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The Employers' *Edge*

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Family Medical Leave Now Available in Ontario

The Employment Standards Amendment Act (Family Medical Leave), 2004 was quietly passed and proclaimed in force by the Ontario Government on June 29, 2004. These amendments to the *Employment Standards Act, 2000* ("ESA") provide Ontario workers with up to eight (8) weeks of job-protected leave to provide care or support for a gravely ill family member at significant risk of dying within a twenty-six (26) week period.

What is Family Medical Leave?

Family Medical Leave is a job-protected leave (similar to Emergency and Pregnancy/Parental leaves) under the ESA of up to eight (8) weeks in a twenty-six (26) week period. The eight (8) weeks do not need to be taken consecutively, but they must be taken in one (1) week periods.

Family Medical Leave applies in circumstances where an employee is asking for time off to provide care or support to a "specified family member" for whom a "qualified health practitioner" has issued a certificate stating that the family member has a serious medical condition and there is a significant risk of death occurring within a period of 26 weeks.

Who is Eligible?

All employees (including full-time, part-time, contract and casuals) are eligible for Family Medical Leave in the above circumstances. Unlike Pregnancy and Parental Leave, the em-

ployee need not have worked any particular period of time before qualifying. Additionally, unlike Emergency Leave, there is no requirement that the employer employ any specified number of employees before its employees become eligible.

Two or more employees in the same family may qualify for Family Medical Leave. The only caveat is that the eight (8) weeks must be shared between them. We have reviewed the legislation and it is unclear to us how this requirement can be effectively policed in circumstances where the family members requesting the leave work for different employers.

What is Required?

There are two (2) requirements for invoking Family Medical Leave. First, the employee must make the request in writing. Second, if the employer requests, the employee must produce a certificate from a "qualified health practitioner" stating that the family member has a serious medical condition and is at a significant risk of death within a 26 week period.

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Our lawyers and support staff use the most up-to-date technological resources to increase our efficiency, remain current on proposed legislative changes, access an extensive network of legal databases and other resources, and maintain our own comprehensive legal precedent system to ensure our clients receive the best legal representation available.

We are committed to providing timely and cost-effective legal services to employers. We also offer flexible and creative fee arrangements intended to make the cost of legal services more predictable.

“The Employers’ Choice”

When the need to take the leave arises urgently, neither the written request nor the certificate need be produced prior to the employee commencing the leave. Rather, the employee must produce the written request and medical certificate “as soon as possible” thereafter.

Qualified Health Practitioner Defined

A qualified health practitioner is defined as a person who is qualified to practice medicine under the laws of the jurisdiction in which the care or treatment of the family member is being provided. In Ontario, this means that only licensed medical doctors can issue the certificates.

The determination of whether the family member is “seriously ill” and is at “significant risk of dying within a 26 week period” is left to the discretion of the qualified health practitioner. Therefore, it appears to us that the legislation is intended compel employers to accept the attending physician’s judgment on this issue.

Specified Family Members

The specified family members are:

a) The employee’s spouse (including same-sex spouse);

b) A parent, step-parent or foster parent of the employee;

c) A child, step-child or foster child of the employee or the employee’s spouse.

Coordination with E.I. Benefits

Under federal employment insurance legislation (“E.I.”), employees may qualify for Compassionate Care benefits of up to six (6) weeks. The eight (8) weeks of job-protected leave under the ESA covers the two (2) week E.I. waiting period and the six (6) week Compassionate Care benefit period. Subject to other E.I. eligibility requirements, the right to take Family Medical Leave under the ESA is intended to correspond with the circumstance where employees may claim E.I. Compassionate Care benefits.

Family Medical Leave and Emergency Leave

Family Medical Leave and Emergency Leave are treated as separate leave entitlements under the ESA. Therefore, in some instances, an employee whose employer regularly employs more than 50 employees could be entitled to take 10 days Emergency Leave and 8 weeks Family Medical Leave with respect to the illness of the same family member.

For more detailed information about Family Medical Leave under the ESA, please feel free to consult with any of our lawyers or you may check the Ministry of Labour’s website at www.gov.on.ca/lab
