

## Public Health Emergency Leave

Businesses and industry in Manitoba are responding to COVID-19 in a number of different ways. This situation creates new challenges for both employers and employees.

Manitoba has introduced a temporary job-protected leave to the Employment Standards Code for employees who are unable to work due to circumstances related to the COVID-19 pandemic. The **Public Health Emergency Leave** gives employees time away from work for reasons related to a public health emergency such as the COVID-19 pandemic.

A recent amendment to the Public Health Emergency Leave expanded job-protected leave to workers who must be absent from work because they have underlying conditions, are undergoing treatment, or have other illnesses that make them more susceptible to COVID-19. This change ensures workers who are eligible for the new federal benefits that came into effect September 27, 2020 can take time off work to access them. Manitoba's legislation is retroactive to that date.

Employers are not permitted to request a physician's certificate or medical certificate to verify an employee's eligibility to take the Public Health Emergency Leave and other protected leaves available under The Employment Standards Code during the COVID-19 public health crisis.

### Can employees affected by the COVID-19 pandemic take a leave of absence from work?

Yes. As of March 15<sup>th</sup>, 2022 employees will still be eligible to take the Public Health Emergency Leave under the following circumstances:

- the employee is under medical investigation, supervision or treatment\*\* related to COVID-19;
- the employee, as a result of information or directions issued or provided by a health professional
  - ◆ is subject to self-isolation or any other measure that results in their inability to work;
- the employee is, in the opinion of a health professional more susceptible to COVID-19 because the employee
  - ◆ has an underlying medical condition,
  - ◆ is undergoing medical treatment, or
  - ◆ has contracted another illness;
- the employee is absent from work as a result of the side effects from being vaccinated against COVID-19;
- the employer directs the employee not to work because the employer is concerned about the employee's exposure to others;
- the employee is providing care, support or assistance to a family member as a result of COVID-19, including but not limited to, school and daycare closures;
- the employee is directly affected by travel restrictions and cannot reasonably be expected to travel to their workplace.

\*\*Please note that this refers to *active* investigation, supervision or treatment such as ongoing hospitalization or other active remedies that would result in an employee unable to perform the duties of their job. It does not

typically refer to instructions from a medical professional to stay at home and rest.

## **Who can take leave from work for a public health emergency?**

All employees are eligible to take leave for COVID-19 related circumstances if they meet any of the specific requirements listed above.

There is no minimum length of time that employees must be employed by an employer before they can take the COVID-19 related leave.

## **When can an employee take a leave of absence for circumstances relating to COVID-19?**

Entitlement to the public health emergency leave begins March 1, 2020.

The leave ends when none of the eligible purposes apply to the employee.

## **How long is the public health emergency leave?**

Employees can take as much time as needed for eligible circumstances listed above. The leave ends when none of those circumstances apply to the employee.

## **Can an employee take the public health emergency leave more than once?**

Yes. An employee can take this leave as many times as necessary, as long as one of the eligible circumstances apply to them.

## **Are employees paid while on leave?**

No. Employers are not required to pay wages to employees while on public health emergency leave.

## **Can employers provide additional leave or paid days of leave?**

Yes. Employers can give greater benefits than those provided for in the legislation.

## **Are there programs to pay employees while on leave?**

The Government of Canada is taking immediate, significant and decisive action to help Canadians facing hardship because of the COVID-19 outbreak. Please visit [Canada's COVID-19 Economic Response Plan](#) for details.

## **How do employees start the public health emergency leave?**

Employees tell their employers they need to take a leave of absence. The employer will need enough detail to show the time off work meets the requirements of the leave.

## **Who decides what type of leave an employee is taking?**

Employees tell their employers the reason they require a leave. The employer will need enough detail to show the time off work meets the requirements of the leave.

When employees require time off, the employer should ask whether they are advising of a leave available under The Employment Standards Code. Employers do not control when employees can take a leave provided by law, but they do control other types of time off work.

## **How much notice is required?**

Employees must give their employer as much notice as is reasonable in the circumstances.

## **Do employees have to provide a medical certificate to take this leave?**

No. To reduce strain on the health system and help prevent spread of the virus, employers may request reasonable verification of the need for leave, but cannot request a note from a doctor, nurse, or other health professional.

During the COVID-19 public health crisis, employers are not permitted to request a physician's certificate or medical certificate to verify an employee's eligibility for **this leave or any other protected leave** available under The Employment Standards Code.

## **What is reasonable verification for public health emergency leave?**

Reasonable verification will be different from case to case. The intent is to confirm the employee is taking the leave to deal with a specified purpose related to the public health crisis.

## **Will the information about the leave be confidential?**

Unless it is required by law or the employee has given consent, employers cannot disclose information related to a leave except to other persons in the workplace, who need to know in order to carry out their duties.

## **What happens to pension and other benefits while an employee is on leave?**

Employment is considered continuous during a legislated leave of absence from work. This means an employee is still employed, though not earning wages for the period of the leave. When employees return from the leave, they are still entitled to any pension and other benefits they had before the leave. As well, their years of service include the time away on the leave.

## **What happens when the leave ends?**

Employees must be allowed to return to their job, or a comparable job with the same or greater benefits and pay, when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

## **Can employees be terminated or laid off because they take this leave?**

No. While employers are prohibited from terminating or disciplining an employee specifically because they take a leave of absence, nothing would prevent them from terminating or laying off employees for other business reasons – even if those reasons are also related to COVID-19, such as a mandatory closure order or drop in revenue.

## **What if the employer refuses to bring the employee back to work?**

Employees must be allowed to return to their job, or a comparable job, with the same or greater pay and benefits when they return from leave. Employees who are not reinstated by their employer can file a complaint with Employment Standards no later than six months after the date the employee should have been reinstated.

## **What if the employee's job is no longer available?**

Generally, employees should be returned to the job they had before the leave. However, if the job is no longer available, they must be given a similar position with the same or greater benefits and pay.

There may be some situations where employers do not have a position available for reasons completely unrelated to the leave. For example, employees who are on unpaid leave would not necessarily be protected from losing their jobs if the employer shut down part of their operations and reduced their workforce based on a seniority system.

Employers must show the leave has no impact on the decision to lay-off or terminate the employment.

## **What is a period of employment?**

The period of employment is the length of time from when an employee starts working for an employer until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment (a layoff, an unpaid leave), seasonal employment, and when an employee returns to work for the same employer after a break of less than two months.

Employees who work in a seasonal industry and return to work with the same employer each season have continuous service. Each consecutive season they return adds one more year of service to their total period of employment.

### **Layoffs and Periods of Employment**

It is important to know how to determine an employee's period of employment because wages in lieu of notice is based on their length of employment.

When layoffs are longer than 8 weeks in a 16-week period, they become terminations and wages in lieu of notice is required. The employment is deemed to have been terminated without notice on the first day of the layoff.

The actual date on which a layoff began does not change because a state of emergency is declared or a state of emergency ends. For example:

- If an employee was laid off on February 18, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on February 18, 2020.

- However, if an employee was laid off on July 8, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on July 8, 2020.

## **For more information contact Employment Standards:**

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

Website: [www.manitoba.ca/labour/standards](http://www.manitoba.ca/labour/standards)

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including The Employment Standards Code, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

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