

Leave for Reservists

Members of the Canadian Forces Reserves are entitled to unpaid leave and job protection while they are serving our country.

Who Qualifies for Leave for Reservist ?

Members of the Canadian Forces Reserves who have worked for their employer for three consecutive months, who are absent from work for the purpose of service, qualify for Leave for Reservists.

What is included in "service"?

Service includes the following:

- a) active duty;
- b) military skills training; or
- c) treatment, recovery or rehabilitation in respect of a physical or mental health problem that results from active duty or military skills training.

What protections do employees who are serving in the Reserves have?

Employees who take leave from their employment for the purpose of service must be reinstated to the position, or a similar position with no less wages or benefits they had before the leave.

Employers cannot lay off or terminate an employee who takes this leave.

Do employees get paid when on leave?

No. Employers are not required to pay wages to employees while on leave. For all leaves, the legislation only requires employers to provide the time off and allow employees to return to their job when the leave has ended. Employers can, and often do, give greater benefits than those provided for in the legislation.

However, other federal programs may provide income replacement. Employees should contact the federal government to find out what types of leaves have income replacement.

The only exceptions under *The Employment Standards Code* where an employer is required to pay a portion of a leave is under the Domestic Violence Leave and the COVID-19 Vaccination Leave.

What happens to pension and other benefits while a Reservist is on leave?

While employees are on unpaid leave, the employment is deemed to be continuous. When they return, they continue to be entitled to any benefits they had before the leave and their years of service would include the time away on the leave.

How long is Leave for Reservists?

Employees can take unpaid leave for as long as they continue to serve. There is no restriction on the length of the unpaid leave.

How often can a Reservist go on leave?

There are no restrictions on the how often a Reservist can go on leave.

Once employees have been employed with their employer for three consecutive months, they are entitled to the leave and can use it to serve the Reserves.

How do Reservists request a leave?

Employees must provide, in writing, as much notice as reasonable and practicable in the circumstances. The employer may request a certificate from an official in the Reserves confirming the employee is a member of the Reserves, is required for service, and where possible, the start and end dates for the period of service.

Who decides what type of leave an employee is taking?

Employees tell their employers the reason they require a leave. The employer will need enough detail to show the time off work meets the requirements of the leave.

When employees require time off, the employer should ask whether they are advising of a leave available under The Employment Standards Code. Employers do not control when employees can take a leave provided by law, but they do control other types of time off work.

When can a Reservist return to work?

Reservists who have taken a leave must provide their employer, in writing, notice of their return date. The employer can defer the reservists return to work for up to two weeks, or one pay period, whichever is longer.

What if the employee's job is no longer available?

Generally, employees should be returned to the job they had before the leave. However, if the job is no longer available, they must be given a similar position with the same or greater benefits and pay.

There may be some situations where employers do not have a position available for reasons completely unrelated to the leave. For example, employees who are on unpaid leave would not necessarily be protected from losing their jobs if the employer shut down part of their operations and reduced their workforce based on a seniority system.

Employers must show the leave has no impact on the decision to lay-off or terminate the employment.

What if the employer refuses to bring the employee back to work?

Employees must be allowed to return to their job, or a comparable job, with the same or greater pay and benefits when they return from leave. Employees who are not reinstated by their employer can file a complaint with Employment Standards no later than six months after the date the employee should have been reinstated.

How does an unpaid leave affect...

- Termination?

When it comes to how much notice an employer or an employee has to give upon termination, the amount of time spent on the leave has to be included in determining the length of service. See the [Termination of Employment](#) fact sheet for more details.

- Vacation?

The leave does not affect the amount of vacation time an employee is entitled to, as the time spent on leave is included in the employee's length of service. However, since vacation pay is a percentage of wages earned, the

leave will affect the vacation pay. See the [Vacations & Vacation Pay](#) fact sheet for more details.

Will the information about the leave be confidential?

Unless it is required by law or the employee has given consent, employers cannot disclose information related to a leave except to other persons in the workplace, who need to know in order to carry out their duties.

What is a period of employment?

The period of employment is the length of time from when an employee starts working for an employer until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment (a layoff, an unpaid leave), seasonal employment, and when an employee returns to work for the same employer after a break of less than two months.

Employees who work in a seasonal industry and return to work with the same employer each season have continuous service. Each consecutive season they return adds one more year of service to their total period of employment.

Layoffs and Periods of Employment

It is important to know how to determine an employee's period of employment because wages in lieu of notice is based on their length of employment.

When layoffs are longer than 8 weeks in a 16-week period, they become terminations and wages in lieu of notice is required. The employment is deemed to have been terminated without notice on the first day of the layoff.

The actual date on which a layoff began does not change because a state of emergency is declared or a state of emergency ends. For example:

- If an employee was laid off on February 18, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on February 18, 2020.
- However, if an employee was laid off on July 8, 2020 and the layoff eventually became a termination, the period of employment will be deemed to have ended on July 8, 2020.

For more information contact Employment Standards:

Phone: 204-945-3352 or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including The Employment Standards Code, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

**Available in alternate formats
upon request.**

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