Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 1:

a) Any employee desiring leave of absence for any reason other than those set out in Sections 2 and 3 of this Article must obtain same in writing from the Company, a copy of such leave to be forwarded to the Local Union.

b) Where any employee is granted a leave of absence under this Section for a period of longer than thirty (30) calendar days, the Company agrees to notify the Job Steward and the Union as to the circumstances for the granting of such period of leave.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 1, a):

The simple definition of "Leave of Absence" from the Cambridge Dictionary is "permitted period of time away from work". This Article outlines the basis for leaves of absence which an employee is expressly entitled to subject to meeting the corresponding criteria. Section 1 a) requires that employees should obtain approvals for leaves in writing for reasons other than that of illness/injury or union office, and copies are to be forwarded to the local union.

The reference in Section 1 a), to "for any reason other than those set out in Sections 2 and 3 of this Article must obtain same in writing from the Company" is quite historical and was written when there were only three sections in the Article. In practice, the process called for in Section 1 a) for "obtaining same in writing", for example in the case of Family Responsibility Leave, is not generally followed.

In the event a LOA (leave of absence) is granted for greater than 30 calendar days, the company is obligated to communicate the circumstances to the union.

Some basis for LOA requests are not covered in this Article; for example, incarceration. Arbitral jurisprudence over the last two decades has established an obligation on the employer to grant a LOA to an employee because of incarceration, as long as the offence was unrelated to his/her employment. Employers who encounter a situation where an employee may be subject to a period of incarceration are advised to contact CONIFER to review the particulars.

In general, current arbitral jurisprudence follows a line of reasoning that where the incarceration is for a relatively short duration and there is no evidence that production would be unduly disrupted by the employee's absence, the employer is required to effectively grant a LOA for the period of incarceration.

The employer must consider all the relevant facts:

- Effect of the employee's absence on the business
- Nature of the offence
- Duration of incarceration
- Any misrepresentation of the employee
- Employee's prior work record

For a further elaboration on these principles, employers are encouraged to review the following case references:

Case References – Article IX, Leave of Absence, Section 1:

1. WELDWOOD OF CANADA LTD., INDUSTRIAL WOOD AND ALLIED WORKERS LOCAL 1-425 (BILKHU GRIEVANCE)
   March 7, 2000 Arbitrator David C McPhillips
   Click here to read this case reference

   CONCLUSION: An employee was terminated because of a criminal conviction and incarceration. The arbitrator reinstated the employee. At the conclusion of the award, the arbitrator states: "Therefore, given that there is no evidence of a causal nexus between Mr. Bilkhu's conduct and his employment at Weldwood, that there was no detriment to the company in having the grievor away on leave and the fact the grievor was candid with the employer as to the reasons for the leave request, this board concludes that Mr. Bilkhu's request for leave in April, 1999 was unreasonably denied by the employer."

2. FEDERATED CO-OPERATIVES LTD., V. INDUSTRIAL WOOD AND ALLIED WORKERS OF CANADA LOCAL 1-417 (SHEWCHUK GRIEVANCE)
   March 18, 2002 Arbitrator Colin Taylor
   Click here to read this case reference

   CONCLUSION: The arbitration arose out of a decision of the employer to deny a leave of absence and subsequently terminate an employee for failing to show up for work due to incarceration. The arbitrator reinstated the employee without compensation.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 2:

The Company will grant leave of absence to employees suffering illness or injury, subject to a medical certificate if requested by the employer. The employee shall report or cause to have reported to the Company the injury or illness which requires his/her absence from the operation. The employee shall have a reasonable period of time to present a medical certificate if requested by the Company.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 2:
The employer is obligated to grant a leave of absence to employees suffering from illness or injury.

It is perfectly reasonable for the employer to expect that when an employee is subject to a circumstance (illness/injury) which will inhibit the employee from attending work, that the employee provides notification of his/her circumstances as soon as reasonably possible (See *Article VII, Section 13*). Failure to communicate one's circumstances prior to the commencement of the shift could be grounds for disciplinary action.

Once an individual has indicated the need for a leave of absence for illness or injury, the employer does have the right to request a medical certificate, if deemed necessary, in order to validate an absence. A period of one week is considered an appropriate duration within which an employee should present a medical certificate. The date on a doctor's correspondence should be commensurate with the absence, and not be after the fact. We do not recommend that a blanket policy requiring all absences be substantiated by provision of a doctor's note. This typically serves to frustrate the medical community. Alternatively, strategies should be utilized that attempt to control non-culpable absenteeism. However,

when physician notes are sought employers are reminded the College of Physicians and Surgeons of British Columbia prescribes the parameters of the degree and accuracy to which medical certificates must be completed and outlines physicians legal liabilities when completing medical certificates. The policy from the College is attached for your reference on the following page. The College of Physicians and Surgeons of British Columbia website is: www.cpsbc.ca/cps

College of Physicians and Surgeons of British Columbia

Practice Standard

Medical Certificates and Other Third-party Reports

Effective:	November 2013
Last revised:	September 22, 2020
Version:	2.0
Next review:	September 2023
Related topic(s):	Independent Medical Exams, Medical Records, Data Stewardship and Confidentiality of Personal Health Information

A **practice standard** reflects the minimum standard of professional behaviour and ethical conduct on a specific topic or issue expected by the College of its registrants (all physicians and surgeons who practise medicine in British Columbia). Standards also reflect relevant legal requirements and are enforceable under the *Health Professions Act*, RSBC 1996, c.183 (*HPA*) and College Bylaws under the *HPA*.

Registrants may seek advice on these issues by contacting the College and asking to speak with a member of the registrar staff, or by seeking medical legal advice from the CMPA or other entity.

PREAMBLE

This document is a standard of the Board of the College of Physician and Surgeons of British Columbia. It offers considerations that registrants must reflect upon before they provide medical certificates or reports to patients who may use these documents to obtain workplace accommodation or insurance benefits from employers or other third parties. Such requests may originate from government departments or agencies (e.g. WorkSafeBC), private non-governmental sectors such as lawyers, the Insurance Corporation of British Columbia, and other insurance and disability carriers.

This document must be read in conjunction with *Independent Medical Examinations*.

COLLEGE'S POSITION

Registrants are ethically and legally obliged to provide reports on patients they have attended, even when they have not seen them for some time and are unable to provide a current report.

Registrants are frequently asked to provide medical certificates for a patient's employer or another third party such as a disability insurer. When a request has been received, the registrant is required to respond in a timely manner, with objective medical information despite pressures to advocate on behalf of the patient. The registrant is expected to differentiate between objective medical information and opinion.

Registrants must recognize that employers and their insurers will be relying on the information provided to them by the registrant in making decisions concerning financial and other entitlements.

Registrants may be subpoenaed as witnesses, required to produce clinical notes, and examined and cross-examined under oath about the information already provided by them in medical certificates or other forms.

Registrants must also be aware that if they provide misinformation, or erroneous or unfounded opinions, employers and insurers who have relied on such representations may have claims for damages against the registrant. The College may consider the provision of untruthful information or inappropriate delay in producing medical certificates or reports as professional misconduct.

STANDARDS

- Registrants must ensure that they have received the patient's valid and documented consent to provide any information to an employer or other third party. Consent must include discussion about the scope, purpose, and likely consequences of the disclosure of their personal health information and the fact that relevant information cannot be concealed or withheld.
- Because it may be difficult to confirm what information was provided to an employer or other third party in a verbal or telephone conversation, registrants are advised to avoid verbal communication unless the patient is party to that conversation.
- Statements made must be truthful and based upon objective clinical information about the patient and not simply a repetition of the patient's self-diagnosis.
- Medical information must be presented in a clear and factual manner, with opinions that are supported by objective medical evidence.
- Conjecture, speculation and inappropriate advocacy in medical certificates or reports must be avoided.

- Registrants must provide medical certificates or reports in a reasonable time frame; this is usually considered to be within 30 business days of the request but may in some situations be shorter.
- If they are unable to respond within a reasonable time frame, registrants must communicate directly with the third party and negotiate a new time frame or provide the reasons why they cannot comply.
- If a patient was not seen during a period of disability or illness, an opinion about retrospective diagnosis may be provided but the fact that the patient was not seen during that period must be clearly stated.
- Before giving an opinion on a patient's fitness to perform a specific activity or job, registrants must ensure that they have accurate information about the activity or the requirements of that job.
- Registrants must not disclose more information than is covered by the patient's consent or requested by the third party.
- Registrants must clearly specify the addressee for whom the medical certificate or report is intended.
- Fees must be discussed with the requesting third party in advance of the report preparation. Fees charged must be fair and reasonable—reflecting the work required—and consistent with the Doctors of BC *Guide to Fees* for non-insured medical services.
- Registrants may request, but they must not demand, payment in advance for their professional services. A report cannot be withheld contingent on pre-payment.
- Fee disputes between registrants and lawyers can be referred to the Medical-Legal Liaison Committee of Doctors of BC.

RESOURCES

The Canadian Medical Protective Association

- Privacy and Confidentiality
- Medical Legal Handbook

In addition to requesting a medical certificate to validate a leave of absence for illness or injury, employers can request the same to clarify an employee's status when he/she initiates a return to work after a considerable period of time off. The employer has the right to require medical documentation outlining the status of an employee's recovery from a lengthy disability, and a prognosis regarding the employee's ability to return to work, as well as any limitations or concerns regarding functional capability.

In an arbitration case (*06/03, Case Reference #1)*, the following principles were extracted and should be followed relative to this subject:

1) When requesting employees to provide further medical documentation pertaining to their fitness to return to work, be very specific and clear on the expectations of the employer's needs in terms of the information that is required from a medical professional including such things as functional abilities and physical limitations.
2) Continually maintain open communications between injured or sick employees, Worksafe BC, disability management committees and the union.
3) Document all conversations with sick or injured employees, and Worksafe BC and indicate the dates, times, what was discussed, action plans and outcomes. This is a particularly important principle, which was alluded to in this arbitration. "The union asks me [the arbitrator] to conclude that the testimony of the grievor is more in accordance with probabilities than that of Creusot, noting that the events occurred a while ago and human memory is fallible."
4) Encourage employees to report all first aids and near misses as soon as they occur no matter how insignificant they may seem.
5) Complete First Aid reports for all injured or sick employees, especially when the injury or illness involves the employee going home or to a doctor, even if the injury or illness is not work related.
6) This arbitration validates the need for sound disability and attendance management programs.

The following principles from another arbitration case *(02/03, Case Reference #2)* may also serve to be of assistance:

1) An employer should consider all the pertinent facts of each case to help establish the level of medical information required to facilitate a safe return to work, and in so doing should not act in a discriminatory manner and have a legitimate and valid reason for requiring such information.
2) Employers must remain cognizant of the type of medical information that they can enquire about.
3) In some situations of serious illness and/or injury there is an onus upon an employee returning to work from an illness or injury to satisfy an employer that he can do so safely without a threat either to himself or other employees.
4) Take the opportunity to maintain communication links between the sick or injured employees, insurance carriers, Worksafe BC, and the union to facilitate effective claims and disability management processes.
5) The following excerpt is from Arbitrator Munroe, from North Central Plywood and PPWC, Local 25, September 14, 1987, which is also quoted in this arbitration, where he states:

> "However, there are cases where the mere presentation of oneself for work will not be sufficient to satisfy the initial onus -- i.e., where it is entirely reasonable that the employer would want more information before re-introducing the employee to the regime of the workplace, and there appears to be an accord among arbitrators that where an employee has been absent due to illness or injury, the employer is entitled to require further evidence of the employee's renewed medical fitness, and to hold the employee out of service without liability for wages pending the receipt of such further evidence, where the evidence that is offered (whether it be the mere presentation of oneself for work, or a note from a physician) does not reasonably resolve any real and substantial question concerning the employee's ability to perform as required."

Upon availability to return to work the employer should require some sort of notice of that intent from employees. (Example: 24 hours notice to immediate supervisor when intending to return to work.)

Case References – Article IX, Leave of Absence, Section 2:

1. CANADIAN WOODWORKS LTD., AND IWA CANADA LOCAL 1-424 (GRONNING ARBITRATION)
   April 3, 2003 Arbitrator John L McConchie
   Click here to read this case reference

   CONCLUSION: The focus of this case was a grievance that arose as a result of a decision of the employer to hold an employee out of work for four weeks until medical validation of fitness to resume work was provided. The Arbitrator states the following:

   "I cannot find fault in the Employer's delay between January 28 and February 5 to consider how it was going to deal with the situation before it. In the same light, I cannot find fault in the delay between February 19 and February 26 in conducting the necessary inquiries, having the necessary meetings and reaching the necessary conclusions regarding what could be done to reasonably accommodate the grievor.

   It is my conclusion that the grievor was unreasonably held out of service between February 5 and February 19. He is entitled to be compensated for his loss during that specific period of time. He was not unreasonably held out of service during the other periods mentioned and so no award of compensation will be made in respect of them."

2. WEST FRASER MILLS LTD., SKEENA DIVISION AND IWA CANADA LOCAL 2171 (GRIEVANCE OF P. BAINS)
December 12, 2002 Arbitrator Judi Korbin
Click here to read this case reference

CONCLUSION: The focus of this case was a grievance that arose because of a decision of the employer to hold an employee out of work from March 6 to 12 2002 until medical validation of fitness to resume work was provided. The Arbitrator states the following:

"While the Grievor clearly saw his doctor immediately upon receiving the Employers request of March 5, 2002, (the doctors second letter is dated March 7, 2002) and cannot be faulted for any delay in so doing, it is nonetheless uncontradicted that the Employer did not receive this letter until March 13) 2002. And it wasn't until the Employer received this letter that the real and substantial questions concerning the Grievor's ability to perform were resolved."

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 3:

a) The Company will grant leave of absence to employees who are appointed or elected to Union office. The employee who obtains this leave of absence shall return to the Company within thirty (30) calendar days after completion of his/her term of employment with the Union.

b) The Company will grant leave of absence to Employees for any Union Business applied for by the Union in order that they may carry out their duties on behalf of the Union.

c) It is agreed that before the employee receives this Leave of Absence as set forth in Clauses a) and b) above, the employer will be given notice in writing (in the case of a) – fifteen (15) calendar days, in the case of b) – five (5) calendar days) by the Union in order to replace the employee with a competent substitute.

d) The Union will make every effort in requesting such leaves of absence to avoid requests that will unduly deplete the crew in any one department which will impair production or inhibit the normal functioning of the operation. In such cases, the Union will cooperate with the Company in making substitute employee's available or select alternate delegates to attend Union functions.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 3 a):

This section applies to roles with the Union that are of a longer term, full time nature. The Union is to advise the employer when an employee is elected or appointed to Union office. Upon completion of a term with the Union, the employee is to return to work within thirty (30) calendar days.

When an employee assumes a position under this section benefit coverage responsibility shifts to the Union. Employers can refer to the Northern Interior Forest Industry Benefit Plan manual for specifics on benefit administration for those on Union leave. Upon return to work with the Company all benefit coverage is resumed.

Section 3 b):

Prior to the 2009 to 2013 collective agreement, Section 3 b) of Article IX, provided specific reason for the union activities that must be pursued, and provided a potential avenue to deny these leave applications if not in keeping with the stated purposes. The revised language under Section 3 b), negotiated into the 2009 to 2013 collective agreement, provides a generalization of reasons for the corresponding union leave as:

> "…for any Union Business applied for by the Union in order that they may carry out their duties on behalf of the Union."

Regardless of this change, all leave applications remain subject to the provisions of Section 3 d).

Section 3 c):

This section prescribes the written notice to be provided by the union to arrange leaves under a) and b). It is suggested to remain flexible regarding this requirement.

Section 3 d):

This section puts an onus on the union to cooperate with the company regarding the reasonableness of requests for leave. The Employer is not obligated to incur significant overtime costs or jeopardize the efficient operation of the facility by granting requests for leave under this section.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 4: - Compassionate Leave

By mutual agreement leave of absence will be granted to a maximum of (6) months without pay to the employees for compassionate reasons or for educational or training or extended vacation purposes, conditional on the following terms:

a) That the employee apply at least one (1) month in advance unless the grounds for such application could not reasonably be foreseen.
b) That the employee shall disclose the grounds for application.
c) The Company shall grant such leave where a bona fide reason is advanced by the applicant or may postpone leave where a suitable replacement is not available.
d) That the Company will consult with the Shop Committee in respect of any application for leave under this section.
e) The Company will only be obliged to grant leave of absence for educational and training purposes to employees who intend to take training that will assist the individual in obtaining skills related to the industry.
f) Employees granted Leave of Absence pursuant to this section shall be required to pay the appropriate premiums for Medical Services Plan, Extended Health Benefits, and Dental Plan coverage in accordance with sections 8 d) and e) of the Memorandum of Agreement dated December 10th, 1983.
g) The Union agrees it will provide a letter regarding problems that arise from extended vacation applications.
h) A Committee shall be established during the 1977 – 1979 Agreement to clarify the terms of this Section.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 4: Compassionate Leave

It is important to recognize that Section 4 and Section 8 obligations under this Article have two different basis for providing leave for compassionate reasons and the two leave provisions should not be confused. Section 8 "Compassionate Care Leave" is a specific leave entitlement in the collective agreement and the Employment Standards Act for an employee to take a leave to provide **care or support to a family member with a significant risk of dying.** The Section 4,

Compassionate Leave provision, is to provide for leaves up to six (6) months for compassionate reasons, education, training, or extended vacation. Below are some examples of the various circumstances that may be the catalyst for a request for leave under Section 4 and the parameters under which an associated leave should be administered.

Compassionate reasons:

- Granted because of unusual distressing circumstances affecting an individual.
  Example: To attend to the needs of a family business following the death of an immediate family member.

Educational or Training:

- Should be of a nature that will assist the individual in obtaining skills related to the industry.

Extended Vacation Purposes:

- Means an extension of regular vacations and should be granted in conjunction or subsequent to employee's regular vacation. Article X, Section 8 still applies, "when quantity and regularity of production shall not be impaired".

Other considerations for Compassionate Leave under Section 4 of Article IX, which are not applicable when an employee is entitled to Compassionate Care Leave under Section 8, include:

- Employee is obligated to apply one (1) month in advance of requested leave, unless notice is unreasonable due to specific compassionate issue faced by employee. Employee must disclose grounds for application.

- Company should review any requests for leave under this section with the shop committee.

- Employees on leave under this section pay their premiums for MSP, Extended Health, and Dental coverage continuation.
  - Other premiums continued by employer.
  - No eligibility for WI while on leave; eligibility for coverage available on agreed return to work date
  - Details of benefit administration associated with leaves of absence under this section are outlined in the Northern Interior Forest Industry Benefit Plan Administration Manual, distributed by CONIFER.

- Requests to experiment in self-employment or other employment do not meet criteria called for.

- For guidelines regarding Leave of Absence requests on a compassionate basis due to a requirement of a period of incarceration, see Article IX, Section 1.

Text:

ARTICLE IX: LEAVE OF ABSENCE

Section 5: Maternity Leave

To provide for a reasonable period of time for extended maternity leave without pay to female employees where there is a valid medical reason.

Guidelines:

ARTICLE IX: LEAVE OF ABSENCE

Section 5: Maternity Leave

This section provides for an extension of maternity leave without pay to employees where there is a valid medical reason. This is somewhat redundant given that Section 2 of Article IX obligates the employer to grant a leave of absence for injury or illness when medically validated.

It should be noted that "maternity" leave and "pregnancy" leave mean the same thing and the terms tend to be used interchangeably. The technical term under the Employment Standards Act is "Pregnancy Leave".

Furthermore, Pregnancy and Parental Leave obligations (flowing from the Employment Standards Act) have been incorporated into the collective agreement under Section 6 of this Article as a result of 2009 to 2013 negotiations.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 6: Pregnancy and Parental Leave

a. Female employees shall be entitled to unpaid pregnancy leave of up to seventeen (17) weeks.

b. A female employee is entitled to up to 6 additional consecutive weeks of unpaid leave if, for reasons related to the birth or the termination of the pregnancy, she is unable to return to work when her leave ends under sub-section a).

c. On the advice of her doctor, if a pregnant employee requests a transfer due to workplace conditions, she will be provided alternate work, if available.

d. Employees shall be entitled to unpaid parental leave of up to thirty-seven (37) weeks.

e. If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional 5 consecutive weeks of unpaid leave, beginning immediately after the end of the leave taken under sub-section (d).

f. An employee's combined entitlement to leave under section (a) and (d) is limited to 52 weeks, plus any additional leave the employee is entitled to under sub-section (b) or (e).

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 6: Pregnancy and Parental Leave.

Pregnancy and Parental Leave was agreed to in the 2009 to 2013 collective agreement and has its origin in the Employment Standards Act of British Columbia. There are some differences in the collective agreement language compared to the particulars of the ESA (Section 50 and Section 51). These differences should be examined and considered closely in determining the ultimate approach to managing a leave request of this nature. Employers are bound to comply with Section 50 and 51 of the Employment Standards Act.

IMPORTANT NOTE: Regarding the following:

- **Sections 6: Pregnancy & Parental Leave,**
- **Section 7: Family Responsibility Leave,**
- **Section 8: Compassionate Care Leave**

When the language under sections 6, 7 and 8 was negotiated into the 2009 to 2013 collective agreement, the Union indicated that it wanted "one stop shopping" to help its members to understand their rights under certain leave provisions of the Employment Standards Act. Therefore, this led to the Union's insistence during collective bargaining on the inclusion of certain leave provisions from the Employment Standards Act into the collective agreement, including Pregnancy and Parental, Family Responsibility and Compassionate Care leave.

With this in mind, the intent was to incorporate the Employment Standards leave entitlements into the collective agreement. The inclusion of these leave provisions into the collective agreement does not provide employees with an additional entitlement over and above the Employment Standards obligations and are not to be used to pyramid on top of the Employment Standards leave provisions. Stated otherwise, employees are **not** entitled to request a leave under the collective agreement and then seek an additional leave under the ESA, and in essence, double up leave for the same reasons under the Employment Standards Act.

For more information on Pregnancy and Parental (or other) Leave provisions, contact CONIFER or the Employment Standards Branch at (250) 612-4100 or 1 800 663-7867. There is also a great deal of useful information on the Employment Standards website: www.labour.gov.bc.ca/esb/

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 7: Family Responsibility Leave:

An employee is entitled to up to 5 days of unpaid Family Leave during each employment year to meet responsibilities related to:

a) the care, health or education of a child in the employee's care, or

b) the care or health of any other member of the employee's immediate family.

Guidelines:

Changes to the 2009 to 2013 collective agreement incorporated Family Responsibility Leave obligations into Section 7 of Article IX. The origin of the Family Responsibility Leave language comes from Section 52 (as structured as of August 17, 2010) of the Employment Standards Act. The current Employment Standards Act allows for a period of "family responsibility leave" as follows:

- Up to five (5) days unpaid leave in an employee's employment year, based on their starting date, to help employees deal with family problems that conflict with work responsibilities. In most cases, an employee's starting date will be equivalent to their seniority date.

- Must be related to the care, health or education of a child in employee's care, or the care or health of a member of employee's immediate family.

- Family reunions, birthdays, or longer holidays are not grounds for family responsibility leave. Eligibility does not carry over from year to year.

Below is an excerpt from the Employment Standards Branch Interpretation Guidelines regarding Family Responsibility Leave:

Policy Interpretation

Family responsibility leave is an employee-initiated unpaid leave of up to 5 days in an employee's employment year, based on their starting date. This leave is designed to help employees deal with family problems that conflict with job responsibilities. This leave is a statutory entitlement, not something that may or may not be granted at the discretion of the employer.

Family responsibility leave does not carry over from year to year if it is not used during the employment year.

Employers should record the absence as leave without pay and keep a record of the absence.

Subsection (a)

"A child in the employee's care" means a child under the age of nineteen. Parents are not entitled to family responsibility leave to attend to education-related issues of their children after they reach the age of nineteen.

Subsection (b)

"Immediate family"

Under s.1 of the Act, "immediate family" means the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and any person who lives with an employee as a member of the employee's family. It includes common-law spouses, step-parents, and step-children, and same sex partners and their children as long as they live with the employee as a member of the employee's family.

Duration of leave

Employees are entitled to request up to 5 days off, to be taken at their discretion. Any time taken off on any day (even one hour) qualifies as ***one day*** *for purposes of this section, unless the employer and employee agree otherwise. (See definition of "day" in s.1 of the Act)*

Reason for leave

The request does not need to be made because of a crisis or emergency. It must be related to the care or health, and in the case of a child, education, of a member of the employee's immediate family. An employee is encouraged to give reasonable notice of any request for leave to allow the employer to accommodate the absence. Employers are entitled to reasonable proof, after the event, that the request for a leave was valid.

Examples

- *An employee is notified by school authorities that their child has been injured in a school yard accident and taken to hospital. Family responsibility leave should be allowed.*
- *An employee has an appointment to meet with a school counsellor to discuss behaviour issues. The appointment is during the employee's scheduled working hours. Family responsibility leave should be allowed.*
- *An employee has to accompany their elderly, disabled parent to attend a medical appointment. Family responsibility leave should be allowed.*
- *An employee wants to accompany their child on a school recreational activity excursion. Since this activity is not related to the care, health or education of the child, it does not justify family responsibility leave.*
- *An employee wants two days family responsibility leave to go to Edmonton to help their 20-year-old child pack up their belongings after their second year at university. Since the child is over the age of 19, this activity is not related to the education of a child in the employee's care and does not justify family responsibility leave.*

Vacation entitlement after leave of absence

Examples

Kate commences work on June 1, 2002. Due to family responsibilities, in December 2002, Kate requests a two-month unpaid leave of absence to attend to a sick parent. The employer approves the unpaid leave. Kate returns to work in February 2003.

Kate is entitled to 2 weeks' paid vacation effective June 1, 2003 regardless of the fact that Kate has taken a 2-month leave of absence approved by the employer. See s.56(1)(a) for a further discussion on vacation pay calculation and entitlement after a leave of absence.

Terms and conditions of employment protected

Section 54 provides that an employer cannot terminate an employee or change a condition of employment without the employee's written consent as a result of a leave under this Part. See also s.56 for an explanation of the effects of leave under this Part on employment and benefit payments. If the employer's business operations have been suspended or discontinued at the time the employee's leave ends, the employer must comply with s.54(2) when operations resume.

In the event of a contravention under this Part of the Act, the director may order a remedy in a determination under s.79(2). The determination will include an escalating monetary penalty, subject to s.98.

Employees covered by a collective agreement

Under the provisions of s.3, parties to a collective agreement are prohibited from giving up the specific employment protection provided in Part 6. Employers, employees and unions may not negotiate terms and conditions that do not meet the standards set out in this Part of the Act, or Part 6 will be deemed to be incorporated into the collective agreement.

Under s.3(7) of the Act, where there is a collective agreement, the enforcement of matters relating to Part 6 is through the grievance procedure, not through the enforcement provisions of the Act.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 8: Compassionate Care Leave
(To Provide Care Or Support To A Family Member with A Significant Risk Of Dying)

a) In the following sub-sections "family member" means a member of the employee's immediate family and includes the spouse, child, parent, guardian, sibling, grandchild or grandparent of any person who lives with an employee as a member of the employee's family. It includes common-law spouses, step-parents and step-children and same-sex partners and their children as long as they live with the employee as a member of the employee's family.

b) An employee who requests Compassionate Care Leave under this section is entitled to up to eight (8) weeks of unpaid leave to provide care or support to a family member if a medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within twenty-six (26) weeks, or such other period as may be prescribed after:

   i) The date the certificate is issued, or
   ii) if the leave began before the date the certificate is issued, the date the leave began.

c) The employee must give the employer a copy of the certificate as soon as practicable.

d) An employee may begin a leave under this section no earlier than the first day of the week in which the period under subsection (b) begins.

e) A leave under this subsection ends on the last day of the week in which the earlier of the following occurs:

   i) the family member dies;

   ii) the expiration of 26 weeks or other prescribed period from the date the leave began.

f) A leave taken under this subsection must be taken in units of one or more weeks.

g) If an employee takes a leave under this section and the family member to whom the subsection applies does not die within the period referred to in that subsection, the employee may take a further leave after obtaining a new certificate in accordance with this subsection.

Guidelines:

The origin of this content is based on the Employment Standards Act Compassionate Care Leave Section 52.1 (as structured as of August 17, 2010). There are some differences in the CA language compared to the particulars of the ESA which should be examined and considered closely relative to applicability of the ESA guidelines.

In early 2006 the provincial government implemented provisions for Compassionate Care Leave in the Employment Standards Act. The intent of Compassionate Care Leave under the Employment Standards Act is to afford employees a measure of job protection when they are faced with a situation where they are called upon to care for gravely ill family members who are at risk of dying and the employee needs a leave from work to fulfill this responsibility.

When employees exercise the right to take Compassionate Care Leave under this section of the collective agreement, their employment is considered to be continuous. This means that time spent on Compassionate Care Leave would count as time worked for the purposes of such things as calculating vacation entitlement, severance obligations and maintaining benefit coverage**. <u>The employer has an obligation to continue benefit coverage for employees on Compassionate Care Leave providing the employee pays their appropriate share of health and welfare premiums, where applicable.</u>**

The following is an excerpt from the Guide to the Employment Standards Act in BC, regarding Compassionate Care Leave:

Summary

This section explains the circumstances in which an employee is entitled to take compassionate care leave, the length of the leave, and the definition of "immediate family".

Text of Legislation:

52.1 *(1) In this section, "family member" means someone who is:*

a) a member of an employee's immediate family, and

b) any other individual who is a member of a prescribed class.

(2) An employee who requests leave under this section is entitled to up to 27 weeks of unpaid leave to provide care or support to a family member if a medical practitioner or nurse practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks, or such other period as may be prescribed, after

(a) the date the certificate is issued, or

(b) if the leave began before the date the certificate is issued, the date the leave began.

(3) The employee must give the employer a copy of the certificate as soon as practicable.

(4) An employee may begin a leave under this section no earlier than the first day of the week in which the period under subsection (2) begins.

(5) A leave under this section ends on the last day of the week in which the earlier of the following occurs:

(a) the family member dies;
(b) the expiration of 52 weeks the date the leave began.

(6) A leave taken under this section must be taken in units of one or more weeks.

(7) If an employee takes a leave under this section and the family member to whom subsection (2) applies does not die within the period referred to in subsection(5)(b), the employee may take a further leave after obtaining a new certificate in accordance with subsection (2), and subsections (3) to (6) apply to the further leave.

Policy Interpretation

All employees are entitled to up to 27 weeks of unpaid leave within a period of 52 weeks to care for a gravely ill family member. The right to compassionate care leave under this Part is available to all eligible employees regardless of how long they have been employed. The leave is a statutory entitlement, not something that may or may not be granted at the discretion of the employer.

An employee must, as soon as practicable, provide the employer with a certificate from a medical practitioner or nurse practitioner stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

If the employee takes leave under this Part and the family member does not die within the 52 week period, the employee may obtain a new certificate. This will entitle the employee to a further 27 weeks of leave within a subsequent 52 week period.

For the purposes of this section, the definition of "week" in section 1 of the Act says that a week starts on Sunday. So if an employee begins a leave in the middle of a week, and ends it in the middle of the following week, the employee will be deemed to have used up two weeks of leave. The 52 week period begins on the Sunday of the week in which the certificate is issued or the first leave is taken, whichever comes first.

Subsection (1)

"Family member" means a member of the employee's immediate family or a member of a prescribed class as set out in the Family Member Regulation.

"Immediate family" is defined in section 1 of the Act. It means the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and any person who lives with an employee as a member of the employee's family. It includes common-law spouses, step-parents and step-children, and same-sex partners and their children as long as they live with the employee as a member of the employee's family.

The Family Member Regulation contains a list of individuals who are part of the prescribed class referred to in s. 52.1 (1) (b). They are as follows:

In relation to an employee:

- *a step-sibling;*
- *an aunt or uncle;*
- *a niece or nephew;*
- *a current or former foster parent;*
- *a current or former foster child;*
- *a current or former ward;*
- *a current or former guardian; or*
- *the spouse of*
    - *a sibling or step-sibling;*
    - *a child or stepchild;*
    - *a parent*
    - *a grandparent;*
    - *a grandchild;*
    - *an aunt or uncle;*
    - *a niece or nephew;*
    - *a current or former foster child; or*
    - *a current or former guardian;*

In relation to the employee's spouse:

- *a step-parent;*
- *a sibling or step-sibling;*
- *a grandparent;*

- *a grandchild;*
- *an aunt or uncle;*
- *a niece or nephew;*
- *a current or former foster parent; or*
- *a current or former ward; and*

This also includes an individual with a serious medical condition who is like a close relative to the employee, whether or not they are related by blood, adoption, marriage or common law partnership.

Subsection (2)

An employee who requests leave is entitled to 27 weeks of unpaid leave within a period of 52 weeks. The legislation does not specify how the leave should be requested. There is no requirement for a request to be in writing, or for the employee to give the employer advance notice.

The employee must provide a certificate from a medical practitioner or nurse practitioner which states that the family member has a serious medical condition with a significant risk of death within 26 weeks.

The leave starts when the employee requests it, either before or after the certificate is issued.

The 52 week period starts either on the Sunday of the week when the certificate is issued, or if the employee requests leave before being able to obtain the certificate, the Sunday of the week when the leave begins.

Subsection (3)

The employee must give the employer a copy of the certificate as soon as practicable. This section contemplates that the need for a leave of this nature can arise suddenly and without warning, so the employee is not disentitled from taking the leave because of the lack of a certificate. The employee still must provide the certificate as soon as is reasonable under the circumstances.

Subsection (4)

Any leave taken by the employee will be considered to be part of the period of 52 weeks. The first leave will always be included in the 52 week period, even if the certificate is not produced until a later time. In that case, the 27 weeks of leave and the 52 week period will start to run from the beginning of the week that the first leave occurs, instead of from the beginning of the week in which the certificate is issued.

Subsection (5)

A leave ends on the last day of the week in which the family member dies, or at the end of the 52 week period, whichever comes first.

If an employee has not used up 27 weeks of leave when the 52 week period ends, any unused leave entitlement lapses.

If the employee uses up 27 weeks of leave before the end of the 52 week period, the employer does not have to allow more leave within the time remaining in the period.

Subsection (6)

A leave in this section must be taken in units of one or more weeks. The employee is entitled to take the leave when it is needed, but if less than a week is taken at one time, it counts as one week under this section. If an employee takes a leave that uses up the end of one week and the beginning of the next, the employee will be considered to have used up two weeks of leave.

Subsection (7)

If the employee takes a leave and the family member does not die within the 52 week period, the employee is entitled to take up to another 27 weeks of leave in a subsequent 52 week period upon obtaining a new certificate that states the family member has a serious medical condition with a significant risk of death within 26 weeks. The leave would be requested and taken under the same conditions as the first leave.

Terms and Conditions of Employment Protected

Section 54 provides that an employer cannot terminate an employee or change a condition of employment without the employee's written consent as a result of a

leave under this Part. See also section 56 for an explanation of the effects of leave under this Part on employment and benefit payments. If the employer's business operations have been suspended or discontinued at the time the employee's leave ends, the employer must comply with s.54(2) when operations resume.

In the event of a contravention under this Part of the Act, the director may order a remedy in a determination under s. 79(2). The determination will include an escalating monetary penalty, subject to s.98.

Employees Covered by a Collective Agreement

Under the provisions of s. 3, parties to a collective agreement are prohibited from giving up the specific employment protection provided in Part 6. Employers, employees and unions may not negotiate terms and conditions that do not meet the standards set out in this Part of the Act, or Part 6 will be deemed to be incorporated into the collective agreement.

Under s. 3(7) of the Act, where there is a collective agreement, the enforcement of matters relating to Part 6 is through the grievance procedure, not through the enforcement provisions of the Act.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 9: Bereavement Leave

a) When death occurs to a member of a regular full-time employee's immediate family, the employee will be granted an appropriate leave of absence for which he/she shall be compensated at his/her regular straight time hourly rate of pay for hours lost from his/her regular work schedule for a maximum of three (3) days.

b) Piece workers who are entitled to bereavement leave shall be compensated in accordance with the principle established in Article XI, Section 2 b).

c) Members of the employee's immediate family are defined as the employee's spouse, mother, father, brothers, sisters, sons, daughters, mother-in-law, father-in-law, sons-in-law, daughters-in-law, step-parents, grandparents, grandparents-in-law, grandchildren and step-children.

d) Compensable hours under the terms of this Section will be counted as hours worked for the purpose of qualifying for vacations and for recognized paid holidays, but will not be counted as hours worked for the purpose of computing overtime.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 9: Bereavement Leave

Bereavement leave is applicable to regular full-time employees. Probationary and casual employees do not qualify for paid bereavement leave under the collective agreement. However, the Employment Standards Act provides for a period of three days of unpaid leave and is applicable to those employment categories.

The "appropriate" leave that is granted may be for longer than 3 days, however, the employee eligible for bereavement leave is paid for a maximum of three days absence from his regular work schedule.

These are consecutive workdays; bereavement leave is not to be "split" up. Bereavement leave should occur immediately subsequent to the death and must not be permitted to be held in abeyance, or "banked" to be taken at some future time.

Bereavement Leave with pay is not to be granted to employees who are absent because of:

1. Injury or illness;
2. Weekly Indemnity
3. Workers' Compensation
4. Compassionate or Educational leave;
5. Union business;
6. Any authorized leave of absence;
7. Lay-off

Additional considerations in the administration of Bereavement Leave are as follows:

- The appropriate pay is the employee's regular rate at the regular work schedule.
- The employee does not qualify for bereavement leave if he/she is on an authorized leave of absence, laid off, or on strike.
- Where an employee is on vacation and a qualifying death occurs, he/she is entitled to bereavement leave if requested.
- Bereavement leave for employees working under an alternate shift agreement as provided by Article VII, Section 4 is determined by the negotiated parameters of the specific alternate shift agreement.

Only in the event of a death of those family members explicitly spelled out under sub-section c) trigger employee eligibility for paid bereavement leave. Spouse includes a common-law spouse subject to a meaningful common law relationship of one-year duration. The Company should develop a system for records purposes to document the name of the deceased, the date and place of death, and relationship to the applicant. The company has the right to request proof of a death of an immediate family member if the company feels this is warranted to validate the requested bereavement leave. Requests of this nature are relatively

infrequent. Validation would be in the form of a copy of the death certificate or an obituary notice. CONIFER has obtained a legal opinion on appropriate circumstances and issues associated with the request for validation. Please contact CONIFER if you require a copy of this legal opinion.

There is an April 13, 2000 interpretation case (*See Case Reference #1)*, decided by Arbitrator Donald Monroe, where the union claimed bereavement leave entitlement in the event of death of a step grandparent or stepparent in-law. In denying the grievance, Arbitrator Monroe concludes: "Here, as I have said more than once, the parties explicitly included "step-parent" and "step-child" in their definition of "immediate family" for bereavement leave purposes, but have not listed other "step" relationships. More specifically they have not listed the relationships of "step-grandparent" or "step-parent-in-law". In the whole of the circumstances, I have concluded that by accepting the union's argument that those two "step" relationships are nevertheless included in "immediate family", I would be amending and not just interpreting the collective agreement. My answer to the question posed for resolution is as follows: "No, step grandparents and step-parents-in-law are not included in 'the employee's immediate family' for purposes of Article IX, Section 6 of the collective agreement".

The principle to be applied because of this interpretation case is that if the relationship is not specifically listed in the collective agreement then the employee is **not** entitled to paid bereavement leave.

Case References – Article IX, Leave of Absence, Section 9:

1. CONIFER, AND IWA CANADA
   (BEREAVEMENT LEAVE)
   April 13, 2000 Arbitrator Don Munroe
   Click here to read this case reference

   CONCLUSION: Specific relationship must be listed to be eligible.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 10: Jury Duty

a) Any regular full-time employee who is required to perform Jury Duty, Coroner's Duty, or as a Crown Witness or Coroner's Witness on a day which he/she would normally have worked will be reimbursed by the Company for the difference between the pay received for Jury Duty and his/her regular straight time hourly rate of pay for his/her regularly scheduled hours of work. It is understood that such reimbursement shall not be for hours in excess of eight (8) per day or forty (40) per week, less statutory pay received for Jury Duty. The employee will be required to furnish proof of Jury Service and Jury Duty pay received.

b) Any piece worker who is required to perform Jury Duty shall be compensated for the difference between statutory pay received for Jury Duty and his/her job rate in accordance with the principle established Article XI, Section 2 b).

c) Hours paid for Jury Duty will be counted as hours worked for the purpose of qualifying for vacation and for recognized paid holidays but will not be counted as hours worked for the purpose of computing overtime.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 10: Jury Duty

When a regular full-time employee is required to perform jury duty, including Coroner's jury duty, or is required to appear as a Crown witness, the Company must make up the difference between the payment received for those duties and the wages lost. This does not include employees who are subpoenaed as defence witnesses in a criminal prosecution or an employee subpoenaed as a witness in civil litigation, or an employee subpoenaed as a witness in a Labour Relations Board hearing. An arbitration case *(See Case Reference #1)* established that an employee who was required for Jury Duty on a given date was not obliged to report for work on a shift even though he was only required for Jury Duty for a portion of the shift. This case is from a PPWC bargaining unit, but the collective agreement contains the same language.

Case References – Article IX, Leave of Absence, Section 10:

1. DOMAN & PPWC LOCAL 8
   (JURY DUTY GRIEVANCE)
   December 13, 1982 Arbitrator Rod Germaine
   Click here to read this case reference

   CONCLUSION: The Arbitrator states the following: "I conclude, therefore, that the clause contemplates that an employee will not be required to return to work for any portion of a day for which the employee is entitled to compensation from the Company because of jury duty or the necessity to give evidence as a witness. Indeed, I am satisfied that any other interpretation is inconsistent with the language of the collective agreement. As a result, the grievance succeeds."

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 11: Public Office

a) The Company will grant leave of absence for campaign purposes to candidates for Federal, Provincial or Municipal elective public office for periods up to and including eight (8) weeks, provided the Company is given due notice in writing of twenty (20) calendar days, unless the need for such application could not reasonably be foreseen.

b) Employees elected or appointed to Federal, Provincial, or Municipal office, shall be granted as much leave as is necessary during the term of such office. Municipal office holders, where the term of public office is served intermittently, shall give the Company reasonable notice for absences from work for conducting Municipal business.

c) The employee who obtains this leave of absence shall return to his/her Company within thirty (30) calendar days after completion of public office.

Guidelines:

ARTICLE IX – LEAVE OF ABSENCE

Section 11: Public Office

Leaves granted under sub-section a) will be for periods up to eight (8) weeks. Twenty calendar days notice is not always practicable and the Company should apply some flexibility.

Federal or Provincial positions typically require leave for the full term of office. Health and Welfare, Medical, and Dental benefits coverage cease during leaves of a full time nature but are maintained if the position of office is on an intermittent basis. Refer to the Benefit Plan Administration Manual for more details.

Employees granted leave under this section are obliged to return to work within thirty (30) calendar days after completion of public office.

Text:

ARTICLE IX – LEAVE OF ABSENCE

Section 12: Domestic Violence Leave

An employee may take 10 days of unpaid domestic violence leave each calendar year for the following purposes:

- to allow the employee, employee's dependent child or a protected adult to seek medical attention for physical or psychological injury caused by domestic violence
- to obtain services from a victim services organization
- to allow the employee, employee's dependent child or a protected adult to obtain psychological or other professional counselling
- to relocate (temporarily or permanently)
- to seek legal or law enforcement assistance, including time relating to legal proceedings

Any leave days not used by an employee cannot be carried over into a new calendar year.

There will be no waiting period for employees who qualify for short term disability due to an injury caused by domestic violence.

Reasonable documentation may be required to take domestic violence leave.

Guidelines:

Article IX – LEAVE OF ABSENCE

Section 12: Domestic Violence Leave

This Section was added in the negotiation of the 2018-23 Collective Agreement, under item 5 of the MOA of February 13, 2019.

The inclusion of this section was not intended to alter the traditional application of Section 4, Compassionate Leave.

Following the inclusion of this section in the collective agreement, the BC provincial government amended the Employment Standards Act to provide for

leave of this nature under Part 6, Section 52.5. (Leave Respecting Domestic or Sexual Violence).

Employers are bound to comply with Part 6, Section 52.5 of the Act notwithstanding this topic is addressed under the collective agreement.

The Policy Interpretation and some supportive relevant information regarding the administration of ESA Part 6, section 52.5 is as follows:

Policy Interpretation:

All employees are entitled to up to 5 days of paid leave and 5 days of additional unpaid leave to seek medical attention, counselling or other social or psychological services, or legal advice, or to seek new housing if they or an eligible person has experienced domestic violence. If necessary, an employee can take up to 15 weeks of additional unpaid leave. Employees can take intermittent hours, partial or full days. The leave does not have to be taken all at once.

The right to leave respecting domestic violence under this Part is available to all eligible employees regardless of how long they have been employed. The leave is a statutory entitlement, not something that may or may not be granted at the discretion of the employer.

Employees must request leave from their employer and follow the normal processes for requesting leave. Advance notice is not required.

Employers have the right to be satisfied of the entitlement to the leave to better support the employee, as well as to ensure the leave is administered properly. If the employer asks for information to support the leave, the employee must provide it as soon as practicable – it does not have to be right away.

Calculating an "average day's pay"

An average day's pay is calculated by dividing the amount paid or payable in the 30 calendar days before the leave by the number of days worked.

Terms and Conditions of Employment Protected

Section 54 provides that an employer cannot terminate an employee or change a condition of employment without the employee's written consent as a result of a leave under this Part. See also section 56 for an explanation of the effects of leave under this Part on employment and benefit payments. If the employer's business operations have been suspended or discontinued at the time the employee's leave ends, the employer must comply with s.54(2) when operations resume.

In the event of a contravention under this Part of the Act, the director may order a remedy in a determination under s. 79(2). The determination will include an escalating monetary penalty, subject to s.98.

Employees Covered by a Collective Agreement

Section 3 provides that parties to a collective agreement may not negotiate terms and conditions that do not meet or exceed the standards set out in section 52.5. Where there is a collective agreement, the enforcement of matters relating to section 52.5 is through the grievance procedure, not through the enforcement provisions of the Act.

Member Companies are encouraged to contact the CONIFER office or legal counsel in the event of an application for leave under this Section. Additional information can also be obtained from the BC Governments "Guide to the Employment Standards Act".