

CAUT BriefingNote

Compassionate Care Leave & Benefits

Compassionate care leave and benefits were introduced in 2003/04 to help employees cope with this difficult work-life balance challenge. Employment Standards legislation and the Employment Insurance program (EI) were amended to provide leave without pay, with payment of EI benefits for compassionate care leave. Collective agreements have been renegotiated to provide access to compassionate care leave and, sometimes, to supplement compassionate care benefits.

In the spring of 2015, the federal government announced in its 2015/16 budget measures to expand compassionate care leave and benefits. The purpose of this briefing note is to provide background and details on recent changes to compassionate care leave and benefits to assist CAUT's member associations in renegotiating compassionate care leave provisions and benefits.

Background to compassionate care leave & benefits

The federal government first introduced compassionate care leave and Employment Insurance benefits for such leave more than a decade ago by amending the Canada Labour Code and the Employment Insurance program. Since most employees in Canada fall under provincial employment standards legislation, the provinces and territories had to amend their legislation in order to ensure employees could take advantage of the new federal benefits. By 2014, all provincial and territorial governments had done so.

Compassionate care leave provisions

Generally, the maximum duration of compassionate care leave found under provincial employment standards is eight weeks. It is to be granted if the employee provides a doctor's note stating that a family member is facing a significant risk of death within the next 26 weeks (See table 1). The maximum number of weeks of leave is generally tied to the total number of weeks covered by EI, including the two-week waiting period. However, exceptions are found in BC, Saskatchewan, Ontario, and Quebec, where leave can be longer or extended. In Manitoba, Newfoundland and Labrador, Nova Scotia, and Alberta, an employee must have a minimum length of service with his/her current employer to qualify for the leave. This ranges from 30 days in Manitoba and Newfoundland and Labrador to 12 months in Alberta. Distinctions can also be found between jurisdictions about the length of notice required, if the leave entitlement can be shared between care-givers, if fractioning of leave is possible, or if benefits and seniority are protected or accumulating while on leave.

The most significant variation between provincial legislation governing compassionate care leave concerns the definition of what constitutes a family member. In most jurisdictions, the definition of family members is broader than what can be found for other special leaves. For instance, the federal labour code will include a person who considers the employee to be, or whom the employee considers to be "like a close relative" as a family member for the purpose of accessing compassionate care leave.

Table 1**Key Compassionate Care Leave Provisions**

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|------------------------------------|---|
| Canada | Eight weeks unpaid to provide care or support to a family member with a doctor's note stating that it is a serious medical condition with a significant risk of death within 26 weeks (s.206.3(2)). |
| British Columbia | Eight weeks unpaid, with doctor's note stating that a significant risk of death within 26 weeks. Must be taken in blocks of one or more weeks. Can be extended if family member doesn't die, with another doctor's note (s.52.1). |
| Alberta | Eight weeks unpaid to provide care or support to a seriously ill family member if the employee is the primary caregiver (s.53.9(2)). Employee must have worked 52 weeks of the year prior to absence. |
| Saskatchewan | Up to 12 weeks unpaid in a year for serious illness/injury, and 12 days for non-serious, with some exceptions, and not for longer than 16 weeks total (s.44.2). Employee must have worked 13 weeks of the year prior to absence. Can be extended to 26 weeks for serious injury if employee is receiving workers' compensation (s.44.2(2)). |
| Manitoba | Eight weeks unpaid to support a seriously ill family member, with a doctor's note stating that there is a significant risk of death within 26 weeks (s.59.2(3)). Can be broken into two periods, maximum (s.59.2(6)). Must have been employed for at least 30 days (s.59.2(2)). |
| Ontario | Family Medical Leave: eight weeks, unpaid, with doctor's note that significant risk of death within 26 weeks (s.49.1). Must be taken in entire week periods. |
| Quebec | Up to 12 weeks unpaid in 12 months (can be extended to 104 weeks) if employee has minor child who has serious and potentially terminal illness (s.79.8). This can be extended if child is victim of crime and needs care (s.79.9). |
| New Brunswick | Eight weeks, unpaid, with a doctor's note stating a significant risk of death within 26 weeks (s.44.024). Must be taken in blocks of minimum one week. |
| Nova Scotia | Eight weeks, unpaid, with a doctor's note that there is a significant risk of death within 26 weeks (s.60E). Must have been employed at least three months. |
| Prince Edward Island | Eight weeks, unpaid, with a doctor's note stating a significant risk of death within 26 weeks (s.22.3). Periods of no less than a week (s.22.3(6)). |
| Newfoundland & Labrador | Eight weeks, unpaid, with a doctor's note stating a significant risk of death within 26 weeks (s.43.14) if employed for at least 30 days. In exceptional circumstances, three additional unpaid days may be granted if the family member dies (s.43.14(3)). This leave must be taken in periods of minimum one week (s.43.14(6)). |
| Yukon | Eight weeks unpaid to provide care or support to a family member of the employee if a medical practitioner or nurse practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks from the day the certificate was issued. (s.60.01(2)). |
| Northwest Territories | Eight weeks unpaid with doctor's note proving significant risk of death within 26 weeks (s.30). Cannot be broken up into periods shorter than one week (s.30(4)). |
| Nunavut | Eight weeks unpaid to care for family with doctor's note stating significant risk of death in 26 weeks (s.39.1(2)). |

Source: Employment Standard Acts, various provinces and Mapping Basic Employment Conditions, Research paper 51, CLC.

Over the years, many provincial and territorial jurisdictions have amended their legislation or regulations to expand their definition of family members for the purpose of compassionate care leave. This can be attributed to the fact that the definition of what constitutes a family member under the EI program was and remains very broad, forcing legislators to expand their definition of family members under their employment standard laws to meet the federal program.

As of today, all jurisdictions and all employees covered by employment standards legislation are now entitled to compassionate care leave, and the employment protection that goes with it. As a result, most employees, including unionized employees, are entitled to compassionate care leave even if the collective agreement remains silent about compassionate care leave.

Compassionate care benefits

Compassionate care benefits are Employment Insurance (EI) benefits paid to people who have to be away from work temporarily to provide care or support to a family member who is gravely ill and who has a significant risk of death within 26 weeks (six months). When this benefit was introduced a decade ago, an employee who qualified for the program was entitled to 6 weeks of EI benefits, after observing a two-week waiting period.

To be eligible for compassionate care benefits, the employee must be able to show that their regular weekly earnings from work have decreased by more than 40 percent; and they have accumulated 600 insured hours of work under EI in the last 52 weeks or since the start of their last claim. This period is called the qualifying period.

As soon as possible after employees have applied for compassionate care leave, they must provide medical proof showing that the ill family member needs care or support and is at risk of dying within 26 weeks.

The legislative changes to compassionate care leave & benefits

In 2015, the federal government introduced legislation to expand both the maximum number of payable weeks of compassionate care benefits under EI and the maximum number of weeks of compassionate care leave without pay available under the Canada Labour Code (Part III).

These changes were introduced by the government through the 2015 Budget Implementation Act (Bill C-59), in Division 4 Part 3. The Bill amended both the Canada Labour Code (Part III) and the Employment Insurance Act to expand compassionate care leave and benefits. The amendment to the Canada Labour Code increased the maximum duration of compassionate care leave from 8 weeks to 28 weeks, and extended from 26 weeks to 52 weeks the period within which the leave can be taken. Bill C-59 also amended the Employment Insurance Act to increase the maximum number of weeks of benefit entitlement for Employment Insurance compassionate care benefits to 26 weeks (from six weeks) and to extend to 52 weeks the period within which these benefits may be paid. These new measures came into force on 3 January 2016.

Provincial and territorial jurisdictions are now reacting to these changes. The government of Nova Scotia tabled legislation at the end of November 2015 to extend the maximum compassionate care leave duration from 8 to 28 weeks under the provincial labour standards code. Other jurisdictions are expected to make changes to allow employees to access full compassionate care benefits available under the EI program.

With the new legislation, an employee can share the 26 weeks of compassionate care benefits with other family members. Each family member must apply for and be eligible for these benefits. If employees plan to share compassionate care benefits, they should agree on the number of weeks each family member will take before they apply for benefits. Each family member can claim the benefits at any time during the 52-week period, either at the same time or at different times.

Table 2
Qualifying Family Members under
EI Compassionate Care Leave

Employee's Family Members

- Children
- Wife, husband, common-law partner
- Father, mother
- Father's wife, mother's husband
- Common-law partner of father/mother
- Brothers, sisters, stepbrothers, stepsisters
- Grandparents, stepgrandparents
- Grandchildren, their spouses/common-law partners
- Sons-in-law, daughters-in-law (married/common-law)
- Father-in-law, mother-in-law (married/common-law)
- Brothers-in-law, sisters-in-law (married/common-law)
- Uncles, aunts, their spouses/common-law partners
- Nephews, nieces, their spouses/common-law partners
- Current/former foster parents
- Current/former foster children, their spouses/common-law partners
- Current/former wards
- Current/former guardians, their spouses/common-law partners

Family Members of Employee's Spouse/Common-Law Partner¹

- Children
- Father, mother (married/common-law)
- Father's wife, mother's husband
- Common-law partner of father/mother
- Brothers, sisters, stepbrothers, stepsisters
- Grandparents
- Grandchildren
- Sons-in-law, daughters-in-law (married/common-law)
- Uncles, aunts
- Nephews, nieces
- Current/former foster parents
- Current/former wards

1. Common-law partner must be living together for one year.
 Source: Service Canada

As noted above, the definition of what constitutes a family member under the EI program is very broad. Table 2 presents eligible family members covered by the program. However, an employee can also receive compassionate care benefits under EI to care for a gravely ill person who is considered a family member, such as a member of an extended family or a close friend.

An employee eligible for compassionate care benefits must serve a two-week unpaid waiting period before receiving EI benefits. Usually, this period is the first two weeks of a claim. Compassionate care benefits may commence during one of the following weeks, or whichever is earlier: 1) the week a doctor signs a medical certificate; 2) the week a doctor examines the gravely ill family member; or 3) the week a family member became gravely ill, if a doctor can determine that date (for example, the date of the test results).

The benefits end after 26 weeks, when the gravely ill family member dies or no longer requires care or support (benefits are paid to the end of the week), when the 52-week period has expired, or when the employee has exhausted the maximum benefits payable on a claim that combines compassionate care benefits with other types of EI benefits.

The basic benefit rate is 55 percent of an employee's average insurable earnings, up to a yearly maximum insurable amount (\$50,800 in 2016). In 2016, the maximum payment of compassionate care benefits is \$537 per week, taxable. Employees could have a higher benefit rate if they have children, and earn less than \$26,000 per year. It is possible to receive compassionate care benefits to care for or support a family member, regardless of where that family member lives. Finally, if the employee's absence from work to claim compassionate care benefits was already approved by the employer before a work stoppage occurred due to a strike, lockout, or other form of labour dispute, an employee may still be eligible for compassionate care benefits.

To further reduce the economic burdens of compassionate care leave, it is possible in collective bargaining to negotiate a compassionate care allowance to supplement EI benefits. Some agreements top-up EI premiums to replace up to 100% of wages during the waiting period and while receiving EI benefits.

Recommendations when dealing with compassionate care leave & benefits

CAUT policy on compassionate care leave provides guidance to academic staff associations on how to approach compassionate care leave and benefits:

- 1. Sound employment practice recognizes employees' family and dependent care responsibilities, and accepts an obligation to accommodate their absence during periods which demand that priority be given to these responsibilities in circumstances of critical or terminal illness. A Compassionate Care Leave Policy shall cover employees to care for family, dependents, and/or a person with whom they have a committed, caring relationship.*
- 2. All academic and general staff have the right to take compassionate care leave and to maintain all rights under the collective agreement for the duration of the leave. They should retain full salary and benefits during compassionate care leave.*
- 3. The length of the leave should depend on the circumstances, and is at the discretion of the employee.*
- 4. If academic and general staff qualify for legislated employment insurance entitlements, the employer should provide a top-up to maintain their full salary. The employer should also maintain benefit and pension contributions based on their regular salary for the duration of the leave.*
- 5. Academic and general staff who have taken compassionate care leave should retain their appointment with full rights under the collective agreement or handbook. They should also have the right to defer tenure and promotion decisions and sabbatical leave and should retain their seniority.*
- 6. The employer should not penalize an employee for taking compassionate care leave, nor the employee's academic unit. The employee should be replaced for the duration of the leave.²*

2. "CAUT Policy Statement on Compassionate Care Leave," Approved by CAUT Council, November 2007.