

CAN YOUR EMPLOYER PLACE YOU ON UNPAID LEAVE?

November 19, 2021 | Know Your Rights



Folks all across Canada, in every province, in every sector and whether in a union or not, are being placed on unpaid leave, or threatened with unpaid leave for not complying the the vaxx mandate. And there is a lot confusion, misinformation... and a whole lot of stress, relating to unpaid leave. And the big question folks need the answer to... IS THIS LEGAL?

We did some digging through various employment acts, through legislation and case law and what we are finding, is that employees can take an unpaid leave, ONLY IF it is requested by the EMPLOYEE. An employer does NOT have the authority to place an employee on unpaid leave, and in fact doing so is constructive dismissal. And to support this statement, we have found case law from 2004, Cabiakman v. Industrial Alliance Life Insurance Co., and below is the highlight of this ruling:

Supreme Court of Canada in the case of, states that the following are required when placing an employee on administrative suspension:

- *The suspension must be necessary to protect the legitimate business interest;*
- *The employer must be acting in good faith;*
- *The suspension must be for a relatively short time period for a fixed term; and*

- *Other than in exceptional circumstances, the suspension must be paid.*

If you are placed on an unpaid suspension for administrative reasons where your employer is refusing to pay you, you are able to refuse the suspension and this would not be construed as a resignation but rather a constructive dismissal.

You can read the case law here: <https://canliiconnects.org/en/commentaries/46624>.

Furthermore, when we examined the [Employment Standards Act](#) (ESA) to see if there are any legal provisions for an employer to place an employee on leave, we could not find it. Instead, there were only provisions for an employee to request leave without pay.

Then we also dug into the [Employment Standards Amendment Act \(Infectious Disease Emergencies\)](#) to make sense of this, AND what did we find??? This temporary amendment to the ESA ended July 28, 2021 as it was dependent on the declared emergency under the Emergency Management and Civil Protection Act (EMCPA), sections 7.0.1 and 7.0.2 - the declared emergency was Revoked June 9th. What this means is that the temporary amendment is dormant, because there is no emergency to invoke it.

So, what do you do when you have been told by your employer they have placed you on unpaid leave? You go to work as per your regular schedule, you did not agree to the unpaid leave. If you work outside of your home, show up for work and attempt to access the building. If you work remotely, then try to login. Record yourself trying to access your place of work. If you are accessing a building and told to leave, then leave. It's not necessary to escalate, you simply want to create a record of your attempting to go to work. Then email your boss and state what happened; how you were blocked and by whom, etc. In that same message, state that you do not consent to being placed on unpaid leave.

What this does is protect you as later down the road if you do not push back, it could be claimed that you agreed to the leave. And could set you up as though you resigned by not reporting to work. Don't give this opportunity!

Folks, trust that the law is on your side! Keep your head up and keep fighting back. We are NOT the minority and our strength is building in numbers. We CAN do this!

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