

For Employers – Domestic Violence, Intimate Partner Violence or Sexual Violence Leave

Effective November 1, 2019, this leave provides up to three days of paid leave and an additional seven days of unpaid leave, in a twelve-month period, for employees to address the consequences of domestic violence, intimate partner violence or sexual violence. An employee can use this leave intermittently (on an as-needed basis) or all at once.

As with other forms of leave, an employer cannot to dismiss, suspend or layoff an employee who has been granted a leave of absence under the *Employment Standards Act* for reasons arising from the leave alone.

What is Domestic Violence and Intimate Partner Violence?

The Province has a guide available, [Addressing Family Violence: A Guide for PEI Workplaces](#). The guide uses the term family violence instead of domestic violence and intimate partner violence. However, information in the guide will help you understand the impact family violence has in the workplace. The guide has information on:

- the social and financial effects that family violence has on a workplace
- the signs of family violence
- ways to help prevent family violence from escalating into the workplace, and
- how to talk about family violence

The new law broadly defines domestic violence and intimate partner violence. Domestic violence and intimate partner violence may include such things as actions or threats of sexual abuse, physical abuse, or emotional abuse. It may also include acts of assault, forced confinement, and reckless acts or omissions that cause injury or cause damage to property.

For a complete list of the types of relationships covered and the types of acts of violence included, please consult the *Domestic Violence, Intimate Partner Violence, and Sexual Violence Regulations*.

What is Sexual Violence?

Sexual violence includes, for example, sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, and sexual exploitation. There is no requirement for an existing relationship between the perpetrator of the sexual violence and the victim.

Sexual violence can also include sexual harassment that occurs in the workplace. Employers are responsible to make every reasonable effort to ensure that no employee is subject to sexual harassment in the workplace. Every employer must have a sexual harassment policy posted on their premises where it is readily available to all employees. Employers must make all employees aware of the policy and its requirements. Sample policies are available from the Employment Standards Branch or you can visit: <https://www.princeedwardisland.ca/en/information/workforce-and-advanced-learning/sexual-harassment-policy> .

What makes an employee eligible for this leave?

An employee needs three months of continuous employment with an employer to be eligible for this leave.

An employee who is the victim of domestic violence, intimate partner violence or sexual violence can use the leave for one or more specified purposes.

An employee can also use the leave to accompany a minor child, or individual for whom they are a primary caregiver, for one or more of the specified purposes.

For what purposes can employees use the leave?

The employee can use the leave for one or more of the following purposes:

- to seek medical attention for a victim with respect to a physical or psychological injury or disability caused by domestic violence, intimate partner violence or sexual violence
- to obtain services from a victim services organization
- to obtain psychological or other professional counselling for a matter related to or arising from domestic violence, intimate partner violence or sexual violence
- to relocate temporarily or permanently for a reason related to or arising from domestic violence, intimate partner violence or sexual violence
- to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, intimate partner violence or sexual violence
- to comply with child protection interventions and participate in child protection case planning or related activities
- for any other purpose related to or resulting from the domestic violence, intimate partner violence or sexual violence, that requires the attendance of the employee during the employee's regularly scheduled workday.

How does an employee use the leave?

The employee must tell their employer of their intention to use the leave. The employee must tell their employer the date the leave will start and for how long they will be absent.

An employer can request written evidence respecting the employee's need for the leave. The employee must cooperate in obtaining the written evidence.

Employers must allow the employee to use the leave if the employee has appropriately requested it.

What if I want evidence of the employee's need for the leave?

Employers are permitted to request written evidence respecting the employees need to use the leave. Employers can accept this written evidence from anyone they deem acceptable, or any of the following:

- a social worker
- a psychologist or psychological associate
- a medical practitioner
- a registered nurse or nurse practitioner
- a member of a police service
- a person who provides victim services pursuant to the *Victims of Crime Act*
- community elder, spiritual counsellor or counsellor who is providing culturally specific services to the victim;

What parts of the leave are paid?

The employer must pay the employee for the first three days of the leave. The additional seven days are unpaid days of leave.

What if the employee wants to take the leave intermittently?

Employees can choose whether to take the leave all at once, or they can take the leave intermittently (on an as-needed basis over 12 months).

What are the rules around confidentiality?

Employers must maintain the confidentiality respecting all matters related to the leave used by the employee. Employers are permitted to disclose information related to the leave as required under the *Child Protection Act* or *Adult Protection Act*. Employers may also disclose information if they have the consent of the employee to whom the leave relates.

If necessary, an employer can also disclose information related to the leave to another employee or agent of the employer *only* if that employee or agent requires the information to carry out their duties. The other employee or agent to whom information is disclosed is similarly required to maintain confidentiality. The other employee or agent is prohibited from disclosing the information to any other person unless it is to be used for the purpose for which it was originally disclosed, or if required under the *Child Protection Act* or *Adult Protection Act*, or with the consent of the employee to whom the leave relates.

How do I calculate the paid days of leave for employees who work irregular hours?

Where the wages of an employee vary from day to day, the employee's rate of pay for each paid day of leave must be at least equivalent to the employee's average daily earnings, exclusive of overtime.

Average daily earnings is calculated using the total hours worked divided by the number of days worked by the employee during the 30 calendar days immediately prior to the commencement of the leave. For example:

Shannon has worked 16 shifts in the past 30 calendar days. Shannon's total hours worked in these 16 shifts was 80 hours. Shannon's average hours worked over the past 30 days was 5 hours (80 hours/16 shifts). Shannon's paid leave would be equal to pay for a 5-hour shift.

Additional Resources

The Premier's Action Committee on Family Violence Prevention has resources available to anyone looking for additional information on family violence prevention. There is a specific section with information on violence and the workplace:

<http://www.stopfamilyviolence.pe.ca/workplace>

For more information on Sexual Harassment in the workplace from the Human Rights Commission, see:

http://www.gov.pe.ca/photos/original/final_sexharass.pdf