

Federally-Regulated Employees Soon Entitled to 10 Days of Medical Leave with Pay

November 29, 2022

Effective **December 1, 2022**, employees in the federal sector will be entitled to 10 days of medical leave with pay each year. The “year” in which the 10 days are earned is the calendar year, or an alternate year period if the employer uses an alternate year for vacation entitlement purposes.

This briefing note outlines the key features of this new entitlement.

Medical leave with Pay

Medical leave with pay can be taken for an employee’s personal illness or injury, medical appointment during working hours, quarantine, or organ or tissue donation from the employee. An employee can only access medical leave with pay for a day the employee was otherwise scheduled to work or a day the employer reasonably expected the employee to be available for work.

Medical leave with pay will be earned as follows:

Existing Employee

Effective December 1, 2022, each federally-regulated employee will be entitled to three days of medical leave with pay after 30 days of continuous employment. After the initial 30-day qualifying period, an employee will earn one additional day of medical leave with pay on the first day of the month following a completed calendar month of employment, to a maximum of 10 days of medical leave with pay per year.

As such, assuming an existing employee was hired prior to December 1, 2022, they will have earned three days of medical leave with pay effective **December 31, 2022** and thereafter will earn one day of medical leave with pay day on **February 1, 2023** and on the first of the month thereafter, to a maximum of 10 days a year.

New Employees

A new employee hired **after** December 1, 2022 will be entitled to three days of medical leave with pay after 30 days of continuous employment. After the initial 30-day qualifying period, an employee will earn one additional day of medical leave with pay on the first day of the month following a completed calendar month of employment, to a maximum of 10 days of medical leave with pay per year.

For example, if an employee is hired on March 17, 2023, they will be entitled to three days of medical leave with pay as of April 16, 2023. They will then earn their first additional day of medical leave with pay on **June 1, 2023** after they have one completed calendar month of employment (in this case, May 2023).

Calculation of Medical Leave with Pay

An employee is entitled to be paid their regular rate of wages for their normal hours of work for each day of medical leave with pay. The pay is considered “wages” for the purposes of the *Canada Labour Code*.

If an employee’s hours vary or the employee is paid on a basis other than time, the employee’s pay will be the average of the employee’s daily earnings (excluding overtime) for the 20 days preceding the first day of the medical leave. A collective agreement can provide a different calculation of this paid leave entitlement.

Carry-Over Entitlement

An employee can carry-over any earned but unused medical leave with pay from one year to the next. For example, for an employer that uses the calendar year to determine an employee’s medical leave with pay entitlement, it is expected that most employees will carry-over into 2023 the three paid days earned on December 31, 2022, given there is not sufficient time in 2022 for those days to be taken.

However, any paid leave carried over will reduce the amount of paid leave the employee will earn in the carry-over year. In other words, an employee is entitled to a maximum of ten medical leave with pay days in any year, regardless of whether they are earned or carried over. For example, if an employee carries over four days of medical leave with pay from 2023 into 2024, the employee will only be entitled to earn an additional six days of medical leave with pay in 2024.

Proof of Medical Leave Entitlement

An employer may require a medical certificate to confirm an employee’s incapacity to work **only if** the employee has used five or more consecutive medical leave with pay days. The employer must put its request for this information in writing no later than 15 days after the employee has returned from leave.

Interaction Between Medical Leave with Pay and Existing Benefits

If an employee is already entitled to paid leave under an existing employment agreement or collective agreement (“contractual sick leave”), the existing contractual entitlement may reduce or eliminate the statutory entitlement to medical leave with pay (subject to the conditions set out below). There is no “stacking” of similar benefits.

Any paid sick leave under an employment agreement or collective agreement will reduce an employee’s statutory entitlement to medical leave with pay **if**:

- The employee can take the contractual sick leave for **one or more** of the reasons the employee would be entitled to medical leave with pay
- The employee may take the contractual sick leave in one or more period
- The employer does not require a medical certificate to access the contractual sick leave if the employee is absent for fewer than five consecutive days, **and**
- The employee is entitled to:
 - Receive their regular wages for each day of the contractual sick leave

- Maintain and accumulate pension, health and disability benefits and seniority during the contractual sick leave, **and**
- Reinstatement at the end of the contractual sick leave.

If an employer provides a contractual leave that is similar in scope and purpose but does not comply with all of these requirements, this does not necessarily mean an employee will be entitled to “stack” their medical leave entitlements. Rather, the employer will need to ensure it “tops up” its contractual sick leave to comply with the statutory medical leave with pay entitlement.

For example, if an employee is entitled to contractual sick leave of 75% of an employee’s regular wage rate, the employee will be entitled to the additional 25% of regular wages for the medical leave day taken. This would ensure the employer complies with both its statutory and contractual obligation.

However, if an employer provides a contractual paid leave that is not similar in scope (even if an employee could access it for medical reasons if they chose), an employer cannot count those paid leave days against the statutory medical leave with pay entitlement. For example, if an employee is entitled to two paid personal leave days, these will not reduce an employee’s entitlement to 10 days of statutory medical leave with pay.

Record Keeping Obligations

An employer must retain, for at least **three years**, the following records with respect to an employee’s medical leave with pay:

- The amounts paid each pay day (included as earnings in a manner similar to other paid entitlements under the *Canada Labour Code*)
- The dates on which the medical leave commenced and ended
- The year of employment in which the leave was earned
- The number of days of leave carried over from any prior year
- A copy of any written request for a medical certificate to verify incapacity to work
- A copy of any medical certificate submitted by an employee to verify incapacity to work

To learn more and for assistance, contact your Sherrard Kuzz lawyer or info@sherrardkuzz.com.

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