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LABOUR AND EMPLOYMENT NEWSLETTER

COMPASSIONATE CARE LEAVE INTRODUCED IN BC

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On April 27, 2006, the *Employment Standards (Compassionate Care Leave) Amendment Act* came into force in British Columbia. The Act allows workers in BC to care for their families during a serious medical crisis without fear of losing their jobs. The Act amends the *Employment Standards Act*, which already provides for other types of unpaid leaves including pregnancy leave, parental leave, family responsibility leave, bereavement leave, and leave for jury duty.

BC joins every other Canadian jurisdiction, except Alberta and the Northwest Territories, in providing compassionate care leave. In January 2004, similar provisions in the *Canada Labour Code* came into effect, which also permit federally-regulated employees to take compassionate care leave.

Qualifying for Compassionate Care Leave

In BC, all employees are now entitled to take up to 8 weeks of unpaid leave to provide care or support to a "family member" within a period of 26 weeks.

"Family member" means a member of the employee's immediate family, or the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and any person who lives with the employee as a member of the employee's immediate family.

The family member must be suffering from a serious medical condition posing a significant risk of death within 26 weeks. The employee must produce a certificate from a medical practitioner confirming the family member's medical condition and significant risk of death.

Commencing Compassionate Care Leave

The employee is entitled to leave as soon as leave is required. The employee need only provide a copy of the medical certificate to the employer "as soon as practicable".

Leave does not have to be taken all at one time. However, leave must be taken in increments one week or more. For example, if an employee needs two days of leave, a week of leave will be deemed to have been used.

Ending and Continuing Compassionate Care Leave

Leave can come to an end in three ways, whichever comes first:

1. When the family member dies.
2. When the employee has had 8 weeks off within the period of 26 weeks.
3. 26 weeks after the leave begins, even if the employee has not taken 8 weeks of leave.

Note:

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If the family member does not die within the 26 week period, an employee may take a further leave after obtaining a new medical certificate stating that the family member has a serious medical condition with significant risk of death within 26 weeks.

Employment is Considered Continuous While on Leave

When an employee is on compassionate care leave, employment is considered to be continuous for the purposes of calculating annual vacation and termination entitlements, as well as for pension, medical or other plans of benefit to the employee.

An employer must continue to make payments to any such plans unless the employee chooses not to continue with his or her share of the cost of a plan. The employee is also entitled to all increases in wages and benefits that the employee would have received if not on leave.

Return to Work

An employer may not terminate an employee, or change a condition of employment because of a leave, without the employee's written consent.

When the leave ends, the employer must place the employee in his or her former position or a comparable one.

Employment Insurance Benefits

Although employers are not required to pay wages during compassionate care leave, employees who are taking compassionate care leave may apply for E.I. benefits during the leave. Eligible employees will be granted six weeks of special insurance benefits.

ABOUT THE AUTHORS :

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