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Bill 239

An Act to amend the Employment Standards Act, 2000 with respect to paid leave

Ms P. Sattler

Private Member's Bill

1st Reading December 8, 2020

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill makes the following amendments to the *Employment Standards Act, 2000*:

1. Sections 50, 50.0.1 and 50.0.2, which deal with sick leave, family responsibility leave and bereavement leave, respectively, are replaced with a new section 50 that provides for personal emergency leave due to a personal illness, injury or medical emergency, the death, illness, injury or medical emergency of a listed family member or certain urgent matters. Under the new section 50, an employee is entitled to seven days of paid leave and three days of unpaid leave in a calendar year.
2. Currently, section 50.1 of the Act provides for unpaid leave in situations related to declared emergencies and infectious disease emergencies. That section is amended to provide that employees are entitled to take the first 14 days of any such leave in a calendar year as paid leave.
3. The Act is also amended to require for the establishment of a financial support program for employers to cover the costs of paid leave under section 50.1 and to help employers adapt to any increased costs associated with paid leave under section 50, as those provisions are amended by the Bill. Payment may only be made if the Legislature has appropriated money for the purpose of the program.

An Act to amend the Employment Standards Act, 2000 with respect to paid leave

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Sections 50, 50.0.1 and 50.0.2 of the *Employment Standards Act, 2000* are repealed and the following substituted:

PERSONAL EMERGENCY LEAVE**Personal emergency leave****Definition**

50 (1) In this section,

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician, a registered nurse or a psychologist under the laws of the jurisdiction in which care or treatment is provided to the employee or to an individual described in subsection (3), or
- (b) in the prescribed circumstances, a member of a prescribed class of health practitioners.

Personal emergency leave

(2) An employee is entitled to a leave of absence because of any of the following:

1. A personal illness, injury or medical emergency.
2. The death, illness, injury or medical emergency of an individual described in subsection (3).
3. An urgent matter that concerns an individual described in subsection (3).

Same

(3) Paragraphs 2 and 3 of subsection (2) apply with respect to the following individuals:

1. The employee’s spouse.
2. A parent, step-parent or foster parent of the employee or the employee’s spouse.
3. A child, step-child or foster child of the employee or the employee’s spouse.
4. A child who is under legal guardianship of the employee or the employee’s spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee’s spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee’s spouse.
9. An uncle or aunt of the employee or the employee’s spouse.
10. A nephew or niece of the employee or the employee’s spouse.
11. The spouse of the employee’s grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purposes of this section.

Advising employer

(4) An employee who wishes to take leave under this section shall advise his or her employer that he or she will be doing so.

Same

(5) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Limit

(6) Subject to subsection (7), an employee is entitled to take a total of seven days of paid leave and three days of unpaid leave under this section in each calendar year.

Same, entitlement to paid leave

(7) If an employee has been employed by an employer for less than one week, the following rules apply:

1. The employee is not entitled to paid days of leave under this section.
2. Once the employee has been employed by the employer for one week or longer, the employee is entitled to paid days of leave under subsection (6), and any unpaid days of leave that the employee has already taken in the calendar year shall be counted against the employee's entitlement under that subsection.
3. Subsection (9) does not apply until the employee has been employed by the employer for one week or longer.

Leave deemed to be taken in entire days

(8) If an employee takes any part of a day as paid or unpaid leave under this section, the employer may deem the employee to have taken one day of paid or unpaid leave on that day, as applicable, for the purposes of subsection (6) or (7).

Paid days first

(9) The seven paid days must be taken first in a calendar year before any of the unpaid days can be taken under this section.

Personal emergency leave pay

(10) Subject to subsections (11) and (12), if an employee takes a paid day of leave under this section, the employer shall pay the employee,

- (a) either,
 - (i) the wages the employee would have earned had they not taken the leave, or
 - (ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

Personal emergency leave where higher rate of wages

(11) If a paid day of leave under this section falls on a day or at a time of day when overtime pay, a shift premium or both would be payable by the employer,

- (a) the employee is not entitled to more than his or her regular rate for any leave taken under this section; and
- (b) the employee is not entitled to the shift premium for any leave taken under this section.

Personal emergency leave on public holiday

(12) If a paid day of leave under this section falls on a public holiday, the employee is not entitled to premium pay for any leave taken under this section.

Evidence

(13) Subject to subsection (14), an employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

Same

(14) An employer shall not require an employee to provide a certificate from a qualified health practitioner as evidence under subsection (13).

2 (1) Subsection 50.1 (1.1) of the Act is amended by striking out “without pay” in the portion before clause (a).

(2) Section 50.1 of the Act is amended by adding the following subsections:

Paid leave

(1.2) An employee who takes a leave of absence under this section is entitled to take a total of 14 days of paid leave in each calendar year, with the remainder of any leave of absence to which the employee is entitled being unpaid.

Same

(1.3) For greater certainty, the entitlement to paid leave referred to in subsection (1.2) is in addition to any other entitlement to paid leave under section 50.

Paid days first

(1.4) The 14 paid days must be taken first in a calendar year before any of the unpaid days can be taken under this section.

Same

(1.5) Subsections 50 (7), (8), (10), (11) and (12) apply, with necessary modifications, to paid leave under this section.

3 The Act is amended by adding the following section:**Financial support program**

53.2 (1) The Minister shall implement a financial support program as described in this section.

Purpose of the program, cost of emergency leave: declared emergencies and infectious disease emergencies

(2) The purpose of the financial support program is to provide financial support to employers to cover the costs associated with paid leave under section 50.1.

Same, cost of personal emergency leave

(3) The financial support program has as an additional purpose: the provision of temporary financial support to employers to help them adapt to any increased costs associated with paid leave under section 50, as established by the amendments to this Act made by the *Stay Home If You Are Sick Act, 2020*.

Same

(4) Subject to subsection (5), the Minister may provide funding to employers under the financial support program for the purposes referred to in subsections (2) and (3).

Appropriation required

(5) The Minister may only make a payment under subsection (4) if money has been appropriated for that purpose by the Legislature.

Commencement

4 This Act comes into force on the day it receives Royal Assent.

Short title

5 The short title of this Act is the *Stay Home If You Are Sick Act, 2020*.