



TORONTO TRANSIT COMMISSION

Toronto Transit Commission

Changing Workplaces Review

A submission by the Employee Relations Section, HR Department, TTC for the
Ministry of Labour CWR Special Advisors

Toronto Transit Commission (TTC)

ESA Personal Emergency Leave (PEL) Data

As of September 18th, 2015

OVERVIEW

The Toronto Transit Commission is Canada's largest public transit system and services approximately 1.8 million customers on an average weekday, giving the TTC the third largest ridership rate in all of North America. In order to ensure the TTC keeps Toronto moving, the TTC relies heavily on approximately 13,000 employees, who strive to ensure services meet the needs of the public, day in and day out. In its current state, the Personal Emergency Leave (PEL) provisions within Section 50 of the Employment Standards Act (ESA) have placed the TTC in a vulnerable position; exposing the organization to a high volume of lost working days as a result of leave submissions which are averaging 18,367 PEL's per year since the start of 2012. The PEL section of the ESA, in combination with alternative ESA leave rights (e.g. Family Caregiver Leave), and in conjunction with the leave benefits provided by the TTC's four collective agreements (C.A's), has presented significant challenges to the TTC, specifically in its ability to effectively manage absenteeism and its own attendance management program. These PEL totals continue to strain managers with the daunting task of ensuring the TTC can provide effective services to the public at a reasonable and fair cost.

While the TTC supports the PEL section of the ESA, we believe amendments can be made which will ensure employees retain valuable rights, but also ensure employers maintain the ability to effectively manage absenteeism in their workplace.

OVERVIEW OF THE NUMBERS

- All data below are approximate values, taken from a period spanning over 3 years (January 1st, 2012 until September 18th, 2015)
- It is important to consider that the TTC operates on a 24/7 schedule with the majority of workforce scheduled at work between Monday and Friday. In order to maintain effective service levels, the TTC relies on employees working overtime in instances of irregular (unplanned, not pre-approved and unreported) absenteeism

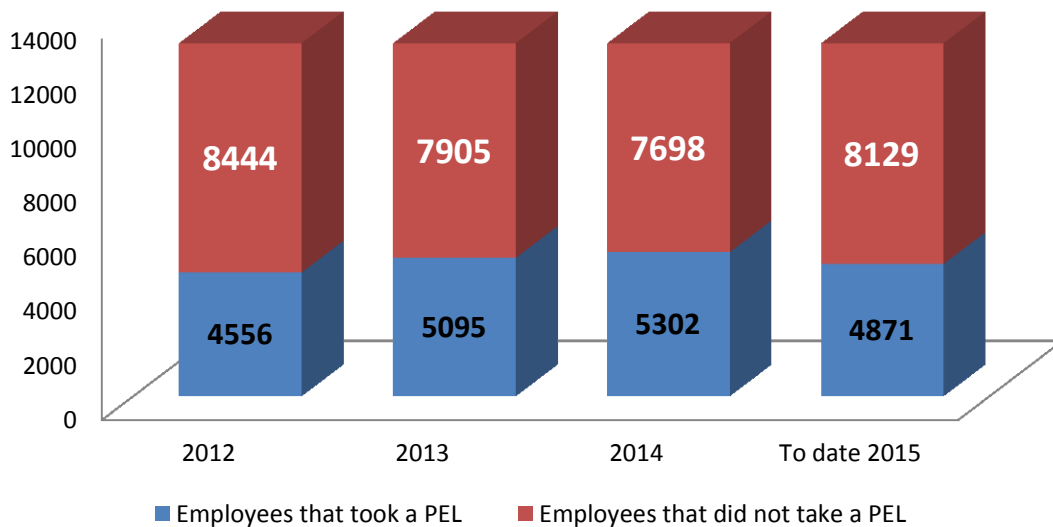
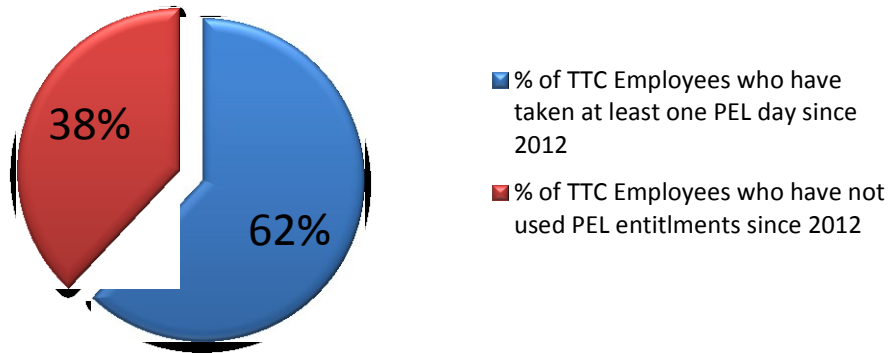


SMALL PERCENTAGE USING MANY PEL DAYS

Although approximately 62% of our workforce have used a PEL day(s), the high volume of PEL absences are driven by a minority of our workforce

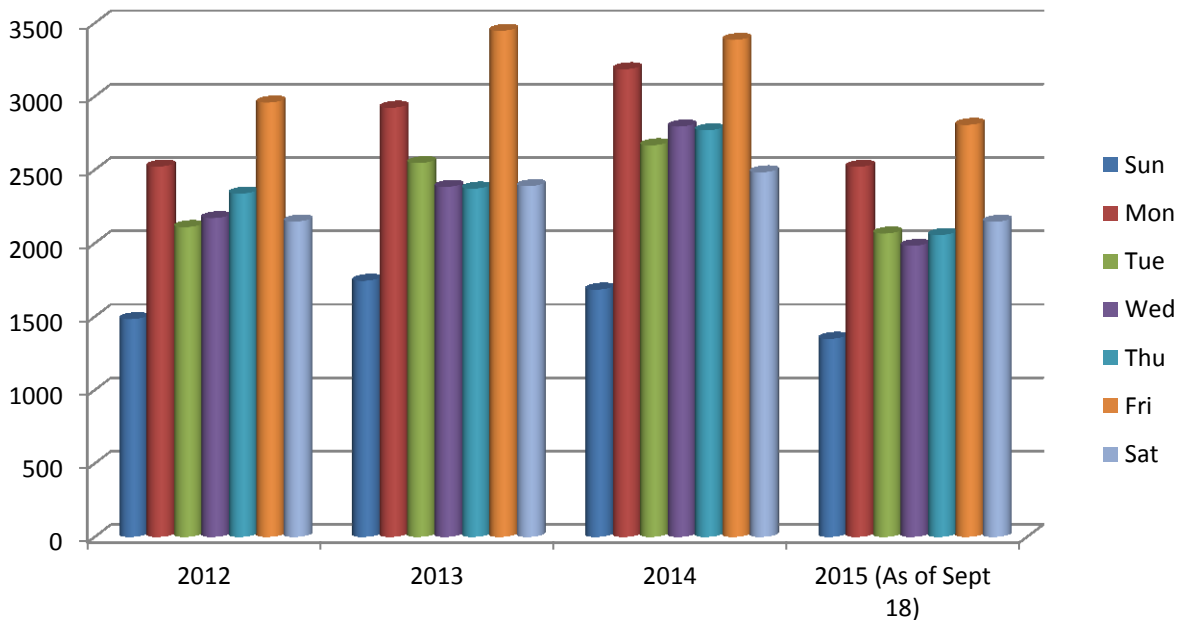
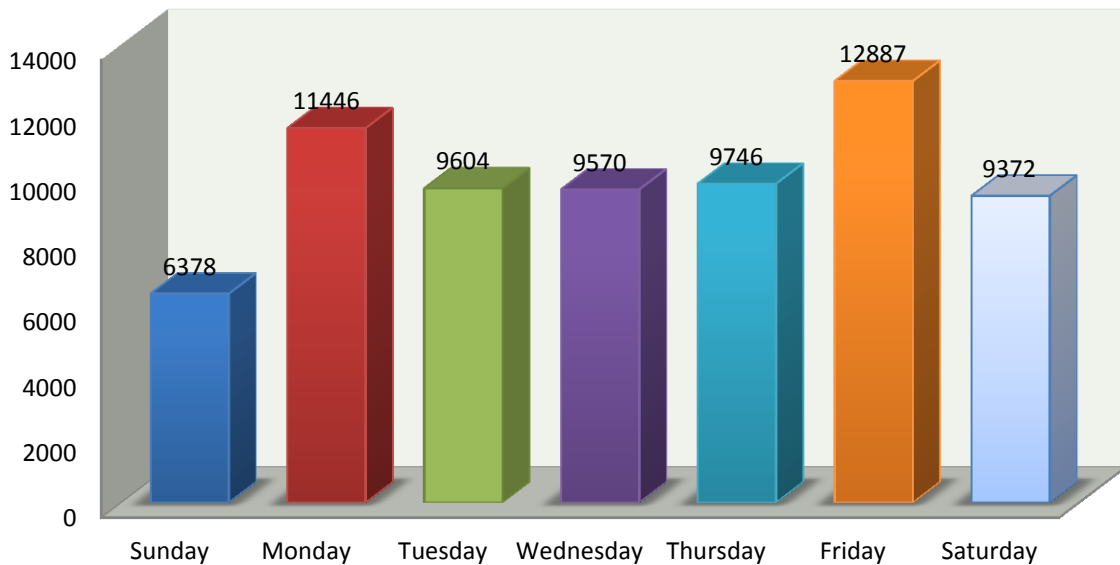
- In 2012 approximately 35% of employees used PEL days
- In 2013 approximately 39% of employees used PEL days
- In 2014 approximately 41% of employees used PEL days
- As of September 18th 2015, approx. 37% of employees have used PEL days

ESA Personal Emergency Leave Usage



PEL's HIGHER ON MONDAYS AND FRIDAYS

- The majority of the TTC's workforce is scheduled to work between Monday and Friday
- It is important to note that although the usage seems lower on Saturdays, the reality is that far fewer employees work on the weekend, and as such, the ratio of employees to leaves on Saturdays is significant.



CURRENT ISSUES

There are several legitimate reasons to utilize PEL days under the ESA, and given this, there is a significant hurdle to overcome to ensure organizations offer a greater right or benefit in their contracts. Simply comparing apples to apples, if leave types under the ESA were categorized individually (for example, 3 days for sick leave, 3 days for childcare issues, etc.), it is apparent that the TTC provides greater rights and benefits for personal sick days, and it would be reasonable to believe that the TTC offers greater benefits for bereavement leaves. However, given the fact that the ESA packages PEL's to include personal illness, along with other leaves such as illness and injury to family members, or urgent matters such as a baby sitter calling in sick, the TTC is unable to claim greater right or benefit. It is important to note that the TTC also offer discretionary leaves to support employees in situations including illness and injury to family members, or urgent matters such as a baby sitter calling in sick last minute, however these alternatives are categorized separately from personal illness/injury leaves in order to help the TTC manage absenteeism, and are subject to managerial discretion.

Another issue which the TTC has recognized as a result of the ESA PEL section is the proof of entitlement rules which limits managerial discretion.

The TTC understands that employees are obligated to provide reasonable evidence for the use of PEL days, when requested by the employer. As such, if employees fail to provide evidence for reasons of personal illness, the TTC can take direct action. Unfortunately, in these situations however, the TTC is limited, in that we cannot count that absence toward the employee attendance record as a culpable absence per our internal attendance management program. In other words, we cannot force an employee to book sick, or unilaterally change an ESA leave request to a company sick day unless the employee chooses to take this approach. This may lead to employees using PEL days illegitimately, in lieu of reporting to work late, or requesting company sick days, in order to avoid continued management of their attendance under the TTC attendance management program.

With evidence to highlight that PEL requests are greatest on Monday and Fridays, a trend which can suggest abuse, the TTC is hopeful that the Ministry may find solutions to prevent or reduce such potential misuse. Currently, with no provisions for managerial discretion up front, employees may take days off work without calling in before their shifts. As this is common on Mondays and Fridays, the TTC faces contentious issues on the back end when employees eventually do report into work for their next shift and are advised that the PEL day they have taken was actually not for an urgent reason as defined by the ESA. An example would be an employee not reporting to work as a result of being snowed in. As such, allowing for managerial (employer) discretion upfront on urgent matter PEL requests will help reduce the number of illegitimate PEL requests, whether intentional or not.

Finally, for employers like the TTC, PEL absences are very difficult to manage. As a specific example, Managers at our bus divisions may have upwards of 700 people reporting to them. If each employee at a division took only one PEL day per year and the manager wished to inquire about each leave (e.g. challenge the proof of entitlement), it would result in 700 meetings. Even if managers inquired into only half of these leaves, a meeting on almost every calendar day of the year would be necessary. It should be noted that each meeting with an employee requires alternative arrangements to be made for their scheduled route and often results in incurred overtime costs.

Considerations

The TTC understands the value of PEL's and, and understands that the MOL has also considered employers, and has built in relevant employer rights in this section of the ESA. However, the TTC believes we are still limited in our ability to reduce or prevent illegitimate PEL claims, which is reflective in our Monday, Friday and Saturday usage.

Below are some considerations for the Ministry in its review of Section 50 of the ESA;

1. Would the Ministry find common benefit in sub-categorizing PEL days by type and providing specific allowances for each sub-category?

(E.g. Employees are entitled up to 3 incidents for personal illness or injury days and up to 3 incidents for bereavement days etc.)

- This would provide clarity with respect to employers who offer greater right and benefit for those categorized leave types (apples to apples)
- The TTC understands how this could also be perceived as a detriment to employees in Ontario who may need a greater number of one leave type (e.g. Bereavement) over another leave type (e.g. urgent matter) year over year
- The TTC also understands this could be perceived as a detriment to employers who reduce an employee's PEL bank by the number of incidents taken under the provisions of a different contract.

(E.g. reduce the employees PEL bank by 10 days, for 10 days of illness used by that employee under the provisions of their collective agreement)

2. Are there benefits to categorizing "urgent matters" (including reasons such as caring for injured or ill family members) under a separate (new) leave section in the ESA? Also, would there be any benefit in suggesting these leaves require pre-approval.

- Pre-approval will reduce illegitimate claims, whether intentional or not (e.g. not reporting to work because of a 'snow day')
- Pre-approval (i.e. managerial discretion) will provide clarity in whether an employer offers greater right or benefit, specifically when an employer offers general discretionary leave types.
- There is extensive case law in the province to ensure employers exercise discretion in a reasonable manner.

3. Can the Ministry develop other methods to ensure proof of entitlement is adequate?

- Simple solutions including more examples of what will and will not qualify may be of great benefit to employers. For example;
 - Employers cannot require a medical note related to the condition of an employee's family member, however, employers may request a note from that family member's medical practitioner, which clarifies that the employee who took the PEL day, was caring for their family member on the day of the absence.