



Working Caregivers

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Agenda

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Working Caregivers

Who is doing the caregiving – primarily women or those that identify as women.

Working Caregivers provide care for:

- children, including children who suffer from chronic or acute illness
- adult dependent children, foster children, relative's children
- a spouse, who may suffer from chronically or palliatively ill, and care for elderly parents and relatives.

StatsCan states that women are 8 times more likely to play the primary role in caring for children and one and a half times more likely to take the lead in caring for adults.

In Canada, more than half of women, aged 15 and older, provide some form of care to children and care-dependent adults.

Legal Obligations

Where do working caregivers' legal obligation to provide care and support come from?

- Provincial Family Law Legislation
- Provincial Child Welfare Legislation
- Federal: First Nations Child and Family Services
- Parenting and Custodial Agreements or Orders
- Guardianships for property or medical decision making

Legal Obligations

Criminal Code of Canada s. 215

▶ Duty of persons to provide necessaries of life. This is a legal duty to provide necessaries of life that creates dual offences for failure or neglect to perform the duty.

- **215 (1)** Everyone is under a legal duty
 - (a) as a parent, foster parent, guardian or head of a family, to provide necessaries of life for a child under the age of sixteen years;
 - (b) to provide necessaries of life to their spouse or common-law partner; and
 - (c) to provide necessaries of life to a person under his charge if that person
 - (i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and
 - (ii) is unable to provide himself with necessaries of life.



The Pandemic

On March 16, 2020, most of us were forced to work from our homes, in isolation of the outside world.

The Pandemic had and continues to have a significant impact on working care givers.

Women experienced higher job loss than men and increased incidents of domestic violence.

Women took on a greater percentage of childcare, domestic duties and care for care dependent adults and still performed paid work from the home.

Working caregivers also had to provide care for their children when day cares were shut down due to COVID outbreaks and take on parent-teacher roles when education was primarily virtual while doing their paid job

Return to the Office:

- ▶ The Federal government started to return most workers back to working in the office around 2021
- ▶ In the spring of 2023, the federal public service adopted a hybrid work model.
- ▶ PSAC members negotiated telework agreements under the new hybrid work model.
- ▶ This new work model caused significant impact on working caregivers, again.
- ▶ Forced many employees (mostly women) to seek flexible work arrangements and accommodations based on family status.

Return to the Office – Three Days a week

- ▶ On May 1, 2024, TBS updated the Directive on prescribed presence in the workplace, requiring employees of the core public administration to work on-site at least 3 days per week by September 9, 2024.
- ▶ How is the 3-day Return to the Office applied: it varies depending on the department and manager's discretion.
- ▶ Working care givers must make new arrangements for providing care and support to their families
- ▶ Demand for flexible work arrangements and accommodations based on family status sharply increased.
- ▶ New telework agreements had to be negotiated and are still being negotiated.

Duty to Accommodate

The Directive on Duty to Accommodate applies in the hybrid work model.

If an employee faces discrimination under the 13 prohibited grounds for discrimination as listed in the *Canadian Human Rights Act*, they may request accommodation from their manager or file a discrimination grievance.

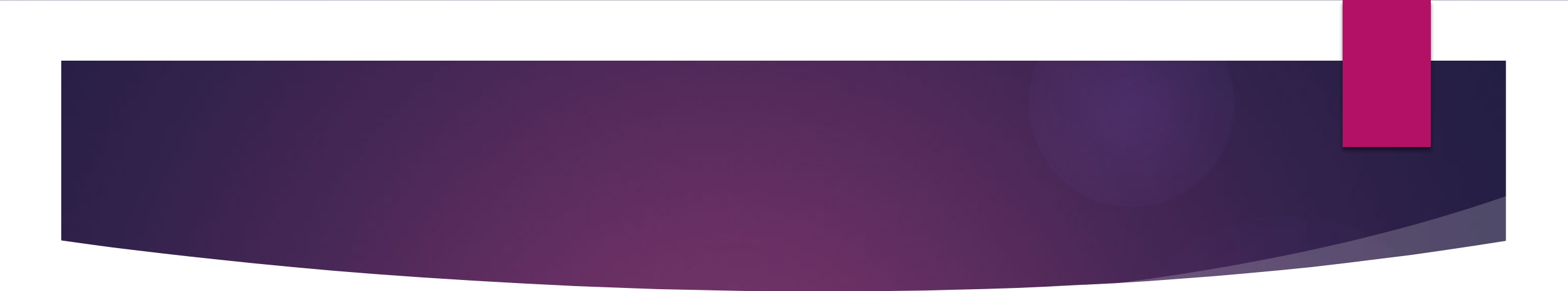
Requests for accommodation must be assessed on a case-by-case basis, considering facts, the evidence and circumstances that may be unique to the individual or the workplace.

In addition to medical requests for accommodation, many working caregivers are seeking accommodations based on family status.

Accommodation based on Family Status

Discrimination based on family status is one of the prohibited grounds for discrimination under the **CHRA** and the discrimination article.

- ▶ Seeking an accommodation on this basis requires cooperation between the employer, the employee and the union.
- ▶ An employee seeking this kind accommodation **must**:
- ▶ Make the request for an accommodation to the employer in a timely way.
- ▶ Demonstrate that there is a genuine obligation to provide care (personal choice/preference is not enough to justify accommodation).
- ▶ Demonstrate that they have explored alternatives and available caregiving options such their spouse, family members, friends, social program, and community supports.
- ▶ Participate in discussions, consider alternatives, and agree to reasonable arrangements in the workplace that accommodate their needs, even when the arrangement is not the preferred solution.
- ▶ Plan for the unexpected.



What are your Options under the Collective Agreement - Where to Look

- ▶ Most collective agreements have a template that create the structure of the Collective Agreement.
- ▶ Working Conditions and Leave Provisions generally form part of the structure of a Collective Agreement.
- ▶ The Programs and Administration Collective Agreement contains Part III, covering Working Conditions, and Part IV, covering Leave Provisions.
- ▶ These provisions of the Collective Agreement may provide options and flexibility so that a working caregiver may also meet the needs of their families.

What are your Options under the Collective Agreement

Article 25: Working Conditions

Article 41 : Leave without Pay for the Care of Family

Article 42: Care Giving Leave

Care giving leave and Service Canada EI Care Giving benefits

Article 44: leave with pay for family-related responsibilities

Article 53: leave with or without pay for other reason

Article 54.01 Domestic violence leave

Leave with Income Averaging



Hours of Work

Article 25.08 Flexible hours

Subject to operational requirements, an employee has the right to select and request flexible hours between 7 am and 6 pm.

Article 25.09: Variable hours

a. An employee may complete the weekly hours of employment in a period of other than 5 full days, provided that, over a period of up to 28 calendar days, the employee works an average of 37.5 hours per week.

b. In every period of up to twenty-eight (28) days, the employee shall be granted days of rest on such days as are not scheduled as a normal workday for the employee.

Article 41: Leave without pay for the care of family

Key points:

For the purposes of this article, “Family” is defined within the collective Agreement and in addition:
a person who stands in the place of a relative for the employee regardless if there is any degree of consanguinity between such person and the employee.

An employee must notify the Employer in writing as far in advance as possible but not less than 4 weeks in advance of the commencement date of such leave unless, because of urgent or unforeseeable circumstances, such notice cannot be given.

Leave granted under this article shall be for a minimum period of 3 weeks.
The total leave granted under this article cannot exceed 5 years during an employee’s total period of employment in the public service.

An employee who has proceeded on leave without pay may change their return-to-work date if such change does not result in additional costs to the Employer.

Article 42: Caregiving Leave

▶ Key Points:

- ▶ Provide proof to Employer that they have or are waiting **Employment Insurance (EI) compassionate care benefits, family caregiver benefits for children and/or family caregiver benefits for adults** and Employer shall be granted leave without pay while in receipt of or awaiting these benefits.
- ▶ Leave cannot exceed 26 weeks for compassionate care benefits, 35 weeks for family caregiver benefits for children and 15 weeks for family caregiver benefits for adults, in addition to any waiting period.
- ▶ An employee must notify Employer when application for the EI benefits has been accepted.
- ▶ Leave granted under this clause shall count for the calculation of “continuous employment” for the purpose of calculating severance pay and “service” for the purpose of calculating vacation leave.

Employment Insurance Caregiving Benefits:

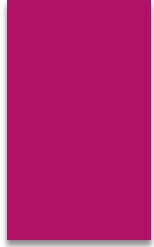
<https://www.canada.ca/en/services/benefits/ei/caregiving.html>

EI caregiving benefits provide financial assistance while you're away from work to care for or support a critically ill or injured person or someone needing end-of-life care.

You could receive 55% of your earnings, up to a maximum of \$668 a week.

As a caregiver, you don't have to be related to or live with the person you care for or support, but they must consider you to be like a family member.

You can receive benefits during the 52 weeks following the date the person is certified by a medical doctor or nurse practitioner to be critically ill or injured or in need of end-of-life care.



The 3 types of caregiving benefits

Benefit name	Maximum weeks payable	Who you're providing care to
Family caregiver benefit for children	up to 35 weeks	A critically ill or injured person under 18
Family caregiver benefit for adults	up to 15 weeks	A critically ill or injured person 18 or over
Compassionate care benefits	up to 26 weeks	A person of any age who requires end-of-life care

Employment
Insurance
Caregiving Benefits:

Article 44: Leave with pay for family-related responsibilities

- ▶ Who does family-related leave apply to:
 - ▶ a. spouse (or common-law partner resident with the employee);
 - ▶ b. children (including foster children, stepchildren or children of the spouse or common-law partner, ward of the employee), grandchild;
 - ▶ c. parents (including stepparents or foster parents);
 - ▶ d. father-in-law, mother-in-law, brother, sister, stepbrother, stepsister, grandparents of the employee;
 - ▶ e. any relative permanently residing in the employee's household or with whom the employee permanently resides;
 - ▶ f. any relative for whom the employee has a duty of care, irrespective of whether they reside with the employee; or
 - ▶ g. a person who stands in the place of a relative for the employee whether or not there is any degree of consanguinity between such person and the employee.
- ▶ Total leave is 37.5 hours per fiscal year
- ▶ Article 44.03 sets out the circumstances under which you can use this leave.

Article 53: Leave with or without pay for other reasons

- ▶ **Article 53.01** was described as Code 699 (its compensation code) during the Pandemic.
- ▶ The interpretation of this article has reverted to its much more restricted pre-Pandemic application
- ▶ Under this Article, the Employer may grant, at its discretion:
 - ▶ Leave with pay when circumstances not directly attributable to the employee prevent their reporting for duty; such leave shall not be unreasonably withheld by the employer.
 - ▶ Leave with or without pay for purposes other than those specified in this agreement
- ▶ **Article 53.02** reverted to Article 43 as of April 1, 2024.
- ▶ Subject to operational requirements as determined by the Employer and with an advance notice of at least 5 working days, the employee shall be granted, in each fiscal year, a single period of up to seven decimal five 7.5 hours or 2 periods of up to 3.75 hours each, of leave with pay for reasons of a personal nature

Article 54: Domestic Violence Leave

- ▶ Under **Article 54**, domestic violence is any form of abuse or neglect that an employee or an employee's child experiences from a family member, or from someone with whom the employee has or had an intimate relationship.
- ▶ domestic violence significantly affects an employee's personal life and affect their ability to focus on work, attend work and/or attend work, safely.
- ▶ an employee who is subject to domestic violence or who is the parent of a dependent child who is subject to domestic violence shall be granted domestic violence leave to enable the employee, in respect of such violence, may request:
 - ▶ i. to seek care and/or support for themselves or their child in respect of a physical or psychological injury or disability;
 - ▶ ii. to obtain services from an organization which provides services for individuals who are subject to domestic violence;
 - ▶ iii. to obtain professional counselling;
 - ▶ iv. to relocate temporarily or permanently; or
 - ▶ v. to seek legal or law enforcement assistance or to prepare for or participate in any civil or criminal legal proceeding

Leave with Income Averaging (LIA)

- ▶ Leave with Income Averaging (LIA) is a special work arrangement that allows you to take an extended leave without pay (for a minimum of 5 weeks and a maximum of 3 months) while averaging your income over a 12-month period. This income averaging allows you to continue receiving part of your regular salary during your leave without pay.
- ▶ Pension and benefits coverage and most of the corresponding premiums and contributions continue at pre-arrangement levels.
- ▶ Employees must have indeterminate employment status. LIA may not be available in all workplaces
- ▶ your 12-month work arrangement period must be operationally feasible.
- ▶ Not all requests are approved.
- ▶ Can take up to 6 weeks to be implemented.

Questions