

FAMILY LAW SASKATCHEWAN

MCKERCHER LLP BARRISTERS & SOLICITORS

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Saskatchewan has the highest rate of domestic violence in Canada. To support and protect survivors of domestic violence, or “intimate partner violence”, the province is adopting legislation titled: *The Saskatchewan Employment (Support for Survivors of Domestic Violence) Amendment Act* (the “Act”). The Act has passed its third reading in the legislature and is set to be in force later this year, amending Saskatchewan’s *Employment Act*.

Previously, *The Saskatchewan Employment (Interpersonal Violence Leave) Amendment Act*, which was passed in 2017, allowed ten days of unpaid leave per year, which could be taken either continuously or intermittently by an employee dealing with this issue. Federally, *The Canada Labour Code* includes a section titled “Leave for Victims of Family Violence”, which allows ten days off per year, five of which are paid, for employees working in the federally regulated private sector.

The new Act provides several changes that encourage support of survivors of domestic violence in the workplace. The Act defines “domestic violence” as: (1) intentional, reckless, or threatened acts or omissions that cause bodily harm or property damage or a reasonable fear that these will occur; (2) conduct that constitutes psychological or emotional abuse; (3) forced confinement; (4) sexual abuse; and (5) post-traumatic stress disorder that is a result of domestic violence.

WHAT EMPLOYEES NEED TO KNOW

When Leave is Available to Employees

The Act allows an employee to take “Domestic Violence Leave” for the following purposes:

- To seek medical attention for the employee or the employee’s child for a physical or psychological injury or disability caused by the domestic violence;
- To obtain services from a victim services organization;
- To obtain psychological or other professional counselling;
- To relocate temporarily or permanently;
- To seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to the domestic violence; or
- Any other prescribed purpose.



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Length of Domestic Violence Leave

In order to qualify for Domestic Violence Leave, the employee must have been working for the employer for at least 90 days. The Act allows two periods of Domestic Violence Leave per year:

1. Up to 10 days which can be taken intermittently or in one continuous period;
2. Up to 17 weeks which can be taken in one continuous period.

Paid Domestic Violence Leave

Up to five days of Domestic Violence Leave is to be paid leave, as long as the employee notifies the employer which five days are to be paid. The Act states that the employer must pay the employee either: (1) the wage that he or she would have been paid if the employee had worked regular hours on the day of the leave; or (2) 5% of the employee's total monthly wage per day of paid leave, if the nature of the employment is such that the employee's wages and hours in a normal workday vary from day to day. If an employee is taking a longer period of Domestic Violence Leave, and wishes to end it early to return to work, he or she must give the employer 2 weeks' notice.

Notice Required Before Taking Leave

Employees who wish to take Domestic Violence Leave are responsible for giving the employer reasonable notice in the circumstances, if possible. The employee may also be required to provide some form of verification that the leave is being used for the proper purpose. The forms of verification that are acceptable are not listed in the Act, but could potentially include medical documentation, documentation from law enforcement if available, a written statement requesting the leave, or other forms of verification requested by the employer.

WHAT EMPLOYERS NEED TO KNOW

Confidentiality

Employers are required under the Act to maintain confidentiality of any information that comes to the employer's attention regarding Domestic Violence Leave of an employee. Employers can only disclose information relating to the Domestic Violence Leave of an employee in the following circumstances:

1. Where other employees require the information to carry out their duties;
2. Where the law requires the disclosure; or
3. With the consent of the employee taking the Domestic Violence Leave.

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The confidentiality of the employee's information is of the utmost importance and can be determinative of whether an employee dealing with domestic violence will choose to access the Domestic Violence Leave. However, in certain circumstances this information will need to be disclosed due to the possibility of a perpetrator of domestic violence attending at the employee's workplace and endangering the employee and other coworkers.

Accommodation by Employers

Under the Act, if the employer becomes aware, or ought to be aware that domestic violence may occur in a workplace, the employer is required to make reasonable accommodations to protect the employee. These accommodations would likely be based on the needs of the individual and the circumstance. Accommodations could include safety planning with the employee and co-workers, relocating an employee to another location in the workplace, providing the employee with a parking space in a different location, making the employee aware of access to emergency services, or banning the violent individual from the workplace.

Use of Other Paid Leave Benefits for Paid Domestic Violence Leave

Unless another agreement between the employer and employee states otherwise, if the employer provides paid sick leave benefits or other paid leave benefits to its employees, and the amounts payable under those benefits are greater than those under the Act for paid Domestic Violence Leave, the employer can opt to pay the employee through those benefits instead.

Employees Who Take Leave for a Partial Day

Under the Act, the employer is able to count any partial day taken by an employee for Domestic Violence Leave as a full day of leave.

About Family Law Saskatchewan:

Zina, Kate and Samantha are active members of the larger McKercher LLP Family Law Group. This group is dedicated to the delivery of honest, focused and experienced legal solutions for families in Saskatchewan who are transitioning to a next chapter in their lives together, or apart.

About McKercher LLP:

McKercher LLP is one of Saskatchewan's largest, most established law firms, with offices in Saskatoon and Regina. Our deep roots and client-first philosophy have helped our firm to rank in the top 5 in Saskatchewan by Canadian Lawyer magazine (2019/20). Integrity, experience, and capacity provide innovative solutions for our clients' diverse legal issues and complex business transactions.



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