

FTR Now

Three New Leaves of Absence Added to the *Employment Standards Act, 2000* Effective October 29, 2014

Date: April 30, 2014

On April 29, 2014, the Ontario Legislature passed Bill 21, the *Employment Standards Amendment Act (Leaves to Help Families), 2014*. Royal Assent was given on the same day. Bill 21 will amend the *Employment Standards Act, 2000* (the “Act”) to add three new job-protected leaves of absence effective October 29, 2014 – family caregiver leave, critically ill child care leave and crime-related child death or disappearance leave.

The new leaves are in addition to existing leaves of absence available to employees under the *Act*, and can be used in conjunction with those other leaves if the circumstances of the leave qualify for more than one type. A list of leaves now available under the *Act* is appended below.

Bill 21 was amended during the Committee review process. The most significant change that will be of concern to employers is that both the new family caregiver leave and the new critically ill child care leave will permit employees to take the leaves in periods of less than full weeks. This may create scheduling difficulties for employers should an employee be in the unfortunate position of needing to make use of the leave.

FAMILY CAREGIVER LEAVE

Employees will be entitled to up to eight weeks of leave per calendar year to provide care or support to specified family members (not including aunts, uncles, nieces, nephews or cousins, but including the potentially broad category of “a relative who is dependent on the employee for care or assistance”), where a qualified medical practitioner has issued a certificate stating that the family member has a “serious medical condition.”

Employees are not required to take the leave in complete weeks and no minimum period of service is required before employees become entitled to take this leave. Employees must notify their employer in writing of their intent to take the leave, and employers are entitled to request copies of the medical certificate. “Serious medical condition” has not been defined; however, the Bill does state that it can include chronic or episodic conditions.

CRITICALLY ILL CHILD CARE LEAVE

Employees will be entitled to up to 37 weeks of leave to provide care or support to a critically ill child of the employee. The leave is not required to be taken in complete weeks. To qualify for the leave, the employee must have been employed by his or her employer for at least six consecutive months. “Child” for the purposes of this leave includes a child, step-child, foster child, or a child who is under legal guardianship, and who is under 18 years of age.

In addition, the child in question must meet the definition of “critically ill” – i.e. his or her baseline state of health has significantly changed and his or her life is at risk as a result of an illness or injury. Whether a child meets this definition is to be determined by a qualified medical practitioner, who is required to provide a certificate which states that the child is critically ill requiring the care or support of one or more parents and sets out the period in which the care or support is required.

Employees intending to take this leave must provide their employer with both notification in writing as well as a written plan that sets out the weeks in which the leave will be taken. If requested, the employer is entitled to a copy of the medical certificate qualifying the employee for the leave. Changes in the plan’s timelines must be made known to the employer in writing, and are permissible only in the event that all of the requirements of the section remain met. The Bill also contains further provisions regarding extending the leave, limitation periods, and courses of action to take in the event that more than one child is critically ill or a child dies.

CRIME-RELATED CHILD DEATH OR DISAPPEARANCE LEAVE

Bill 21 creates a new category of leave of up to 52 or 104 weeks for the disappearance or death of a child that is a result of a crime. “Child” is defined to include a child, step-child, or foster child who is under 18 years of age. “Crime” is defined as an offence under the *Criminal Code*, except as prescribed. In order to be entitled to the leave, an employee must have been employed by the employer for a minimum of six consecutive months.

Employees will be entitled to up to 104 weeks of absence in the case of a child’s death, commencing the week the child dies, if the death of the employee’s child is the probable result of crime. In the case of a disappearance due to a probable crime, employees will be entitled to 52 weeks of leave, commencing the week the child went missing. The Bill contains further provisions in the event that a missing child is found dead or alive or it is probable that the parent or child is involved in the crime.

Employees must advise their employer in writing of their intent to take the leave and provide a written plan of when they intend to take the leave. The leave is generally required to be taken in a single period, subject to limited exceptions.

EMPLOYMENT INSURANCE

Employees entitled to take critically ill child care leave may also qualify for Employment Insurance

("EI") special benefits for Parents of Critically Ill Children ("PCIC"). However, the EI benefits do not perfectly mirror the leave entitlements under the *Act*. There are different eligibility criteria (including a requirement for a minimum number of qualifying insurable hours), and if the employee chooses not to take the leave in full weeks, he or she may not qualify for EI benefits depending on his or her income.

Employees who are entitled to take the crime-related child death or disappearance leave may be entitled to a Federal Income Support for Parents of Murdered or Missing Children (PMMC) grant from the federal government.

Employees would be best advised to consult directly with Service Canada about their entitlements to EI benefits or to a PMMC grant during the period of the leave.

CONCLUDING COMMENTS

As noted at the outset, the new leaves of absence will come into force on October 29, 2014. Employers will need to consider how to integrate the new leaves into existing leave entitlements available to your employees under your organization's policies and contracts, including collective agreements.

For more information on how the new leaves may impact your organization, please contact [Jodi Gallagher Healy](#) or [your regular Hicks Morley lawyer](#).

LEAVES OF ABSENCE UNDER THE *EMPLOYMENT STANDARDS ACT, 2000*

- Pregnancy Leave
- Parental Leave
- Personal Emergency Leave
- Family Medical Leave
- Organ Donor Leave
- Family Caregiver Leave
- Critically Ill Child Care Leave
- Crime-Related Child Death or Disappearance Leave
- Reservist Leave
- Emergency Leave, Declared Emergencies

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and



may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©