

Bill 148: Webinar Series

Domestic or Sexual Violence Leave of Absence

Prepared by
Stefanie Chimienti
Dentons Canada LLP (Toronto)

September 19, 2018

Agenda

- A Brief Statistical Overview of Domestic and Sexual Violence
- Domestic or Sexual Violence Leave of Absence: What Employers Need to Know
- Q&A Discussion
- Wrap-up

Domestic and Sexual Violence – A Brief Statistical Overview

- Domestic Violence

- Women are four times more likely than men to be victims of spousal violence.
- Educational attainment and income has no bearing on a women's risk of spousal violence.
- The average woman will make up to 5 attempts to leave her abuser before ending the relationship permanently.

- Sexual Violence

- In 2014, there were 22 incidents of sexual assault for every 1,000 Canadians aged 15 and older.
- Women experience a higher proportion of sexual offences.
- One in four victims reported that they had difficulty carrying out everyday activities because of the incident.

Domestic or Sexual Violence Leave: Eligibility

- Employees who have been employed for at least 13 **consecutive** weeks are entitled to domestic or sexual violence leave if the employee or the employee's child has experienced or been threatened with domestic or sexual violence.
- Definition of child: "Child" means a child, step-child, child under legal guardianship or foster child who is under 18 years of age.
- Note: An employee is not entitled to this leave, if s/he committed the domestic or sexual violence

Eligibility (continued)

The leave may be taken for any of the following purposes:

- to **seek medical attention** because of physical or psychological injury or disability caused by the domestic or sexual violence
- To **access services** from a victim services organization for the employee or the child of the employee
- To have psychological or other professional **counselling** for the employee or the child of the employee
- To **move** temporarily or permanently
- To seek **legal or law enforcement assistance**, including making a police report or getting ready for or participating in a family court, civil or criminal trial related to or resulting from the domestic or sexual violence

Domestic or Sexual Violence Leave: Length of Leave

- 10-day leave

- Employees are entitled to up to 10 full days of domestic or sexual violence leave every **calendar** year, regardless of their employment status (full-time or part-time).
- There is no pro-rating of the 10-day entitlement.
- The 10 days of domestic or sexual violence leave do not have to be taken consecutively.

- Timing

- Employees can take domestic or sexual violence leave in part days, full days, or in periods of more than one day.
- If an employee takes only part of a day as domestic or sexual violence leave, the employer can count it as a full day of leave.
- If an employee takes part of a day, the employer still has to pay the employee for any part of the day that the employee worked, and has to include the hours worked for the purpose of determining whether overtime was worked or a daily or weekly limit on hours of work was reached.

Length of Leave (continued)

- 15-week leave
 - Employees are also entitled to take up to 15 weeks of domestic or sexual violence leave within a **calendar year**.
 - A “week” is defined as running from Sunday to Saturday.
 - The 15 weeks can be taken consecutively or separately.
 - The employee may take leave for periods less than a full week (for example, single days, at the beginning, middle or end of a week), but if they do, they are considered to have used up one week of their 15-week entitlement.
- Timing
 - The employer cannot require the employee to take an entire week of leave if the employee only wants to take leave for a single day(s),
 - The employer cannot prevent the employee from working prior to taking a single day(s) of leave during a week, and cannot prevent the employee from returning to work after a single day(s) of leave during the week.

Domestic or Sexual Violence Leave: Is it covered and when is it payable?

- Employers must pay eligible employees for the first five days of their domestic or sexual violence leave.
- The employee is entitled to earn what they would have been paid had they been at work and not taken leave.
- If the employee missed part of a day to take the leave, the employee would be entitled to be paid any wages they actually earned during the time they were at work in addition to domestic or sexual violence leave pay.

Pay (continued)

- Calculation for pay depends on the type of employee. The different types are:
 - Employees who are paid by an hourly rate
 - Employees who are paid a salary
 - Performance related wages
 - Employees who are scheduled to work overtime hours
 - Employees who are scheduled to work hours when a shift premium is paid
 - Employee who is scheduled to work on a public holiday

Domestic or Sexual Violence Leave: Advance notice

- **10-day period:** the employee must tell the employer that they will be taking the 10-day leave in advance. If the employee cannot give notice, notice must be given to the employer as soon as possible after starting the leave. Notice does not have to be in writing.
- **15-week period:** the employee must tell the employer in writing that they will be taking the 15-week leave before the leave is taken. If the employee cannot give notice, notice must be given to the employer as soon as possible after starting the leave.
- For both types of leave, the employee has to give notice to the employer that they are taking the leave every time the leave is taken. However, an employee who does not give notice does not lose their right to the leave.

Evidence

- An employer may require an employee to provide evidence reasonable in the circumstances that they are eligible to take domestic or sexual violence leave.
- What is reasonable in the circumstances?
 - This will depend on all of the facts of any given situation, such as the duration of the leave, whether there is a pattern of absences, whether any evidence is available, and the cost of the evidence.



For more information, please contact us!



Stefanie Chimienti

Associate

Labour, Employment and Pensions

D +416 862 3463

E Stefanie.chimienti@dentons.com

For the full team, please visit [here](#).

Thank you

The logo for Dentons, featuring the Chinese characters "大成" followed by the word "DENTONS" in a bold, sans-serif font, all contained within a purple arrow-shaped graphic pointing to the right.

Dentons Canada LLP
77 King Street West
Suite 400
Toronto, Ontario M5K 0A1
Canada

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Labs and the Nextlaw Global Referral Network. Dentons' polycentric approach and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

www.dentons.com

© 2017 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see dentons.com for Legal Notices.