



Gameplan

DOMESTIC VIOLENCE LEAVE

Prepared for.

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40% of victims reported that domestic abuse made it harder for them to go to work and 8.5% said it cost them their job

Take 10 Steps To Comply With Employment Standards Rules Governing Domestic Violence Leave

Domestic violence, aka intimate partner or sexualized violence, remains a widespread problem across Canada. Over 6.2 million women ages 15 or over have reported some kind of abuse in their intimate relationship—that’s 44% of all women in the population. **Domestic violence also tends to spill over into the workplace.** According to one **leading study**, 53% of respondents that experienced domestic violence said that it happened at or near their workplace; another 40% of victims reported that domestic abuse made it harder for them to go to work and 8.5% said it cost them their job.

In response to these disturbing developments, provinces have changed their employment standards laws to provide employees who experience domestic violence leave of absence to deal with its after-effects. That includes paid leave in most jurisdictions. As an HR director, it’s incumbent on you to ensure that your company has appropriate **policies and protocols**. Domestic violence leave laws vary by jurisdiction, which can create major complications - especially for companies that operate in multiple provinces. Here’s a 10-step game plan you can implement to ensure compliance in all parts of the country. Go to the HR Insider website for a **Domestic Violence Leave Policy** template

tailored to the laws of your particular jurisdiction.

STEP 1. VERIFY EMPLOYEE HAS MINIMUM SERVICE REQUIRED FOR DOMESTIC VIOLENCE LEAVE

As with most other forms of employment standards leave, employees generally need to work for the employer for a minimum period to qualify for domestic violence leave. Ninety days or 3 months of continuous employment is the most common standard, but there are variances by jurisdiction:

Table 1. Domestic Violence Leave Eligibility by Jurisdiction

| JURISDICTION | MINIMUM EMPLOYMENT REQUIRED |
|--------------|--|
| FED | 3 consecutive months of continuous employment |
| AB | 90 days with same employer |
| BC | None (all employees get leave regardless of length of service) |
| MB | 90 days with same employer |
| NB | 90 days |

| JURISDICTION | MINIMUM EMPLOYMENT REQUIRED |
|--------------|---|
| NFL | 30 days of continuous employment with same employer |
| NS | 3 months |
| ON | 13 consecutive weeks |
| PEI | 3 months of continuous employment |
| QC | 3 months of uninterrupted service |
| SK | 13 weeks |
| NWT | 1 consecutive month for unpaid leave 3 consecutive months for paid leave |
| NU | 1 continuous month for unpaid leave 3 continuous months for paid leave |
| YU | None for unpaid leave 3 continuous months for paid leave |

STEP 2. UNDERSTAND THE TRIGGERS FOR DOMESTIC VIOLENCE LEAVE

The domestic violence event/experience for which employees may take leave goes by different names in different provinces:

- Domestic violence: AB, NS;
- Domestic or sexual violence: BC, ON, QC, YK;
- Domestic, intimate partner, or sexual violence: NB, PEI;
- Family violence: FED, NL, NT;
- Family abuse: NU; and
- Interpersonal violence: MB.

Each jurisdiction also has a slightly different definition of domestic violence. Generally, there are 3 elements or layers for an event to be characterized as domestic violence allowing for leave:

- It must be a particular kind of act or omission, which typically include those that cause a person to fear for their safety, sexual abuse, forced confinement, emotional abuse, or control of finances to foster dependence;
- The victim of the act or omission must be the employee or their child or other person in a particular kind of relationship with the employee, such as a person for whom the employee acts as a personal caregiver (we'll refer to persons other than the employee to which the employee's leave rights extend as "covered victims"); and
- The act or omission must be performed by a spouse, intimate partner, family member, or other person in an intimate or familial relationship with the victim.

Leave isn't allowed if the employee commits the domestic violence, prompting the need for leave.

STEP 3. DETERMINE HOW LONG DOMESTIC VIOLENCE LEAVE CAN LAST

Eligible employees usually get 10 days of domestic violence leave per calendar year, 3 or more of which may be paid. In 8 jurisdictions, employees also get a specified number of unpaid weeks in addition to their 10-day allotment:

- 15 weeks: BC, ON and the 3 territories;
- 16 weeks: NB and NS; and
- 17 weeks: MB.

Quebec provides 26 weeks of leave, the first 2 of which must be paid. Domestic violence leave time doesn't carry over to the next year.

STEP 4. ENSURE ACCURATE CALCULATION OF ANY PAID DOMESTIC VIOLENCE LEAVE

Domestic violence leave includes paid leave days, except in Alberta where all 10 days of leave are unpaid. Employees who take paid leave are entitled to the regular wages they would have received had they worked the day. Most jurisdictions provide a formula for calculating the wages of employees whose day-to-day work hours or wages vary.

Federal

Paid Leave Per Year: 5 days

Paid Leave Amount: Regular rate of wages for normal hours of work; or if work hours differ from day to day or pay isn't based on time worked, either: i. average daily earnings, not including overtime, for 20 days worked immediately before first day of paid leave period; or ii. amount calculated by method agreed in collective agreement.

Alberta

Paid Leave Per Year: None

Paid Leave Amount: N/A

British Columbia

Paid Leave Per Year: 5 days

Paid Leave Amount: Amount calculated by multiplying period of leave and average day's pay under the formula $\text{amount paid} \div \text{days worked}$, where: (i) amount paid is amount paid or payable for work done during and wages earned within 30 calendar day period before leave, including vacation pay paid or payable for any days of vacation taken within that period, less amounts paid or payable for overtime, and (ii) days worked is number of days employee worked or earned wages within that 30 calendar day period.

Manitoba

Paid Leave Per Year: 5 days

Paid Leave Amount: Wages employee would have been paid had they worked their regular hours of work on the day of leave; or 5% of employee's total wages, excluding overtime, for 4-week period immediately before the day of leave if: (i) the number of hours worked by the employee in a normal workday varies from day to day, or (ii) employee's wage for regular hours of work varies from day to day.

New Brunswick

Paid Leave Per Year: 5 days

Paid Leave Amount: Wages employee would have earned had they worked regular hours of work for applicable period; or if wages vary from day to day, at least average daily earnings exclusive of overtime for days employee worked during 30 calendar days immediately before the applicable period.

Newfoundland

Paid Leave Per Year: 3 days

Paid Leave Amount: Wages calculated by multiplying employee's hourly rate of pay by average number of hours worked in a day in the 3 weeks immediately before the leave.

Nova Scotia

Paid Leave Per Year: 3 days

Paid Leave Amount: Regular wage for all hours employee would have worked on the day of leave had leave not been taken.

Ontario

Paid Leave Per Year: 5 days

Paid Leave Amount: Wages employee would have earned had they not taken leave; or if employee gets performance-related wages, including commissions or a piece work rate, the greater of employee's hourly rate, if any, and minimum wage that would have applied for the number of hours the employee would have worked had they not taken leave.

Prince Edward Island

Paid Leave Per Year: 3 days

Paid Leave Amount: If wages vary from day to day, the average daily earnings, exclusive of overtime, for days on which employees worked during 30 calendar days immediately before start of leave.

Quebec

Paid Leave Per Year: 2 days

Paid Leave Amount: Not specified.

Saskatchewan

Paid Leave Per Year: 5 days

Paid Leave Amount: Wages that would have been paid had employee worked regular hours on the first day of the leave; or 5% of total wages, not including overtime, in the 4 weeks before the first day of the leave if number of hours worked by employee in a normal workday varies from day to day, or employee's wage for regular hours if work varies from day to day.

Northwest Territories

Paid Leave Per Year: 5 days

Paid Leave Amount: Wages employee would have earned had they not taken the leave, or average daily wages for 4 weeks worked immediately before the start of paid leave, if employee's number of hours worked in a normal workday varies from day to day, or employee's wage for regular hours of work varies from day to day.

Nunavut

Paid Leave Per Year: 5 days

Paid Leave Amount: Not specified

Yukon

Paid Leave Per Year: 5 days

Paid Leave Amount: Wages employee would have been paid had they worked their regular hours on day of leave; or 5% of employee's total wages, excluding overtime, for 4-week period immediately before the day of leave if the

employee works irregular hours, or employee's wage for regular hours of work varies.

STEP 5. REQUIRE EMPLOYEES TO TAKE DOMESTIC VIOLENCE LEAVE IN PROPER INCREMENTS

The basic rule is that employees must use their leave in increments of at least one day. Thus, you can charge a full day to an employee who purports to take part of the day off for domestic violence leave. But the rules are less clear regarding whether leave must be continuous or can be intermittent:

Table 2. Division of Domestic Violence Leave Time by Jurisdiction

| JURISDICTION | HOW LEAVE MAY BE TAKEN |
|--------------|--|
| FED | In 1 or more periods of at least 1-day. |
| AB | Not specified. |
| BC | In 1 unit of time, unless employer agrees otherwise. |
| MB | 10 days' leave may be continuous or intermittent. 17 weeks' leave must be continuous. |
| NB | 10 days' leave may be continuous or intermittent. 16 weeks' leave must be continuous. |
| NFL | Not specified. |
| NS | 10 days' leave may be continuous or intermittent. 16 weeks' leave must be continuous. |
| ON | May be continuous or intermittent. |
| PEI | May be continuous or intermittent. |
| QC | Not specified. |

| JURISDICTION | HOW LEAVE MAY BE TAKEN |
|--------------|---|
| SK | May be continuous or intermittent. |
| NWT | Paid leave must be taken in full days. Unpaid leave may be taken in separate periods of at least 1 week. |
| NU | 1 continuous month for unpaid leave 3 continuous months for paid leave |
| YU | Paid leave must be taken in full days and can be taken in 1 continuous period. 15 weeks' unpaid leave must be taken in 1 continuous period, unless employer consents to units of 1 or more days. |

STEP 6. REQUIRE EMPLOYEES TO PROVIDE PROPER NOTICE OF DOMESTIC VIOLENCE LEAVE

Employees generally must give employers notification of their intent to take the leave provided by employment standards laws. But because of the sensitivity of the situation, the notice requirements for domestic violence leave tend to be relatively lax in many jurisdictions.

Table 3. Domestic Violence Leave Employee Notice Requirements by Jurisdiction

| JURISDICTION | REQUIRED NOTICE |
|--------------|--|
| FED | Employee not required to provide notice. |
| AB | Employee must give employer as much notice as "reasonable and practicable in the circumstances" before taking leave. |
| BC | Employee not required to provide notice. |

| JURISDICTION | REQUIRED NOTICE |
|--------------|---|
| MB | Employee must give employer as much notice as "reasonable and practicable in the circumstances". |
| NB | Employee must notify employer in writing as soon as possible of intention to take and expected start date and duration of leave. Employee must notify employer in writing of change as soon as possible if circumstances beyond their control require change in leave duration. Written notice of intent to take leave must specify the purposes for leave. |
| NFL | Employee must give employer written notice of intention to take leave and its expected duration as soon as possible before leave begins, unless there's a valid reason that notice can't be given. |
| NS | Before leave, employee must notify employer in writing as soon as possible of intention to take leave and anticipated start and end dates. Employee that can't provide advance notice must provide employer written notice of leave and its start and expected end date as soon as possible after leave begins. |
| ON | Employee must notify employer of intention to take leave before or as soon as possible after starting leave. |
| PEI | Employee must notify employer of intention to take leave, start date and expected duration. |
| QC | Employee who's absent from work due to domestic or sexual violence must notify employer as soon as possible and state reason for absence. |

| JURISDICTION | REQUIRED NOTICE |
|--------------|--|
| SK | Usual 4 weeks' notice required for leave doesn't apply to domestic violence leave. |
| NWT | Employee must advise employer before leave begins, if possible, for 10 days of leave. Employee must give written notice as soon as reasonable and practical in the circumstances for 15 weeks of leave. |
| NU | Employee must give employer notice as soon as reasonable and practical in the circumstances. |
| YU | Employee must give employer as much notice as practicable in the circumstances. |

STEP 7. ASK EMPLOYEES TO VERIFY NEED FOR DOMESTIC VIOLENCE LEAVE

Simply experiencing domestic violence isn't enough to trigger leave rights (although it could be grounds for other forms of leave, such as personal injury or family emergency leave.) The point of domestic violence leave is to ensure that victims get ample time from work to do certain things that the violence caused and made necessary, either for themselves or the covered victims. The list of these purposes is consistent from jurisdiction to jurisdiction. It includes:

- Seeking medical attention for themselves or a covered victim for a physical or psychological injury or disability caused by the domestic violence;
- Obtaining services from a victim services organization for themselves or the covered victim;
- Getting psychological or other professional counselling for themselves or the covered victim;

- Relocating temporarily or permanently; and
- Seeking legal or law enforcement assistance, including preparing for or participating in a legal proceeding, related to the domestic violence.

Requirements for verifying the need for leave vary. In Nova Scotia, PEI, and Saskatchewan, employers may require written verification of the need for domestic violence leave from a recognized social worker, medical practitioner, or other professional, depending on the purpose for which the employee takes leave. By contrast, Yukon bans employers from demanding third-party verification. Most of the other jurisdictions allow the employer to require "reasonable verification" without specifying the details. In Manitoba and Northwest Territories, employees must provide such verification, regardless of whether the employer requests it, for paid leave – but only if they're asked to do so for unpaid leave.

Table 4. Domestic Violence Leave Employee Verification Requirements by Jurisdiction

| JURISDICTION | REQUIRED VERIFICATION |
|--------------|---|
| FED | Employer may, in writing, ask employee for documentation of reasons for leave no later than 15 days after employee's return to work; employee must provide that documentation only if it's "reasonably practicable" to do so. |
| AB | Not specified. |
| BC | If employer requests, employee must, "as soon as practicable," provide "reasonably sufficient proof in the circumstances" of entitlement to leave. |

| JURISDICTION | REQUIRED VERIFICATION |
|--------------|---|
| MB | Employee must provide reasonable verification of need for paid leave, regardless of whether employer asks. Employee must provide reasonable verification of need for unpaid leave if employer asks. |
| NB | Not specified. |
| NFL | Employer may require employee to provide reasonable verification of need for leave. |
| NS | Employer may require employee to identify purpose of leave. Regulations list additional verification information employers may request depending on purpose of the leave. |
| ON | Employer may require employee to provide evidence reasonable in the circumstances of entitlement to leave. |
| PEI | Employer may require employee to provide written evidence of need for leave from a recognized social worker, psychologist, or psychological associate, medical practitioner, registered nurse or nurse practitioner, police service member, victim services provider, spiritual counsellor, or person approved by employer. |
| QC | Employer may require employee to provide written attestation of reasons for leave. |

| JURISDICTION | REQUIRED VERIFICATION |
|--------------|---|
| SK | Employer may require employee to provide written evidence of need for leave from a recognized social worker, psychologist, medical practitioner, registered nurse, psychiatric nurse, RCMP or police service member, or a person approved by employer who works for an agency providing shelter, assistance, support, or counsel for domestic violence victims. |
| NWT | Employee must provide reasonable verification of need for paid leave, regardless of whether employer asks. Employee must provide reasonable verification of need for unpaid leave if employer asks. |
| NU | Employer may require employee to provide reasonable verification of need for leave. |
| YU | Employer may require employee who requests a leave of absence to provide notice of leave on a govt. form, but form may not require employee to provide verification from a third party. |

STEP 8. MAINTAIN CONFIDENTIALITY OF EMPLOYEES WHO TAKE DOMESTIC VIOLENCE LEAVE

Domestic violence is an extremely sensitive matter, so it's essential to take measures to protect the privacy of victims and keep personal records generated by processing of domestic violence leave, including leave requests and records of verification, confidential and not disclose them except as authorized, permitted, or required by law.

STEP 9. RESPECT EMPLOYEE'S OVERLAPPING FAMILY CARE LEAVE RIGHTS

Keep in mind that employees who experience domestic violence may also qualify for family medical, compassionate care, personal emergency care, bereavement, child death or disappearance, and other leaves provided by employment standards laws. **Rule of thumb:** It's up to the employee to tell the employer which kind of leave they're taking. While you can't insist that they take a different kind of leave, you can verify that they qualify for the kind of leave they've requested, be it domestic violence or another form of leave.

STEP 10. DON'T RETALIATE AGAINST EMPLOYEES FOR TAKING DOMESTIC VIOLENCE LEAVE

Employers aren't allowed to terminate, demote, or cut the pay or benefits or take other adverse employment action against employees for taking or asking about their domestic violence or other employment standards leave rights.

Thank you for your interest.

To access online training for employees on workplace violence, recognizing domestic violence, having difficult conversations, as well as useful tools and checklists that you can implement today, visit www.HRInsider.ca.

Get in touch.

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