of the employer
- committed misconduct
- has been so neglectful of duty that the interest of the employer is adversely affected
- has breached a material condition of the contract of service that in the opinion of the Director or the Labour Relations Board hearing a complaint, warrants summary dismissal
- is employed for a firm non-renewable term or for a specific task where the term or task does not exceed 12 months and termination doesn't occur before the term or task is completed
- has been employed for less than 3 months
- is to be laid-off for a period of 1 week or less

Where the employer

- pays the equivalent normal wages, including overtime earnings, in lieu of notice (1 to 6 weeks pay, depending on the employee's length of employment)
- has to terminate an employee's employment as a result of an unforeseen economic or climatic conditions beyond the foreseeable control of the employer, or as a result of a major breakdown or destruction of plant machinery or equipment

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Termination and Pay

When must an employee whose employment has been terminated be paid any wages they are owed?

Within 1 week from the date of termination, an employee must be paid:

- all wages and vacation pay owing
- pay in lieu of notice, if applicable

What is pay in lieu of notice?

Pay in lieu of notice is the payment of the employee's normal wages if the appropriate written notice (depending on the employee's years of service) is not given upon termination.

Can an employer withhold wages if an employee terminates employment without notice?

If an employee does not provide proper written notice, the employer may with the employee's consent withhold the approved amount of wages in lieu of notice. If the employee does not agree with the wages being withheld, either party can contact the Labour Standards Division to have the matter addressed in accordance with the *Act*.

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Group Termination

What is a group termination of employment?

A group termination of employment is the termination of the employment of 50 or more employees in a 4 week period.

Are notice requirements different for a group termination?

The Act requires written notice of termination be given to each employee. The periods of notice are:

- 8 weeks for 50 to less than 200 employees
- 12 weeks for 200 to less than 500 employees
- 16 weeks for 500 or more employees

Written notice must also be given to the Minister responsible for the *Labour Standards Act* immediately after serving notice on the employees. In that notice, the Minister must be made aware of the number of employees involved, the period of notice involved and the reason for the mass termination of employment. If notice is not given to the Minister, no action can be taken by the employer to terminate the services of those employees. Although the employer provides a notice of intention to terminate the employees, the employer must also give the written notice of termination within the specified time limits.

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Employment of Children

Does the Act allow the employment of children?

Yes; however, the *Labour Standards Act* places some restriction on the employment of children under the age of 16.

What restrictions are imposed by the Act on employers who employ children?

An employer is prohibited from employing a child who is under the age of 16 in employment that is: likely to be unwholesome or harmful to the child's health or normal development, or if it is going to hamper the child's attendance at school.

Additionally, an employer shall not employ a child under 16 to work:

- for more than 8 hours a day
- for more than 3 hours on a school day
- on a day for a period that, when added to the time required for attendance at school on that day, totals more than 8 hours
- between 10p.m. of 1 day and 7a.m. of the following day
- in circumstances that would prevent the child from obtaining a rest period of at least 12 consecutive hours a day
- in occupations that are prescribed as hazardous

An employer shall not employ a child under age 14 unless the work is prescribed in the regulations under the *Act*. Also, an employer shall not employ a child while a strike by employees or a lockout of employees by the employer is in progress.

What is the employer required to do prior to employing a child?

Before employing a person under the age of 16, an employer must obtain the written consent of the parent or guardian. This consent must be kept as part of the record of the employment and the age of the child shall be specified in the written consent.

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Records

Are employers required to issue a statement of earnings each pay day?

Yes, and it should contain the following information:

- the start/end dates of the pay period
- the rates of wages and number of hours worked at each rate during the period
- the gross amount of wages earned for the pay period
- the amount and purpose of each deduction made from the gross wages
- the net amount of wages to which the employee is entitled for the pay period
- if applicable, the amount of vacation pay included in the wages for the pay period

What payroll records must be kept by an employer?

Every employer must keep payroll records for each employee showing the following:

- employee name
- employee address
- birth date of the employee
- date of the start of the employment and the dates of a temporary lay-off or termination
- rates of wages
- number of hours worked in each day
- the amount paid showing all deductions made from wages paid
- the date of annual vacation and the amount of vacation pay paid
- the dates on which each 24 hour rest period is given

The employer is required to keep these records for a period of 4 years from the date of the last entry.

All questions concerning Record of Employment (separation slip/lay-off slip) are to be directed to the nearest Service Canada Centre at 1-800-622-6232.

What is the employer required to keep on record if they are employing a child?

Before employing a person under the age of 16, an employer must obtain the written consent of the parent or guardian. This consent must be kept as part of the record of the employment and the age shall be specified in the written consent.

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Know your rights!



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