

Compassionate care leave added to EI Act, *Canada Labour Code*

Bill C-28, an Act implementing a number of provisions from the February 2003 federal budget, received Royal Assent on June 19, 2003. The Bill amends the *Employment Insurance Act (EI Act)* and *Canada Labour Code* to provide new compassionate care leave and benefits. The entitlement to the new benefits begins on January 4, 2004.

The amendments to the *EI Act* provide employees with six weeks of benefits to care for seriously ill family members. "Family member" is defined as:

- a spouse or common-law partner of the employee
- a child of the employee or of the employee's spouse or common-law partner
- a parent of the employee or a spouse or common-law partner of the parent
- any other person defined as a "family member" in subsequent regulations

Note that a parent of the employee's spouse or common-law partner is not included in the list as it currently stands.

ELIGIBILITY

To be eligible, the employee must produce a certificate from a medical doctor or, in circumstances prescribed in regulations, other health practitioners, stating that the family member has a serious medical condition with a "significant risk of death within 26 weeks" and that the family member requires the care or support of one or more other family members. The other prerequisite for eligibility is that the employee accumulate at least 600 hours of insurable employment during the qualifying period.

While more than one certificate may be obtained in respect of the same family member, only six weeks of benefits can be paid for each 26-week period. This means that an employee who takes off one six-week period would have to wait another 20 weeks before obtaining a second certificate. The significance of this restriction is that, for employees working a 40 hour week, the period required in order to accumulate 600 hours of insurable employment is 15 weeks, and therefore employees seeking a second compassionate leave in respect of the same family member would have to wait five extra weeks.

BENEFITS

Eligible employees must serve out the two-week waiting period before the benefits commence. The employee need not take the entire benefit period for six consecutive weeks, but may divide up the time in which the leave is taken, so long as the time is taken within 26 weeks of the commencement of the leave. Where the employer provides a Supplemental Unemployment Benefit (SUB) plan, employees will be able to receive a SUB

at the same time they receive EI benefits for compassionate care.

The benefit period in respect of one family member can be shared out between different employees, and if this is done, only one waiting period will need to be served. Employees sharing the benefits may divide them up by agreement. If no agreement is arrived at, the benefit period will be shared out under rules which are to be prescribed. Other than through sharing the benefit period, multiple individuals are not permitted to make separate claims for benefits in respect of the same family member.

CANADA LABOUR CODE

Complementary amendments are to be made to the *Canada Labour Code*, which would provide for compassionate care leave of up to eight week. The eight-week period includes the six-week benefit period provided under the *EI Act* plus the two-week waiting period. This means that federally regulated employees taking advantage of the *EI Act* benefits will not risk losing their employment because they took the leave.

In Our View

In respect of the Canadian work force governed by provincial employment standards legislation, there is no such job protection, other than for those in Quebec. Therefore, unless other provinces follow suit to provide for job-protected leave in the circumstances contemplated by the *EI Act*, the number of employees applying for the benefits may be limited.

If other provinces decide to provide their own benefits for compassionate care, the amendments to the *EI Act* provide that the federal benefits may be reduced or eliminated as prescribed.

For further information, please contact [Carole Piette](#) at (613) 940-2733.

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