

## **Military Reservists' Leave Now Available In Ontario: What Employers Need To Know**

As a result of a recent amendment to the *Employment Standards Act, 2000* (the ESA), Ontario now joins Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan in providing job-protected leave for military reservists. There is also pending legislation before the Canadian Senate which, if passed, will extend the same protection to federally-regulated employees. The purpose of the amendment to the ESA is to ensure that, following a tour of duty, a reservist can return to his or her same job or a comparable job with the same employer.

### **Who is Eligible for Military Reservists' Leave?**

An employee who is a military reservist is entitled to take a leave of absence without pay if he or she is deployed to a Canadian Forces operation outside Canada or to a domestic Canadian Forces operation, such as a search and rescue operation or a natural disaster response. To qualify for the leave, the employee must have been employed by his or her employer for at least six consecutive months before the deployment. Unlike emergency leave, which is only available to employees if their employer regularly employs more than 50 employees, all employers who are governed by the ESA are required to provide military reservists' leave to eligible employees.

### **How Long is the Protected Leave?**

The length of the leave continues for the duration of the deployment, and includes the employee's participation in any pre-deployment or post-deployment activities which are required by the Canadian Forces. Before granting the leave, an employer is entitled to require an employee to provide proof of deployment.

The employee must give his or her employer reasonable notice in writing with respect to when the employee intends to begin the leave, and also when he or she intends to return to work. Upon receiving notice of an employee's intention to return, the employer may postpone the employee's reinstatement for two weeks or one pay period, whichever is later.

### **What are the Obligations of Employers?**

An employer is not required to pay an employee or to continue pension or benefit plan contributions while the employee is on military reservists' leave. However, if the employer delays the employee's return to work, it is required to make benefit contributions throughout such period of postponement.

As with all of the ESA's legally protected leaves, when an employee returns from a military reservists' leave, the employer must reinstate the employee to his or her same position if it still exists, or to a comparable position if it does not. As well, the time spent on leave is taken into account for the purposes of the employee's rights that depend on length of employment, length of service or seniority.

For more information with respect to compliance with your obligations regarding leaves of absence, please contact a member of Blakes [Labour & Employment Group](#).

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