



Ministry of Finance/Ministry of Revenue

Managers Guide – Special and Compassionate Leave

PURPOSE:

This guide has been developed to assist managers in administering Special and Compassionate leaves under the relevant Collective Agreements and the *Public Service of Ontario Act*.

AUTHORITY:

The granting of special and compassionate leaves for bargaining unit employees is governed by the provisions of the relevant Collective Agreements and for non-bargaining unit employees (management and excluded, SMG, ITX) by the Directives under the *Public Service of Ontario Act*.

OPSEU	Articles 25.1 and 49 of the OPSEU Collective Agreement
AMAPCEO	Articles 23.3.1 and 23.3.2 of the AMAPCEO Collective Agreements
Management/Excluded	Section 46 of the Management Board of Cabinet Compensation Directive under the <i>Public Service of Ontario Act</i> .

DELEGATED AUTHORITY:

Delegated authorities for the approval and denial for special and compassionate leaves in the Ministry of Finance and the Ministry of Revenue are outlined in the HR Delegation of Authority documents for the [Ministry of Finance](#) and for the [Ministry of Revenue](#).

- Not more than 3 days per year: MCPM
- Not more than 6 months: SMG3, ITX 3

Note: Only the manager with the delegated authority can actually approve or deny the employee's request. Managers not possessing the delegated authority can only make a recommendation to the manager with the delegated authority.



GUIDELINES:

The provisions of the Collective Agreements and the Directives under the *Public Service of Ontario Act* provide management with a wide discretion to consider applications by employees for special and compassionate leave. However, arbitration boards have developed some general principles with respect to the exercise of that discretion.

The reasonable exercise of discretion requires the manager with the delegated authority to enquire into the surrounding circumstances of each special and compassionate leave request submitted, before deciding whether to grant or deny the request. The decision must be based on the particular merits of each request and be consistent with management's considerations as opposed to rigid policy adherence.

“FOUR-FOLD” TEST OF MANAGERIAL DISCRETION:

Arbitrators have consistently considered the following four factors when reviewing management decisions concerning requests for special and compassionate leave:

1. The decision must be made in good faith and without discrimination.

Consideration under this factor would include legitimate business needs (i.e. economy, efficiency and effectiveness), whether the decision was made without discrimination (i.e. treat employees in similar circumstances in a similar manner and do not rely on personal characteristics as a basis for the decision).

2. There must be a genuine exercise of discretion as opposed to rigid policy adherence.

A genuine exercise of discretion precludes the application of a policy. However, reference to guidelines is permissible provided that the final decision does not rely solely on the guidelines.

3. Consideration must be given to the merits of each request for special and compassionate leave.

Management must thoroughly investigate each request before making a decision. This may often require that a meeting be held with the employee to ensure that all available information has been provided to the decision-maker.

4. All relevant factors must be considered and irrelevant factors must be rejected.

The existence or availability of accumulated credits such as overtime, vacation or sick leave is an irrelevant consideration since the granting of special and compassionate leave must not depend on or be charged against accumulated credits. Similarly, management cannot unilaterally deduct credits from one of these sources to cover the absence when special and compassionate leave is denied.

QUESTIONS:

The following examples of factual questions to be considered may be consulted as an aid to the decision-making process and will be of assistance in gathering the necessary facts to enable a manager to exercise discretion in responding to a request for special and compassionate leave. Whether the request is approved or denied, a copy of the leave request should be placed on the employee's personnel file together with the reason for the approval or denial.

SITUATION	EXAMPLE SOF FACTUAL QUESTIONS TO BE CONSIDERED
1. Unable to attend work due to weather conditions.	<ul style="list-style-type: none"> - Where does the employee live? - did any other employees who live in that vicinity make it in to the same shift? - What mode of transportation does the employee use? - Was there an alternate mode of transportation? - What weather conditions were reported by the weather bureau? - What is indicated in reports relating to road conditions? - Were people being advised to staff off the roads? - Were there any accidents in the vicinity? - What attempts did the employee make to get to work?
2. Failure of caregiver to turn up.	<ul style="list-style-type: none"> -What contingency plans had the employee made? -Could someone else have cared for the child/family member? - What daycare facilities are in the area? - How much notice was the employee given by the caregiver? - What attempts were made to get an alternate caregiver?
3. Illness of family member.	<ul style="list-style-type: none"> - What is the nature of the relationship with the individual? - How serious is the illness? - Could another individual have attended the relative? - Why was the employee's presence necessary? - Did the employee attempt to make alternate arrangements? - Could the situation have been dealt with during non-working hours?

SITUATION	EXAMPLE SOF FACTUAL QUESTIONS TO BE CONSIDERED
4. Medical appointments.	<ul style="list-style-type: none"> - Why could the appointment not be made for non-working hours? - Is the physician located in close proximity to the employee's home or did the employee have to travel a distance for specialist treatment? - Was this an emergency appointment?
5. Attendance at court.	<ul style="list-style-type: none"> - Who is required to be in court: the employee? A close relative? A friend? - What's the employee's role at court? - Could someone else attend in the employee's place? - How serious is the situation? - What would be the consequence of the employee not attending? - How important is attendance at court to the employee?
6. Transportation breakdown.	<ul style="list-style-type: none"> - Where does the employee live? - Could the breakdown have been anticipated? - What precautionary measures did the employee undertake? - What alternate modes of transportation were available to the employee? - Who attended the scene of the breakdown? - Did any other employees affected by the same breakdown make it in to work? If so, why didn't the employee? - What attempts did the employee make to get into work?
7. Legal matters.	<ul style="list-style-type: none"> - Why could the appointment not be made after working hours? - Is it necessary that the employee be in attendance? - What would be the consequence of the employee not attending?
8. Assisting a person in need.	<ul style="list-style-type: none"> - How important is the matter to the employee? - Relationship with person in need? - Why was the person in need? - Why was the employee's assistance required? - Could someone else have provided the assistance? - Could the assistance have been provided outside of working hours? - What would have been the consequences of not providing the assistance? - Was the employee's presence required the entire time?
9. Household emergencies.	<ul style="list-style-type: none"> - What was the nature of the emergency? - Could it have been avoided? - Could someone else have attended to the emergency? - What would be the consequences of not attending to the emergency until after working hours? - How long to rectify the emergency?
10. Ceremonies and celebrations.	<ul style="list-style-type: none"> - What is the nature of the occasion? - Why is the employee's attendance required? - How important is attendance to the employee? - Could the occasion be conducted during non-working hours? - What would be the consequences of the employee not attending?

SITUATION	EXAMPLE SOF FACTUAL QUESTIONS TO BE CONSIDERED
11. Moving.	<ul style="list-style-type: none"> - Why can't the move be conducted during non-working hours? -What is the reason for the move? - Why is the employee's presence required? - Could someone else attend in place of the employee?
12. Death	<ul style="list-style-type: none"> - Is the Bereavement Leave Article applicable? - If not, is there some aspect to the relationship which justifies special and compassionate leave? - Are there circumstances which justify special and compassionate leave in addition to bereavement leave?

Managers should contact their Human Resources Consultant if they wish to discuss any aspect of this guide.

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February 2008 (updated)