

2012 Bill 203

First Session, 28th Legislature, 61 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 203

**EMPLOYMENT STANDARDS
(COMPASSIONATE CARE LEAVE)
AMENDMENT ACT, 2012**

MR. JENEROUX

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 203
Mr. Jeneroux

BILL 203

2012

EMPLOYMENT STANDARDS (COMPASSIONATE CARE LEAVE) AMENDMENT ACT, 2012

(Assented to , 2012)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cE-9

1 The *Employment Standards Code* is amended by this Act.

2 Section 1(1) is amended by adding the following after clause (d):

(d.1) “compassionate care leave” means the rights and obligations described in Part 2, Division 7.2;

3 Section 2(2) is amended by striking out “or reservist leave” and substituting “, reservist leave or compassionate care leave”.

Explanatory Notes

1 Amends chapter E-9 of the Revised Statutes of Alberta 2000.

2 Definition added.

3 Section 2(2) presently reads:

2(2) Except for provisions relating to maternity and parental leave or reservist leave and other provisions of this Act necessary to give effect to those provisions, this Act does not apply to

- (a) employees who are members of a municipal police service appointed pursuant to the Police Act and their employers with respect to the employment of those employees, or*
- (b) employees and employers to the extent that another Act states that this Act or a provision of it does not apply to them.*

4 Section 3 is amended

- (a) in subsection (1)(b)(i) by adding “, compassionate care leave” after “reservist leave”;**
- (b) in subsection (2) by striking out “or reservist leave” and substituting “, reservist leave or compassionate care leave”.**

5 Section 14(4) is amended by adding the following after clause (f.1):

- (f.2) copies of documentation relating to compassionate care leave;

6 The following is added after section 53.8:

**Division 7.2
Compassionate Care Leave**

4 Section 3 presently reads:

3(1) Nothing in this Act affects

- (a) any civil remedy of an employee or an employer;*
- (b) an agreement, a right at common law or a custom that*
 - (i) provides to an employee earnings, maternity and parental leave, reservist leave or other benefits that are at least equal to those under this Act, or*
 - (ii) imposes on an employer an obligation or duty greater than that under this Act.*

(2) If under an agreement an employee is to receive greater earnings, maternity and parental leave or reservist leave than those for which this Act provides, the employer must give those greater benefits.

5 Section 14(4) presently reads:

14(4) An employer must keep an up-to-date record of the following additional information for each employee:

- (a) name, address and date of birth;*
- (b) the date that the present period of employment started;*
- (c) the date on which a general holiday is taken;*
- (d) each annual vacation, showing the date it started and finished and the period of employment in which the annual vacation was earned;*
- (e) the wage rate and overtime rate when employment starts, the date of any change to wage rates or overtime rates, and particulars of every change to them;*
- (f) copies of documentation relating to maternity and parental leave;*
- (f.1) copies of documentation relating to reservist leave;*
- (g) copies of any termination notice and of written requests to employees to return to work after a temporary layoff.*

6 Compassionate care leave.

Compassionate care leave

53.9 In this division,

- (a) “common-law partner” means a person who at the relevant time cohabits in a conjugal relationship with the employee and has so cohabited with the employee for a continuous period of at least one year;
- (b) “family member”, in relation to an employee, means
 - (i) a spouse or common-law partner of the employee,
 - (ii) a child of the employee or a child of the employee's spouse or common-law partner,
 - (iii) a parent of the employee or a spouse or common-law partner of the parent, and
 - (iv) any other person who is a member of a class of persons designated in the regulations for the purpose of this definition;
- (c) “physician” means a physician who provides care to a family member and who is entitled to practise medicine under the laws of the jurisdiction in which the care is provided;
- (d) “primary caregiver” means an individual who has primary responsibility for providing care or support to a seriously ill family member for that family.

(2) Subject to subsections (3) to (7), an employee who has completed at least 52 consecutive weeks with an employer is entitled to compassionate care leave of up to 8 weeks to provide care or support to a seriously ill family member if the employee is the primary care-giver.

(3) For an employee to be eligible for leave, a physician must issue a certificate stating that:

- (a) a family member of the employee has a serious medical condition with a significant risk of death within 26 weeks from
 - (i) the day the certificate is issued, or
 - (ii) if the leave was begun before the certificate was issued, the day the leave began; and

- (b) the family member requires the care or support of one or more family members.
- (4) An employee who wishes to take a leave under this section must give the employer notice of at least 2 weeks, unless circumstances necessitate a shorter period.
- (5) Except in emergency situations, the employee must give the employer a copy of the physician's certificate prior to commencing compassionate care leave.
- (6) An employee may take up to 2 periods of compassionate care leave totalling no more than 8 weeks, but any second period of leave must end no later than 26 weeks after the first period of leave began.
- (7) No period of leave may be less than one week's duration.

Termination of employment

- 53.10(1)** No employer may terminate the employment of, or lay off, an employee who has started compassionate care leave.
- (2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.12 continues to apply.

Resumption of employment

- 53.11(1)** If an employee has been on compassionate care leave, he or she must provide 2 weeks' written notice of the date the employee intends to resume work.
- (2) Notwithstanding subsection (1), nothing precludes an employer and an employee from agreeing in writing to a return to work date on less than 2 weeks' notice.
- (3) If an employee fails to comply with subsection (1) or (2), the employer may postpone the employee's return to work for a period of up to 4 weeks after the day on which the employee notifies the employer of the employee's intention to resume work.
- (4) If the employer informs the employee in writing that the employee's return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

(5) During the period of postponement, the employee is deemed to continue to be on compassionate care leave.

(6) Where an employee is entitled to resume work under this section, the employer must

- (a) reinstate the employee in the position occupied when the compassionate care leave started, or
- (b) provide the employee with alternative work of a comparable nature

at not less than the earnings and other benefits that had accrued to the employee when the compassionate care leave started.

(7) An employee who does not wish to resume employment after compassionate care leave must give the employer at least 2 weeks' written notice of intention to terminate employment.

Suspension of operations

53.12 If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's compassionate care leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

Leave and vacation conflict

53.13 Notwithstanding section 37(1), if an employee is on compassionate care leave on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

7 Section 82(1)(b) is amended by adding the following after subclause (i.2):

7 Section 82.1 presently reads:

- (i.3) contrary to section 53.10 after the employee started compassionate care leave;

8 Section 90(5) is amended by striking out “or Part 2, Division 7.1, Reservist Leave” and substituting, “, Part 2, Division 7.1, Reservist Leave or Division 7.2, Compassionate Care Leave”.

9 Section 128(c) is amended by striking out “or 53.6” and substituting “53.6, 53.11 or 53.12”.

82(1) *An employee may make a written complaint to an officer that*

- (a) *the employee is entitled to earnings;*
- (b) *the employment of the employee was suspended or terminated or the employee was laid off*
 - (i) *contrary to section 52(1) after the employee started maternity leave or because the employee was entitled to or had started parental leave,*
 - (i.1) *contrary to section 52.91 of the Public Health Act,*
 - (i.2) *contrary to section 53.4 after the employee started reservist leave;*
 - (ii) *for the sole reason that garnishment proceedings are being or might be taken against the employee,*
 - (iii) *because the employee gave evidence or may give evidence at any inquiry or in any proceeding or prosecution under this Act,*
 - (iv) *because the employee requested or demanded anything to which the employee is entitled under this Act, or*
 - (v) *because the employee made or is about to make any statement or disclosure that may be required of the employee under this Act.*

8 Section 90(5) presently reads:

90(5) An order of the Director for compensation under section 89(3)(b) may direct payment for a period not exceeding 6 months from the date that the employment of the employee was suspended or terminated, that the employee was laid off or that the employer failed to reinstate the employee or to provide the employee with alternative work, in accordance with Part 2, Division 7, Maternity Leave and Parental Leave or Part 2, Division 7.1, Reservist Leave.

9 Section 128 presently reads:

128 No employer may

- (a) *fail to pay earnings to an employee or to provide anything to which an employee is entitled under this Act;*
- (b) *require an employee to work hours in excess of the hours of work permitted under this Act;*

10 Section 129 is amended by adding “53.10,” after “53.4,”.

11 This Act comes into force on Proclamation.

- (c) *fail to reinstate an employee or provide an employee with alternative work in accordance with section 53, 53.1, 53.5 or 53.6;*
- (d) *fail to keep employment records as required by this Act.*

10 Section 129 presently reads:

129 A person who contravenes section 52, 53.4, 65, 124, 125, 126, 127 or 128 or a regulation made under section 138(1)(e) is guilty of an offence.

11 Coming into force.

Record of Debate

[illegible]