

CHANGES TO PERSONAL EMERGENCY LEAVE IN THE AUTOMOBILE SECTOR

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In a [recent bulletin](#), we advised readers of the proposed changes to personal emergency leave provisions of Ontario's Employment Standards Act, 2000 ("ESA"), which arose out of the Ontario Ministry of Labour's Changing Workplaces Review.

On January 1, 2017, amendments to the personal emergency leave provisions of the ESA came into force for the auto industry. Specifically, the ESA's 10-day personal emergency leave entitlement was split into two distinct entitlements:

1. Seven unpaid personal emergency days each calendar year, and
2. Three unpaid bereavement days per death of a listed family member, with no yearly limit.

The seven personal emergency leave days are available in the same manner as the ESA's former 10-day entitlement, allowing leaves to be taken for the same reasons and applying the same listed family members, with one exception – they can no longer be taken in respect of the death of a listed family member. The bereavement leave days now apply in such circumstances.

Definition of Auto Sector

The amendments affect only non-unionized employers in the following industries:

- the automobile manufacturing industry;
- the automobile parts manufacturing industry (Tier 1 and Tier 2), which is defined in Ontario Regulation 502/06 to include: (a) producing automobile parts supplied directly to automobile manufacturers or parts warehouses; or (b) producing elements of automobile parts supplied directly to the parts producers described in (a);
- the automobile parts warehousing industry; and
- the automobile marshalling industry.

Do the changes address stakeholder concerns?

During the consultation process, many automobile sector employers with generous paid sick leave, bereavement leave, and other leave policies advised that some of their employees viewed unpaid personal emergency leave under the ESA as an entitlement that existed in addition to the paid leaves already provided by their employers. Employers recommended separating personal emergency leave into separate leaves so that employers and employees could more easily assess whether the employer's policies provided employees with greater rights or benefits than the ESA.

The changes to the personal emergency leave provisions should help to clarify both of these concerns with respect to bereavement leave. In most cases, to the extent that an employer's bereavement leave entitlements are paid days off from work, they will provide employees with a greater right or benefit than the ESA.

Additionally, automobile sector employers also expressed concern about absenteeism and employees abusing the personal emergency leave provisions. Some employers pointed to high levels of absenteeism on Mondays and Fridays and on days abutting holidays as circumstantial evidence of abuse. They also asserted that although they are entitled under the ESA to require an employee who takes personal emergency leave to provide evidence reasonable in the circumstances that the employee is entitled to the leave (for example, a doctor's note), the circumstances triggering the entitlement to such leaves are difficult if not impossible to monitor.

The changes to the personal emergency leave provisions will likely not resolve this issue. The changes do not provide for any enhanced measures for employers to manage absenteeism nor do they alleviate the ongoing administrative problems for employers and employees, particularly around doctor's notes. These are important issues, particularly for automobile sector employers, whose ability to operate efficiently and effectively are integral to the provincial economy.

by Stefanie Di Francesco

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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