Guidelines for Drafting and Implementing Bereavement Leave, Compassionate Leave, and Family Responsibility Leave Policies

Prepared by the Equality, Equity and Diversity Committee
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I. Introduction

This document provides information and guidance on short-term leave policies that legal employers can provide in their workplace. These policies are aimed at helping workers achieve work-life balance, a contemporary concern in Canadian society. Work-life balance conflicts occur when workers find that they do not have enough time to meet their professional, family, personal and community responsibilities. The result is often missed days at work, unproductive time spent at work, and in some cases exiting the workforce altogether. The impact of work-life imbalance hurts employees, the organizations they work for, and the general well being of Canadian society.

In response to the work-life imbalance, employers are increasingly offering leave policies to alleviate the stress in the workplace. There are three types of leave that will be discussed in this document. It is worth noting at the outset that the terminology for these short-term leaves is used inconsistently in the literature and legislation. For the purposes of this document the following terms will be used to refer to three distinct types of leave:

- **Bereavement leave** refers to a leave surrounding a death;
- **Compassionate leave** refers to a leave to care for a family member’s health needs;
- **Family responsibility leave** refers to a leave to attend to important domestic concerns.

The leaves are often incorporated into existing personnel or benefit policies; they can range from one day to eight-weeks depending on the situation. There can be a combination of paid and unpaid, or fully paid or fully unpaid leave in each of these categories.

This document is intended to assist legal workplace employers in developing their policies on bereavement, compassionate and family responsibility leave to maintain a productive, committed and loyal workforce. Offering these types of short-term leaves will prevent law firms from losing valuable personnel in whom they have invested time and money in training. Currently, the leaves are not mandated by the Alberta Employment Standards Code. There are a number of provinces that do have short-term leaves as a legal requirement signaling a movement in that direction. Also beginning in January 2004, the federal Employment Insurance program will provide compassionate leave benefits for up to six weeks for employees who leave work to help care for a gravely ill family member.

This document details the legal requirements and human resources considerations for these short-term leave policies. The information provided is meant as a guideline for firms to develop their own policies to fit their firm. There is sample clause for each type of leave included in Section VI. We hope that these guidelines will help firms as they consider developing and implementing their human resources policies.

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The mandate of the Equality, Equity and Diversity Committee is to help the profession identify, understand and address equality, diversity and equity issues. The committee consists of benchers of the law society, designates from both law schools in the province and representatives from the Canadian Bar Association. As part of its mandate, the Committee has developed guidelines and sample policies in key areas, such as interviewing practices, parental leave and gender inclusive communications. These policies are available on the Law Society of Alberta website at [http://www.lawsocietyalberta.com](http://www.lawsocietyalberta.com). The Committee thanks summer student Rosalia Nastasi for her assistance in drafting this policy.
II. Work-life Balance – the case for flexible policies

The Legal Profession - The legal profession is particularly susceptible to work-life balance issues because of the long hours demanded by the profession. Surveys of the Canadian legal profession in recent years have found that work-life balance is now the number one concern for both male and female lawyers.\(^2\) The issue is acute for many female lawyers who are trying to balance work responsibilities with child-rearing responsibilities. Many female lawyers leave private firms for other legal opportunities where the hours and child-care benefits may be more flexible. Women make up 40% of the lawyers in non-private practice versus 26% of the lawyers in private practice.\(^3\) Another indicator of the impact of work-life struggles on female lawyers is their rate of attrition from the profession. A disproportionate number of women are leaving the legal profession. For example, in B.C., 29% of all practising lawyers in 2001 were women, however, of the total number of lawyers who left the profession 42% were women.\(^4\)

The Canadian Workforce – The factors that have led to work-life imbalance in Canadian society are numerous. The baby boom generation is taking on eldercare responsibilities while often still providing for grown children at home. The labour force now has an increasing number of people who have significant dependent care responsibilities. As well there is an increased amount of non-standard forms of employment in terms of timing, hours and benefits. All of these have led to an increasing need for workers to have a flexible workplace.\(^5\) Some further statistics help to illustrate the importance of the issue:\(^6\)

- Eldercare is a growing issue as the population ages with 25% of employees now caring for an elderly family member and 15% of employees caring for both children and an older family member (the sandwich generation)
- Women report higher levels of work-life conflict than men and spend more time in unpaid childcare and domestic work
- Two recent national-level studies found that roughly half of Canadian employees are experiencing work-life conflict, a marked increase since the 1990’s

Employers and legislators have begun to implement measures to allow more flexibility in the workplace in response to the conflicting pressures that employees face. Along with flextime schedules, job sharing, and telework employers are also offering a variety of paid and unpaid leaves to help workers balance their personal and work demands. Employers also recognize that flexible workplace policies help them to meet their legal duty to accommodate by ensuring equal opportunities in the workplace. There is evidence that these changes benefit the

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\(^3\) Ibid.

\(^4\) Ibid.


organizations that implement them through less missed workdays and better working relationships as well as increased productivity and personnel retention.⁷

III. Legal Considerations

A. Provincial Legislation

Across Canada, provinces differ widely in their employment standards legislation regarding compassionate leave, bereavement leave and family responsibility leave. A chart detailing the full provincial legislative requirements is attached as Appendix A, current to May 2003.⁸ Below is a short summary of the current provincial standards. Note that under provincial standards legislation compassionate leave and family responsibility leave are combined.

<table>
<thead>
<tr>
<th>Type of Leave</th>
<th>Bereavement Leave</th>
<th>Compassionate/Family Responsibility Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Length of Leave</td>
<td>Typically 3 to 5 days of unpaid protected leave per year.</td>
<td>Typically 5 to 10 days of unpaid protected leave per year.</td>
</tr>
<tr>
<td>Provinces With Leave</td>
<td>Ontario, B.C., New Brunswick, Yukon, Saskatchewan, Quebec, Newfoundland, Nova Scotia, P.E.I.</td>
<td>Ontario, B.C., New Brunswick, Saskatchewan, Quebec, Newfoundland</td>
</tr>
<tr>
<td>Provinces Without Leave</td>
<td>Alberta, Manitoba, Northwest Territories, Nunavut</td>
<td>Alberta, Manitoba, Northwest Territories, Nova Scotia, Nunavut, P.E.I., Yukon</td>
</tr>
</tbody>
</table>

In Alberta, there are no statutory requirements in the Employment Standards Code regarding bereavement leave, compassionate leave, or family responsibility leave.⁹

B. Federal Legislation

In the 2003 budget, the Government of Canada announced that a new type of Employment Insurance (EI) benefits would come into effect on January 4, 2004.¹⁰ The benefits are called “compassionate care benefits” and will be available to all employees who qualify for regular EI benefits.¹¹ The purpose of the benefits is to provide income to workers who are absent from work temporarily to provide care or support to a family member who is “gravely ill with a

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⁷ Ibid.
⁸ Information taken from Fact Sheets on the Employment Standards websites of each province, a link to all the websites is online: <http://info.load-otea.hrdc-drhc.gc.ca/labour_standards/provincial.shtml>. A provincial comparison is also provided by Human Resources Development Canada’s Labour Law Analysis 2001, Family Related and Other Leaves, online: <http://labour-travail.hrdc-drhc.gc.ca/pdf/pdf_e/family_e.pdf>
⁹ Employment Standards Code, R.S.A. 2000, c. E-9
¹¹ Ibid.
significant risk of death within six months”. The benefits can be taken by a worker who needs to care for their:

- child, or the child of their spouse or common law partner;
- spouse or common law partner;
- father/mother;
- father’s spouse or mother’s spouse, if their father/mother has remarried;
- father or mother’s common law partner.

In order to qualify for the benefits the worker will need a medical certificate indicating that the member of the family is gravely ill with a significant risk of death within six months and that he/she needs one or more family members to provide or arrange for support and care. The benefits can be paid for a maximum of six weeks. They can be shared between family members so long as the family members all qualify.

Currently, Saskatchewan is the only province whose employment standards legislation provides protection from discipline, suspension, lay off, or dismissal to employees who take a compassionate leave of this length.

IV. Components of the Policy

A. Eligibility

Firms will want to set eligibility requirements of a minimum period of work with the firm to qualify for a leave. In those provinces with short-term leave provisions in their employment legislation, the qualifying period ranges from immediate eligibility to three months of work with the employer. After returning from a leave the firm member should be returned to the same or a comparable position and salary and they should not be dismissed, suspended or laid off due to the leave.

Firms will also need to consider whether there is equal accessibility of the leave policies for all members of the firm including employees, associates and partners. Consistency in the application of eligibility for these types of leave sends a strong message of equal opportunities for all in the workplace.

B. Types and Length of Leave

The following section introduces the purposes and typical time allowances for bereavement, compassionate, and family responsibility leave. The information regarding what employers typically offer to their employees was taken from recent Canadian sources that looked at policies in place in private sector and unionized environments.

12 Ibid.
13 Ibid.
14 Labour Standards Act, R.S.S. 1978, c.L-1, s.44.2
1. Bereavement Leave

A bereavement leave clause in a workplace policy allows a person to take time to grieve the passing of a relative in their immediate family. Employers typically offer a leave that ranges in time from 1 day to 5 days, often with a combination of paid and unpaid leave. Some clauses allow leaves in the 3 to 5 day range for parents, spouses and children and shorter periods for grandparents, siblings and in-laws.

2. Compassionate Leave

A compassionate leave clause in a workplace policy allows a person to take time to attend to the health-related needs of immediate family members. There are generally two types of compassionate leave:

   a. Short-term compassionate leave - The time given for the short-term compassionate leave often ranges from 1 to 7 days per year, either paid or unpaid or a combination. The employer can define the circumstances covered by the leave to be broad or narrow in application. Examples of situations covered by compassionate leave in employment contracts and collective agreements include:
      
      * time to attend health professional appointments for one's child or a dependent parent
      * time to attend to a medical emergency in the family
      * time to take care of a sick family member at home
      * time to arrange long-term care for an elderly family member

   b. Long-term compassionate leave - Long-term compassionate care leave may last up to eight weeks and allows a person to attend to a family member’s serious illness. This longer leave allows employees to access the new EI compassionate leave benefits without sacrificing their job security. The eligibility for EI depends on whether the member of the firm is an employee.

   Employers can offer up to eight weeks of unpaid protected leave to employees who provide care or support to a member of their family who is gravely ill with a significant risk of death within 26 weeks (6 months). The EI benefits are provided for a six-week period after a serving a two-week waiting period, for a total of eight weeks. The EI benefit period of six weeks can be split with other members of the employee’s family provided that they are also eligible for the benefits. Therefore the duration of the firm’s long-term compassionate leave should correspond to the actual time the employee is accessing the EI benefits.

3. Family Responsibility Leave

A family responsibility leave clause in a workplace policy allows a person to take time to attend to important domestic matters. Typically, the policies range from 1 to 7 days per year of unpaid or partially paid leave in this category. Again it is up to the employer to define the circumstances which qualify for the leave. Examples from the workforce include:

   * time to attend to the educational needs of children (school appointments)
• time to attend to a household emergency
• time to be married or to attend the wedding of a relative
• time to attend to other urgent matters at the discretion of the employer

In many cases an employer will combine compassionate and family responsibility leaves in one clause of the employment contract with a maximum total days of leave per year.

V. Other Considerations

A. Costs

Each employer needs to consider costs and decide whether they can offer a paid, partially paid or unpaid leave.

B. Written Policies

A written policy will result in a more consistent and balanced treatment for members of a law firm. Written policies assist firms in avoiding the perception of favoritism or discrimination that may occur when personnel issues are dealt with on an ad hoc basis. This in turn has the benefit of reducing the potential risk of human rights complaints and civil liability. Written policies have the advantage of specifying the expectations of organization from the outset, so everyone knows the policies and procedures to follow. Finally, written policies demonstrate the firm's commitment to work-life balance in its organization.

C. Firm Attitude

The attitude of a firm's senior lawyers and management towards members of a firm who take a leave will have a strong impact on the policy's success. The best drafted leave policy cannot overcome an unsupportive environment and attitude. The publication of the American Bar Association, *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers*16 deals succinctly with how a firm's attitude can make or break successful implementation of a policy, in this case parental leave:

"As important as a thoughtful policy with a positive tone may be, the best drafted policy cannot succeed without the full support of the firm's managing partners and senior lawyers. Young attorneys model themselves after their older colleagues. Attitudes - positive as well as negative - are transmitted in this way. If firm leaders visibly and actively support the policy and those who seek to use it, the rest of the firm will follow. If firm leadership projects an attitude that the parental leave policy is important to the goals of the firm and that the firm is the type of place that actively encourages a full family life, that attitude will become the pervasive attitude of the firm. Firm leaders must actively demonstrate that they do not view parental leave as a vacation, or those who take such a leave as "slackers".

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Therefore, it is recommended that all lawyers in the legal workplace, whether in management positions or not, familiarize themselves with the law and with their firm's personnel policies. Through knowledge of the policy and its objectives, a supportive environment, which allows lawyers to be responsibly committed to being good lawyers while maintaining work-life balance, will be achieved.

D. Procedures

The circumstances surrounding bereavement leave, compassionate leave and in some cases family responsibility leave are often difficult. A short notice period, if any, before taking a leave is to be expected because of the emergent nature of the issues involved. The notice and approval procedures should therefore be flexible. The policy should include the name of who to give notice to regarding these types of leave. The approval process should be automatic if the policy criteria and eligibility requirements are met. A discretionary approval process should also be in place for special requests or circumstances. In the case of a long-term compassionate leave the firm may also want to have procedures set out for transferring files and the return to work.\(^\text{17}\)

VI. Sample Policy Clauses

These clauses can be added in to an existing personnel or benefits policy. The policy should state the eligibility requirement and procedure for taking a leave. It should also be clearly stated in the policy that taking a leave will not result in dismissal, suspension or discipline. A contact person's name should be added to the policy if not already included.

A. Bereavement Leave

A firm member shall be granted ___ days of bereavement leave with(out) pay upon the death of a firm member's spouse, child, grandparent, grandchild, parent, sibling or in-law.

B. Compassionate Leave

A firm member shall be granted up to ___ days of compassionate leave with(out) pay in a calendar year for reasons related to the health or care of their children or dependents in their immediate family. This leave includes the following care-giving activities for a child or dependent in their immediate family: accompaniment to health professional appointments, personally providing care in the home, and arranging long-term care. The employer will consider other extenuating circumstances upon request.

A firm member shall be granted up to 8 weeks of unpaid compassionate leave in a calendar year to provide care and support to a gravely ill family member with a significant risk of death within six months. If eligible, a firm member is encouraged to apply for EI compassionate care benefits during this leave. If the firm member is splitting the care-giving duties with a family member under the EI program then they are entitled to a corresponding period of leave from the firm, to a maximum of 8 weeks.

\(^{17}\) Sample transition provisions can be found in the Law Society's model parental leave guidelines and policy online at: http://www.lawsocietyalberta.com.
C. Family Responsibility Leave

A firm member shall be granted up to __ days of family responsibility leave with(out) pay in a calendar year for important domestic matters such as a wedding, household emergency, or educational appointments for children. Leave for other extenuating circumstances may be approved at the employer’s discretion.

VII. Conclusion

These guidelines provide insight into the work-life balance challenge affecting the workplace. To respond to this challenge, the guidelines outline three types of short-term leave: bereavement leave, compassionate leave, and family responsibility leave, that can be added to personnel policies. The Gender, Equality and Equity Committee hopes that these guidelines will help firms to formulate policies that will benefit all firm members and improve job satisfaction, productivity, and overall workplace wellness.


### IV. Appendix A

**Summary of Provincial Employment Standards Legislation**

<table>
<thead>
<tr>
<th>Province</th>
<th>Bereavement Leave</th>
<th>Family Responsibility Leave</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>None</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>British Columbia</td>
<td>-up to 3 days of unpaid leave on the death of employee's immediate family, s. 53</td>
<td>-up to 5 days of unpaid leave in a year to meet responsibilities related to the care, health or education of any member of the employee’s immediate family, ss.52, 1(1)</td>
<td>* there is no minimum period of work to qualify *the employee must be returned to their same/comparable position after *the employee can not be terminated while on leave</td>
</tr>
<tr>
<td>Manitoba</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>-up to 5 days of unpaid leave in the event of the death of a person in a close family relationship with the employee, s.44.03(2)</td>
<td>-up to 3 days in a year for reasons related to the health, care or education or a person in a close family relationship with the employee, s.44.0222(1)</td>
<td>* the employee must be returned to their same/comparable position after *the employee can not be dismissed, suspended or laid off during due to the leave during or after it</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Province</th>
<th>Bereavement Leave</th>
<th>Family Responsibility Leave</th>
<th>Other</th>
</tr>
</thead>
</table>
| Newfoundland & Labrador | -if the employee has been employed for 30 days they are entitled to 1 day off with pay and 2 days off without pay on the death of a spouse, child, grandchild, mother, father, brother, sister (including in-laws)  
- if the employee has been employed less than thirty days they are entitled to 2 days without pay on the death of a relative referred to above, s.43.10 (1) | -if the employee has been employed for at least thirty days with the same employer they are entitled to 7 days unpaid leave per year | *employee must have been under a contract w/same employer for 1 month to qualify  
*employee can not be dismissed due to the leave |
| Nova Scotia              | -an employee can take unpaid leave of up to 3 days in a row if his spouse, parent, guardian, child, or a child under his care dies  
- they may take unpaid leave of 1 day if the death is of a grandparent, grandchild, sister, brother, or in-law, s.60A | None                                                                                          |                                                                     |
| Northwest Territories    | None                                                                              | None                                                                                          |                                                                     |
| Nunavut                  | None                                                                              | None                                                                                          |                                                                     |
| Ontario                  | -all under “Emergency Leave”                                                      | -called Emergency Leave  
-an employee has the right to take up to 10 days of unpaid leave in a year due to illness, injury, certain emergencies or other urgent matters  
- extends to personal and family reasons for the leave, s.50 | *employees must work in a company that regularly employs at least 50 employees  
*some exclusions exist                                                                 |
<table>
<thead>
<tr>
<th>Province</th>
<th>Bereavement Leave</th>
<th>Family Responsibility Leave</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>PEI</td>
<td>-an employee is entitled to an unpaid leave up to 3 days on the death of a member of the employee’s immediate family, s23</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Quebec</td>
<td>-all under “Leaves for Family Events”</td>
<td>-called Leaves for Family Events -extensive provisions include death/funeral (1-3 days, depending on relationship), s.80, 80.1 -wedding/civil union (1 day w/pay if employee, 1 day w/out pay if relative), s.81 -5 days per year w/out pay for parental obligations related to the custody, health or education of a minor child, s.81.2</td>
<td></td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>-after 3 months of employment an employee can get up to 5 days unpaid leave if a member of the employee’s immediate family dies, s.29.3</td>
<td>-after 13 weeks in employer’s service an employee may be absent for up to 12 weeks in a year where the absence is due to an illness or injury of the employee OR of a member of the employee’s immediate family WITHOUT fear of dismissal, suspension, lay off, or discipline, s.44.2</td>
<td>*leaves must be granted without dismissal or discipline</td>
</tr>
<tr>
<td>Yukon</td>
<td>-employee is entitled to 7 days of unpaid leave in the event of the death of member of the immediate family, s.58</td>
<td>None</td>
<td>*no qualifying period *bereavement leave also applies if the employee is designated to organize the funeral potlatch</td>
</tr>
</tbody>
</table>