

New Labour Standards: **Authorized Absences** due to a **Criminal Offence**, the **Disappearance of a Child** or the **Suicide** of a Close Relative

By *Mtre Nicolas Joubert*

The Act respecting labour standards (hereinafter the “ALS”) was amended recently concerning absences due to sickness or accident and absences for family or parental reasons.

In particular, these amendments include the employee’s right to be absent from work for a period ranging between 52 and 104 weeks if:

- *the employee or his minor child suffers serious bodily injury due to a criminal offence;*
- *the death of the employee’s spouse or child occurs due to a criminal offence;*
- *the employee’s spouse or child commits suicide;*
- *the employee’s minor child has disappeared.*

The following text presents a summary of these amendments and their conditions of application.



Absences due to sickness, accident or criminal offence

The former section 79.1 of the ALS provided that an employee credited with three months of uninterrupted service could be absent from work, without pay, for a period of not more than 26 weeks over a period of 12 months, owing to sickness or accident.

The new section 79.1 of the ALS maintains these rights, but adds that an employee henceforth may be absent from work for a period of not more than 104 weeks if the employee suffers a “serious bodily injury”, during or resulting directly from a “criminal offence”, that renders the employee unable to hold his regular position.

According to the Commission des normes du travail, the “criminal offence” to which reference is made would be one defined in certain sections of the *Criminal Code*, essentially concerning offences against persons and property, as recognized by the *Crime Victims Compensation Act*. The “bodily injury” would correspond to a serious physical or mental injury and would include a pregnancy resulting from the commission of a sexual offence or assault.



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Conditions of application

The right to this new absence applies if it may be inferred from the circumstances of the event that the serious bodily injury suffered by the employee is “probably the result” of the commission of a criminal offence.

However, an employee may not benefit from this period of absence if it may be inferred from the circumstances that he was probably a party to the criminal offence or probably contributed to the injury by a gross fault.

The ALS specifies that an employee will also be entitled to an absence due to a “criminal offence” if he suffered serious bodily injury in the following circumstances:

- while lawfully arresting or attempting to arrest an offender or suspected offender;
- while assisting a peace officer making an arrest;
- while lawfully preventing or attempting to prevent the commission of an offence or suspected offence;
- while assisting a peace officer who is preventing or attempting to prevent the commission of an offence or suspected offence.

It should be noted that, to benefit from the absence due to sickness, an accident or a criminal offence, the employee must be credited with three months of uninterrupted service.

This absence is without pay, and the employee is required to advise the employer as soon as possible of his absence, giving the reasons for it.

If the circumstances warrant it, particularly due to the duration of the absence or its repetitive nature, the employer may request that the employee furnish a document attesting to those reasons.

Finally, the ALS provides that the employee, during the period of absence due to a “criminal offence”, may return to work intermittently or on a part-time basis, but only if the employer consents to him doing so.

Absences for family or parental reasons

The former section 79.8 of the ALS provided that an employee credited with three months of uninterrupted service could be absent from work, without pay, for a period of not more than 12 weeks over a period of 12 months when he must stay with certain members of his family because of a serious illness or a serious accident.

The new section 79.8 of the ALS maintains these rights, but the requirement of “three months of uninterrupted service” has been eliminated. Consequently, an employee now is entitled to the protection of section 79.8 of the ALS as soon as he is hired.

Moreover, several new provisions appear and broaden the scope of application of absences for family or parental reasons.

Serious bodily injury to a close relative resulting from a “criminal offence”

The new section 79.9 of the ALS provides that an employee is entitled to an extension of the period of absence under section 79.8 of the ALS if he must stay with his minor child who has suffered a “serious bodily injury”, during or resulting directly from a “criminal offence”, that renders the child unable to carry on his regular activities. However, the employee may not be absent for more than 104 weeks.

An employee may also be absent from work for a period of not more than 104 weeks if the death of his spouse or his child occurs during or results directly from a criminal offence (new section 79.12 of the ALS).

Disappearance of a child

The new section 79.10 of the ALS provides that an employee may be absent from work for a period of not more than 52 weeks if his minor child has disappeared.

This having been said, if the child is found before the expiry of the period of absence, it will end on the eleventh day that follows.

Suicide of a close relative

In the same spirit, the new section 79.11 of the ALS provides that an employee may be absent from work for a period of not more than 52 weeks if his spouse or his child commits suicide.

Conditions of application

The new sections 79.9 to 79.12 of the ALS apply if it may be inferred from the circumstances of the event that the serious bodily harm is “probably the result” of the commission of a criminal offence, that the death is “probably the result” of such an offence or of a suicide, or that the person who has disappeared is “probably in danger”.

However, an employee may not benefit from these new provisions if it may be inferred from the circumstances that it is probable that he or the deceased person (if that person was his spouse or his child of full age) was a party to the criminal offence or probably contributed to the injury by a gross fault.

The ALS provides that an employee will also be entitled to the absence due to a “criminal offence” if the serious bodily injury suffered by his child or his spouse occurred in the following circumstances:

- while lawfully arresting or attempting to arrest an offender or suspected offender;
- while assisting a peace officer making an arrest;
- while lawfully preventing or attempting to prevent the commission of an offence or suspected offence;
- while assisting a peace officer who is preventing or attempting to prevent the commission of an offence or suspected offence.

The employee is required to advise the employer as soon as possible of his absence, giving the reasons for it.

The employee, during the period of absence, may return to work intermittently or on a part-time basis, but only if the employer consents to him doing so.

Finally, it must be emphasized that the employee is entitled to be reinstated in his usual position at the end of the period of absence, with the same benefits as if he had remained at work.

Conclusions

These amendments to the *Act respecting labour standards* came into force on December 18, 2007.

It should be noted that the amendments also apply to an event that occurred prior to that date, but only for the time remaining in the period of absence now applicable.

These new provisions will probably be analyzed by the courts in the months ahead. Among other issues, it will be interesting to examine how the courts will interpret the notion of “serious bodily injury” and what burden of proof they will impose on the employee to show that the serious bodily injury is “probably the result” of the commission of a criminal offence.

Don’t hesitate to contact us for more information on the recent amendments made to the *Act respecting labour standards*.

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