

## **Employment Q&A: Medical leave and benefits**

Following is a brief synopsis outlining some of the highlights of the new legislation for Family Medical Leave under the *Employment Standards Amendment Act 2004* and the Compassionate Care Benefits under the *Employment Insurance Act*.

### **What is Family Medical Leave?**

On June 29, 2004, legislation for Family Medical Leave came into effect in Ontario under the *Employment Standards Amendment Act* (ESA), which provides up to eight weeks of unpaid, job-protected leave in a 26 week period.

Family Medical Leave may be taken to provide care and support to a family member, for whom a qualified health practitioner has issued a certificate indicating the family member has a significant risk of death within a period of 26 weeks.

All employees, whether full-time, part-time, permanent or contract, regardless of their length of employment, are entitled to Family Medical Leave, providing they are covered by the ESA.

Family members who qualify for Family Medical Leave are:

- the employee's spouse (including same-sex spouse)
- a parent, step-parent or foster parent of the employee
- a child, step-child or foster child of the employee or employee's spouse

Family Medical leave can last up to eight weeks and does not need to be taken consecutively but must be taken in one week increments. It can also be shared with other family members. For example, if one spouse took six weeks of Family Medical Leave to care for his or her child, the other spouse would be able to take the remaining two weeks of the Family Medical leave.

Furthermore, if employees have taken a leave to care for a family member who has not passed away in the 26 week period and another medical certificate is issued stating the family member is at risk of death within 26 weeks, there is entitlement to an additional eight weeks of Family Medical Leave.

### **Are employment insurance benefits available to an employee who takes Family Medical Leave?**

Yes, in some cases. As of January 4, 2004, in Canada under the *Employment Insurance Act (EI)*, Compassionate Care Benefits may be paid for up to six weeks to EI eligible employees who have to be absent from work to provide support and care to a family member at risk of death within 26 weeks.

The right to take time off work under the Family Medical Leave provisions of the provincial ESA is not the same as the right to the payment of Compassionate Care Benefits under the federal EI. The Ontario Ministry of Labour cannot assist an employee to obtain the Compassionate Care Benefits.

To be eligible, the employee must apply to Human Resources Skills Development Canada and show that

- regular weekly earnings from work have decreased by more than 40 per cent, and
- 600 insured hours have been accumulated in the last 52 weeks or since the start of the employee's last claim. This period is called the qualifying period.

A family member is considered to be the employee's

- child or the spouse's child or common law partner's child
- wife/husband or common law partner
- father/mother
- father's wife/mother's husband
- father's/mother's common law partner

Medical proof is required. Employees must complete the form called "Medical Certificate for Employment Insurance Compassionate Care Benefits" and have it signed by a medical doctor. As with the Family Medical leave, Compassionate Care Benefits can be shared with other family members. Employees can share the six weeks with other family members who must also apply and are eligible for these benefits.