

## Personal Emergency Leave

The Employment Standards Act (ESA), sets out an employee's minimum entitlements to job-protected leave from work to attend to personal emergencies. The existing entitlement is up to 10 unpaid **Personal Emergency Leave** days per calendar year. The new minimum standard, which came into effect January 1, 2018, is that the first 2 of those 10 days are entitled to be paid.

### What constitutes a "Personal Emergency"?

A Personal Emergency includes the following:

1. A personal *injury, illness or medical emergency*; and
2. The *death, illness, injury, medical emergency or urgent matter* that concerns of any of the following family members:
  - spouse (includes both married and unmarried couples, of the same or opposite genders)
  - parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
  - spouse of the employee's child
  - brother or sister of the employee
  - relative of the employee who is dependent on the employee for care or assistance.

### How does an entitlement to paid Personal Emergency Leave apply at McMaster?

Many collective agreements and employment contracts at McMaster University provide for paid time away from work in excess of this new minimum standard, and therefore will not be significantly impacted by this change.

It is important, therefore, to know and understand the leave provisions of the relevant collective agreement or employment contract, as well as the reason for the leave. The types of paid time away from work which may apply depend on the employee group. Specific examples of such paid time away from work may include:

- Bereavement leave;
- Personal illness/injury benefits such as sick banks and salary continuance programs;
- "Personal" and "Special" leave days; and
- Management Compensation Days.

## How do I administer a Personal Emergency Leave?

To ensure Personal Emergency Leave is accurately tracked and appropriately accounted for, we recommend the following process:

1. **Establish Clear Absence Reporting Requirements.** Employees should be advised that, when reporting an absence from work, they are required to clearly identify:
  - a. the reason for the absence;
  - b. their relation to the individual if the absence is due to the death, illness, injury, medical emergency, or an urgent matter relating to a family member;
  - c. the anticipated length of their absence; and
  - d. contact information during their absence.
  
2. **Consider the Reason for the Absence.** Based on the reason for the absence, consider:
  - a. does the need for the absence constitute a Personal Emergency, under the Employment Standards Act (defined above)?
    - If **NO**, then no further consideration is required with respect to the administration of a Personal Emergency Leave day.
    - If **YES**, then give consideration to (b), below.
  
  - b. has the employee completed at least one week of employment at McMaster University?
    - If **NO**, then the employee has an entitlement to unpaid Personal Emergency Leave but not to paid leave, unless the collective agreement provides a greater right or benefit. Consult with Employee & Labour Relations for guidance if required.
    - If **YES**, then give consideration (c), below.
  
  - c. has the employee, in the current calendar year, already exhausted their entitlement to 2 paid days for absences that would constitute a Personal Emergency (defined above)?
    - If **YES**, then the employee may still have an entitlement to unpaid Personal Emergency Leave (up to a total of 10 days per calendar year). The absence will not be paid unless the collective agreement or employment contract provides a greater right or benefit. Consult with Employee & Labour Relations for guidance if required.
    - If **NO**, then give consideration to (d), below.
  
  - d. does the applicable collective agreement or employment contract provide for paid leave provisions that would address the reason for the absence (e.g. bereavement leave, sick bank, salary continuance, personal day, management compensation day)?

- If **YES**, then administer the absence in accordance with the provisions of the collective agreement or employment contract. Because, in this case, the collective agreement or employment contract provides a greater right or benefit, the employee has no additional entitlement. Record the fact that the employee has used a Personal Emergency Leave day in accordance with the Employment Standards Act.

If the collective agreement or employment contract has provisions for such paid leave, but the employee does not yet qualify (e.g. due to probationary status, or a waiting period to access sick bank), consult with Employee/Labour Relations for guidance.

- If **NO**, then administer the absence as a paid Personal Emergency Leave day pursuant to the Employment Standards Act and contact Employee/Labour Relations for guidance.

## Example Scenarios

### Scenario 1

**Ayesha calls her supervisor to report her absence from work on January 11, 2018, due to personal illness. This is Ayesha's first absence in the calendar year. Ayesha is a temporary employee and not a member of any bargaining unit. Ayesha has been working with McMaster University for one month and her employment contract does not include paid sick days.** As this absence from work is due to Ayesha's personal illness, it constitutes a Personal Emergency Leave day in accordance with the Employment Standards Act. Because this is Ayesha's first Personal Emergency Leave day in this calendar year, and because she has completed at least one week of employment with McMaster University, the Personal Emergency Leave day will be paid. Ayesha's remaining entitlement under the Employment Standards Act is up to 9 Personal Emergency Leave days, the first of which is required to be paid and the rest of which will be unpaid unless the collective agreement provides for paid time away from work depending on the reason for the absence.

### Scenario 2

- (a) **Jerome calls his supervisor to report his absence from work from January 8 to 12, 2018, inclusive, due to the death of his mother. This is Jerome's first absence in the calendar year. Jerome has been a member of the Building Union of Canada bargaining unit since 2011 and has entitlement to bereavement leave of up to 5 working days without loss of regular pay in the event of the death of his mother.** As this absence from work is due to the death of a specified family member, it constitutes Personal Emergency Leave in accordance with the Employment Standards Act. Jerome's collective agreement has provisions for leave without loss of pay in this circumstance that exceed those minimally required by the Employment Standards Act. As a result, Jerome's absence is administered as bereavement leave in accordance with his collective agreement (up to 5 working days without loss of regular pay), and his entitlement to paid Personal Emergency Leave days for the 2018 calendar year in accordance with the Employment Standards Act is exhausted. Jerome's remaining entitlement under the Employment Standards Act is up to 5 Personal Emergency Leave days, none of which is required to be paid unless the collective agreement provides paid time away from work depending on the reason for the absence.
- (b) **Jerome calls his supervisor to report his absence from work on March 7, 2018, due to personal illness. Jerome has previously been absent from work for 5 days in January 2018, due to the death of his mother. Jerome is a member of the Building Union of Canada and has entitlement to sick leave benefits payable from the 4<sup>th</sup> full working day of absence due to non-occupational illness.** As this absence from work is due to Jerome's personal illness, it constitutes a Personal Emergency Leave day in accordance with the Employment Standards Act. Because Jerome has exhausted his entitlement to *paid* Personal Emergency Leave days for the 2018 calendar year in accordance with the Employment

Standards Act, he is not entitled to pay for this absence. As a result, Jerome's absence is administered as sick leave in accordance with his collective agreement (for which he has no entitlement to pay). Jerome's remaining entitlement under the Employment Standards Act is up to 4 Personal Emergency Leave days, none of which is required to be paid unless the collective agreement provides paid time away from work depending on the reason for the absence.

### Scenario 3

**Lesley calls their supervisor to report their absence from work February 13, 2018, due to an injury sustained by their child. This is Lesley's first absence in this calendar year. Lesley has been a member of the SEIU Local 2 (Hospitality Services) bargaining unit since 2016 and does not have entitlement to a Special Leave Day without loss of pay.** As this absence from work is due to the injury of a specified family member of Lesley's, it constitutes a Personal Emergency Leave day in accordance with the Employment Standards Act. Lesley's collective agreement does not have any provisions for leave to attend to their child's injury. Because this is Lesley's first Personal Emergency Leave day in this calendar year, and because they have completed at least one week of employment with McMaster University, they will be paid for the wages they would have earned had they not taken the leave, less any premium pay. Lesley's remaining entitlement under the Employment Standards Act is to 9 Personal Emergency Leave days, the first of which is required to be paid and the rest of which will be unpaid unless the collective agreement provides for paid time away from work depending on the reason for the absence.

### Scenario 4

**Don calls his supervisor to report his absence from work on June 12, 2018, due to an injury sustained by his child. Don has been a member of Unifor Local 5555, Unit 1, since 2006 and has an entitlement under that collective agreement to two personal leave days without loss of pay in a calendar year. Don took his two personal leave days in accordance with the collective agreement on February 15 and 16 to enjoy an extended Family Day weekend getaway.** As this absence from work is due to the injury of a specified family member of Don's, it constitutes a Personal Emergency Leave day in accordance with the Employment Standards Act. Don's collective agreement provides for an overall benefit that exceeds the standards minimally required by the Employment Standards Act, as the personal leave days pursuant to the collective agreement may be taken for any reason – including personal emergencies. Don has exhausted his entitlement to *paid* Personal Emergency Leave days for the 2018 calendar year in accordance with the Employment Standards Act, as he took his two paid personal leave days in February 2018, and is not entitled to pay for this current absence. As a result, Don's absence is administered as unpaid personal leave in accordance with his collective agreement. Don's remaining entitlement under the Employment Standards Act is up to 9 Personal Emergency Leave days, which will be unpaid unless the collective agreement provides for paid time away from work depending on the reason for the absence.

## Scenario 5

**Maria calls her supervisor to report her absence from work on February 5 – 9, 2018, inclusive, due to personal illness. This is Maria’s first absence in the calendar year. Maria has been a member of the Building Union of Canada since 2015 and has entitlement to sick leave benefits payable from the 4<sup>th</sup> full working day of absence due to non-occupational illness.** As this absence from work is due to Maria’s personal illness, it constitutes 5 Personal Emergency Leave days in accordance with the Employment Standards Act. Although Maria’s collective agreement provides overall sick leave benefits that exceed those minimally required by the Employment Standards Act, she is not eligible to access those benefits until the 4<sup>th</sup> full working day of absence (February 8 and 9, 2018). Because Maria has not exhausted her entitlement to *paid* Personal Emergency Leave days for the 2018 calendar year in accordance with the Employment Standards Act, she is entitled to pay for the first 2 days of this absence. As a result, Maria’s absence is administered as sick leave in accordance with her collective agreement and she is permitted access to her sick leave benefits for the first 2 days of this absence. Maria will, therefore, receive payment from her sick leave benefits for February 5 and 6, will be unpaid February 7, and will receive payment from her sick leave benefits for February 8 and 9. Maria’s remaining entitlement under the Employment Standards Act is to 4 Personal Emergency Leave days, which will be unpaid unless the collective agreement provides for paid time away from work depending on the reason for the absence.

## **FAQs Regarding the ESA Provisions for Personal Emergency Leave<sup>1</sup>**

### **Is an employee eligible for Personal Emergency Leave if the injury was caused by their own carelessness or was within their control to have prevented?**

Yes. It does not matter whether the illness, injury or medical emergency was caused by the employee or by external factors beyond their control. For example, an employee who sprained their knee while showing off to friends when waterskiing would still be entitled to personal emergency leave, even though the injury was a result of their own carelessness.

### **Is an employee eligible to take Personal Emergency Leave for pre-planned (elective) surgery?**

Yes, generally, employees are entitled to take the leave for pre-planned (elective) surgery if it is for an illness or injury, even though it is scheduled ahead of time and not a medical “emergency.” Employees cannot take the leave for cosmetic surgery that isn’t medically necessary or is unrelated to an illness or injury.

### **What would be considered an “urgent matter” that would be eligible for Personal Emergency Leave?**

An urgent matter is an event that is unplanned or out of the employee’s control, which concerns one of the identified family members, **and** can cause serious negative consequences, including emotional harm, if not responded to.

The Ministry of Labour provides examples of matters that would be considered ‘urgent’, and therefore eligible for Personal Emergency Leave, which include:

- the employee’s babysitter calls in sick
- the house of the employee’s elderly parent is broken into, and the parent is very upset and needs the employee’s help to deal with the situation;
- the employee has an appointment to meet with their child’s counsellor to discuss behavioural problems at school. The appointment could not be scheduled outside the employee’s working hours.

The Ministry of Labour also provides examples of matters that would not be considered ‘urgent’ and therefore would not be eligible for Personal Emergency Leave, which include:

- the employee wants to leave work early to watch their daughter’s soccer game;
- the employee wants the day off to attend their sister’s wedding as a member of the wedding party.

### **Are Personal Emergency Leave days pro-rated based on start date?**

No. Entitlement to Personal Emergency Leave days is not pro-rated based on start date. Immediately on commencement of employment, an employee is entitled to up to 10 days

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<sup>1</sup> <https://www.ontario.ca/document/your-guide-employment-standards-act/personal-emergency-leave#section-0>

of unpaid Personal Emergency Leave in that calendar year, regardless of the date they started.

If an employee has been employed for less than one week, they are not entitled to paid leave in accordance with the Personal Emergency Leave provisions of the ESA. However, the first and second days of Personal Emergency Leave taken after that first week must be paid if they are taken in the same calendar year.

### **Can an employee elect to take unpaid Personal Emergency Leave Days before paid days?**

No. The 2 paid Personal Emergency Leave days must be taken first in a calendar year before any of the unpaid days can be taken.

### **Can Personal Emergency Leave days be carried over to the next calendar year?**

No, Personal Emergency Leave days cannot be carried over to the next calendar year.

### **Do Personal Emergency Leave days need to be taken consecutively?**

No, Personal Emergency Leave days are not required to be taken consecutively.

### **Can employees take part of a day as Personal Emergency Leave?**

An employee can take part of a day, a whole day, or consecutive days as Personal Emergency Leave. If an employee takes any part of a day, it will count as a one whole day having been taken in terms of determining the remaining entitlement to Personal Emergency Leave for that calendar year. An employee is only entitled to take the portion of time in a day that is required to attend to the emergency.

### **How is pay determined for Personal Emergency Leave?**

The employee will receive the regular wages they otherwise would have earned had they not taken the leave.

If a paid day of Personal Emergency Leave falls on a day or at a time when overtime pay, a shift premium, or both would be payable by the employer, the employee is not entitled to more than their regular rate or to any premium for the leave taken.

### **Is proof of emergency required?**

An employer may require an employee who takes Personal Emergency Leave to provide evidence reasonable in the circumstances. An employee will not be asked to provide a certificate from a qualified health practitioner as evidence for taking Personal Emergency Leave. Such certificate may be required under certain collective agreements or employment contracts to access a greater right or benefit, such as payment from a sick bank or salary continuance program.



**Is an employee required to notify the employer that they are taking Personal Emergency Leave?**

Yes, generally, an employee must inform the employer before starting the leave that he or she will be taking a personal emergency leave of absence. If it is not possible to do so, the employee must inform the employer as soon as possible after starting the leave. The employee is not required to provide such notice in writing.

In any event, the employee will not lose the right to take the leave if they fail to do so.