



A Guide for Employers

# Personal Emergency Leave

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PENINSULA



## About Peninsula

Peninsula is an employer resource for HR and employment advice, offering guidance to small- and medium-sized businesses. For over three decades, we have supported over 50,000 businesses worldwide, across every sector and industry.

Our clients benefit from immediate access to unlimited 24/7 employment advice, legal expenses insurance, on-site HR audits, a suite of employer documents and templates, online employee management tools, and legislation updates, all of which are custom-tailored to your business. Simply put, Peninsula is an affordable alternative solution to having your own in-house human resources team. We're here to help you, anytime.

For more information, visit [www.peninsulagrouplimited.com/ca](http://www.peninsulagrouplimited.com/ca).



# Who is this guide for?

## The essential guide for HR and employment topics dedicated to small business owners.

If you are a business owner or employer, this guide is for you.

The content is designed to address employment-related topics and provides basic information and answers to frequently asked questions.

Use this guide as a reference point for:

- Employer need-to-knows
- HR best practices
- Employment-related facts
- Legislation updates

If you require help to apply this information to your particular situation, please contact Peninsula to speak with our expert HR and employment advisors. Our dedicated employer's advice line is a complimentary service that's available 24/7 at **1(833) 247-3652**.

General Disclaimer: Peninsula is an employer resource for HR and employment advice. Employers are advised that this guide is for informational purposes only. Peninsula is not licensed to practice law in Ontario. The content in this guide is not intended to replace licensed services and the information is not intended to be legal advice.



# Managing Personal Emergency Leave (PEL)

**This employer guide explores the basics of Personal Emergency Leave, otherwise known as Sick Leave. As a small business owner, use this resource to avoid common pitfalls.**

How do you manage absence in the workplace? Have you prepared or updated your personal emergency leave policy?

As a result of Ontario's changing labour laws – introduced by Bill 148 – employers may be seeing changes where employee management is concerned, such as, patterns of absences. Whether your organization is big or small, a long-established firm or a new startup, managing sick leave and other personal leaves of absence in the workplace supports the growth of your business and helps to maintain a strong organizational culture.

It is important to understand what rights your employees have and how to find a balance for a sick leave policy that fits with your workplace culture. Think about how you can manage absence in relation to employee job satisfaction and morale. Get to know the laws around personal emergency leave and from there, have a policy in place that best reflects your business practices.

Use this document to gain a better understanding of Ontario's labour laws for personal emergency leave and adopt our HR best practices for your business.

**As an employer in Ontario, you must provide up to 10 full days of job-protected personal emergency leave per calendar year.**

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# Understanding Personal Emergency Leave

## The Basics

All employees, regardless of the size of the business they work for, are now entitled to up to **10 days personal emergency leave** in any one year. The first two days of leave are paid.

PEL can be taken for the following reasons:

- 1 A personal illness, injury or medical emergency;
- 2 The death, illness, injury or medical emergency of an individual related to the individual; or
- 3 An urgent matter that concerns an individual related to the individual.

The **Employment Standards Act, 2000 (ESA)** details a list of individuals from the employee's spouse to the step grandparent of the employee's spouse. Essentially PEL can be taken with respect to any of the employee's or employees' spouse's relatives.

There is no pro-rating of personal emergency leave, so when an employee begins work part way through a year they are still entitled to 10 days of leave for the rest of the year.

Employees who work part time hours also have the same entitlement as full-time staff, although their entitlement to personal emergency leave pay will depend on their working hours.

An employee must inform their employer before starting the leave or as soon as possible after starting it. It does not have to be given in writing. The employee does not lose the right to personal emergency leave if they fail to do so.

## **Elective Surgery and Personal Emergency Leave**

A common PEL question is whether an employee is entitled to take PEL for pre-planned or so-called ‘elective’ surgery. Because such surgery is scheduled ahead of time it is not a medical emergency, however, if the surgery is required to address an underlying medical condition (eg: a hip operation or laser eye surgery) then this would qualify because it is related to an illness or medical condition. However, it would not include surgery for purely cosmetic reasons such as plastic surgery, because these types of surgery are not because of an illness or injury.

## **Medical Notes and Personal Emergency Leave**

Another area of concern is around doctor’s notes. An appointment to a doctor because of illness or injury would qualify for personal emergency leave but an appointment for an annual check up would generally not trigger personal emergency leave unless it was scheduled because of an underlying illness or injury. For example, if the employee requires regular check ups because of a condition such as Crohn’s Disease. Regular pre-natal appointments would not trigger an entitlement to personal emergency leave because a normal healthy pregnancy is not an illness, however, under the **Ontario Human Rights Code** employers are required to accommodate pregnant employees attending prenatal appointments up to the point of undue hardship.

Whether an illness, injury or medical emergency is caused by the employee’s own actions or not is irrelevant to the question of whether an employee is entitled to PEL.

The ESA gives employers some ability to require an employee to provide proof that they are entitled to take PEL, but it must be ‘reasonable’ in the circumstances. An employer cannot ask an employee to provide a medical certificate from a doctor or health practitioner, but an employee may decide to submit one voluntarily. What is reasonable in the circumstances will depend on the facts of each situation, and employers should avoid adopting a blanket policy. Extensive or repeated absences may be a reason for requiring proof, but employers should exercise care to make sure any evidence is available and that any disciplinary sanction imposed was proportionate and in no way a penalty or reprisal for the employee having taken the leave.

# What is an Urgent Matter?



One of the events that qualifies as personal emergency leave is an ‘urgent matter’ that concerns any of the people listed in the act. PEL can be taken with respect to any of the employee’s or employees’ spouse’s relatives including step-parent or foster child.

Generally, an urgent matter has to be unplanned or out of the employee’s control and may have serious consequences if it is not responded to. When deciding whether an event qualifies the employer should look at it objectively, so an employee’s or employer’s personal opinion should not decide whether something does or does not qualify. Employers should seek advice if they are unsure.

# Designating Absences as Personal Emergency Leave

Where an employee is entitled to personal emergency leave under the ESA it is the employee and not the employer who decides whether to designate an absence from due as personal emergency leave.

An employee may be entitled to personal emergency leave but decides not to claim the absence as a personal emergency leave day. If an employee decides not to take advantage of their leave entitlements they are deciding simply not to exercise them.



# What if the employee fails to notify the employer?



If an employee fails to advise the employer they do not lose their right to personal emergency leave. The ESA specifically allows for situations where the employee may not be able to notify the employer in advance of taking the leave. An employer may choose to discipline an employee who failed to give notice when they were in a position to do so, but care must be taken to make sure that the discipline is clearly linked to the failure to give notice, and not to penalize the employee for taking the leave.

# Can personal emergency leave be taken in part days?

Yes, the ESA allows an employer to count a part day off work as an entire day's leave, but just because an employer attributed a whole day to a part day absence does not mean that the employee then has the right to take the entire day off if the emergency did not last the entire day. For example, if an employee normally works 9am to 5pm but he has to attend son's school to attend to an urgent matter at 10am, his employer is entitled to count the absence as an entire day's personal emergency, but the employee must nevertheless return to work after the meeting is over. Employees have the right to be away from work for as long as the emergency lasts and after the emergency is over, the employee's normal work obligations to attend work are resumed.



**Do you have a sick leave policy in place?**

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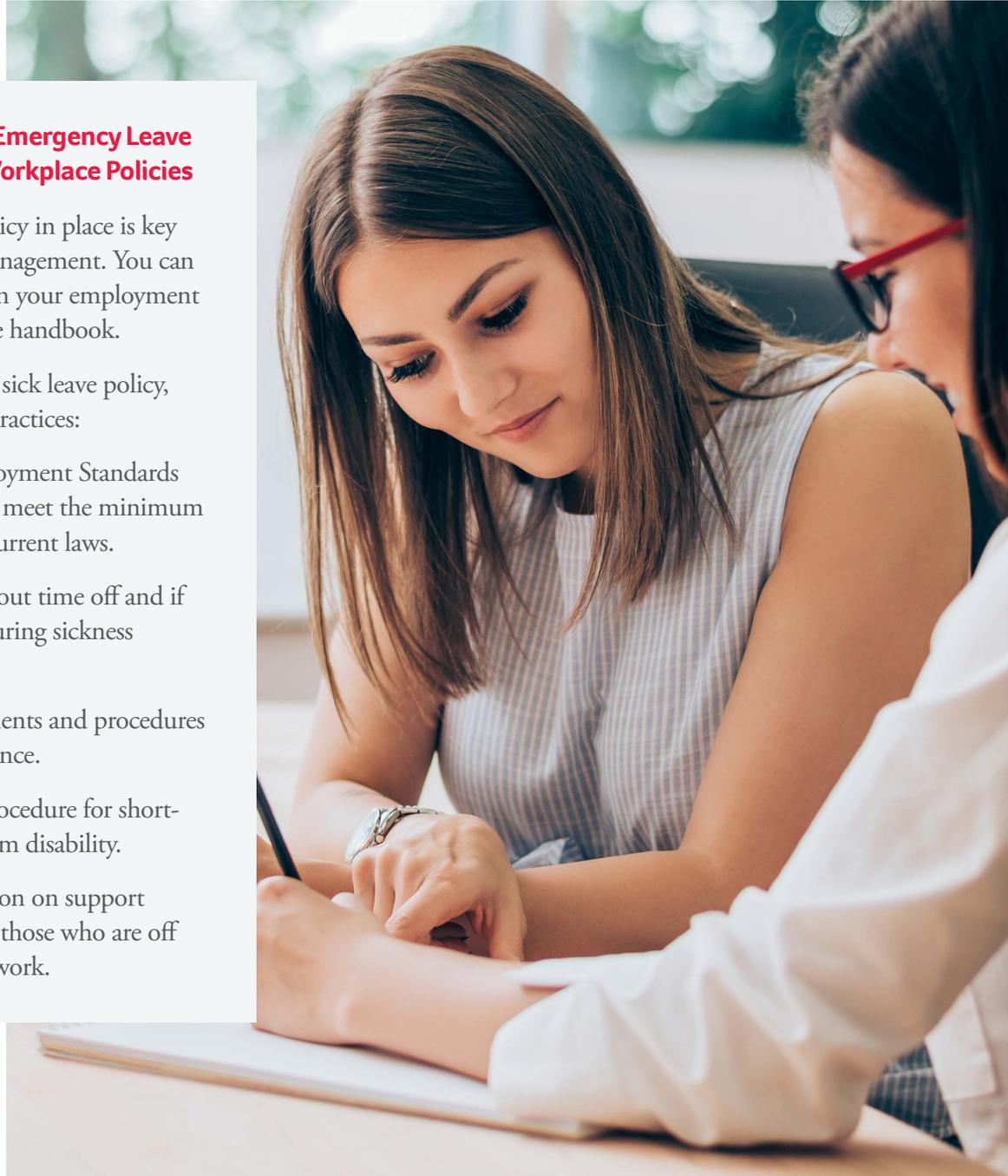
# 5 HR Best Practices to Prepare an Effective Sick Leave Policy

## Managing Personal Emergency Leave Starts with Proper Workplace Policies

Having a sick leave policy in place is key to effective absence management. You can set these expectations in your employment agreement or employee handbook.

To prepare an effective sick leave policy, here are five HR best practices:

1. Review the Employment Standards Act to ensure you meet the minimum requirements of current laws.
2. Be transparent about time off and if pay is provided during sickness absence.
3. Outline arrangements and procedures for recording absence.
4. Determine the procedure for short-term and long-term disability.
5. Include information on support and assistance for those who are off and returning to work.





# Summary

## Managing Personal Emergency Leave

As an employer, it is important to know your obligations under the Employment Standards Act. This will allow you to operate your business with confidence, knowing that you are taking the right steps when your employees request for personal emergency leave.

Remember, your employees have the right to take up to 10 days off for PEL in any one year, where the first two days are paid.

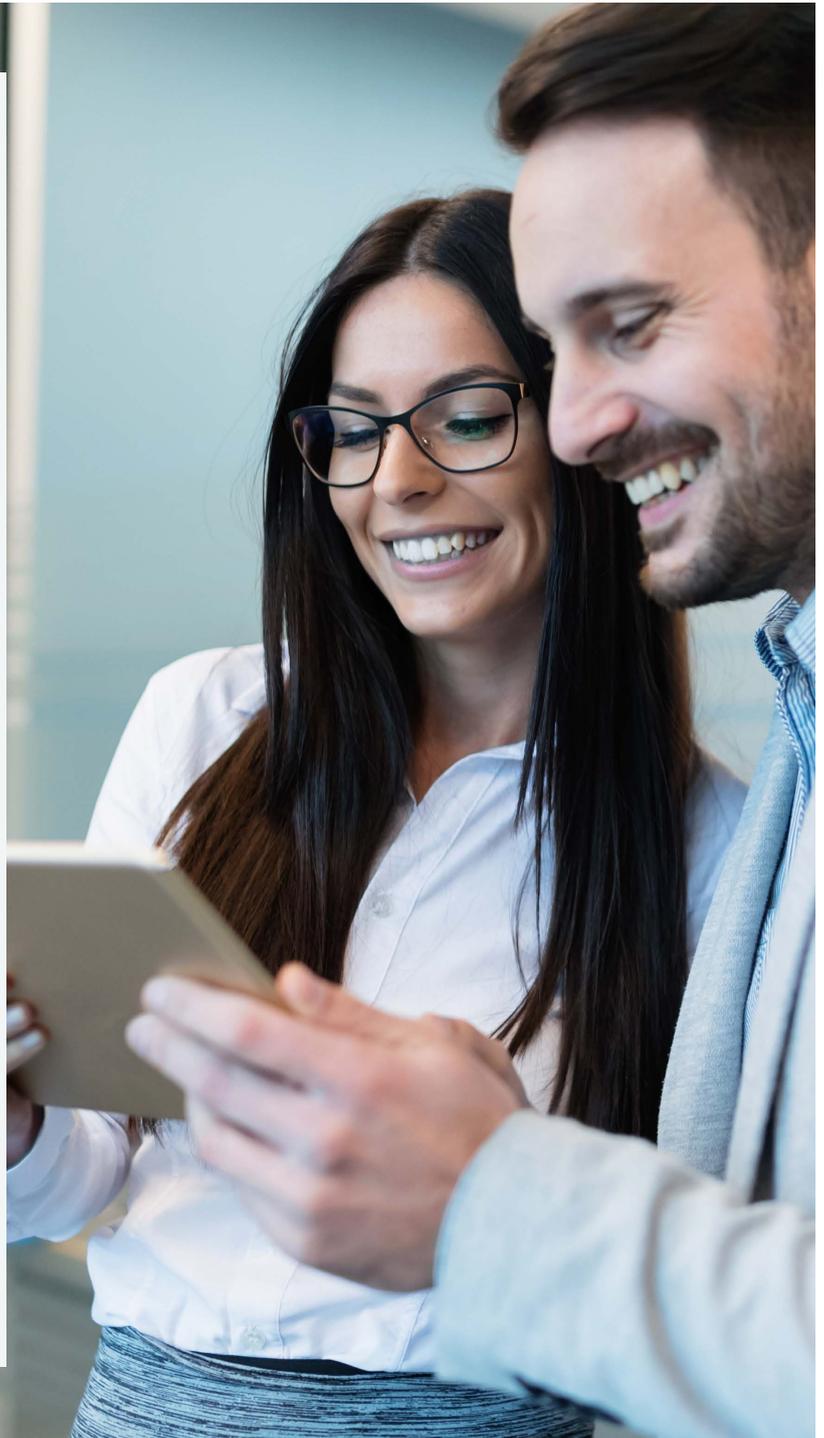
Are you noticing an increase in employee absences? It's always a good idea to check in and make sure your employee handbook is up to date with new policies and procedures as the labour laws continue to change.

### Learn More

If you have questions about the Ministry of Labour or the Employment Standards Act, contact Peninsula. We are dedicated to providing small business owners with HR support. Call us today.

**1(833) 247-3652**

**We've got you covered.**



# Employer FAQs

## What are employers asking about personal emergency leave?

### What is the definition of personal emergency leave (PEL)?

PEL is job-protected leave that gives employees the right to take time off because of an illness, injury, medical emergency, death, or urgent matter, whether for him or herself or a family member.

### Who is included as a “family member”, that an employee can take PEL for?

Family members include the employee’s: spouse; parent, grandparent, child, grandchild (all of which include both fostered or step-related); spouse of the employee’s child; siblings; and any relatives who may be care-dependent on the employee.

### How many PEL days can an employee take?

Yes. Your employee is entitled to job-protected leave. You may hire a replacement worker to cover the job while the employee is on leave, but the employee is entitled to return to that position or a comparable job when their leave is finished.

### Who is entitled to paid emergency leave?

All employees have the right to personal emergency leave from their first day of hire. The first two days of paid leave only applies to staff who have worked one week or more.

### Do employers pay for all PEL days?

No. If your employee has worked for a minimum of one week, then pay must be provided for the first two days of leave. The rest is unpaid.

### How much pay do employees get during PEL?

For the first two days of leave, the pay should amount to the employee’s regular rate of pay. For performance-based employees (i.e. on commission), you must pay them the greater of their hourly rate, or the minimum wage rate that applies to them for the time they took off for PEL.

# Employer FAQ's

## ...continued

### What if an employee only takes a half day of PEL?

Employers can count it as a full days' leave.

### If an employee starts partway through a year, how many PEL days do they get?

The employee gets the full 10 days of leave.

### Can employees carry over unused PEL days?

No. PEL is for a maximum of 10 days, within each calendar year.

### Can employees use PEL to take time off for regularly scheduled medical or dental appointments?

It depends. PEL is only applicable to appointments due to illness, injury, or medical emergency. Employees cannot use PEL for personal medical appointments, such as an annual check-up. However, appointments are considered illness-related for the treatment or management of a chronic medical condition.

### Do employees need to request PEL with their employer?

Yes. Employees must tell you if they are taking PEL before they start the leave or right after they start; this does not need to be in writing.

### Can employers ask for proof of the personal emergency, in order for employees to take the leave?

It depends. Employers can ask for evidence under "reasonable circumstances" (i.e. death of a family member). However, employers cannot ask for medical notes from a physician, registered nurse, or psychologist. An employee can provide a medical note voluntarily.

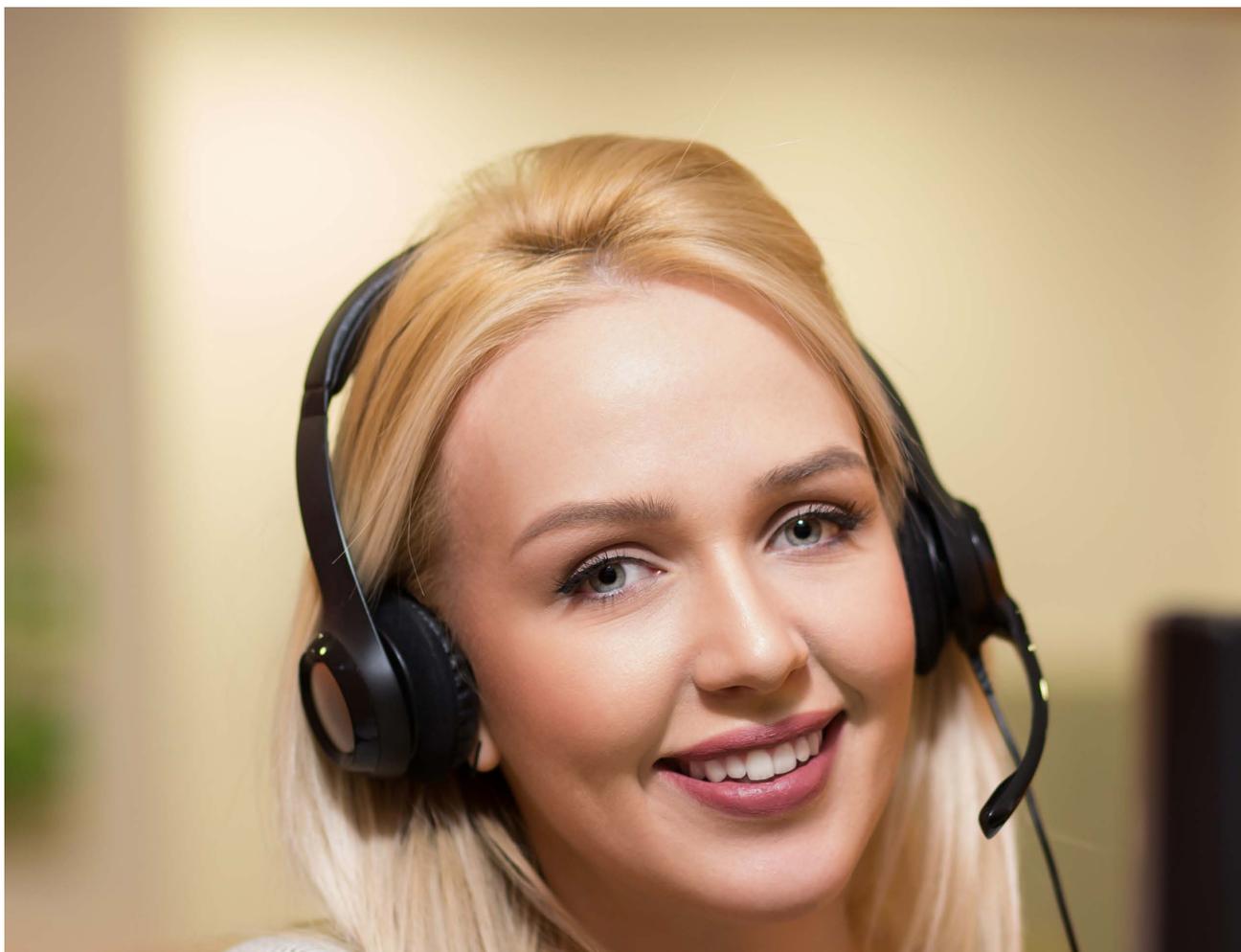
### Is PEL applicable to all employers?

If you are an employer covered by the Employment Standards Act (ESA), PEL applies to your business no matter the size of your organization.



# Employer Resources

Get 24-hour access to complete HR support that's affordable, immediate, and right for your business needs.



**Are you a small business owner looking for HR advice? You're in the right place.**

For additional information, you can continue browsing:

- The [Employment Standards Act, 2000 \(ESA\)](#)
- [Peninsula Employment Services](#)
- [Peninsula's Free Employer Downloads](#)

Or, save time and money with a quick solution. Give us a call, instead - **1(833) 247-3652**