



Q. What are my insurance options if I need to take a temporary leave of absence from practice?

A. You can apply for Exemption 'C' under the LAWPRO Program if you are taking a temporary leave of absence from practice. The leave may be up to five years for family reasons or illness and two years for other reasons. This exemption is for a temporary leave of absence only, meaning you must intend to return to practice. It is not available if you wish to pursue alternative employment and there is no coverage for professional services provided during your period of exemption except for the following:

- pro bono services provided through an approved pro bono project associated with Pro Bono Ontario;
- certain mentoring services; and
- certain services as estate trustee, trustee for *inter vivos* trust, or attorney for property, provided you have completed an application

How does my coverage change?

If you apply part way through a policy year, you keep the coverage options (including deductible) you have in place and then revert to the standard coverage at the outset of the next policy year if you remain on exemption. Lawyers who apply at the outset of the policy year are provided with the full coverage of \$1 million per claim/\$2 million in the aggregate and the standard deductible of \$5,000.

Protecting yourself from a claim while on leave

LAWPRO claims statistics show that lawyers taking extended leaves of absence face increased vulnerability to claims as a result of inadequate file supervision, transfer

procedures, and missed deadlines. Litigators should be mindful of the 5-year deadline to set matters down for trial under Rule 48. Files left unattended can trigger a “cluster” of administrative dismissals and is a scenario that LAWPRO sees all too frequently. In various areas of practice, claims have arisen when the departed lawyer has failed to ensure active files are being monitored by staff or transferred to a colleague.

Here are some tips to avoid the files you leave behind becoming a malpractice claim:

Develop and follow procedures for seamless transfer of files

Failing to follow firm file transfer procedures can lead to unnecessary confusion. A file may have languished because damages are

minimal and/or there are difficult issues of liability. When going on leave, make sure to be frank with the successor lawyer or the lawyer who will be assigning the files as to why the matter is in the state that it's in, and what steps need to be taken.

Write detailed file transfer memos

Disorganized files can result in details being missed. A good practice is to include a detailed file transfer memo for each file.

Ensure employees are appropriately supervised

Lawyers should not be relying solely on staff to handle files in their absence: at the end of the day it is the lawyer who will be facing a malpractice claim. ■

A leave of absence checklist

- Draft detailed file transfer memos that explain upcoming closing dates, limitation dates, administrative dismissal deadlines, or other important dates and any steps that must be taken before those dates.
- Communicate with your clients about your absence in advance and tell them who will be handling their file while you are away. Put this conversation in writing in a letter to the client and detailed notes to file.
- Ensure your tickler system is effective, populated properly, and staff have been trained in the use of the system.
- Ensure junior lawyers, clerks and staff are appropriately supervised and pay attention to signs that suggest they are overwhelmed and at risk of missing deadlines.
- Keep your office and files organized so that lawyers taking over your files will be able to locate the information they need and understand what work remains to be done.
- Diarize in your tickler system any upcoming or regular filing deadlines that apply to your clients, such as annual corporate filings, licence renewals, IP renewals, requirements for passing of accounts.
- For litigators, diarize timelines in your tickler system including the 5-year deadline to set matters down for trial under Rule 48, meet outstanding orders, and to ensure your files stay on track.
- Be prepared for leaves by already having an action plan in place for unexpected work interruptions or emergencies.
- Confirm your firm's excess insurance coverage will extend to you during your leave.
- If an error is made or a potential malpractice claim is discovered, LAWPRO should be notified immediately.