



Draft Regulations to *Employment Standards Act 2018*

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Introduction

On June 12, 2018, Bill 116, *An Act To Amend The Employment Standards Act (No. 3)* as amended, received Royal Assent. Bill 116 introduces a new form of leave to the *Employment Standards Act*, providing for up to three days of paid leave, and another seven days of unpaid leave for employees needing time to deal with the consequences of domestic, intimate partner or sexual violence.

The details of how this amendment is to be implemented has been left to be determined by regulations. Regulations are statutory instruments often used to provide more specifics on the processes used to put an Act into action. Regulations which are passed by the Lieutenant Governor-in-Council (cabinet) rather than by the legislature.

A scan of other Canadian jurisdictions was conducted in order to help inform the development of regulations appropriate to the Prince Edward Island context. The resulting consultation draft regulations have been drawn from Prince Edward Island's *Victims of Family Violence Act*, as well as from New Brunswick, Nova Scotia and Saskatchewan.

Below you will find two sections of text. Section 1 contains the text of Bill 116 as amended; Section 2 contains proposed regulations to support the implementation of Bill 116. Feedback from stakeholders and the general public is sought on Section 2.

Section 1 : Bill No. 116 (2018)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. The *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2, is amended by the addition of the following after section 22.3:

Domestic Violence Leave, Intimate Partner Violence Leave or Sexual Violence Leave

22.4 Domestic violence, intimate partner violence or sexual violence leave

(1) Where an employee has been employed by an employer for a continuous period of three months or more, the employer shall, at the request of the employee, grant the employee

- a) leaves of absence with pay of up to three days, and
- b) leaves of absence without pay of up to seven additional days,

which the employee may choose to take intermittently or in one continuous period, during a twelve-calendar-month period, taken at the employee's discretion, for a domestic violence leave, intimate partner violence leave or sexual violence leave.



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Advise employer

(2) An employee who intends to take a leave of absence under subsection (1) shall advise the employer of the employee's intention to take the leave, the commencement date of the leave and, subject to subsection (1) and the regulations, the anticipated duration of the leave.

2. Subsection 41(1) of the Act is amended by the addition of the following after clause (f):

(f.1) respecting a domestic violence leave, intimate partner violence leave or sexual violence leave under section 22.4, including

- (i) the purposes for which the leave may be taken,
- (ii) the information or documentation that an employee is required to provide to an employer, if any, in support of entitlement to the leave, and when it is to be provided, and
- (iii) the confidentiality, disclosure or sharing of any information or documentation provided by the employee in relation to the leave;

3. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

Section 2 : Consultation Draft Regulations

1. Definitions

In these regulations,

- (1) “domestic violence” means violence against a person by any other person with whom that person is, or has been married to have cohabited in a spousal or sexual relationship; or is a member of the same family.
- (2) “intimate partner violence” means violence committed against a person by another person who is or has been in an intimate personal relationship with the person and includes the following:
 - (a) abusive, threatening, harassing or violent behaviour used as a means to psychologically, physically, sexually or financially coerce, dominate and control the other member of the relationship; and
 - (b) deprivation of food, clothing, medical attention, shelter, transportation or other necessities of life; and,
- (3) “sexual violence” means sexual assault, sexual exploitation or sexual molestation, or the threat of sexual assault, sexual exploitation or sexual molestation;
- (4) “victim” means
 - (a) an employee,
 - (b) a child of an employee, and
 - (c) a person for whom an employee is a caregiver, regardless of whether the person and the employee have lived together at any time.

- (5) “violence” includes
- (a) any assault of the victim, but does not include an act committed in self-defence;
 - (b) any reckless act or omission that causes injury to the victim or damage to property;
 - (c) any act or threat that causes a reasonable fear of injury to the victim or damage to property;
 - (d) forced confinement of the victim;
 - (e) actions or threats of sexual abuse, physical abuse or emotional abuse of the victim;
 - (f) depriving a victim of food, clothing, medical attention, shelter, transportation or other necessities of life; or
 - (g) a series of acts that collectively causes the victim to fear for their safety, including following, contacting, communicating with, observing or recording any person.
 - (h) any act by a person solicited to do so by a domestic partner or intimate partner which, if done by a domestic partner or intimate partner, would constitute domestic violence or intimate partner violence.

2. Purposes of leave

Leave pursuant to this regulation may be taken for one or more of the following purposes:

- (1) to seek medical attention for a victim with respect to a physical or psychological injury or disability caused by domestic violence, intimate partner violence or sexual violence;
- (2) to obtain services from a victim services organization;
- (3) to obtain psychological or other professional counselling for a matter related to or arising from domestic violence, intimate partner violence or sexual violence;
- (4) to relocate temporarily or permanently for a reason related to or arising from domestic violence, intimate partner violence or sexual violence; or
- (5) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, intimate partner violence or sexual violence.

3. Calculating leave usage

For the purposes of calculating when an employee’s period of leave has been fully used in accordance with this section, only the periods during which the employee is on leave, such as partial days, are to be used in making the calculation and not any periods during which the employee has returned to work.

4. Employer obligation of confidentiality

An employer shall

- (1) maintain confidentiality respecting all matters that come to the employer’s knowledge in relation to leave taken by an employee pursuant to this regulation; and
- (2) not disclose information relating to the leave to any person except
 - (i) employees or agents of the employer who require the information to carry out their duties, or
 - (ii) with the consent of the employee to whom the leave relates, or
 - (iii) as required under the *Child Protection Act*, or
 - (iv) as required under the *Adult Protection Act*.



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5. Disclosure of information

A person to whom information is disclosed pursuant to regulation 4(2) shall not disclose it to any other person unless it is to be used for the purpose for which it was originally disclosed or for a different purpose authorized by that clause.

6. Employer request for evidence of need for leave

If the employer so requires, the employee shall provide written evidence respecting the employee's need for the leave, issued by any of the following persons:

- (1) a social worker as defined in the *Social Work Act* R.S.P.E.I. 1988, Cap. S-5;
- (2) a psychologist as defined in the *Psychologists Act*, R.S.P.E.I. 1988, Cap. P-27.2;
- (3) a medical practitioner as defined in the *Medical Act* R.S.P.E.I. 1988, Cap. M-5;
- (4) a registered nurse or nurse practitioner as defined in the *Registered Nurses Act* R.S.P.E.I. 1988, Cap. R-8.1;
- (5) a member of the Royal Canadian Mounted Police or a member of a police service as defined in the *Police Act* R.S.P.E.I. 1988, Cap. P-11.1;
- (6) a Victims Services Worker as employed under the *Victims of Crime Act* R.S.P.E.I. 1988, Cap. V-3.1;
- (7) a person approved by the employer to provide statements for the purposes of this section.

EXPLANATORY NOTES

This creates regulations under the *Employment Standards Act* that sets out the rules applicable to this new type of leave.

Regulation 1 provides definitions for the purposes of the section.

Regulation 2 specifies the purposes for which the leave may be taken.

Regulation 3 clarifies how the leave is to be calculated.

Regulation 4 requires the employer to keep matters in relation to the leave confidential, and not to disclose them except to employees or agents of the employer who need the information to carry out their duties, or with the consent of the employee to whom the leave relates.

Regulation 5 prohibits a person to whom information is disclosed under Regulation 5 from disclosing it to any other person except for the purpose it was originally disclosed or a different purpose authorized by Regulation 6.

Regulation 6 authorizes an employer to require the employee to provide written evidence of the employee's need for the leave from one of the specified persons.