## PROTECTED LEAVES

[Organization Name] recognizes that qualified employees have the right to take job protected leave without any negative consequences to their employment. As such, [Organization Name] is committed to adhering to the guidelines established by the Ontario *Employment Standards Act* (ESA) with respect to any job-protected leaves.

POLICY

The purpose of this policy is to outline the job-protected leaves employees have a right to take under the ESA so that:

* Employees know their rights; and
* [Organization Name] manages employee leave in a fair and consistent manner.

[Organization Name] will adhere to all regulations covered under the ESA.

Protected Leaves:

1. Pregnancy Leave
2. Parental Leave
3. Sick Leave
4. Bereavement Leave
5. Family Responsibility Leave
6. Family Caregiver Leave
7. Family Medical Leave
8. Critical Illness Leave
9. Child Death Leave
10. Crime-related Child Disappearance Leave
11. Domestic or Sexual Violence Leave
12. Unpaid Infectious Disease Emergency Leave
13. Organ Donor Leave
14. Reservist Leave
15. Jury Duty Leave
16. Voting Leave

Employee Rights During a Leave

Employees have the right to continue to participate in the company benefits plans during their job-protected leave of absence. This includes programs such as: pension plan, life insurance, extended health care, and dental. If an employee wishes to opt out of their participation in these company-provided benefits, they must provide their request via written notice.

[Organization Name] will continue to pay its portion of the employee benefits contribution to an employee’s benefit plan, unless the employee has provided written notice, they’d like to opt out during the leave period.

Employees will continue to accrue seniority while on a job-protected leave.

Sharing Leave Time

The total amount of leave taken by one or more employees under the ESA in respect of the same family member, child, or event is the entire amount of the leave; the leave is not doubled. Employees who are sharing the leave can be on leave at the same time, or at different times; the ESA does not provide restrictions for this. The sharing requirement applies whether the employees work for the same employer.

1. **Pregnancy Leave**

Pregnant employees have the right of taking a pregnancy leave constituting up to 17 unpaid weeks off work provided they have worked at [Organization Name] for a period of at least 13 weeks leading to the due date. The earliest the leave can begin is 17 weeks before the employee’s due date and the latest one can begin is the baby’s due date (or actual date of birth if that arrives sooner).

If an employee is still pregnant after the 17 weeks of leave, they may continue on until the birth and then commence their parental leave. Employees are entitled to return early from their leave if they desire to do so; however, they may not split up their leave and use up the unused part later.

Miscarriages and Stillbirths

Pregnancy leave is not an entitlement when an employee has a miscarriage or stillbirth more than 17 weeks prior to their due date. If an employee has a miscarriage or stillbirth within the 17 weeks prior, they continue to be eligible for parental leave and it commences on the date of the miscarriage or stillbirth if it hadn’t started yet.

Pregnancy leave for an employee who had a stillbirth or miscarriage ends either 17 weeks after the leave started or 12 weeks after the miscarriage or stillbirth (whichever is later).

[Organization Name] employees embarking on pregnancy leave are required to provide at least two weeks’ written notice prior to the start of their leave. Medical information may be requested. Where an emergency forces the leave to start early, pregnant employees must provide the notice no later than two weeks after the leave started. In certain cases, employees may be entitled to the use of sick time prior to the start of the pregnancy leave.

This two-week notice requirement also applies if an employee needs to change the date of their pregnancy leave.

An employee may also change the date that their pregnancy leave ends, provided they provide a written notice at least four weeks in advance of the new date. If an employee does not provide [Organization Name] with a return-to-work date, a leave of 17 weeks will be assumed and the employee will be expected to resume work after that time.

Employees who choose not to return from pregnancy leave are required to provide at least four weeks’ written notice.

1. **Parental Leave**

New parents are entitled to take parental leave of up to 61 or 63 weeks of unpaid time free from work. Parents may refer to a birth parent, an adoptive parent, or a person in a relationship with a parent of a child who plans on treating the child as their own. To be eligible, employees must have been hired by [Organization Name] at least 13 weeks prior to starting their parental leave.

Birth mothers who have taken pregnancy leave are entitled to up to 61 weeks of leave. In the case of a birth mother who did not take pregnancy leave and any other new parents, they are entitled to up to 63 weeks of parental leave.

Parental leave for a pregnant employee may begin as soon as the pregnancy leave ends unless the baby has not come into their care. In this event, an employee may return to work between the pregnancy and parental leaves and then start parental leave within 78 weeks of the birth (or the date the baby first left the hospital to come home). For any other employees, parental leave must be started no later than 78 weeks after the date of the baby’s birth or the date the child came into their care, custody, and/or control. Note: the parental leave must be started in the 78 weeks but is not required to be completed then. Employees may return early from leave but may not re-embark on the leave to use up any remaining time.

Employees must provide at least two weeks’ written notice before the start of a parental leave and four weeks’ written notice if they desire to return to work before their leave entitlement has been used up. If an emergency occurs and the parental leave needs to begin immediately, employees are required to provide their notice of the leave at least two weeks after starting the leave.

[Organization Name] will not penalize any employee because the employee is or will be taking either pregnancy or parental leave. Employees who take a pregnancy or parental leave are entitled to return to either their same position or a comparable one, if [Organization Name] has eliminated their previous one.

1. **Sick Leave**

Employees have the right to take up to three days of unpaid sick leave each calendar year because of personal illness, injury, or medical emergency. This entitlement begins once an employee has worked for [Organization Name] for at least two consecutive weeks. Employees may not take sick leave for cosmetic surgery or medically unnecessary procedures.

These sick leave days may not be carried over into another calendar year if they are not used. If an employee’s hire date is partway through the year, they are still entitled to the three days. As per the ESA, reasonable medical documentation may be requested. This will only include the duration of the absence, that date of the employee’s medical appointment, and whether the employee was examined in-person.

1. **Bereavement Leave**

Employees are entitled to up to two days of unpaid leave in the event of a death of a family member.

As per the ESA, family member refers to:

* A spouse (married or unmarried, of the same or opposite genders);
* Parent, stepparent, foster parent, child, stepchild, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee, or the employee's spouse;
* Spouse of the employee's child;
* Brother or sister of the employee; or
* Relative of the employee who is dependent on the employee for care or assistance.

This entitlement starts once an employee has been employed with [Organization Name] for a period of at least two weeks. It can be taken on the date of the death, or later for a funeral or to settle the estate. Bereavement leave entitlement resets every calendar year and the days may not be carried over. The entitlement to the two days remains the same, regardless of whether an employee of [Organization Name] is hired partway through the year.

[Organization Name] may request reasonable documentation of the need for the leave such as a death certificate, a funeral home notice, etc.

1. **Family Responsibility Leave**

Employees are entitled to take up to three days of unpaid leave each calendar year because of an illness, injury, medical emergency, or other urgent health matters relating to specific relatives. This applies to [Organization Name] employees if their hire date is at least two weeks prior to taking the leave.

As per the ESA, the term “family members” refers to:

* Spouse (includes both married and unmarried couples, of the same or opposite genders);
* Parent, stepparent, foster parent, child, stepchild, foster child, grandparent, step-grandparent, grandchild, or step-grandchild of the employee or the employee's spouse;
* Spouse of the employee's child;
* Brother or sister of the employee; or
* Relative of the employee who is dependent on the employee for care or assistance.

Employees may take the leave whether the illness is a planned event (such as surgery that is medically necessary), or an unplanned emergency, such as an urgent matter. Urgent matters could include an unforeseen need for childcare, as an example.

Notice of family responsibility leave may occur before the leave if it is planned, or as soon as it happens if unplanned. This notice can be made orally; it does not have to be in writing. Family responsibility leave entitlement resets every calendar year and the days may not be carried over. The entitlement to the three days remains the same, regardless of whether an employee of [Organization Name] is hired partway through the year.

[Organization Name] may request reasonable evidence of the need for the leave. This will not include medical notes or medical information from the doctor of the family member.

1. **Family Caregiver Leave**

Employees of [Organization Name] are entitled to an unpaid leave of up to eight weeks per calendar year, per specified family member, to provide support or care in the event a medical practitioner certifies that they have a serious medical condition. As per the ESA, medical practitioners could include a physician, registered nurse, psychologist, psychiatrist, or nurse practitioner. [Organization Name] employees are entitled to this leave, regardless of the length of their term of employment.

Under the ESA, “family members” refers to:

* The employee’s spouse (including same-sex spouse);
* A parent, stepparent, or foster parent of the employee or the employee’s spouse;
* A child, stepchild, or foster child of the employee or the employee’s spouse;
* A grandparent or step-grandparent of the employee or the employee’s spouse;
* A grandchild or step-grandchild of the employee or the employee’s spouse;
* A spouse of a child of the employee;
* A brother or sister of the employee; or
* A relative of the employee who is dependent on the employee for care or assistance.

Employees of [Organization Name] do not need to produce the medical certificate prior to starting the leave but need to provide the certificate at some point during the leave. This certificate needs to include the name of the individual and that the individual has a serious medical condition but does not need to include medical specifics. Written notice is required for the family caregiver leave of absence but may be produced during the leave if the leave was not planned.

Family caregiver leave may last for up to eight weeks; however, the weeks may be taken either consecutively or separately. If an employee takes part of a week, this counts as a full week of the entitlement. Employees are required to provide written notice each time they are taking a week of leave.

1. **Family Medical Leave**

Employees of [Organization Name] are entitled to family medical leave (consisting of unpaid leave for a period of up to 28 weeks in a 52-week period) to provide care or support to family members who have a significant risk of death occurring within a period of 26 weeks. This leave is different from family caregiver leave because an employee is only eligible for family medical leave if the family member who has a serious medical condition has a significant risk of death occurring within a period of 26 weeks. These leaves are also separate from the critical illness leave (outlined later in this policy).

[Organization Name] employees are entitled to this leave, regardless of their length of service, for the care and support (e.g., emotional support or providing care) of the following family members (as per the ESA):

* The employee's spouse (including same-sex spouse);
* A parent, stepparent, or foster parent of the employee or the employee's spouse;
* A child, stepchild, or foster child of the employee or the employee's spouse;
* A brother, stepbrother, sister, or stepsister of the employee;
* A grandparent or step-grandparent of the employee or of the employee's spouse;
* A grandchild or step-grandchild of the employee or of the employee's spouse;
* A brother-in-law, step-brother-in-law, sister-in-law, or step-sister-in-law of the employee;
* A son-in-law or daughter-in-law of the employee or of the employee's spouse;
* An uncle or aunt of the employee or of the employee's spouse;
* A nephew or niece of the employee or of the employee's spouse;
* The spouse of the employee's grandchild, uncle, aunt, nephew, or niece; or
* A person who considers the employee to be like a family member (full details in the ESA).

Employees are not required to take all 28 weeks consecutively and may separate their weeks. However, if an employee takes part of a week, this will count as a full week of leave. If the family member does not pass away within the 26 weeks outlined in the original certificate, employees may continue on leave until 28 weeks have passed without needing to provide another medical certificate.

As per the ESA, there are three important periods of time relating to family medical leave:

* The 26-week period specified in the medical certificate within which the family member has a significant risk of death;
* The 52-week period that starts on the first day of the week in which the 26-week period specified in the medical certificate begins; and
* The 28 weeks of family medical leave.

The latest day an employee can remain on leave is:

* The last day of the week in which the family member dies;
* The last day of the week in which the 52-week period expires (a Saturday as per the ESA); or
* The last day of the 28 weeks of family medical leave.

It must be whichever is earlier.

[Organization Name] employees are required to provide written notice of the need for a family medical leave of absence. If the leave is required unexpectedly, employees may provide notice as soon as possible after having started the leave. Employees must provide notice for each week of the leave if they are taking them separately.

1. **Critical Illness Leave**

[Organization Name] employees are entitled to up to 37 weeks in a 52-week period of unpaid leave in the event they have a critically ill minor child or 17 weeks in the event of a critically ill adult family member (the term family member includes the same list as that of family medical leave). This leave may be taken to support or provide care for a minor child (includes a child, stepchild, foster child, or child who is under legal guardianship and is under 18 years of age). The term adult refers to a person over 18 years of age. Employees with at least six months of service with [Organization Name] are entitled to this leave.

Employees are required to provide a medical certificate from a qualified medical practitioner which sets out who requires care and support and establishes the period of time that the care and support may be required. The certificate does not have to be produced prior to embarking on the leave but must be produced at some point during the leave. Employees must also provide written notice of their intent to take the leave and a written plan indicating the specific weeks either in advance of the leave or as soon as possible after starting it. Changes may be made to the plan under special circumstances outlined in the ESA.

If a medical certificate issued by a qualified health practitioner sets out a period during which the person requires care or support of a family member that is less than 37 weeks (for a minor child) or less than 17 weeks (for an adult), the employee is entitled to take a leave only for the period set out in the certificate. An employee’s leave may be extended if the original certificate did not use up all of the leave, but another medical certificate must be issued.

Employees may take the weeks separately, or consecutively. If an employee only takes part of a week, this does qualify as a full week of leave unless the employee takes another day in the same week; these both qualify as only one week.

In the event of the death of the person for whom the employee is providing care, the leave ends at the end of the week in which the person passes away.

1. **Child Death Leave**

An employee of [Organization Name] who experiences the death of a child is entitled to an unpaid leave of absence for a period of up to 104 weeks. Eligibility for this leave begins after an employee has at least six months of service with [Organization Name]. “Child” refers to a child, a stepchild, a child under the legal guardianship of the employee, or a foster child less than 18 years of age. This leave must be taken within the 105-week period that started when the child passed away and only as a single period of leave (it may not be broken up).

A written notice and a plan for taking the leave must be provided to [Organization Name] as soon as possible either prior to beginning the leave or once the leave has started. As necessary, [Organization Name] may require reasonable evidence of the need for the leave.

1. **Crime-Related Child Death or Disappearance Leave**

Employees who have been employed with [Organization Name] for a minimum of six months and who experience the crime-related death or disappearance of a child are entitled to up to 104 weeks of unpaid leave. The crime does not have to be proven, but probable. If an employee was a party to the crime, they are not entitled to the leave. “Child” refers to a child, stepchild, or foster child who is under 18 years of age.

This leave must be taken within the 105-week period that started when the child disappeared and must be taken all at once (it may not be broken up). If there is a change in circumstance that occurs during the leave and it is no longer probable that it is the result of a crime, the employee’s entitlement to the leave ends. If the child is found alive during the leave, an employee is entitled to remain on leave for 14 days following the discovery of the child. If a child is found dead, the employee then has a separate entitlement to the child death leave.

A written notice and a plan for taking the leave must be provided to [Organization Name] as soon as possible either prior to beginning the leave or once the leave has started. The plan may be amended under special circumstances. As necessary, [Organization Name] may require reasonable evidence of the need for the leave.

1. **Domestic or Sexual Violence Leave**

Employees of [Organization Name] who have at least 13 weeks of service are entitled to this leave in the event an employee or an employee’s child has experienced or been threatened with sexual or domestic violence. This leave provides for up to ten days and 15 weeks in a calendar year of protected leave. “Child” refers to a child, stepchild, child under legal guardianship, or foster child who is under 18 years of age. The employee’s first five days of leave will be paid, and the remainder of the leave is unpaid.

The leave may be taken for any of the following:

* To seek medical attention for the employee or the child of the employee because of a physical or psychological injury or disability caused by the domestic or sexual violence;
* To access services from a victim services organization for the employee or the child of the employee;
* To have psychological or other professional counselling for the employee or the child of the employee;
* To move temporarily or permanently; or
* To seek legal or law enforcement assistance, including making a police report or getting ready for or participating in a family court, civil or criminal trial related to or resulting from the domestic or sexual violence.

Employees are not entitled to the leave if they committed the violence.

The entitlement to the ten days resets every calendar year, regardless of the month in which an employee began employment with [Organization Name]. These days may not be carried over if unused and an employee does not have to take all the days off in the same period. An employee may choose to take part days but in terms of the leave, these are counted as full days.

This entitlement extends to if an employee needs to take up to 15 weeks of domestic or sexual violence leave for the same reasons as those above. These weeks can be taken separately, or all at once. If an employee only uses part of a week, it does count as a full week of leave.

Note: Employees of [Organization Name] will be paid for the first five days whether they take the ten days or they take leave from their 15-week entitlement.

Employees are required to provide notice, either ahead of the leave or as soon as possible after they have started the leave (this notice may be provided orally), for either length of leave. In addition, employees are not required to take the ten days leave before starting on their 15-week entitlement. Employees may be requested to provide reasonable evidence of the need for the leave. 

1. **Unpaid Infectious Disease Emergency Leave**

Employees of [Organization Name] have the right to this leave in the event they are not able to perform their duties because of COVID-19. The only disease for which unpaid infectious disease emergency leave may be taken at this time is COVID‑19. Although the ESA was amended to include unpaid infectious disease emergency leave on March 19, 2020, the leave entitlements for COVID-19 are retroactive to January 25, 2020 and have no end date. Employees are entitled to take this unpaid leave so long as the conditions set out below are met.

Employees therefore have the right to take unpaid, job-protected infectious disease emergency leave if they are not performing the duties of their position because of specified reasons related to COVID-19 which are outlined in the ESA. Employees of [Organization Name] are required to provide notice that they will be starting the leave or provide notice as soon as possible if they are already on leave. This notice does not have to be in writing; it may be provided orally.

There is no specified limit to the number of days an employee can be on unpaid infectious disease emergency leave and unpaid infectious disease emergency leave absences do not have to be taken consecutively. Employees can take the leave in part days, full days, or periods of more than one day. Employees may also return after a part day if the time off was taken in relation to the reasons outlined in the ESA. The employee will be entitled to their regular rate of pay for any hours worked. Note that [Organization Name] may request reasonable evidence of the need for the leave from employees.

1. **Organ Donor Leave**

An employee of [Organization Name] who has been employed with the company for at least 13 weeks is entitled to organ donor leave if they are undergoing surgery to donate all or part of certain organs to a person. As necessary, organ donor leave may be extended past the original 13 weeks to an additional 13 weeks.

Under the ESA, “organ” refers to a kidney, liver, lung, pancreas, or small bowel. This leave generally begins on the date of the surgery unless another date is specified by the certificate. The leave may be extended for employees if a qualified medical practitioner asserts that the employee requires more time away from work. The maximum length of time for organ donor leave is 26 weeks.

An employee is required to provide at least two weeks’ written notice of the need for the original leave and if there is a need to extend the leave. An employee may also return early from leave provided they have two weeks’ written notice that they intend to do so. [Organization Name] reserves the right to request a medical certificate attesting to the need for the leave and this must be provided as soon as possible after it is requested.

1. **Reservist Leave**

A reservist employee who has worked for the company for at least two consecutive months and who is deployed to an operation is entitled to unpaid leave for the time that is necessary for them to be a part of the operation. The ESA sets out that an operation may include providing assistance in dealing with an emergency or its aftermath (including search and rescue operations, recovery from national disasters such as flood relief, military aid following ice storms, and aircraft crash recovery).

Employees can also take this leave if participating in Canadian Armed Forces military skills training, or recovering from physical or mental injuries that resulted from participation in a military operation or activity.

Employees are required to provide written notice of the beginning and end date of their leave and will be reinstated to their same position upon returning from leave. In the event that their position has been eliminated, [Organization Name] will reinstate them to a comparable position. As needed, [Organization Name] reserves the right to postpone an employee’s reinstatement for two weeks, or one pay period, as needed.    

1. **Jury Duty Leave**

[Organization Name] will provide unpaid job-protected time away from work as necessary for employees to participate in jury duty. Employees may be requested to provide evidence of the need for them to participate in jury duty.

1. **Voting Leave**

Eligible employees are entitled to take three (3) hours off to vote during work hours during federal and provincial elections. The leave will be applicable where an employee’s hours of work prevent them from having three consecutive hours to vote. The hours will be paid. Note that voting is open for 12 hours.