



## LEAVES OF ABSENCE

Leaves of absences are an important entitlement for employees. They are often used during unexpected difficult periods in their lives. It is important that employers be aware that they have obligations to employees who are on a leave. These obligations are significant and failure to meet them can result in costly and time consuming litigation.

In British Columbia, the *Employment Standards Act* provides six types of leave to employees: pregnancy leave, parental leave, family responsibility leave (for the care and health of family members), compassionate care leave, bereavement leave, and leave for military reservists.

Under the *Employment Standards Act*, employers are required to grant employees these leaves if they are entitled to them, and the employer must not terminate, or change conditions of, the employment of employees on leave. In addition, when the leave ends, employers must place employees back in the same position as they held before, or in a comparable position. Employers must also continue to pay for benefit plans, including a pension plan, if the employer normally pays the total cost of the plan. If the employer and employees share the cost of the plans, and the employee in question continues to make contributions, the employer must continue to pay its share.

Under the *Employment Standards Act*, employment is considered to be continuous while an employee is on leave. This means that seniority and benefits continue to accrue during the leave period and the calculation of benefits, such as vacation pay, includes time spent on leave. This also means that employees are also

entitled to any wage or benefit increases that would have been due to them if they had not taken the leave.

Leaves of absences for employees of federally regulated companies are governed by similar provisions in Part 3 of the *Canada Labour Code*. The types of leave available are similar to those in the *Employment Standards Act*, with some differences, most notably the inclusion of statutory sick leave and the absence of family care leave. Federally

regulated employers have the same obligations as discussed above, but they also have the additional duty, in the case of maternity, parental, or compassionate care leave, to notify employees of any employment opportunities available to them for which they are qualified that arise while they are on leave.

The statutory obligations in the *Employment Standards Act* and the *Canada Labour Code* only apply to statutorily required leave. For example, there is no obligation under

the *Employment Standards Act* for employers to provide paid sick leave unless the employer has a policy that provides for sick leave. Nevertheless, both the British Columbia *Human Rights Code* and the *Canadian Human Rights Act* prohibit employers from discriminating against employees on various grounds including disability, sex, and family status. As a result, employers terminating an employee's employment or altering employment benefits during a leave for a reason attributable to those grounds could face a human rights complaint whether or not the leave is a statutory leave.

Employers must be cautious whenever considering any change to the terms or conditions of employment of employees on leave. It is also important that employers be aware of their obligations when an employee requests a leave of absence. By doing so, employers will reduce the risk of violating employment standards or human rights legislation.

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constitute legal advice. For additional details or advice concerning specific situations please contact any member of our Labour & Employment Group.

If you have any questions, please contact any member of our Labour & Employment Group.

## LABOUR & EMPLOYMENT GROUP



<b>Larry Page</b> 604.641.4902 dlp@bht.com	<b>Howard Ehrlich</b> 604.641.4901 hle@bht.com	<b>Simon Margolis</b> 604.641.4871 sbm@bht.com	<b>Herb Isherwood</b> 604.641.4818 hji@bht.com
<b>Judith Macfarlane</b> 604.641.4910 jam@bht.com	<b>Ryan Berger</b> 604.641.4956 rpb@bht.com	<b>Christian Petersen</b> 604.641.4903 cjp@bht.com	<b>Taryn Mackie</b> 604.641.4877 tlm@bht.com
<b>Anthony Moffatt</b> 604.641.4814 arm@bht.com	<b>Andrew Schafer</b> 604.641.4858 ans@bht.com		



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**Bull, Housser  
& Tupper** LLP

3000 ROYAL CENTRE . 1055 WEST GEORGIA STREET . VANCOUVER . BC . CANADA . V6E 3R3