

# Article G.2: Compassionate Care Leave

## ❖ Overview

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This article establishes an entitlement to compassionate care leave for employees in accordance with the terms and conditions of the provincial *Employment Standards Act (ESA)* (established April 27, 2006). This provision is intended to guide the parties in the administration of compassionate care leave as established in the ESA. The purpose of the provision is to provide leave to employees who are absent from work to care for an ill family member. It is separate and distinct from any existing compassionate or bereavement leave provisions in your Previous Local Agreement.

Concurrent with this provision, employees may or may not be entitled to Employment Insurance (EI) benefits.

## ❖ Article G.2: Compassionate Care Leave

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1. *For the purposes of this article “family member” means:*
  - a. *In relation to an employee:*
    - i. *a member of an employee's immediate family;*
    - ii. *an employee’s aunt or uncle, niece or nephew, current or former foster parent, ward or guardian;*
    - iii. *the spouse of an employee’s sibling or step-sibling, child or step-child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster child or guardian;*
  - b. *In relation to an employee’s spouse:*
    - i. *the spouse’s parent or step-parent, sibling or step-sibling, child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster parent, or a current or former ward; and*
  - c. *Anyone who is considered to be like a close relative regardless of whether or not they are related by blood, adoption, marriage or common law partnership.*
2. *Upon request, the employer shall grant an employee Compassionate Care Leave pursuant to Part 6 of the BC Employment Standards Act for a period up to eight (8) weeks or such other period as provided by the Act. Such leave shall be taken in units of one or more weeks.*
3. *Compassionate care leave supplemental employment insurance*

*benefits:*

*When an employee is eligible to receive employment insurance benefits, the employer shall pay the employee:*

- a. one hundred percent (100%) of the employee's current salary for the first two (2) weeks of the leave,*
  - b. for an additional six (6) weeks, one hundred percent (100%) of the employee's current salary less any amount received as EI benefits*
  - c. current salary shall be calculated as 1/40 of annual salary where payment is made over ten months or 1/52 of annual salary where payment is made over twelve months.*
- 4. A medical certificate may be required to substantiate that the purpose of the leave is for providing care or support to a family member having a serious medical condition with a significant risk of death within 26 weeks.*
  - 5. The employee's benefit plans coverage will continue for the duration of the compassionate care leave on the same basis as if the employee were not on leave.*
  - 6. The employer shall pay, according to the Pension Plan regulations, the employer portion of the pension contribution where the employee elects to buy back or contribute to pensionable service for part or all of the duration of the compassionate care leave.*
  - 7. Seniority shall continue to accrue during the period of the compassionate care leave.*
  - 8. An employee who returns to work following a leave granted under this article shall be placed in the position the employee held prior to the leave or in a comparable position.*

*Note: The definition of "immediate family" in clause 1 above, shall incorporate any expanded definition of "immediate family" that may occur through legislative enactment.*

The parties have now expanded the definition of family so it is consistent with the changes to the *Employment Standards Act*.

## ❖ Explanation

- G.2.1** 1. *For the purposes of this article “family member” means:*
- a. *In relation to an employee:*
    - i. *a member of an employee's immediate family;*
    - ii. *an employee’s aunt or uncle, niece or nephew, current or former foster parent, ward or guardian;*
    - iii. *the spouse of an employee’s sibling or step-sibling, child or step-child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster child or guardian;*
  - b. *In relation to an employee’s spouse:*
    - i. *the spouse’s parent or step-parent, sibling or step-sibling, child, grandparent, grandchild, aunt or uncle, niece or nephew, current or former foster parent, or a current or former ward; and*
  - c. *Anyone who is considered to be like a close relative regardless of whether or not they are related by blood, adoption, marriage or common law partnership.*

G.2.1 defines “family member” and thus identifies those individuals whose state of health may trigger a request for leave pursuant to this article. The parties agreed that this definition may be amended to reflect any expanded definition in the *Employment Standards Act*. This initial definition has now been amended as a result of changes to the Act and is even broader in scope.

- G.2.2** 2. *Upon request, the employer shall grant an employee Compassionate Care Leave pursuant to Part 6 of the BC Employment Standards Act for a period up to eight (8) weeks or such other period as provided by the Act. Such leave shall be taken in units of one or more weeks.*

G.2.2 allows an employee up to eight weeks of Compassionate Care Leave under normal circumstances pursuant to the provisions of the *Employment Standards Act*. This leave may be taken in smaller blocks of time, in increments of one week or more.

3. *Compassionate care leave supplemental employment insurance benefits:*  
*When an employee is eligible to receive employment insurance benefits, the employer shall pay the employee:*
- a. *one hundred percent (100%) of the employee’s current salary for the first two (2) weeks of the leave,*

- b. *for an additional six (6) weeks, one hundred percent (100%) of the employee's current salary less any amount received as EI benefits*
- c. *current salary shall be calculated as 1/40 of annual salary where payment is made over ten months or 1/52 of annual salary where payment is made over twelve months.*

G.2.3 allows an employee who is eligible to receive employment insurance benefits up to eight weeks of supplemental employment benefits for Compassionate Care Leave.

Employees can receive compassionate care employment insurance benefits for up to a maximum of six weeks if they have been absent from work to provide care or support to a gravely ill family member at risk of dying within 26 weeks. To be eligible for compassionate care employment insurance benefits, an employee must be able to show that their regular weekly earnings from work have decreased by more than 40 percent; and they have accumulated 600 insured hours of work in the last 52 weeks, or since the start of their last claim (this period is called the qualifying period). Employees must also provide medical proof showing that the ill family member needs care or support and is at risk of dying within 26 weeks. The required forms are available on the Employment Insurance website. If the employee has submitted all the required information and qualifies for benefits, they will usually receive their first payment within 28 days of the date the claim is received.

Compassionate care leave benefits can be shared with other family members. Each member must apply for and be eligible for these benefits. Each family member can claim the benefits at any time during the 26-week period, either at the same time or different times. The family members will receive up to six weeks of EI benefits in total. The family members should agree on the number of weeks that each person will take before applying for benefits.

**NOTE: Due to a reduction in the EI waiting period to one week, BCPSEA advises districts to apply G.2.3.a for a one week period (not two) and G.2.3.b for a seven week period (not six). BCPSEA has obtained verbal agreement with BCTF on this approach through Labour Management discussions.** Compassionate care leave supplemental employment insurance benefits fall into the same category as maternity or parental supplemental employment insurance benefits. Therefore, the employer must indicate the percentage of top-up being received on Block 18 of the Record of Employment. In compassionate care leave cases the top-up will be 100%.

Once an employee has been approved for EI benefits for compassionate care leave they must supply the district with proof of the benefit. Benefits statements are available online and can be printed and submitted. The school district can then arrange for the employee to be paid the top-up. The district is

not required to pay the employee until eligibility for employment insurance benefits is confirmed.

- G.2.4** 4. *A medical certificate may be required to substantiate that the purpose of the leave is for providing care or support to a family member having a serious medical condition with a significant risk of death within 26 weeks.*

G.2.4 establishes that an employee may be required to provide a medical certificate for the purpose of substantiating the request. The employer will not bear the costs of such a certificate. The BC *Employment Standards Act* does not require the employee to provide such a certificate before beginning the leave.

In such circumstances, the employee may be required to provide a certificate upon his/her return to work.

- G.2.5.c** 5. *The employee's benefit plans coverage will continue for the duration of the compassionate care leave on the same basis as if the employee were not on leave.*

G.2.5 stipulates that an employee's benefits will continue for the duration of the leave in accordance with the established premium share arrangement. Employees should make arrangements to continue paying premiums where required, in order to avoid retroactive payments.

- G.2.6** 6. *The employer shall pay, according to the Pension Plan regulations, the employer portion of the pension contribution where the employee elects to buy back or contribute to pensionable service for part or all of the duration of the compassionate care leave.*

G.2.6 establishes that the employer shall pay the employer portion of pension contributions in cases where the employee is eligible and elects to buy back or contribute to his/her pension during such a leave. Where the employee does not elect to contribute to or buy back pension, the employer will not be required to contribute.

- G.2.7** 7. *Seniority shall continue to accrue during the period of the compassionate care leave.*

Notwithstanding the provisions in the Previous Local Agreement, G.2.7 establishes that an employee shall continue to earn seniority during the leave.

- G.2.8** 8. *An employee who returns to work following a leave granted under this article shall be placed in the position the employee held prior to the leave or in a comparable position.*

G.2.8 makes clear that an employee returning from a compassionate care leave has the right to be placed back in the same job or in a comparable position to the one held at the commencement of the leave. As with each other type of leave under the *Employment Standards Act*, an employer must not terminate an employee or change a condition of employment without the employee's consent because the employee is on leave, and as soon as the leave ends, the employer must place the employee in the position he/she held prior to taking the leave or in a comparable position.

This provision does not supersede layoff provisions which may cause the employee to lose the position, or require the employee to move to a new position because of inferior seniority.

*Note: The definition of "immediate family" in clause 1 above, shall incorporate any expanded definition of "immediate family" that may occur through legislative enactment.*

Clause 1 of this article may be amended and the eligibility for this leave may be expanded in the event of a legislative change to the definition of "immediate family member."

As noted earlier, the definition has already been amended to reflect a change in the *Employment Standards Act*.

## ❖ Implementation

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This article was effective upon ratification of the new collective agreement.

## ❖ Relationship to Other Articles

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This article should be read on its own and is not related in any way to previous articles regarding non-statutory compassionate leave.