



Personal Emergency Leave

Changing Workplaces Review

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Introduction

The Canadian Union of Public Employees (CUPE) Ontario is the largest union in the province with more than 260,000 members in virtually every community and every riding in Ontario. CUPE members provide services that help make Ontario a great place to live. CUPE members are employed in five basic sectors of our economy to deliver public services: health care, including hospitals, long-term care and home care; municipalities; school boards in both the separate and public systems; social services; and postsecondary education. CUPE members are your neighbours. They provide care at your hospital and long-term care home. They deliver home care for your elderly parents. They collect your recyclables and garbage from the curb. They plough your streets and cut the grass in your parks and playgrounds. They produce and transmit your electricity, and when the storm hits in the middle of the night, they restore your power. CUPE members teach at your university and keep your neighbourhood schools safe and clean. They take care of your youngest children in the child care centre and make life better for developmentally challenged adults. They protect at-risk children as well as those struggling with emotional and mental health issues. Our members do this work every day, and as a collective experience it equips us to make a positive and informed contribution to the discussions regarding the labour and employment law review.

Personal Emergency Leave

The right to take leave from a job in cases of emergencies is a necessary component to protecting all workers, but vulnerable workers in particular. We all face emergencies that are beyond our control. Personal illness or injury, or the need to care for sick or injured relatives are situations that eventually require virtually everyone to take time off work. Nobody is immune from unforeseen “urgent matters” that require our immediate attention, and take us away from our job. It is a fundamental principle of human decency that people be protected against losing their job for taking time off work when a family member dies. Protecting the right to bereavement leave, through PEL, is necessary to protect a modicum of human decency in the labour market.

Women continue to do a disproportionate amount of unpaid care work, including taking care of ill or injured family members and dealing with household emergencies. Personal Emergency Leave (PEL) that allows women the right to job protection when engaging in this unpaid care work is a measure to mitigate against gender inequality. It provides women with protection against loss of employment when performing unpaid care work, ensuring the right to continue to earn an income.

At present the PEL provisions in the Employment Standards Act (ESA) only cover employers who regularly employ 50 or more workers. Those who are employed in smaller workplaces are denied access, are treated to a lesser standard, and cannot attend to their personal and family needs without risk of losing their jobs. There is no ethical basis on which to make this exclusion. Workers in smaller workplaces are no less likely to need PEL to take care of themselves or their families, or to take bereavement leave.

Under the current rules, approximately 19% of employees (971,000 workers) are excluded from PEL coverage because they are employed in smaller workplaces. This is not an insignificant number of people. As the Special Advisors note in the interim report, no other province has an exclusion based on the number of employees in a workplace.¹

Workers in small workplaces tend to be more vulnerable than those in larger workplaces. They are less likely to have a union, and therefore face a greater power imbalance with their employers. Only 5% of employees in small workplaces are unionized. Workers who are exempted from PEL are also more likely to be part-time or temporary employees, and are more likely to have a shorter tenure in their jobs. Workers who are currently excluded from PEL coverage are more likely to have low incomes, and to live in low-income families. Young workers, who are regularly identified as amongst the more vulnerable employees, are also more likely to be excluded from PEL coverage.² Extending PEL to workers in workplaces with fewer than 50 employees would be in keeping with the goals of the CWR to protect vulnerable workers.

The interim report notes that other jurisdictions break down PEL entitlement into set days for different categories of emergency. Ontario is the only jurisdiction that has ten flexible-use days to cover any of the categories of emergency listed in the ESA. Maintaining the ten flexible-use days is appropriate because it meets the actual needs of workers in an equitable way. Workers with different needs can all have access to the full ten days, regardless of which specific emergency needs are met by using PEL. Breaking down entitlement to PEL by category of leave would merely have the effect of reducing leave entitlements for some workers whose needs primarily fall within one category.

Some employers will likely want to make use of, or extend the “greater right or benefit” provisions in the ESA to get around their obligations to provide PEL to employees. They might argue that they provide superior leave provisions in other areas, and therefore should not be held to the minimum standards for PEL as established in the ESA. We reject that premise. As noted in the interim report: “The greater right or benefit provisions do not provide for all benefits provided by an employer to be compared with all benefits required by the ESA. An employer cannot rely on a greater benefit with respect to one standard to offset a lesser benefit with respect to another.”³ The greater right or benefit provisions in the ESA would allow employers to provide more than ten days of PEL, and we would encourage them to do so. But the greater right or benefit provisions cannot be used to contract out of PEL by granting other kinds of leave in an employment contract or collective agreement, and should not be extended in a way that would enable employers to contract out of provision of PEL. The purpose of PEL is specific to the leave categories identified in the ESA, and should not be eroded by enabling employers to get around PEL by providing other kinds of leave.

¹ CWR Interim Report, p. 209.

² Vosko, Noack and Thomas, p. 60-61, 64.

³ CWR Interim Report, p. 254.

Conclusion

Personal Emergency Leave provides much needed job protection for workers who face emergency situations. Nobody should risk losing their job due to illness, or because they have to provide care to family members, or to take leave to mourn the loss of a loved one. This kind of protection should be extended to all workers, regardless of the number of people employed in their workplace. There is no reason to believe that workers in smaller workplaces do not require the same protection. In fact, workers currently excluded from PEL tend to be more vulnerable. In keeping with the mandate of the CWR to protect vulnerable workers, PEL should be extended to all employees.

PEL should continue to be provided as flexible-use days. Breaking down PEL into leave categories will have the effect of reducing the leave entitlement. Workers' needs differ. Some require more time to care for ill or injured family members. Some might require more bereavement leave in a given year. Some might be more likely to face "urgent matters" regarding their family. There is no way to predict what leave will be required in any given year, for any given worker. As a matter of equity, creating the flexibility for all workers to make use of the full ten days of PEL is the most appropriate policy goal.