

OPS FACT SHEET

Special or Compassionate Leave

This Fact Sheet provides information on *Special or Compassionate Leave* for AMAPCEO-represented Regular/Permanent or Fixed-Term employees in the OPS. *For more details about Leaves of Absence, please refer to Article 23 of the AMAPCEO [OPS Collective Agreement](#) or the fact sheet entitled “Leaves of Absence”.*

What is Special or Compassionate Leave?

Special or Compassionate Leave is **paid** leave you can request from the OPS Employer, for circumstances related to special or compassionate reasons.

Examples of some of the reasons why you may want to make a request for *Special or Compassionate Leave* could include, but are by no means limited to, the following:

- Transportation breakdown
- Legal matters
- Assisting a person in need (including family)
- Household emergencies
- Ceremonies and celebrations
- Moving of your household
- Death of a friend or family member

In most cases, a request to take *Special or Compassionate Leave* is subject to “reasonable” discretion of the Employer.

In certain limited circumstances, however, the granting of *Special or Compassionate Leave* is non-discretionary (i.e., the Employer must grant you the leave), such as to use up to 2 days of paid leave per year for the celebration of approved religious holidays (Article 23.4); and/or to use up to 2 days of paid leave per year for dependent or elder care responsibilities (Article 23.3.4). See below for more details.

How do I make a Request for Special or Compassionate Leave?

For up to 3 days paid *Special or Compassionate Leave*, your request will be reviewed by your manager. For more than 3 days of paid leave and up to a maximum of 6 months, your request will be reviewed by your Ministry's Deputy Minister. For more than 6 months of leave, your request will be reviewed by the Public Service Commission.

You should first discuss your request with your Manager. Even if your request is for more than 3 days, and therefore likely outside of your Manager's authority, it is best to give your Manager a 'heads-up' at the outset and try to enlist support for your request.

The Employer is entitled to ask you for information in support of your request, even if this information is sensitive to discuss, however they must ensure confidentiality of any sensitive information that you disclose. So, within reason, be prepared to discuss and document your request and the special or compassionate circumstances that require you to be away from work, including such things as the financial impact to you if your request is not approved.

Your Manager will likely request that you complete a standard form to request a *Special or Compassionate Leave*. Submit this form and any supporting documentation to your Manager, who will review your request or forward it to the delegated level of authority who is the decision-maker.

Examples of supporting documentation that would be appropriate to provide for a *Special or Compassionate Leave* request include (not exhaustive):

- Any alternatives which you have considered and why they were found to not be suitable.
- If caring for somebody else who is ill or injured, a letter from the person's doctor indicating the type and duration of support required.
- If assisting somebody for reasons unrelated to illness or injury, a letter from the person or organization in support of why your assistance is required and the negative impact of you not providing this assistance.
- The impact on you related to loss of income if the request is denied.

What happens for requests of more than 3 days?

The Deputy Minister must utilize their discretion when reviewing requests for *Special or Compassionate* leave beyond 3 days.

In practice, however, a Deputy Minister may delegate part or all this authority to others, such as to an Assistant Deputy Minister or to your Director. For example, delegated

authority for *Special or Compassionate leave* requests may reside with the employee's Director for requests over 3 days and up to 1 month, the ADM level for requests over 1 month and up to 3 months, and the Deputy Minister for requests exceeding 3 months.

So, when making a request for *Special or Compassionate Leave*, make sure to ask your Manager how this decision-making authority is delegated in your Ministry.

What criteria is used to make the decision on my Request for Leave?

Requests for *Special or Compassionate Leave* should be considered on their own merits and on a case-by-case basis.

The Employer's delegation of authority only provides for a different decision maker depending on the length of your request. As a result, it is not appropriate – nor is there any collective agreement provision – for the substitution of different or 'tougher' criteria *based on the length* of an employee's request for *Special or Compassionate Leave*. Rather, the same criteria should be used for reviewing and deciding on a leave request, regardless of the length the request.

Whoever has the authority to approve your request, they must exercise their discretion in a reasonable manner. For example, labour arbitrators have consistently considered the so-called "Four-Fold Test" of managerial discretion when reviewing decisions concerning requests for such things as employee leave:

1. **The decision must be made in good faith and without discrimination:** employees in similar circumstances should be treated in a similar manner and personal characteristics should not be used as a basis for the decision.
2. **There must be a genuine exercise of discretion as opposed to rigid policy adherence.**
3. **Consideration must be given to the merits of each request:** proper investigation of each leave request to ensure that all relevant information has been collected.
4. **All relevant factors must be considered, and irrelevant factors must be rejected.**

How long will it take for a decision on my leave request?

Since each *Special or Compassionate Leave* request should be considered on its own merits, it is fair to say that the timelines for the Employer to decide on a request for leave will vary. For instance, depending on the complexity of the circumstances behind your

request, your Manager (or others) may seek clarification or request additional information from you.

If the Employer indicates a decision cannot be made before you need to be away from work, do not make yourself absent from work without first speaking with your Manager, as this could lead the Employer taking disciplinary action against you. Rather, discuss with your Manager how you want your absence to be covered (by using, for example, vacation or lieu time) until a decision is made on your leave request.

If your request for *Special or Compassionate Leave* is approved after the fact, your credits will be re-established to the extent covered by the approved leave. If your request for *Special or Compassionate Leave* is denied, or if you feel the Employer has not considered or responded to your request within a reasonable time, then contact an AMAPCEO Workplace Representative ([link](#)) to discuss your options, such as the informal dispute resolution process or filing a formal dispute.

Do I need to exhaust my other credits to be eligible for Special or Compassionate Leave?

No. You do not need to exhaust your other credits to be eligible for *Special or Compassionate Leave*.

The existence or availability of accumulated credits such as overtime, vacation or sick leave is an irrelevant consideration for a request for Special or Compassionate Leave.

What is Special Leave for Religious Accommodation and how does it relate to Special or Compassionate Leave?

In accordance with Article 23.4, an employee is entitled to take up to 2 **paid** days of *Special Leave* per calendar year for the purpose of religious accommodation, so long as a religious holiday is included in the list of holy days in the Employer's Religious Holidays Policy. Any days taken for purpose of religious accommodation will be counted against the employee's 3 days for *Special or Compassionate Leave*. Therefore, an employee needs to have at least 2 days of Special or Compassionate Leave to their credit to be entitled to take this religious accommodation leave.

What is Special Leave for Dependent or Elder Care and how does it relate to Special or Compassionate Leave?

In accordance with Article 23.3.4, effective April 1, 2018, an employee is entitled to take up to two (2) **paid** days of *Special Leave* per calendar year to attend to unforeseen dependent or elder care. Any days taken for dependent or elder care leave will be counted against the employee's three (3) days for Special or Compassionate Leave.

Therefore, an employee needs to have at least two (2) days of Special or Compassionate Leave to their credit to be entitled to take this dependent or elder care leave.

For more information, please see the fact sheet entitled *Dependent and Elder Care Leave*

Questions?

If you have any questions regarding Special or Compassionate Leave, please contact a Workplace Representative. A complete list of Workplace Representatives can be found on the AMAPCEO Website at amapceo.on.ca. Keep in mind that you are not restricted to a Workplace Representative in your ministry.