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Bill 247

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

Mr. M. Coteau

Private Member's Bill

1st Reading February 17, 2021

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Employment Standards Act, 2000* to require employers to provide personal emergency leave to their employees.

Currently, sections 50, 50.0.1 and 50.0.2 of the Act provide for sick leave, family responsibility leave and bereavement leave. These sections are repealed and replaced with a new section 50 which provides for personal emergency leave. This new personal emergency leave provision provides up to 10 paid days of leave per year for personal illnesses, injuries or medical emergencies and illnesses, injuries, medical emergencies and certain urgent matters experienced by specified family members.

Employers may require their employees to provide evidence of entitlement to this leave but are prohibited from requiring certificates from a qualified health practitioner.

**An Act to amend the Employment Standards Act, 2000
with respect to personal emergency leave**

Preamble

Paid personal emergency leave allows employers and employees alike to succeed, especially during times of public health emergencies.

Employees deserve to be able to do their jobs, care for themselves and their families and to stay safe and healthy. Employers deserve workplaces that are productive and kept safe.

Time off to get well or to care for an ill loved one is a matter of dignity and public safety and is, ultimately, a key to productivity. Paid personal emergency leave ensures that workplaces remain open and prevents the spread of illnesses by giving employees time off to get well or to care for a loved one.

Paid personal emergency leave is necessary to support employers and employees.

The Government of Ontario is committed to working with small business owners to facilitate this change and to support employers and employees alike.

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

1 (1) Subsection 1 (1) of the *Employment Standards Act, 2000* is amended by adding the following definition:

“personal emergency leave pay” means pay for any paid days of leave taken under section 50; (“indemnité de congé d’urgence personnelle”)

(2) The definition of “regular wages” in subsection 1 (1) of the Act is repealed and the following substituted:

“regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, personal emergency leave pay, termination pay, severance pay and termination of assignment pay and entitlements under a provision of an employee’s contract of employment that under subsection 5 (2) prevail over Part VIII, Part X, Part XI, section 49.7, section 50, Part XV or section 74.10.1; (“salaire normal”)

2 Subsection 15 (7) of the Act is amended by striking out “sick leave, family responsibility leave, bereavement leave” and substituting “personal emergency leave”.

3 Sections 50, 50.0.1 and 50.0.2 of the Act 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 who has been employed by an employer for at least one week 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 of the employee's spouse.
3. A child, step-child or foster child of the employee or of the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance.

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 10 paid days of leave under this section in each calendar year.

Same, employed for less than one week

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

1. The employee is entitled to unpaid days of leave under this section, rather than paid days of leave.
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 this section, and any unpaid days of leave that the employee has already taken in the calendar year shall be counted against the employee's entitlement.

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).

Personal emergency leave pay

(9) Subject to subsections (10) and (11), 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

(10) 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

(11) 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

(12) Subject to subsection (13), 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

(13) An employer shall not require an employee to provide a certificate from a qualified health practitioner as evidence under subsection (12).

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 *Paid Personal Emergency Leave Now Act, 2021*.