Medical leave with pay - IPG-118

Effective date: December 1, 2022

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Subject

This Interpretation, Policy and Guideline (IPG) intends to provide further guidance on medical leave with pay provided for in section 239, of Division XIII of Part III of the *Canada Labour Code* (Code).

Issue

The following provision has been added to the Code:

- medical leave with pay

There is a need to ensure a consistent interpretation of several principles involving section 239.

This IPG addresses the following:

- employees entitled to medical leave with pay
- when an employee can take medical leave with pay
- defining a year for the purposes of medical leave with pay
- qualifying period
- establishing qualifying period
- accrual of medical leave with pay
- annual carrying over of unused medical leave with pay
- scheduling medical leave with pay
- certificate
- calculating medical leave with pay entitlement for employees whose hours of work vary or who are paid on a basis other than time

Interpretation

Effective December 1, 2022, all employees in federally regulated workplaces are entitled to accrue medical leave with pay of up to 10 days each year.

Note: "employees" also includes "interns". Student interns are not entitled to medical leave with pay.

Employees entitled to medical leave with pay

All continuously employed employees are entitled to medical leave with pay. This includes part-time, casual, and fixed-term contract employees. Medical leave with pay provisions apply to all federally regulated employers regardless of business size or how many employees they employ.

When an employee can take medical leave with pay

Any employee may take medical leave with pay for any of the following reasons:

- personal illness or injury of the employee
- organ or tissue donation from the employee
- medical appointments for the employee during working hours
- quarantine of the employee

Employees are entitled to take medical leave with pay when their employer:

- schedules them to work, or
- reasonably expects them to be available for assigned work

An employee is not permitted to take medical leave with pay on a day their employer does not schedule or expect them to be available for work.

Defining a year for the purposes of medical leave with pay

The Code and *Canada Labour Standards Regulations* allow some flexibility when defining a year for the purposes of medical leave with pay entitlement.

An employer may choose to establish one of the below options as the year for the purposes of medical leave with pay entitlements:

- a calendar year
- an alternate year period used by the employer that exists for the purposes of calculating annual vacation entitlement

Qualifying period

Employees earn medical leave with pay after they complete an initial 30-day qualifying period of continuous employment with their employer. Employees earn their first 3 days of medical leave with pay after completing their initial 30-day qualifying period.

Establishing qualifying period

Employees who are already employed as of the coming into force date of December 1, 2022 automatically started their initial 30-day qualifying period on December 1, 2022.

Employees hired after December 1, 2022 started their initial 30-day period on their first day of employment.

Accrual of medical leave with pay

After completing the initial 30-day qualifying period, employees earn their first 3 days of medical leave with pay.

After the initial 30-day qualifying period in which the employee earns 3 days of medical leave with pay, the employee must then complete 1 month of continuous employment before earning additional days. For the purposes of this calculation, 1 month of continuous employment is 1 complete calendar month. At the beginning of each month after completing the month of continuous employment with the employer, the employee will earn 1 additional day of medical leave with pay up to a maximum of 10 days per year.

Annual carrying over of unused medical leave with pay

Employers will carry over any unused days of medical leave with pay in a year to an employee at the beginning of the next year. Employers can carry over up to a maximum of 10 days. This carryover will count toward the maximum of 10 days that an employee can earn during the following year.

Scheduling medical leave with pay

An employee is entitled to take medical leave with pay when the reason meets the requirements of the Code. Some employees may have multiple leave entitlements available to them. In this case, only the employee may decide to categorize the leave as paid medical leave. Employers do not have the authority to decide when their employees take medical leave with pay.

Certificate

An employer may require in writing that the employee provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of their medical leave.

In line with subsection 239(2), an employer may require a medical certificate from an employee who takes medical leave with or without pay:

- no earlier than after 5 days of consecutive leave
- no later than 15 days after the employee’s return from leave

Part III of the Code defines a health care practitioner as a person lawfully entitled, under the laws of a province, to provide health services in the place in which they provide those services.

Calculating medical leave with pay entitlement for employees whose hours of work vary or who are paid on a basis other than time

Section 17 of the *Canada Labour Standards Regulations* prescribes the method to calculate pay to which an employee is entitled for various leaves when:

- the employee's work hours differ from day to day, or
- the employee is paid on a basis other than time

Employers can calculate medical leave pay for these employees by taking the average of the employee's daily earnings, exclusive of overtime hours, for the 20 days the employee has worked immediately preceding the first day of the period of paid leave. Employers must apply this calculation method to medical leave with pay.

An employee's collective agreement can specify a different calculation method. The calculation method contained in the collective agreement must relate specifically to medical leave with pay.

The calculation method for medical leave with pay is as follows:

- employee not covered by collective agreement or covered by a collective agreement that does not contain an agreed upon calculation method:
  - average of the employee's daily earnings, exclusive of overtime hours, for the 20 days the employee has worked immediately preceding the first day of the period of paid leave
- employee covered by a collective agreement that contains an explicit calculation method for medical leave with pay:
  - calculated by the method agreed on under or pursuant to the collective agreement that is binding on the employer and the employee

Difference between personal leave and medical leave with pay

The Code was amended on December 1, 2022, to remove ”treating their illness or injury” [paragraph 206.6(1)(a)] from the reasons for which personal leave may be taken. Therefore, an employee is no longer able to take personal leave to treat their illness or injury.

Examples

Examples 1 to 5: accrual and carry over

Example 1 (first day of employment: prior to December 1, 2022)

Karim is an employee at a major bank with more than 2 years of continuous employment. The new medical leave with pay provisions apply to him from the date they come into force, on December 1, 2022. Karim completed the initial 30-day qualifying period of continuous employment under the new medical leave with pay provisions on December 30, 2022. Therefore, he earns 3 days of medical leave with pay on December 31, 2022. Karim's employer uses the calendar year as basis for medical leave with pay entitlement.

On January 1, 2023, Karim's 3 unused days of medical leave with pay carry over to the 2023 calendar year. These 3 days carried over from 2022 count as days earned in 2023. Since Karim carried over 3 days of medical leave with pay, he may only earn an additional 7 days in 2023.

Next, Karim must complete 1 month of continuous employment after the initial 30-day qualifying period. This month of continuous employment starts on January 1, 2023 and ends on January 31, 2023. After completing this month of continuous employment, Karim earns 1 day of medical leave with pay at the beginning of each month. On February 1, 2023, he earns his 4th day of medical leave with pay.

Karim continues to earn 1 day of medical leave with pay at the beginning of each month until he earns his 10th day on August 1, 2023.

Example 2 (first day of employment: December 15, 2022)

Tim starts a new job as a long-haul truck driver on December 15, 2022. The new medical leave with pay provisions apply to him from his first day of employment. Tim completes his 30-day qualifying period on January 13, 2023, and earns 3 days of medical leave with pay on January 14, 2023.

Next, Tim must complete 1 month of continuous employment after the initial 30-day qualifying period. This month of continuous employment is the calendar month following the 30-day period. It starts on February 1, 2023 and ends on February 28, 2023. After completing this month of continuous employment, Tim earns 1 day of medical leave with pay at the beginning of each month. On March 1, 2023, he earns his 4th day of medical leave with pay.

Tim continues to earn 1 day of medical leave with pay at the beginning of each subsequent month until he earns 10 days. This is the maximum he can earn in each calendar year. Tim earns his 5th day on April 1, 2023, his 6th day on May 1, 2023, and so on, until he earns his 10th day on September 1, 2023.

Example 3 (first day of employment: February 1, 2023)

Danuta starts a new job as a helicopter pilot on February 1, 2023. The new medical leave with pay provisions apply to her from her first day of employment. Danuta completes her 30-day qualifying period on March 2, 2023. She earns her first 3 days of medical leave with pay on March 3, 2023. Her employer uses the calendar year as basis for medical leave with pay entitlement.

Next, Danuta must complete 1 month of continuous employment after the initial 30-day period. This month of continuous employment is the calendar month following the 30-day period. It starts on April 1, 2023 and ends on April 30, 2023. After completing this month of continuous employment, Danuta earns 1 day of medical leave with pay at the beginning of each month. On May 1, 2023, she earns her 4th day of medical leave with pay.

Danuta continues to earn 1 day of medical leave with pay at the beginning of each month until she earns her 10th day on November 1, 2023. After that, she will not earn any more in the 2023 calendar year.

Example 4 (calculation based on a year other than a calendar year)

Paula works for an employer who uses a fiscal year (April 1 to March 31) rather than a calendar year (January 1 to December 31) as a basis for vacation leave and medical leave. As of March 31, 2023, Paula has accumulated 5 days medical leave with pay and has not taken any. On April 1, 2023, her employer carries over her 5 accumulated days to the new fiscal year. Paula can then accumulate an additional 5 days (1 additional day on the first day of each subsequent month) during the new fiscal year for a maximum of 10 days.

Example 5 (maximum days earned and carry over)

Tin Yung has more than 10 years of continuous employment with his current employer. He earned medical leave with pay in the 2022 and 2023 calendar years. Tin Yung did not take any medical leave with pay and has 10 days banked at the end of 2023. Tin Yung's employer uses the calendar year as basis for medical leave with pay entitlement.

On January 1, 2024, Tin Yung's 10 days of banked medical leave with pay carry over to the 2024 calendar year. This carryover of the banked 10 days counts as 10 days earned in the 2024 calendar year. As a result, Tin Yung has earned the maximum medical leave with pay on the first day of the calendar year.

Later in January 2024, Tin Yung takes 10 days of paid leave to recover from an illness, using his entire bank of 10 days of medical leave with pay.

Tin Yung's bank of medical leave with pay remains empty for the remainder of the 2024 calendar year. He only starts earning medical leave with pay again in 2025. Starting on January 1, 2025, Tin Yung earns 1 day of medical leave with pay at the beginning of each month until he earns a maximum of 10 in the 2025 calendar year.

Examples 6 to 8: calculating pay entitlement

Example 6 (calculation method not provided in collective agreement)

Claire is an employee who works in the rail sector. Claire's employer pays her based on mileage. She is covered by a collective agreement that does not include a medical leave with pay entitlement. Claire recently took a medical leave day with pay but is unsure what her pay entitlement should be. The collective agreement does not explain a calculation method for medical leave with pay. This means the calculation method for Claire's medical leave with pay must be the average of her daily earnings, not including overtime hours, for the 20 days she has worked immediately before the first day of the paid leave.

Example 7 (medical leave with pay while on a modified work schedule)

Lisa is an employee working 10 hours a day on an ‘8 on/ 4 off’ modified work schedule (eight 10-hour days in a row followed by four days off). Lisa takes a day of medical leave with pay on a scheduled workday and wonders if this day will be paid for 10 hours or 8 hours.

Lisa is entitled to 10 hours at the regular rate of pay when taking a day of medical leave with pay.

Employees who work a regular set schedule, and who are paid on a basis of time (e.g., hourly), must be paid at their regular rate of wages for their standard hours of work. This is the case whether the employee works a standard work week of eight hours a day for five days a week, or if they are on a modified work schedule.

Example 8 (paid on a basis other than time)

Shawn is a long-haul truck driver who works part time, completing on average one 3 to 4-day trip per week. He is paid $0.50 per km.

Shawn's employer schedules him to start a 3-day trip on April 1, 2023. Getting out of bed that morning, Shawn sprains his ankle. He decides to use one day of medical leave with pay to let his ankle rest and to recover. He plans to return to work the next day.

Shawn's hours of work differ from day to day, and his employer pays him on a basis other than time. Therefore, his day of medical leave with pay will be paid based on section 17 of the *Canada Labour Standards Regulations*. That is, Shawn's employer will pay him the average of his daily earnings (exclusive of overtime hours) in the last 20 days he has worked immediately preceding April 1, 2023.

The table below shows Shawn's hours worked and wages earned in the 2 months preceding April 1, 2023. Shawn never works over 60 hours a week and as a result never works any overtime hours.

Shawn's employer has to go back as far as February 9, 2023 in order to establish the relevant 20 days of daily earnings preceding the medical leave with pay Shawn used on April 1, 2023. The total amount Shawn earned over these 20 days was $3,950.00. The average of these 20 days of earnings is $197.50.

Shawn's employer will pay him $197.50 for the day of medical leave with pay on April 1, 2023.

Month	Date	KMs driven	Daily earnings	Days worked preceding the medical leave with pay
February	9	400	$200	20
February	10	400	$200	19
February	11	500	$250	18
February	12	400	$200	17
February	13	N/A	N/A	N/A
February	14	200	$100	16
February	15	300	$150	15
February	16	500	$250	14
February	17	N/A	N/A	N/A
February	18	N/A	N/A	N/A
February	19	N/A	N/A	N/A
February	20	N/A	N/A	N/A

Month	Date	KMs driven	Daily earnings	Days worked preceding the medical leave with pay
February	21	300	$150	13
February	22	500	$250	12
February	23	450	$225	11
February	24	N/A	N/A	N/A
February	25	N/A	N/A	N/A
February	26	N/A	N/A	N/A
February	27	N/A	N/A	N/A
February	28	N/A	N/A	N/A
March	1	N/A	N/A	N/A
March	2	N/A	N/A	N/A
March	3	400	$200	10
March	4	400	$200	9
March	5	700	$350	8
March	6	200	$100	7
March	7	N/A	N/A	N/A
March	8	N/A	N/A	N/A
March	9	N/A	N/A	N/A
March	10	N/A	N/A	N/A
March	11	N/A	N/A	N/A
March	12	N/A	N/A	N/A
March	13	N/A	N/A	N/A
March	14	N/A	N/A	N/A
March	15	N/A	N/A	N/A

Month	Date	KMs driven	Daily earnings	Days worked preceding the medical leave with pay
March	16	N/A	N/A	N/A
March	17	N/A	N/A	N/A
March	18	N/A	N/A	N/A
March	19	200	$100	6
March	20	500	$250	5
March	21	500	$250	4
March	22	N/A	N/A	N/A
March	23	N/A	N/A	N/A
March	24	N/A	N/A	N/A
March	25	N/A	N/A	N/A
March	26	N/A	N/A	N/A
March	27	300	$150	3
March	28	350	$175	2
March	29	400	$200	1
March	30	N/A	N/A	N/A
March	31	N/A	N/A	N/A
April	**1**	**N/A**	**N/A**	**Date of medical leave with pay**

Examples 9 to 10: scheduling of leave

Example 9 (type of leave at employee's discretion)

Bastien became ill with the flu and missed 5 days of work. His employer mandated that he use his annual vacation entitlement for the 5 days of work missed. However, Bastien does not wish to use annual vacation and only wishes to use medical leave with pay. The employer cannot force Bastien to use annual vacation for the 5 days of missed work. The decision on which category of leave to use rests with Bastien.

Example 10 (when leave may be taken)

Clara works from Monday to Friday for a telecommunication company. If Clara is sick on a Saturday, she is not entitled to a medical leave with pay, as she is not scheduled to work that day.

If Clara were on-call for that same Saturday, she would be entitled to take medical leave with pay for the day, as there is a reasonable expectation to be available for work.

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