

# Personal emergency leave

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Most employees have the right to take up to **10 days** of job-protected leave each calendar year due to illness, injury, death and certain emergencies and urgent matters. This is known as **personal emergency leave (PEL)**. Special rules apply to some occupations.

Employees are entitled to up to 10 personal emergency leave days per year as soon as they start working for an employer. The first two days of the leave in each calendar year are paid if the employee has been employed for one week or longer. An employee who missed part of a day to take the leave would be entitled to any wages they actually earned while working, in addition to personal emergency leave pay for any leave taken.

## Reasons a personal emergency leave may be taken

An employee who is entitled to personal emergency leave can take up to 10 days of leave each calendar year due to:

- personal illness, injury or medical emergency
- or**

- death, illness, injury, medical emergency or urgent matter relating to the following family members:
  - spouse (includes both married and unmarried couples, of the same or opposite genders)
  - parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
  - spouse of the employee's child
  - brother or sister of the employee
  - relative of the employee who is dependent on the employee for care or assistance

## **Illness, injury or medical emergency**

An employee can take personal emergency leave for illnesses, injuries and medical emergencies for themselves or a specified family member listed above. It does not matter whether the illness, injury or medical emergency was caused by the employee or by external factors beyond their control. For example, an employee who sprained their knee while showing off to friends when waterskiing would still be entitled to personal emergency leave, even though the injury was a result of their own carelessness.

Generally, employees are entitled to take the leave for pre-planned (elective) surgery if it is for an illness or injury, even though it is scheduled ahead of time and not a medical “emergency.”

Employees cannot take the leave for cosmetic surgery that isn’t medically necessary or is unrelated to an illness or injury.

## **Urgent matter**

An employee can also take personal emergency leave because of an “urgent matter” concerning any of the family members listed above. An urgent matter is an event that is unplanned or out of the employee’s control, **and** can cause serious negative consequences, including emotional harm, if not responded to.

### **Examples of an “urgent matter”**

- The employee’s babysitter calls in sick.
- The house of the employee’s elderly parent is broken into, and the parent is very upset and needs the employee’s help to deal with the situation.
- The employee has an appointment to meet with their child’s counsellor to discuss behavioural problems at school. The appointment could not be scheduled outside the employee’s working hours.

### **Examples of events that do not qualify as an urgent matter**

- An employee wants to leave work early to watch his daughter’s soccer game.

- An employee wants the day off to attend her sister's wedding as a bridesmaid.

## **Personal emergency leave and contracts that provide paid sick or bereavement leave**

If an employment contract, including a collective agreement, provides a greater right or benefit than the personal emergency leave standard under the [Employment Standards Act](#) (ESA), then the terms of the contract apply instead of the standard.

If the contract does not provide a greater right or benefit, then the personal emergency leave standard in the ESA applies to the employee.

### **Example:**

A contract only provides three paid personal sick days and three paid bereavement leave days per year. It does not include job-protected time off for any other reason. This contract does not provide a greater right or benefit than the personal emergency leave provisions. This means that the employee is entitled to 10 days of job protected personal emergency leave per calendar year.

There is nothing in the ESA that would prohibit an employer from subtracting any personal emergency leave (PEL) days that are taken from the paid days under the contract. For example, if the employee takes three days of PEL for personal illness in a calendar year, the ESA does not prohibit the employer from counting those days against both the employment contract entitlements and against the employee's PEL entitlement. While this is not prohibited under the ESA, an employment contract may address whether any PEL days count against any contractual leave entitlements.

On the other hand, if an employer offers a benefit plan for sick days, bereavement days, or for any other event that any leave under the ESA can be taken, and the employee chooses to claim benefits under the plan, the employee has in effect designated the absence as a day of statutory leave and it will reduce the employee's ESA entitlement. For example, if an employer offers three paid bereavement days under a benefits plan and the employee is absent three days because of the death of a parent and claims benefits under the plan, the employee is considered to have used three of their PEL days.

## **Interaction between personal emergency leave and other leaves**

PEL, family caregiver leave, family medical leave, domestic or sexual violence leave, critical illness leave, child death leave and crime-related child disappearance leave are different types of leaves. The purposes of the leaves, their length and eligibility criteria are different. See the other chapters of this Guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s). This means that a single absence can only count against one statutory leave, even if the event that triggered it is a qualifying event under more than one leave.

## **Length of personal emergency leave**

Employees are entitled to up to 10 full days of job protected personal emergency leave every **calendar** year, whether they are employed on a full or part-time basis.

There is no pro-rating of the 10-day entitlement. An employee who begins work partway through a calendar year is still entitled to 10 days of leave for the rest of that year.

Employees cannot carry over unused personal emergency leave days to the next calendar year. The 10 days of leave do not have to be taken consecutively. Employees can take the leave in part days, full days or in periods of more than one day. If an employee takes only part of a day as personal emergency leave, the employer can count it as a full day of leave.

### **Example: Part-day personal emergency leave**

Kevin's daughter is sick, and her doctor has scheduled some tests at the hospital. Kevin tells his employer that he has to be away from work in the morning to take his daughter for tests.

Kevin has the right to be on personal emergency leave for the half-day needed to take his daughter for the tests. His employer does not have to count the absence as a full day of leave, but can if they want. Kevin does not have the right to take the entire day off as leave – even if his employer counted it as such – as he only needs half the day for the leave.

The employer is only allowed to count the half-day absence as a full day of leave when determining if Kevin's 10-day entitlement has been used up. The employer, for example, still must pay Kevin for the half day that he worked, and has to include the hours worked to determine whether he worked overtime, or reached his daily or weekly limit on hours of work.

## **Eligibility for personal emergency leave pay**

An employee who has been employed for at least a week with an employer is entitled to be paid for the first two days of personal emergency leave taken in a calendar year.

A new employee employed for less than a week may take unpaid days of leave. However, the first and second days of leave taken after that first week must be paid if they are taken in the same calendar year.

### **Example:**

Tessa starts a new job on Monday, August 1, but on her second day of work, her mother is injured in a car accident. Tessa gives notice to her employer and takes Tuesday afternoon and all day Wednesday off as personal emergency leave. She is not entitled to personal emergency leave pay for those days.

On Monday, August 8, Tessa gets the flu and takes two days of personal emergency leave. She is entitled to personal emergency leave pay for the two days of leave taken on August 8 and 9, although they are not the first and second days of leave she has taken in the calendar year. She has six days of leave left for the remainder of the calendar year.

## Calculating personal emergency leave pay

There are different ways to calculate personal emergency leave (PEL) pay, depending on how the employee is paid, and whether the employee took a full or part day of leave. Personal emergency leave pay is only payable for the first two days of leave taken in a calendar year.

### Example: Employees paid by an hourly rate

PEL pay is the hourly rate multiplied by the number of hours the employee did not work because they took the leave.

#### Scenario 1: If the took leave for a full day

- Jamie is paid \$16.00/hour and missed a full day of work to take personal emergency leave. He was scheduled to work nine hours.
- PEL pay:  $\$16.00 \times 9 = \$144.00$

#### Scenario 2: If the employee took leave for part of the day

- Oakley is paid \$17.50/hour and missed the first 2.5 hours of his shift to take personal emergency leave. He normally works eight hours in a day.
- PEL pay:  $\$17.50 \times 2.5 = \$43.75$  (in addition to regular earnings for the hours he worked during the rest of the day)

### Example: Employees paid by salary

PEL pay is generally equal to salary continuance.

#### Scenario 1: If the employee took leave for a full day

PEL pay would be the employee's salary divided by the number of days in a pay period.

- Theresa is paid \$1,500.00 per bi-weekly pay period and works five days a week.
- PEL for one day:  $\$1,500.00 \div 10 = \$150.00$ .

## **Scenario 2: If the employee took leave for part of the day**

PEL pay would be the employee's hourly rate (salary divided by the number of hours the employee normally works in a pay period) multiplied by number of hours taken as personal emergency leave.

- Theresa is paid \$1,500.00 per bi-weekly pay period and works a 40-hour week. She takes four hours of leave.
- Hourly rate:  $\$1,500.00 \div 80 = \$18.75/\text{hour}$ .
- Personal emergency leave:  $\$18.75 \times 4 = \$75.00$  (in addition to any regular wages earned for the part of the day that she worked).

## **Example: Performance-related wages**

The calculation of PEL pay for employees who are paid fully or partly based on performance would use either the employee's hourly rate (if any) or the applicable minimum wage – whichever is greater.

Performance-related wages can include commission-only employees, employees who earn commission plus an hourly wage, an employee paid by piecework, or a flat-rate mechanic.

## **Scenario 1: Employee earns an hourly rate plus commission**

- Athan earns \$16.00/hour plus 2% commission on sales
- Athan takes 6.5 hours of PEL
- PEL pay:  $\$16.00 \times 6.5 = \$104.00$  (plus hourly wage for any hours worked + commission earned while the employee worked, if any)

## **Scenario 2: Employee paid entirely by commission**

- Francesca earns 10% commission on all sales
- Francesca is scheduled to work eight hours, makes sales of \$5,000 and takes three hours of personal emergency leave
- PEL pay: applicable minimum wage rate x 3 (in addition to the \$500.00 commission earned while the employee worked)

## **Scenario 3: Employee is a homemaker paid by piecework**

- Yael earns \$3.50 per phone call answered
- Yael is scheduled to work 8.5 hours, works two hours, answers nine phone calls and takes 6.5 hours of personal emergency leave
- PEL pay: applicable minimum wage x 6.5 (in addition to regular wages earned on the day based on piecework, which is  $\$3.50 \times 9$ )

## **Scenario 4: Employee is a flat-rate mechanic**

- Matt is scheduled to work nine hours
- Matt is paid a flat “book” rate of \$16.00/hour for tune ups (calculated to take two hours to complete)
- Employee completes two tune ups in three hours and takes the rest of the shift as personal emergency leave
- PEL pay: applicable minimum wage x 6 (in addition to regular wages earned on the day)

### **Example: Employees scheduled to work overtime hours**

If an employee is scheduled to work a shift that includes overtime hours, and they miss all or part of the shift to take paid personal emergency leave, the employee will be entitled to the regular hourly rate only for any leave taken, not the overtime rate.

- Ramiro is paid \$15.00/hour and was scheduled to work a Saturday shift of eight hours. He had already worked 44 hours in the same week. He missed his entire shift to take paid personal emergency leave.
- PEL pay:  $\$15.00 \times 8 = \$120.00$

### **Example: Employees scheduled to work hours when a shift premium is paid**

If an employee is scheduled to work a shift that would attract a shift premium, and they miss all or part of the shift to take paid personal emergency leave, the employee will be entitled to the regular hourly rate only for any leave taken, not the shift premium.

- Minh is paid \$16.00/hour and an additional \$2.50/hour for working night shifts. She is scheduled to work a night shift of nine hours and leaves after working two hours to take paid personal emergency leave.
- PEL pay:  $\$16.00 \times 7 = \$112.00$  (plus regular wages and shift premium of  $[\$16.00 + \$2.50] \times 2$  for the hours that she worked)

### **Example: Paid PEL is taken when an employee was scheduled to work on a public holiday**

In some situations, employees can either be required to work on a public holiday because of the type of work that they do, or may agree to work on a public holiday.

Generally, the employee will be entitled to either:

- regular wages for the hours worked on the public holiday, plus a substitute day off with public holiday pay
- **or**
- “premium pay” which is 1.5 times their regular rate for all hours worked on the public holiday, plus public holiday pay (and no substitute day off).

To receive this entitlement, the employee must work all the hours agreed to or required to on the public holiday – unless they had reasonable cause not to – and follow the “first and last” rule.

That rule says that the employee must work all of the last scheduled shift before the public holiday and the first one after the holiday or have reasonable cause for failing to do so.

If an employee misses work because of one of the reasons personal emergency leave may be taken, this will also generally constitute “reasonable cause” for the purposes of public holiday entitlements.

If an employee agrees, or is required, to work on a public holiday and misses some or all of the shift to take paid personal emergency leave, PEL pay will not include the “premium pay” that the employee would have earned had they not taken the leave.

- Tabitha works in a restaurant and is required to work on Victoria Day. She is paid the liquor server’s minimum wage.
- She is scheduled to work 10 hours on the public holiday, and the employer has decided to give her premium pay for all hours worked on that day, plus public holiday pay (but no substitute day off).
- Tabitha works six hours of the shift and takes the rest off as paid personal emergency leave.
- Entitlements:
  - Public holiday pay
  - Premium pay for hours worked (liquor server’s minimum wage x 1.5 x 6 hours).Note: the employee is not entitled to premium pay for any leave taken.

## **Notice requirements**

Generally, an employee must inform the employer before starting the leave that he or she will be taking a personal emergency leave of absence.

If an employee has to begin the leave before notifying the employer, the employee must inform the employer as soon as possible after starting it. Notice does not have to be given in writing. Oral notice is sufficient.

While an employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take the leave if they fail to do so.

## **Proof of entitlement**

An employer may require an employee to provide evidence “reasonable in the circumstances” that they are eligible for personal emergency leave. However, employers cannot require employees to provide a medical note from a physician, registered nurse or psychologist (see discussion below).

What will be reasonable in the circumstances will depend on all of the facts of the 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 example, if an employee takes the leave because of the death of a person included in the group of family members covered by personal emergency leave, it would be reasonable for an employer to request a copy of an obituary or a death certificate.

The prohibition in the ESA against requiring a note from a physician, registered nurse or psychologist applies only with respect to providing evidence that the employee is entitled to personal emergency leave. There may be some situations **outside of the scope of personal emergency leave** where an employer may need medical documentation in order to, for example, accommodate an employee, satisfy return to work obligations. The ESA does not prohibit employers from requiring a note for these sorts of other purposes.

## **Medical notes because of personal illness, injury or medical emergency or the illness, injury or medical emergency of a specified relative**

An employer cannot require an employee to provide a medical note from a qualified health practitioner when the employee is taking the leave because of personal illness, injury or medical emergency or the illness, injury or medical emergency of a specified relative.

A “qualified health practitioner” means a physician, a registered nurse or a psychologist qualified to practice in Ontario or in another jurisdiction in which care or treatment is provided to the employee or specified family member.

An employer can ask an employee for a note from other types of health practitioners, such as a dentist, physiotherapist, Chinese medicine practitioner, naturopath or registered massage therapist, if it is “reasonable in the circumstances.”

If it is reasonable in the circumstances for the employer to require the employee who took leave for their own illness, injury or medical emergency to provide a note from an individual who is not a physician, registered nurse or psychologist, the employer can ask only for the following information:

- the duration or expected duration of the absence
- the date the employee was seen by a health care professional
- whether the patient was examined in person by the health care professional issuing the note

Employers cannot ask for information about the diagnosis or treatment of the employee’s medical condition.

In addition to being prohibited from requiring the employee to provide a medical note with respect to a leave taken because of the illness, injury or medical emergency of a relative, the employer cannot require the employee to give details of the relative’s medical condition. The employer may only require the employee to disclose the name of the relative, and their

relationship to the employee, and a statement that the absence was required because of the relative's injury, illness or medical emergency.

## **Rights during leave**

Employees who take personal emergency leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking a personal emergency leave. See "[Rights for employees taking pregnancy and parental leaves](#)" in the "Pregnancy and parental leave" chapter of this guide.

## **Special rules regarding personal emergency leave**

### **Professional employees**

Certain professionals may not take PEL where it would constitute an act of professional misconduct or a dereliction of professional duty (e.g. health practitioners). For a list of professions to which this special rule applies, please refer to the [special rule tool](#).

### **Automobile manufacturing/parts warehousing/marshalling employees**

Employees who work in automobile manufacturing, automobile parts manufacturing or warehousing, or automobile marshalling have special rules for PEL. These rules apply whether the workplace is unionized or not unionized. These employees are entitled to take up to seven days of leave within a calendar year in relation to their own illness, injury or medical emergency, or the illness, injury, medical emergency or urgent matter of a specified family member. In addition, these employees may take up to three days of PEL because of the death of a specified family member (per family member); there is no limit on the number of instances the employee may qualify for bereavement leave of up to three days.

An employee will not be entitled to PEL pay (although they will still be entitled to take unpaid leave) if the employee, as part of their employment contract, is entitled to receive two or more paid days off work per year that are:

- Vacation, in excess of what the employee already gets under the ESA
- Holidays (including non-ESA public holidays like the August Civic holiday, or company holidays), in excess of what the employee already gets under the ESA, or
- For personal illness or for personal medical appointments.

### **Construction employees**

If a construction employee receives at least 0.8% of their regular wages or hourly rate as personal emergency pay on each pay cheque, the employee is not entitled to PEL pay. However, they will still be entitled to take unpaid PEL.

