

# PROPOSED LEAVE FOR BRITISH COLUMBIA VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

Posted on April 10, 2017

**Categories:** [Insights](#), [Publications](#)

Employment Standards (Domestic Violence Leave) Amendment Act, 2017 proposes amendments to the *British Columbia Employment Standards Act* (“ESA”) which would provide leave for BC victims of domestic or sexual violence.

## Proposed Changes

If enacted, an employee who requests leave under proposed section 52.3 of the ESA will be entitled to up to 10 days of paid leave, and up to 17 weeks of unpaid leave, if the employee or the employee’s child has experienced domestic violence or sexual violence.

It is expected that “domestic violence” will be defined as (a) an act 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, or (b) a threat or attempt to do an act described in (a). “Sexual violence” is expected to 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, and includes 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.

An employee will only be entitled to a leave if the employee uses the leave for one or more of the following purposes:

- to seek medical attention for the employee or the employee’s child in respect of a physical or psychological injury or disability caused by the violence;
- to obtain services for the employee or the employee’s child in respect of the violence from a victim services organization, domestic violence shelter, rape crisis centre, sexual assault centre or other social services program or community agency;

- to obtain psychological or other professional counselling for the employee or the employee's child in respect of the violence;
- to relocate temporarily or permanently for the purpose of making future violence against the employee or the employee's child less likely; or
- to seek legal or law enforcement assistance for the employee or the employee's child, including preparing for or participating in any civil, criminal or administrative proceeding related to or resulting from the violence.

In addition to paid and unpaid leaves, the proposed amendments to the ESA require employers to accommodate (to the point of undue hardship) employees if employees require variation of their assigned work as a result of domestic violence. In determining undue hardship, cost, outside sources of funding, and health and safety requirements will be considered. Some examples of variation of work include

- the employee needs to work at a place of work other than where the employer has assigned the employee;
- the employee needs fewer hours of work; or
- the employee needs to work at different times than the employer has assigned the employee.

### **Status of Bill M 235 – 2017**

Bill M 235 – 2017 passed its first reading on March 7, 2017. However, this Bill will not progress unless it is reintroduced after the Provincial election. Although we query whether this Bill will be reintroduced, BC employers should be aware of these proposed changes to the BC ESA and may want to review their current policies, practices and procedures on domestic and sexual violence.

by Natalie Cuthill

### **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.

© McMillan LLP 2017