

TWO NEW LEAVES OF ABSENCE IN THE WORKS FOR ONTARIO

By Barry W. Kwasniewski*

A. INTRODUCTION

Two Bills were recently introduced in the Ontario Legislature, which, if passed, will grant new leave of absence provisions under the *Employment Standards Act, 2000* (“ESA”).¹ Bill 175, [*Jonathan’s Law \(Employee Leave of Absence When Child Dies\), 2016*](#),² (“Jonathan’s Law”) and Bill 177, [*Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act, 2016*](#)³ (“DSVL”) were introduced on March 8, 2016. While these Bills are in the early stages of the legislative process, charities and not-for-profits will want to follow their development given their potential impact should they become law. This *Charity & NFP Bulletin* explores each of these Bills in their current form and discusses the potential implications to charities and not-for-profits.

B. THE CURRENT LEGISLATION

Under Part XIV of the ESA, there are currently a number of job protected leaves of absence for Ontario employees. Current leave of absence provisions under the ESA include:

- Pregnancy Leave under section 46
- Parental Leave under section 48
- Family Medical Leave under subsection 49.1(2)
- Organ Donor Leave under subsection 49.2(3)

*Barry W. Kwasniewski, B.B.A., LL.B., a partner, practices employment and risk management law with Carters’ Ottawa office. The author would like to thank Shawn Leclerc B.A., J.D., for his assistance in preparing this Bulletin.

¹ SO 2000, c41.

² 1st Sess, 41 Leg, Ontario, 2016, (first reading 8 March 2016).

³ 1st Sess, 41 Leg, Ontario, 2016, (second reading 10 March 2016).

- Family Caregiver Leave under subsection 49.3(2)
- Critically Ill Child Leave under subsection 49.4(2)
- Crime-Related Child Death or Disappearance Leave under subsections 49.5(2)(3)
- Personal Emergency Leave under subsection 50(1)
- Emergency Leave, Declared Emergency Leave under subsection 50.1(1)
- Reservist Leave under 50.2(1)

All ESA leaves of absence provide protections for employees, including the continuation of employee participation in benefits plans such as pension plans, life insurance, accidental death, extended health, and dental plans.⁴ During an employee's leave of absence, the employer is obligated to continue the employer portion of the contributions to the plans unless an employee provides written notice to the employer that they do not intend to pay the employee portion of the contribution.⁵ Employees are also guaranteed that any leave taken will be included in calculations for determining their rights under an employment contract for things such as seniority, length of service, and length of employment.⁶ Additionally, the ESA ensures that an employee who takes leave will be reinstated to the position the employee most recently held or to a comparable position if the position no longer exists.⁷ Finally, the ESA provides wage protection for employees who take leave so that, once reinstated, the employee will be paid at a rate that is equal to or greater than the rate they most recently earned and the rate that the employee would be earning had they worked throughout the leave.⁸

C. PROPOSED LEGISLATION

1. Jonathan's Law

While section 49.5 entitles a parent to a leave of absence where a child dies for crime-related reasons, Jonathan's Law, currently at first reading, proposes to amend the ESA by adding section 49.4.1 which will entitle an employee to an unpaid leave of absence in the event that the child of an employee dies for reasons other than those of section 49.5. For the purposes of the proposed section, a child would be defined as a child, step-child or foster child who is under 18 years of age.⁹ In

⁴*Ibid* at section 51(1)&(2)

⁵*Ibid* at section 51(3)

⁶*Ibid* at section 52

⁷*Ibid* at section 53

⁸*Ibid* at subsection 53(3)

⁹*Supra* note 2 at cl 1.

addition, the new section would entitle one or more employees to the leave, and the employees would be entitled to a leave of absence of up to 52 weeks beginning from the week that the child dies.¹⁰

As with the other leave of absence provisions, proposed section 49.4.1 requires that an employee seeking the leave be employed for at least six consecutive months. In addition to this requirement, the proposed amendment places limits on the period and manner in which the leave may be taken. As a result, a parent, or parents, seeking leave of absence under Jonathan's Law would be required to take their leave within the 52 week period beginning from the week the child died and a parent could not take the leave in multiple periods, but in one single period and only within the 52 week period following the child's death.

2. DSVL

The DSVL, already through second reading and now before the Standing Committee on Justice Policy, would provide the first employer-paid leave of absence under the ESA. An employee taking a leave of absence under the DSVL would be entitled to ten days of paid leave in addition to any other entitlement of paid leave under the employee's employment contract. The proposed legislation would add several amendments to the ESA, including workplace accommodations if an employee or their child experienced domestic or sexual violence. Finally, the DSVL would amend the Ontario *Occupational Health and Safety Act* to require every employer to have "every manager, supervisor and worker" receive information and training about domestic and sexual violence in the workplace.

a) Definitions

Under the proposed legislation, domestic violence would be defined as "(a) an act of abuse between an individual and a current or former intimate partner, between an individual and a child who resides with the individual, or between an individual and an adult who resides with the individual and who is related to the individual by blood, marriage, foster care or adoption, whether the abuse is physical, sexual, emotional or psychological, and may include an act of coercion, stalking, harassment or financial control, or (b) a threat or attempt to do an act described in clause (a)."¹¹ In addition, sexual violence would be defined as "any conduct of a sexual nature or act targeting an individual's sexuality, gender identity or gender expression that

¹⁰ *Ibid*

¹¹ *Supra* note 2 at cl 1.

is committed, threatened or attempted against an individual without the individual's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism, sexual exploitation and sexual solicitation, and may include an act that occurs online or in the context of domestic or intimate partner relationships.”¹²

b) Accommodations

Accommodations for an employee who has experienced domestic or sexual violence, or whose child has experienced domestic or sexual violence, would be required under two new sections to the ESA. Under a new Part VI.1 section 16.1 and a new section 19.1, an employer would be required to provide an employee with accommodation in the form of an alternative work space to the one the employer had assigned the employee, and/or accommodation to the employee in the form of reduced hours or alternate times of work. In both circumstances, the employer will be required to provide accommodation to the point of undue hardship. In either circumstance the employee will have to provide reasonable evidence that the accommodation requested is necessary.

c) Leave Entitlement Conditions

New section 49.6 of the proposed legislation outlines an employee's entitlement to the leave. According to section 49.6, the definition of child for the purposes of that section would be “a child, step-child or foster child who is under 18 years of age.”¹³ Where the employee or their child has experienced domestic or sexual violence, they may take a leave of absence to seek medical attention, access victim services, obtain psychological or other professional counselling, relocate, or seek legal or law enforcement assistance.

D. CONCLUSION

As both Jonathan's law and the DSVL are both in the early stages of the legislative process, it is uncertain as to whether the bills will become law, either in the current or a revised form. However, both bills have been receiving a considerable amount of attention, and therefore may gain momentum to be passed by the

¹² *Ibid.*

¹³ *Ibid* at cl 1(9).

Ontario Legislature. As such, we will continue monitoring the progress of both bills given their potential impact on charities and not-for-profits as employers.



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