



# Labour

## Information on **LABOUR STANDARDS**

### **5B LEAVE RELATED TO CRITICAL ILLNESS**

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

The *Canada Labour Code* provides for leave related to critical illness in Division VII of Part III.

The following questions and answers will be of interest to employers and employees under federal jurisdiction. Pamphlet 1 of this series describes the types of businesses covered by the Code. It is available on the [labour.gc.ca](http://labour.gc.ca) website.

#### **1. What is meant by leave related to critical illness?**

An employee, whose child is under 18 years of age and is critically ill, is eligible to take up to 37 weeks of leave to provide care or support to his or her child. A “critically ill child” is a person under 18 years of age, on the day the leave begins, whose health has changed and whose life is at risk as a result of an illness or injury (as defined under the *Employment Insurance Regulations*).

#### **2. Who is entitled to leave related to critical illness?**

An employee who has completed six consecutive months of continuous employment with the same employer and is considered to be a parent of a critically ill child is entitled to the leave.

#### **3. Who is considered to be a “parent”?**

“Parent” is defined under the *Employment Insurance Regulations* as:

- a person who, in law, is a parent (including adoptive parent) of a critically ill child, or

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- a person who has the custody of or, in Quebec, parental authority over the child, or
  - a person who is the guardian of the child, or in Quebec, the tutor to the person of the child, or
  - a person with whom the child is placed for purposes of adoption under the laws governing adoption in the province in which the person resides.

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

No. The Code provides job security only. There is no provision for paid leave of absence. Some employees, however, may be entitled to benefits under the *Employment Insurance Act*.

Information about Employment Insurance benefits may be obtained from Service Canada by visiting their website at [www.servicecanada.gc.ca](http://www.servicecanada.gc.ca), calling their toll free number at 1-800-206-7218 or visiting a Service Canada Centre.

**5. Is a doctor's certificate required in order to take leave related to critical illness?**

Yes. In order to qualify for the leave an employee must provide the employer with a medical certificate issued from a "Specialist Medical Doctor", as defined under the *Employment Insurance Regulations*, stating that the child is critically ill or injured and requires the care or support of one or more of his or her parents.

**6. When can leave be taken and how much leave is provided under the Code?**

The leave of absence can be taken on the first day of the week in which the medical certificate is issued or, if the leave begins before the day on which the certificate is issued, the day from which the specialist medical doctor certifies that the child is critically ill. The leave must end when the allowed leave ends (37 weeks within 52 weeks period) or on the last day of the week in which the child dies.

**7. Can the leave end earlier than the Code prescribed entitlements?**

Yes. The employee can change the length of leave by notifying the employer in writing as soon as possible. If leave is longer than four weeks, the employee must provide the employer with at least four weeks written notice in advance, unless there is a valid reason why that cannot be done.

Also, the leave will end on the last day of the week in which the child dies.

**8. Can both parents take leave related to critical illness?**

Yes. Both parents can take leave at the same time, or one after the other, as long as the combined duration of the leave does not exceed 37 weeks within a 52 week period.

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**9. Can both parents take the maximum leave if they work for different employers?**

No. If both parents wish to take leave and are employed by employers under the jurisdiction of Part III of the *Canada Labour Code*, they must share the leave (37 weeks).

**10. Can leave related to critical illness be divided in shorter, non-consecutive periods?**

Yes. If one parent takes leave related to a critically ill child, he or she will be entitled to a maximum of 37 weeks of leave within a 52-week period. Separate, non-consecutive shorter periods of leaves (not to exceed the 37 week maximum) can be taken within the 52-week period if the child has several episodes of critical illness, as long as a medical certificate is issued from a “Specialist Medical Doctor” for each period of leave.

For example, a child with leukemia may have an acute and life threatening leukemic episode that requires parental care and support for 10 weeks. The parent may take 10 weeks of leave and then return to work. If another episode occurs 5 weeks later, the parent may then resume the leave for the remaining 27 weeks if a medical certificate is issued for that period.

**11. What happens if two or more children of the employee are critically ill?**

If two or more children of an employee are critically ill as a result of the same event, the employee is eligible for only one leave of 37 weeks. However, if two or more children of an employee are critically ill as a result of different events, the employee will be eligible for separate leaves with respect to each affected child.

**12. What happens to the employee’s job upon return from leave related to critical illness?**

The employee must be reinstated in his or her former position, or be given a comparable position in the same location and with the same wages and benefits.

**13. Can an employer postpone an employee’s return to work?**

No, the employer must reinstate the employee once the leave ends.

However, if an employee takes a leave of more than four weeks but requests to end the leave earlier without giving at least four weeks’ written notice, the employer may postpone the employee’s return to work. The employee’s return to work can be postponed for a period of up to four weeks after the day on which the employer was informed of the new end date. In that case, the employer must inform the employee of this decision and the period of postponement is considered to be part of the leave.

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**14. Could an employee ever receive lower pay 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 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 increase upon their return to work.

**15. Do pension, health and disability benefits and the seniority of the employee accumulate during leave?**

Yes. These benefits continue during the leave period provided the employee pays any contributions that would normally have been paid. Likewise, the accumulation of seniority continues during the absence.

**16. What if an employee chooses not to pay normal contributions related to pension, health and disability benefits for the leave period?**

Non-payment of contributions for the leave period has no impact on the employee's employment status. These benefits may lapse during the leave period, but employment upon reinstatement is considered to be continuous with employment before the leave, for purposes of calculating future benefits.

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

Yes. The employer must pay at least the same share of contributions as if the employee were not on leave, unless the employee does not pay their contributions.

**18. Is an employee on leave entitled to receive information about opportunities for training and promotion?**

Yes. On the written request of the employee, the employer must inform the employee who is on leave of every employment, training or promotion opportunities that arise during the period of leave.

**19. Can an employer dismiss or lay off an employee because the employee has taken or intends to take leave related to critical illness?**

No. An employer may not dismiss, suspend, lay off, demote or discipline an employee because the employee has taken or intends to take leave related to critical illness. The employer also cannot take the employee's intention to take the leave into account in any decision to promote or train the employee.

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**20. When a collective agreement does not provide for leave related to critical illness, is the employer still obliged to grant it?**

Yes, provided the employee meets the requirements of the Code.

This publication is provided for information only. For interpretation and application purposes, please refer to Part III of the *Canada Labour Code* (Labour Standards), the *Canada Labour Standards Regulations*, and relevant amendments.

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