

PERSONAL LEAVE PROCEDURES

PERSONAL LEAVE

All employees are entitled to up to 5 days of personal leave per calendar year. If an employee has 3 consecutive months of continuous employment with the same employer, the first 3 days of leave are paid. Employees with less than 3 months of employment are entitled to 5 days of leave without pay. The employee can take this leave over more than 1 period. The employer may request that the employee provide supporting documents concerning the reasons for the leave up to 15 days after the employee's return to work. The employee must provide supporting documents if it is possible to obtain and provide them.

RIGHTS OUTLINED IN THE CODE FOR PERSONAL LEAVE

Employees have the right to a leave of no more than five days per calendar year to heal from an injury or illness, take care of health obligations for any member of their family or care for them, take care of obligations related to the education of any family member under age 18, manage any urgent situation that concerns them or a family member, attend their citizenship ceremony under the Citizenship Act, or manage any other situation prescribed by regulation.

CONDITIONS FOR PAID LEAVE

If the employee has worked for the employer without interruption for at least three months, the first three days of leave are paid at the regular rate of pay for a normal work day and such paid leave shall be considered wages. Employees who have worked fewer than three months without interruption for the same employer have the right to unpaid leave. **Employees whose salary varies from one day to another or who is paid on a basis other than an hourly rate must receive the average of their daily earnings exclusive of overtime hours for the 20 days the employee has worked immediately preceding the first day of leave.**

LEAVE TAKEN OVER MORE THAN ONE PERIOD

The leave may be taken in one or more periods; the employer may, however, require that each period be at least one day.

Note: **The Code defines a day as any period of 24 consecutive hours.** Stating the time and day your leave will begin is recommended.

EMPLOYER REQUEST FOR DOCUMENTATION

The employer may, in writing, no later than 15 days after the employee's return to work, ask them to provide supporting documents concerning the reasons for the leave. The employee is only required to provide such documents if it is possible in practice to obtain and provide them.

NOTICE TO EMPLOYER OF LEAVE

Employees who take a leave of absence from employment shall, as soon as possible, provide the employer with a notice in writing of the reasons for the leave and the length of the leave that they intend to take. While on leave, provide notice in writing of any change in the length of the leave that they intend to take.

Note: CP currently has an unofficial form they have been requiring employees to fill out for this leave. In any case the Code requires notice in writing. Even if arrangements are made verbally it is recommended it be followed up in writing to the employer and copies are retained by the employee.

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COMPLAINTS IF DENIED LEAVE / PAYMENT

The Code provides a process to address federal labour standards complaints. There are timeframes that need to be followed and they vary depending on the type of complaint.

Employees must be timely in filing a complaint:

- Monetary complaints must be filed within 6 months from the last day the employer was required to pay the amounts.
- Non-monetary complaints must be filed within 6 months from the day the employee was aware of the issue.

An employee filing certain complaints can request that their identity not be shared with the employer during the investigation. However, confidentiality cannot be maintained if...

- A. The disclosure is necessary for the purposes of a prosecution
- B. The Minister determines that the disclosure is in the public interest, or
- C. An inspector determines that the disclosure is necessary for the investigation of the complaint to be carried out and the complainant consents to the disclosure in writing

If as per "C." above, if the complainant refuses to grant consent for disclosure, the complaint is deemed withdrawn. Withholding your information from the employer, however, may limit the ability to facilitate and expedite the processing of this complaint.

BEFORE A COMPLAINT IS FILED

Consider the following:

1. Contact your union representative to discuss your complaint. Being a unionized employee, the Labour Program may not be authorized to handle your complaint. Complaints should be filed in the interim until the Labour Program explicitly states they cannot handle these complaints. Once filed an inspector will determine whether you and your employer fall under the Code's jurisdiction. You may also have grounds for a grievance or another government complaint, with such agencies as the Human Rights Commission or the Workers Compensation Board.
2. If possible, approach your employer to try to resolve the issue. It is possible for parties to reach a settlement before Labour Program inspectors make their final determination during a complaint investigation.

TO FILE A COMPLAINT

Download the [Labour Program complaint form](#) from the Service Canada website.

1. Fill in the form

You need to provide your name, address and contact information, as well as the name, address, and contact information of your employer. Next, you need to provide your work history with the employer and details about your complaint. This includes selecting whether your complaint is related to wages or other amounts owed such as termination and severance pay, or another labour standards violation.

2. Photocopy records

If you have any documents or records to support your complaint, you should copy and attach them to your complaint form. If your complaint is related to wages or other amounts owed, your records should cover the period of **24 months prior** to the complaint.

3. Submit

Once you have completed the form and attached any supporting documents, please submit these to the Labour Program office nearest you. To locate a Labour Program office, please call the 1-800-641-4049 for enquiries or to make an appointment to meet with a Labour Program Officer.

For information regarding employment standards and/or for assistance in filing a complaint please call 1-800-641-4049 or email NA-ERO-GD@labour-travail.gc.ca.

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WHAT HAPPENS NEXT?

You will receive a Letter of acknowledgement from the Labour Program which confirms that your complaint has been received and is being reviewed.

The inspector will determine whether you and your employer fall under the Code's jurisdiction and whether a violation of labour standards has occurred. A Preliminary letter of determination will be sent to you and your employer with the inspector's findings.

If you or your employer disagree with the findings, there will be an opportunity to provide more information to the inspector. A Labour Program inspector will review any new information submitted before a final determination on your complaint is made.

If a violation is found, a Letter of determination will be sent to your employer requesting that the violation be corrected. For example, they may be asked to pay wages owed to you or to implement appropriate workplace practices.

If the employer is found to be in compliance with the Code, you will be notified of the inspector's findings in writing. You may also subsequently be issued a Notice of unfounded complaint, which advises you that the employer is in compliance, including reasons why, and that the inspector's decision can be appealed.

RECOVERY OF WAGES

If the Labour Program determines that wages or other amounts are owed, and the employer agrees to pay, you may receive the monies directly from your employer or through the Labour Program. If you disagree with the amount paid, a Notice of voluntary compliance may be issued, which will allow you to request a review.

If your employer refuses to pay the wages or amounts owed, the Labour Program will issue a Payment Order to the employer or the director of the corporation for the amounts owed. A Payment Order to recover wages will cover 24 months before the complaint was received or before the last day of employment.

THE PRICE OF NON COMPLIANCE

- When a Payment order to employer is issued, an administrative fee of **\$200.00 or 15%** (whichever is greater) will be added to the wages or other amounts owed.
- In cases of summary conviction, a corporation that has violated federal labour standards will be fined up to **\$50,000 for the first offence, up to \$100,000 for the second offence, and up to \$250,000 for the third (and any subsequent) offences.**
- An employer that is not a corporation will be fined up to **\$10,000 for the first offence, up to \$20,000 for the second offence, and up to \$50,000 for the third (and any subsequent) offence.**
- Upon summary conviction of a serious offence of Part III of the Code, an employer will be fined up to **\$250,000 for the first (and any subsequent) offences.** A serious offence includes failure by an employer to: offer workers' compensation coverage; insure any long-term disability plans they may offer to employees; and comply with group termination requirements.
- The fine for an employer's failure to keep or make records available to Labour Program inspectors is **\$1,000 per day that the violation continues.** The fine for failing to comply with an order to pay wages or to reinstate an employee is also \$1,000 per day that the violation continues.
- **A repeat offence will be determined if the first offence occurred within the preceding five years.**