

Compassionate Care Leave

The *Employment Standards Act* requires employers to allow employees to take unpaid compassionate care leave to provide care and support to a family member in situations where the family member is gravely ill with a significant risk of death within 26 weeks.

Entitlement to the leave

Employees are entitled to take up to eight weeks of compassionate care leave within a 26-week period.

All employees are entitled to take this **unpaid** leave. An employee does not have to work for a specified period to qualify for leave. “Family member” means someone who is:

- in relation to an employee:
 - a member of an employee’s immediate family
 - an employee’s aunt or uncle, niece or nephew, current or former foster parent, ward or guardian
 - the spouse of an employee’s sibling or step-sibling, child or step-child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster child or guardian
- in relation to an employee’s spouse:
 - the spouse’s parent or step-parent, sibling or step-sibling, child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster parent, or current or former ward; and

- anyone who is considered to be like a close relative regardless of marriage or common law partnership.

Setting up and starting leave

An employee must get a certificate from a medical practitioner stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

Once the employee requests leave from the employer, the employee is entitled to the leave. There is no requirement for the employee to make the request in writing or to give the employer advance notice. However, the employee may want to speak to the employer about the possible need for a leave when they first become aware of it.

If the employee has not obtained a certificate the first time leave is required, the employee is still entitled to the leave. The employee would have to give the employer the certificate as soon as it is reasonably possible to do so.

The 26-week period begins when a medical practitioner issues a certificate to the employee, or the first time the employee takes a leave, whichever comes first. If the employee takes a leave before getting the certificate, that leave will be included in the 26-week period covered by the certificate.

Leaves must be taken in units of at least a week. A “week” starts on Sunday. This means that the 26-week period will start to run from the Sunday of the week that the certificate is issued, or from the Sunday of the week that the employee first took leave. It also means that if an employee needs two days of leave in the same week, a week of leave will be deemed to have been used.

Ending the leave

The leave can come to an end in three ways, whichever comes first.

- On the last day of the week in which the family member dies.
- After the employee has had eight weeks off within the period of 26 weeks. The employer will not have to grant any more leave during that 26 week period.
- Twenty-six weeks after the period begins. Even if the employee has not taken eight weeks of leave, the employer is not required to grant any more leave until the employee provides another medical certificate.

If the family member does not die within the 26-week period, an employee may take a further leave after obtaining a new medical certificate stating that the family member has a serious medical condition with significant risk of death within 26 weeks.

Employment considered continuous

An employee who is on compassionate care leave is considered to be continuously employed for the purposes of calculating annual vacation and termination entitlements, as well as for pension, medical or other plans of benefit to the employee.

An employer must continue to make payments to any such plans, unless the employee chooses not to continue with his or her share of the cost of a plan. The employee is also entitled to all increases in wages and benefits that the employee would have received if the leave had not been taken.

