

BILL 26: PROPOSED DOMESTIC VIOLENCE LEAVE A FIRST OF ITS KIND IN ONTARIO

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Proposed amendments to the Ontario *Employment Standards Act, 2000* (ESA) and *Occupational Health and Safety Act* (OHSA) may soon provide important workplace protections for employees who have experienced domestic or sexual violence. If passed into law, Bill 26 will introduce the following changes:

Domestic or Sexual Violence Leave

The proposed changes to the ESA will allow employees to take a job-protected leave of absence if they have experienced domestic or sexual violence. Employees may also take a job-protected leave of absence if their child has experienced domestic or sexual violence. The leave may last for a “reasonable time”, and employees will be entitled to receive their regular pay for up to 10 days of leave in each calendar year (making it the first paid leave under the ESA).

It is expected that “domestic violence” will be defined as an act or threat of abuse between an individual and a current or former intimate partner, between an individual and a child who resides with the individual, or between an individual and an adult who resides with the individual and who is related to the individual by blood, marriage, foster care or adoption (whether the abuse is physical, sexual, emotional or psychological, and may include an act of coercion, stalking, harassment or financial control).

“Sexual violence” will be defined as any conduct of a sexual nature or act targeting an individual’s sexuality, gender identity or gender expression that is committed, threatened or attempted against an individual without the individual’s consent (including sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, sexual exploitation and sexual solicitation, and may include an act that occurs online or in the context of domestic or intimate partner relationships).

However, domestic or sexual violence leave under the ESA may only be taken for one or more of the following purposes relating to the employee or employee’s child:

- to seek medical attention (physical or psychological);
- to obtain services from a social services program or other community agency;

- to obtain psychological or other professional counselling;
- to relocate for the purpose of making future violence less likely; and/or
- to seek legal or law enforcement assistance.

The proposed changes will also require employers to provide reasonable workplace accommodations to employees if they or their child have experienced domestic or sexual violence. Accommodation could include a change in the employee's place of work, or a change of hours or times the employee works. The employer will be entitled to ask for evidence from the employee of the need for accommodation, but only such evidence that is reasonable to ask for in the circumstances.

Training and Instruction

The training and instruction requirements under the OHSA will also be amended if Bill 26 is passed into law. Specifically, employers will be required to provide every manager, supervisor and worker with information and instruction about domestic and sexual violence in the workplace.

Status of Bill 26

Bill 26 passed its first reading in September 2016, and second reading in October 26 (with unanimous support). The Bill will now make its way to a Standing Committee on the Legislative Assembly for further consideration and feedback from stakeholders. It will then return to the legislature for its third and final reading.

Although Bill 26 is still in its (relatively) early stages, Ontario employers would be wise to begin reviewing their current policies, practices and procedures on domestic and sexual violence, and start preparing for the likely upcoming changes to the ESA and OHSA.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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