

Employment Standards

Rights and responsibilities at work

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Reservist Leave

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Part 2, Division 7.1 of the *Employment Standards Code (Code)* sets reservist leave as an employee entitlement.

The legislation entitles employees who qualify to a period of leave without pay at the end of which they must be reinstated in their old, or an equivalent job. Reservist leave is intended to provide employees who are reservists and qualify, with unpaid job protected leave while they are away serving their country.

A reservist means a member of the reserve force of the Canadian Forces referred to in the *National Defence Act (Canada)*.

Reservist entitlements

Under the *Code*, employees who are reservists are entitled to an unpaid, job protected leave of absence when deployed to an operation outside of Canada (including any required pre- or post-deployment activities) or inside Canada to assist with an emergency.

In addition, a reservist is entitled to unpaid leave of up to 20 days each calendar year to participate in annual training.

Employee eligibility for leave

A reservist must work for an employer for a period of at least 26 consecutive weeks before being entitled to leave. This requirement applies to both full-time and part-time employees who are reservists.

Duration of leaves

When a reservist is deployed to an international operation or domestic emergency, leave may last as long as is necessary to accommodate the period of service. In addition, up to 20 days may be taken each calendar year for annual training.

Frequency of leaves

There are no restrictions on how often a reservist can go on a domestic or international deployment. A reservist cannot take more than 20 days each calendar year for annual training purposes. The days off for annual training may be taken non-consecutively.

Notice to start leave

In the case of a deployment, a reservist must provide an employer with at least four weeks' written notice of the date on which the leave will start and the estimated date on which the reservist intends to resume work.

A reservist will not be required to comply with the notice requirement if unable to do so, due to deployment in urgent circumstances. However, when such circumstances arise, the reservist must provide the employer with written notice as soon as is reasonable and practicable in the circumstances.

In the case of leave for annual training, a reservist must provide at least four weeks' written notice of the date on which leave will start and the actual date on which the reservist will be back at work.

Employer requests for proof

An employer can require a reservist to request further written information respecting the leave from an official in the Reserves. The employer is entitled to request confirmation that the reservist is taking part or has taken part in an activity that is eligible for leave, the day on which leave will start or has started, and the estimated or actual length of the leave. The reservist must forward the document to the employer once it is received from the commanding officer.

Notice of change in the length of a leave

Unless there is a valid reason for not doing so, a reservist must provide the employer with written notice of a change in the length of the leave as soon as is reasonable and practicable in the circumstances.

Notice to end leave

Where the reservist has been on annual training

In the case of annual training, as long as the reservist returns to work on the date specified in the notice to go on leave, no further notice to return to work is required. However, if the reservist intends to return to work on a different date, one of the notices set out below must be provided.

Where the reservist has been on leave for a domestic or international deployment for more than four weeks

In this case, the reservist must give at least four weeks' written notice. If this doesn't happen, the employer can postpone the reservist's return to work for up to four weeks from the date of the reservist's notice.

Where the reservist has been on leave for a domestic or international deployment for four weeks or less

In this case, the reservist must still provide advance written notice of the return-to-work date. However, in such a case, notice can be less than four weeks and the employer will not have the option of delaying the return date.

Notice if not returning to work after leave ends

Reservists are required to give at least four weeks' written notice if not returning to work after leave ends.

Obligations of the employer

Provided that eligibility requirements are met, an employer must grant reservist leave in accordance with the *Code*. While there is no obligation under the *Code* to provide a paid leave of absence, an employment contract or collective agreement may provide a reservist with wages or other benefits while on leave.

An employer may not terminate the employment of, or lay off, a reservist once leave begins, unless the employer suspends or discontinues the business. If the business has been suspended or discontinued during an employee's reservist leave, the employee has hiring priority if the business starts up again within 12 months after the end of the leave.

A reservist who has signaled intent to take reservist leave cannot be terminated because of the request. If it is believed termination is due to a request for reservist leave, the employee may file a complaint under the *Code*.

Vacation entitlements while on leave

A reservist does not accrue vacation pay while on leave. For vacation earned prior to the leave, with the employer's agreement, the vacation and vacation pay can be deferred until the reservist returns to work.

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