



T E E L S

TORONTO EAST EMPLOYMENT LAW SERVICES

Personal Emergency Leave: Response to options presented in Changing Workplaces Review Interim Report

Submitted by: Toronto East Employment Law Services (TEELS)

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Toronto East Employment Law Services' (TEELS) objective is to provide employment law services within each clinic in the East End of Toronto, recognizing that this is an underserved area of law. Employment-related issues impact a wide range of our clients. We aim to provide clients with access to information and advice that can empower them and allow them to assert their rights as workers and unemployed workers.

Our clients are extremely diverse, including new immigrants, women, racial minorities, low-income individuals, and workers in precarious jobs, workers faced with language barriers, unemployed workers and individuals living in poverty. Personal Emergency Leave is an important leave for workers we work with because it helps to keep healthy families, communities and economy.

The participating TEELS clinics are: East Toronto Community Legal Services, Flemingdon Community Legal Services, Neighbourhood Legal Services, Scarborough Community Legal Services, West Scarborough Community Legal Services and Willowdale Community Legal Services.

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Since 2001, the *Employment Standards Act (ESA)* has entitled workers to take up to 10 days of unpaid Personal Emergency Leave (PEL) per year. This leave can be used by a worker for their own personal illness, injury, and medical emergency or for the death, illness, injury, medical emergency or urgent matter concerning the worker's family.¹ While PEL is an *unpaid* leave, which limits access to it, PEL does provide workers with some of the flexibility necessary to manage work, family illness and emergencies.

Workers in precarious employment, particularly women, need flexible leave arrangements to manage paid work and unpaid caregiving work.

Employers want to restrict the flexibility that workers have to respond to emergencies or to replace this flexibility in leaves with company-based leave policies. For example, employers have called for restricting how many of the 10 days can be used for personal vs. family emergency or how many can be used for illness, vs. bereavement, and so forth.

We believe it is important to maintain the employee flexibility in emergency leave provisions and, further, to expand this leave to *all* employees by removing the current exemption for firms that employ fewer than 50 employees.

The government asked the Changing Workplaces Review Advisors to make recommendations in advance of the final recommendations emerging from the Changing Workplaces Review. This is because the government committed in the 2016 Budget to "seek advice ... from the Special Advisors on the Changing Workplaces Review to resolve concerns raised by business regarding the application of the emergency leave provisions" of the ESA.²

However, we believe it is important to view PEL in relation to other issues under consideration in the Changing Workplaces Review; in particular, paid sick days.

The Interim Report presents four options for public comment on PEL. We address each of those options below.

Option 1: maintain the status quo, that is, no changes to the Personal Emergency Leave.

We reject this option as it leaves the exemption for small and medium businesses unaddressed. See discussion under Option 2.

Option 2: Remove the exemption for companies that regularly employ fewer than 50 employees

Option 2 would remove the exemption for workplaces with fewer than 50 employees. We recommend the firm-size exemption for PEL be removed and that all workers should be able to access PEL.

¹ spouse; parent, step-parent or foster child of the employee or their spouse; grandparent; brother or sister, spouse of the employee's child; and a relative of the employee who is dependent on the employee for care or assistance.

² Charles Sousa, Minister of Finance *Jobs for Today and Tomorrow 2016 Ontario Budget: Budget papers*. http://www.fin.gov.on.ca/en/budget/ontariobudgets/2016/papers_all.pdf

The majority of workers in Ontario do not have access to paid sick days or employer-based sick leave policies. Many workers rely on the job-protected, unpaid personal emergency leave as the only way to take care of themselves or dependents when sick without jeopardizing their employment when illness, injury or family emergencies arise.

Unfortunately, over 1.7 million Ontario workers³ do not have this job-protected leave. Only 5% of businesses employ 50 or more workers; 95% employ 49 or less and are therefore exempted from providing job-protected emergency leave to their employees. As a result, one in every three Ontario workers is denied basic job protection in the event of a family or personal emergency. We believe job-protected emergency leave is a necessary standard to support work-life balance that all workers should have access to.

The firm-size exemption denies access to those who need it most. Research done for the Changing Workplaces Review, concluded that workers in small workplaces are more likely to be in precarious work (e.g., less likely to be unionized; more likely to be earning lower hourly wages and living in low-income families; and, more likely to be in temporary and part-time work).⁴

Losing pay is enough of a deterrent for workers facing a family or personal emergency. Denying job protection adds even more insecurity to vulnerable workers. Without job-protected leave, many people in exempted workplaces will be forced to work while sick or facing family emergencies. Being able to take time off when sick speeds up recovery, deters further illness, and reduces health care costs. Most people without job protected PEL work in retail, accommodation and food services, construction, health care, and social services. The sectors where workers are most in contact with the public are the sectors with the least access to job protected sick leave (PEL).

Ontario is the only province to exempt employers from providing such leaves by firm size. Removing this exemption will bring Ontario in line with other jurisdictions.

Option 3: Remove the general 10-day leave entitlement and replace it with a number of separate leave categories (personal illness/injury, bereavement, dependent illness/injury etc)

Option 3 would break down the 10-day leave into separate leave categories but not increase the total leave entitlement (i.e., separate number of days for personal illness/injury, bereavement, dependent illness/injury or emergency leave). We reject this option.

The Interim Report states that employers want to limit the scope and nature of PEL so that workers cannot access both company-based leaves (e.g., paid sick leave) and unpaid leave under the terms of

³ In 2015, 1,723,576 people worked in firms with 49 or fewer employees. Source: Statistics Canada, CANSIM, table 281-0042.

⁴ Leah Vosko, Andrea Noack and Mark Thomas (2016) "How Far Does the Employment Standards Act 2000 Extend, and What are the Gaps in Coverage? An Empirical Analysis of Archival and Statistical Data." <https://cirhr.library.utoronto.ca/sites/cirhr.library.utoronto.ca/files/research-projects/Vosko%20Noack%20Thomas-5-%20ESA%20Exemptions.pdf> p 61

Personal Emergency Leave. We believe that the social and individual cost of removing flexibility under PEL far exceeds the costs of this unpaid leave to some employers.

The reasons for workers using personal emergency leaves are changing. As more women enter the labour force, the need has grown for the critical ability to access leave in order to take care of dependents. The use of leaves for personal illness has shrunk (from 84% in 1976 to 54% in 2015). An aging population and social policies that rely on family to provide elder care are some of the factors in the shift to using emergency leave for personal/family responsibilities. In 2015, men took 26% of their leave for personal/family responsibilities while women took 56% of their leave for personal/family responsibilities (i.e., not personal illness). Removing flexibility under PEL would create a substantial burden on women workers. More, rather than less, flexibility is required in PEL to accommodate labour market, demographic and social policy changes.⁵

Some large companies want to be able to opt out of the ESA PEL provisions because they provide one or more benefits that they believe may be more generous than PEL even if the benefits do not cover all the specific provisions of PEL (i.e., do not cover the same family members or reasons for taking unpaid emergency leave). As the Advisors note, “An employer cannot rely on a greater benefit with respect to one standard to offset a lesser benefit with respect to another.” One of the fundamental principles of the ESA is to provide statutory minimum terms and conditions of employment. We strongly believe PEL should not be reduced in scope nor should amendments enable employers to contract out of PEL or other employment standards.

Option 4: Combine options 2 and 3 giving different entitlements for different sized employers.

Option 4 would break down the 10 day PEL standard into separate leave categories and maintain or create different obligations for different sized employers. We reject this option for reasons discussed above.

⁵ For data and a fuller analysis of these issues, please see “Personal Emergency Leave: A Response to Options Identified in the Mid-Term Report of Changing Workplaces” by Researchers from Closing the employment Standards Enforcement Gap: Improving Protections for People in Precarious Jobs, August 26, 2016.