



Response to draft regulations on violence leaves in the *Employment Standards Act*

The council is pleased that the proposed regulations provide for:

- The leave to be accessed when the employee or their child is the victim of domestic, intimate partner, or sexual violence.
- Both a short- and long-term leave of which the first five days are paid (while the council had originally recommended 10 days of paid leave, we recognize that five days paid leave is currently the highest standard in the country).
- The leave to be accessed without presentation of proof.
- Confidentiality requirements relating to documentation or other material received in relation to the employee's leave of absence.
- A qualifying period of 90 days, as with other leaves under the *Employment Standards Act*.
- A broad range of purposes for which the leave may be taken.

We have included our original feedback on the leave in response to government's consultation in the following pages, should you wish to reference it for information on why the above provisions are critical to ensuring the leave is accessible to victims and supportive of their safety and wellbeing.

The council would like to draw attention to the following for your consideration as the draft regulations are finalized:

Intermittent versus continuous long-term leave.

As currently written, the long-term leave must be taken in a continuous period. While intermittent long-term leave may be more challenging for employers to accommodate, it may be practical for employees using the leave in order to support their safety and wellbeing or that of their child (children).

Situations of domestic, intimate partner, and sexual violence can be volatile and unpredictable. In cases of intimate partner violence perpetrated against women by men, women are at the highest risk for lethal violence *after* they leave. An employee may believe the situation has been addressed and the violence is over and return to work only to have the cycle of violence repeat itself once more – perhaps even with increased physical violence.

Consider a scenario in which a woman accesses the entirety of the short-term leave and then part of the longer term leave to flee a situation of intimate partner violence. She relocates within her community and returns to work after only a few weeks of leave as her economic security is critical to her safety and wellbeing. The abusive man finds her new residence and begins harassing her and she must hide and then relocate once more – but she has already used all the short-term leave and returned from the long-term leave. While she did not use all 16 weeks of the leave, it cannot be used intermittently so she is unable to access it a second time. She requires more time off work to take measures to support her safety, but she also cannot risk losing her job.

Expanding the availability of the leave beyond cases in which the employees themselves or their child (children) is the victim of domestic, intimate partner, or sexual violence.

If one of the goals of the leave is to ensure that employees can access time off to support a vulnerable dependent who has experienced violence, we recommend that the government consider ensuring employees could access the leave if, for instance, an elderly relative or adult family member with a disability for whom they provide care is a victim of violence.

To go a step further than this would be to also include instances in which the victims is not necessarily a vulnerable dependent of the employee, but is a member of the employee's family, the employee's household, or someone in a close family relationship with the employee. This would be a model in which the leave is envisioned not only as a resource for victims and the parents of victims of domestic, intimate partner, and sexual violence, but as a tool to empower communities to rally around victims – and government has recognized that such community support and intervention is required to address domestic, intimate partner, and sexual violence.

In a model where the leave is a tool for communities to intervene in concrete ways, a broad definition of “close family relationships” would be critical. This is to ensure that victims who are subject to violence by family members or who have been distanced from their family by their abuser are able to receive support from other individuals they are close with but not related to by blood or legal means. This may be particularly important for individuals who are immigrants, as they may face pressure from their family to not discuss the violence (due to social norms or fear that disclosures of violence will perpetuate racist and xenophobic stereotypes about their culture) and need to seek support from people they are close to outside of their family. It may also be particularly important for LGBTQA2S+ individuals who may be estranged from their families due to their sexual orientation and/or gender identity and need to turn to their chosen family of friends for support.

For reference: original feedback to government consultation

How long should the leave be? Should there be some combination of lengths that can be used continuously or intermittently?

Experiences of violence are extremely complicated and require flexibility to address those effectively. In addressing violence, employees may be engaging with systems and supports that are prescriptive and rigid – the leave must be flexible to support employees in navigating them. We recommend:

- Both a shorter and longer-term leave. The shorter-term leave should be for 10 days and the longer-term leave for 15 to 17 weeks per calendar year.
- That the shorter leave be able to be taken continuously or intermittently and that only actual time spent away from work should be considered use of leave time (e.g. half a day away from work would not be counted as a full day of leave).
- That the longer leave be able to be taken either continuously or intermittently on a weekly basis.

Should the leave be paid, unpaid or a combination of the two?

In many situations of violence, financial abuse or dependency is present; an unpaid leave would be completely inaccessible to employees in these situations. Even in situations in which financial abuse from or dependency on an abuser is not a factor, an unpaid leave is still likely to be inaccessible for many – consider that most domestic, intimate partner, and sexual violence is perpetrated against women and that adult women in New Brunswick represent the largest group working minimum wage jobs and are more likely than men to work part-time. Financial insecurity – whether part of the context of abuse or not – would prevent many employees from taking an unpaid leave. We recommend:

- That the first 10 days of leave, whether it is through the shorter or longer-term period, be paid. The employee should be entitled to what they would normally have earned had they been at work. This should apply to both part-time and full-time workers.
- That employers not be able to ask or compel employees to use other forms of paid leave instead of this designated leave. It should be noted that an employee may be eligible for multiple leaves relating to the same event or situation.

Should an employer be permitted to request proof or verification of the leave request? If yes, what evidence should be required?

There continues to be shame and stigma attached to experiences of violence. Many survivors of violence hesitate to come forward precisely because they fear they will not be believed or their experiences will be minimized or they will be blamed for the violence. If this leave is to be effectively integrated into New Brunswick workplaces, then this reality must be taken into account – particularly when it comes to when and what verification or proof employers can request before granting a leave. If the requirement for proof is too burdensome, then employees will likely not access the leave. We recommend:

- That an initial paid leave of five days or less not require any proof or verification.
- When proof is required, a variety of sources should be able to provide verification, including: social workers, counsellors, faith leaders and spiritual advisors, physicians and nurses, teachers and school administrators, community-based service providers (including individuals working or volunteering for these organizations who are not registered social workers), law enforcement, etc. Materials such as reports to law enforcement or child protection, restraining orders or peace bonds,

or applications for intervention orders under the *Intimate Partner Violence Intervention Act* should also be considered adequate verification.

Should there be a requirement to maintain confidentiality?

Again, this question must take into account the shame and stigma faced by survivors of violence. If employees are to access this leave, they must be confident that their disclosures of violence will remain confidential. Additionally, employees' safety (as well as the safety of their family, roommates, friends, etc.) may be jeopardized if information regarding disclosures, services they plan to access or intentions to relocate are shared. We recommend:

- That there be a requirement to maintain confidentiality except where there is a legal duty to report (e.g. if violence is being perpetrated against a minor).

Additional comments:

In addition to our responses to questions posed in the request for input, we would like to share a number of additional comments. We recommend:

- That this leave be available to employees in the event that they themselves OR their spouse/partner, child (children), elderly parent(s), other dependent, or anyone in their care or residing in a shared household is the victim of domestic, intimate partner or sexual violence.

- That, as with other forms of leave in New Brunswick, the qualifying period for this leave should be 90 calendar days.
- That the purposes for which the leave may be taken should be broad and not limited to accessing care and services (i.e. medical care, reporting to or liaising with law enforcement, receiving legal advice, counselling, programs and activities offered by community organizations, etc.) or relocation. Employees may need time away from work to simply process the situation and the related trauma. Employees may also require leave time to navigate systems and advocate for support and services. Finally, employees may need leave time to access supports and services (or navigate systems and advocate for access supports and services) that may not explicitly address violence but instead focus on traditional ceremony, immigration and settlement services, child care, elder care, etc.
- That training be made available to employers to support the implementation of this leave.