



Labour

Information on **LABOUR STANDARDS**

15 Reservist Leave

Part III of the *Canada Labour Code* (Labour Standards)

Division XV.2 – *Leave of Absence for Members of the Reserve Force* provides job protection for employees who are members of the reserve force while they are absent from their civilian employment to take part in official military operations or annual training.

The following questions and answers will be of interest to employers and employees under federal jurisdiction. Additional provisions to facilitate the return to studies for student reservists will come into force at a later date.

1. In what circumstances can reservist leave be taken?

Reservists working in federally regulated work places and the federal public service are allowed to take a leave of absence without pay from their civilian employment to take part in annual training or in certain operations in Canada or abroad that are designated by the Minister of National Defence. This leave is also available to reservists who are required to train or to report for duty under the *National Defence Act*.

2. What is required to qualify for reservist leave?

To qualify for this leave, reservists must have been employed continuously for six months with their employer. They must also provide their employer with four weeks notice, unless there is a valid reason for not doing so, in which case the employer must be notified of the leave as soon as practicable. In addition, the employee must advise the employer of the duration of the leave. Notice must be given in writing, unless there is a valid reason to provide notice through other means.

In addition, if the employer requests proof that the reservist is entitled to the leave, the reservist must provide the employer with a document approved by the Chief of the Defence Staff or, if no such document exists, a document from the reservist's commanding officer. Such proof must be provided within three weeks after the leave starts, unless there is a valid reason why this cannot be done.

3. Can an employee be exempted from the right to take reservist leave?

The Minister of Labour may decide that an employee is not entitled to reservist leave if taking such leave would adversely affect public health or safety, or would cause undue hardship to the employer. Further exemptions could be spelled out in the future by regulation.

4. Is there a maximum duration for the leave?

Up to 15 days of leave can be taken for a period of annual training. There is no specified time limit for leave while a reservist takes part in a designated operation or is called out for service.

5. Can an employee extend or shorten the period of leave once it has started?

Yes. However, the employee must give notice to the employer of any change to the original length of leave. If the leave is shortened, notice must be given at least four weeks before the new day on which the leave is to end, unless the employee has a valid reason not to do so. Likewise, if the leave is extended, notice must be given at least four weeks before the day on which the leave was previously scheduled to end, unless the employee has a valid reason not to do so. Notice is required to ensure the employer can take the necessary steps to reintegrate the employee and to maintain operations until the employee returns.

6. What happens if a reservist is injured while on duty? Can leave be extended?

Leave may be extended if the employee needs to receive treatment, recover or undergo rehabilitation because of a physical or mental health problem resulting from his or her service while on reservist leave.

7. Is the employer required to continue wage payments while the employee is absent?

No. There is no obligation to provide for a *paid* leave of absence.

8. Does the seniority of the employee continue to accumulate during leave?

Yes. The accumulation of seniority of the employee continues during the absence.

9. Is the employer required to continue its contributions to the pension, health, disability and other benefits plan while the employee is on leave?

The employer is not required to make contributions to the employee's pension or benefits plans during the leave period.

10. Can an employee postpone a vacation while on reservist leave?

Yes. Employees can decide to postpone their annual vacation until they return to work.

11. When must the employer reinstate the employee?

Normally, the employee must be reinstated in his or her position immediately after the leave ends.

However, if the employee did not specify the duration of the leave before it started and the employee gives the employer less than four weeks notice of the end date of the leave, the employer may delay the employee's return to work by up to four weeks after receiving notice. The employer must inform the employee of any such delay. Any waiting period before returning to work is considered to be part of reservist leave.

12. In what position must the employee be reinstated after the leave?

The employee must be reinstated in the position that he or she held before the leave started. If there is a valid reason why this cannot be done, the employee must be given a comparable position with the same wages and benefits, and in the same location.

However, if the employee is no longer able to perform the functions of the original position, or those of a comparable position, the employer may assign the employee to a different position with different terms and conditions of employment.

13. Could an employee ever receive lower pay or benefits upon returning to work?

Yes. If, during a leave period, the wages and benefits of a group of employees are reduced as part of a reorganization plan, an employee who is reinstated in that group will receive no more than the wages and benefits that the employee would have received if she or he had been at work during the reorganization. Likewise, if wages and benefits for the employee's group are increased during leave, the employee would be entitled to the increases upon return to work.

The employer must inform the employee of any change to wages and benefits resulting from reorganization as soon as practicable, by sending a notice to the employee's last known address.

14. Can an employer dismiss or lay off an employee because the employee is a reservist or because the employee has taken or intends to take reservist leave?

No. An employer may not dismiss, suspend, lay off, demote or discipline an employee because the employee is a member of the reserve force, has taken reservist leave, or intends to take reservist leave. The employer also cannot take these elements into account in any decision to promote or train an employee. In addition, employers are prohibited from refusing to hire a person because he or she is a member of the reserve force.

15. When a collective agreement does not provide for reservist leave, is the employer still obliged to grant it?

Yes.

16. What should I do if I have problems when I return to my civilian employment?

Discuss the situation with your employer, including the information in this fact sheet. If problems persist, you may wish to contact a Labour Program district officer, who is available to answer questions and counsel work place parties on the requirements of this new law.

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