Traditional Aboriginal Practices Leave (Federal)

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Entitlement

Under the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the "Code"), every employee who is an Aboriginal person (specifically Indian, Inuit or Metis) and who has completed 3 consecutive months of employment is entitled to a leave of absence up to 5 days in a calendar year to engage in traditional Aboriginal practices, including hunting, fishing, harvesting, and any other practice prescribed by regulation (Code, s. 206.8(1), (4)). The leave may be taken in one or more periods. The employer may require that each period of leave be not less than 1 day's duration (Code, s. 206.8(2)).

The employer may request supporting documentation that shows the employee as an Aboriginal person no later than 15 days after an employee returns to work and the employee must provide it if reasonably practicable (Code, s. 206.8(3)).

Notice Requirements

An employee must, as soon as possible, provide the employer with a notice in writing of the reasons for the leave and the length of the leave that they intend to take, as well as notice of any change in the length of the leave (Code, s. *207.3*(1), (2)).

Employee Protections

As a general rule, the employee must be reinstated in his or her former position or be given a comparable position in the same location, and with the same wages and benefits (Code, s. *209.1*(1)). The pension, health and disability benefits and the seniority of the employee accumulates during the period of leave (Code, s. *209.2*(1)). Where the employee contributes to a benefit plan, the employee must continue to pay his/her contributions and the employer must continue to pay the employer's contributions to the benefit plan during the leave of absence (Code, s. *209.2*(2), (2.1)). Employment is deemed continuous with employment before the leave of absence (Code, s. *209.2*(4)).

The employer cannot dismiss, suspend, lay off, demote or discipline an employee because the employee has applied for a leave of absence for traditional Aboriginal practices (Code, s. *209.3*).

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