

# Personal Emergency Leave FAQs

**Disclaimer:** This resource has been prepared to help employees and employers understand some of the minimum rights and obligations established under the Employment Standards Act, 2000 (ESA) and regulations. It is not legal advice. It is not intended to replace the ESA or regulations and reference should always be made to the official version of the legislation. Although we endeavor to ensure that the information in this resource is as current and accurate as possible, errors do occasionally occur. The ESA provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation. Employers and employees may wish to obtain legal advice.

## What is personal emergency leave (PEL)?

PEL is a job-protected leave that employees can take to deal with illness, injury or a medical emergency relating to the employee, or the illness, injury, medical emergency, death or urgent matter of particular family members.

## How much PEL do employees get?

Eligible employees have the right to take up to **10 days** of job-protected leave each calendar year. The first two days of the leave in each calendar year are paid if the employee has been employed for one week or longer. The rest is unpaid.

## How long does an employee have to work for an employer before becoming eligible to take PEL?

Employees are entitled to PEL as soon as they start working for an employer; however, in order to be entitled to paid leave they must be employed for a minimum of one week.

## Can unused days of PEL be carried forward into other calendar years?

No. Employees are entitled to a maximum of 10 days of PEL within each calendar year.

### **If a new employee starts halfway through the year, does the employee get fewer PEL days?**

No. Employees are entitled to 10 days of PEL within each calendar year no matter when they started working for the employer. However, a new employee employed for less than a week is only entitled to unpaid days of leave. Once an employee is employed for an employer for one week or longer, the employee is entitled to two paid days of leave and any unpaid days of leave that the employee has already taken in the calendar year is to be counted against the employee's 10 day entitlement.

### **If an employee takes only a few hours within a working day of PEL, can the employer count it as a whole day of leave?**

Yes.

### **Can all employees take PEL?**

Employees covered by the ESA are generally entitled to take PEL, whether they work full time, part time, or are on contract. However, there are some employees with special rules. For example, employees who work in automobile or automobile parts manufacturing have special rules. Some professional employees cannot take PEL if taking PEL would constitute an act of professional misconduct or a dereliction of professional duty (e.g. if patients would be harmed if their doctor took PEL). Construction employees are not entitled to receive PEL pay if they are paid 0.8 percent or more of their hourly rate or wages for personal emergency pay. See the special rule tool for details.

### **Does it matter how many employees work for the employer?**

No. Employees are eligible to take PEL no matter how many employees work for the employer. (Prior to January 1, 2018, employees were entitled to PEL only if their employer regularly employed 50 or more employees.)

### **Does it matter if the employee caused their own injury or illness?**

No. The employee would still be entitled to take the leave if the employee did something careless or risky and got injured as a result.

### **Would an employee be able to take PEL for cosmetic surgery?**

It depends. PEL is to be taken for illness, injury or a medical emergency. If the employee needed to have cosmetic surgery or dental work done as a result of an injury, leave could be taken for this purpose.

## **Could an employee take PEL to attend an annual medical or dental check-up appointment?**

It depends. An appointment for an annual check-up would generally not trigger an entitlement to PEL unless it has been scheduled in respect of an illness, injury or medical emergency. However, if an employee had regularly scheduled appointments for the treatment or management of a chronic medical condition such as Crohn's disease or diabetes, those appointments would trigger an entitlement because they are absences related to an illness.

## **What family members can an employee take PEL for?**

- A spouse (either married or common law, opposite or same sex)
- A parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse;
- The spouse of the employee's child;
- A brother or sister of the employee; or
- A relative of the employee who is dependent on the employee for care or assistance.

“A relative of the employee who is dependent on the employee for care or assistance” means someone who is related to the employee by blood, marriage, adoption or through a common law relationship and who the employee helps or provides care for. The employee does not have to live with the relative.

## **Does an employee need to tell their employer if they are taking the leave?**

Yes. The employee needs to let the employer know before they start the leave (or, if this is not feasible, as soon as possible after starting the leave). It doesn't have to be in writing.

## **If the employee doesn't tell the employer they are taking the leave, is the employee still allowed to take the leave?**

Yes, if the employee meets all the requirements for the leave (e.g. the employee takes the leave for a personal illness or because of an urgent matter of a specified relative).

## **Can an employer ask for proof that an employee is allowed to take the leave?**

Employers can require an employee who takes PEL to provide evidence reasonable in the circumstances that the employee was entitled to the leave. However, employers cannot require employees to provide a note from a physician, registered nurse or psychologist.

## What type of evidence is considered “reasonable in the circumstances”?

While employers cannot require employees to provide a note from a physician, registered nurse or psychologist, they can require a note from other types of health practitioners, for example, a dentist, physiotherapist, Chinese medicine practitioner, naturopath or registered massage therapist, if it is “reasonable in the circumstances.” An employee can provide a medical note voluntarily.

An employer can also ask for other evidence if it is “reasonable in the circumstances”, for example, a police report or invoice from an auto repair shop if the employee took the leave because they were injured in a car accident.

The prohibition in the ESA against requiring a note from a physician, registered nurse or psychologist applies only with respect to providing evidence that the employee is entitled to personal emergency leave. There may be some situations **outside of the scope of personal emergency leave** where an employer may need medical documentation in order to, for example, accommodate an employee, satisfy return to work obligations. The ESA does not prohibit employers from requiring a note for these sorts of other purposes.

## How much PEL pay do employees get?

For the two paid PEL days, an employee is generally entitled to be paid their regular rate of pay for any leave taken.

If the employee is paid fully or partly by a performance-related method (like commission only, commission plus salary, commission plus hourly rate, or piece work) then they must be paid the greater of their hourly rate (if they have one) or the minimum wage rate that applies to them for the time they missed because they were on PEL.

If the employee missed only part of a day to take the leave, the employee would be entitled to be paid any wages they actually earned during the time they were at work in addition to PEL pay.

## Do employees have to be paid PEL pay for the whole day if they only took an hour or two as leave?

No. PEL pay only covers the time that the employee missed because they were on leave. If an employee missed one hour of work, that employee would be entitled to one hour of PEL pay and the pay they earned for the hours they worked.

## What does “the wages the employee would have earned if they had not taken the leave” mean?

For hourly rate employees, this would be the number of hours the employee was on leave multiplied by their regular hourly rate.

For salaried employees, this would be either what an employee is paid for a day if the employee took an entire day of leave, or what the employee is paid for an hour of work. In effect, the employee's salary is continued during the time the employee took paid PEL.

### **What are the rules for employees paid by commission, or an hourly rate plus commission, or by piecework?**

If the employee has an hourly rate as part of their employment contract, the employee should be paid that hourly rate for every hour of work the employee missed because they took PEL, so long as that rate is at least as much as the applicable minimum wage rate. (If the hourly rate is less than the applicable minimum wage rate, then the employee is entitled to the applicable minimum wage rate for time missed because of PEL). If the employee has no hourly rate (for example, is paid by commission only, or piece work) then the employee must be paid the applicable minimum wage for all hours spent on PEL.

### **If an employee was working overtime or was scheduled to work overtime when they took the leave, do they still get it even if they didn't actually work?**

If the employee was scheduled to work overtime and missed all or part of the working day, the employee is entitled to be paid wages they would have earned during the day or shift at their regular rate, but not at the overtime rate of 1.5 x regular rate.

For example, if an employee is paid \$16.00/hour and missed an entire eight hour shift to take the leave, and four of those hours would have been over the 44 hour overtime threshold, PEL pay for that employee would be "straight time" only, or 8 x \$16.00 (\$128.00).

### **If an employee was entitled to a shift premium at the time they took the leave, would that be included in PEL pay?**

No. If the employee was scheduled to work a shift that attracts a shift premium, the employee is not entitled to be paid the shift premium. For example, if an employee is paid \$16.00/hour + \$2.50/hour for night shifts and missed an entire eight hour night shift to take the leave, PEL pay for that employee would be 8 x \$16.00 (not 8 x \$18.50).

### **If an employee takes PEL on a public holiday they were scheduled to work, do they get the premium pay they might have been entitled to if they actually worked?**

In some circumstances, an employee may agree to work or be required to work on a public holiday. One of the possible outcomes of that arrangement is that the employee would be entitled to "premium pay" (1.5 x the employee's regular rate) for all hours worked on the public holiday, plus public holiday pay.

If an employee with that entitlement does not work some or all of the hours they were scheduled to on a public holiday because they took paid PEL, when calculating PEL pay the employee would not receive premium pay for the hours of leave taken. They would be entitled to public holiday pay only.

### **What if an employment contract already provides for paid sick or bereavement leave?**

If an employment contract, including a collective agreement – provides a greater right or benefit than the personal emergency leave standard under the ESA, then the terms of the contract apply instead of the standard. If the contract does not provide a greater right or benefit, then the personal emergency leave standard in the ESA applies to the employee.

For more information, please see the Personal Emergency Leave chapter in Your Guide to the Employment Standards Act, 2000, available at [Ontario.ca/ESAGuide](https://www.ontario.ca/ESAGuide).