

**COMPASSIONATE CARE IN ACCORDANCE WITH THE FEDERAL *EMPLOYMENT INSURANCE ACT***

The 2003 Federal Budget proposed a compassionate care benefit program through amendments to the federal *Employment Insurance Act* (the "*EI Act*"). As a result, effective January 4, 2004, eligible employees became entitled to receive compassionate care benefits up to a maximum of 6 weeks if the employee has to be absent from work to provide care or support to a gravely ill family member with a significant risk of death within 26 weeks.

However, there are two notable considerations:

- The Ontario *Employment Standards Act, 2000*, the statute that applies to provincially regulated employers, has not been amended to provide job protection for employees who take the 6 week compassionate leave (further, no proposed amendments have been announced). Rather, the *ESA, 2000* provides employees whose employer regularly employs 50 or more employees with up to 10 days of unpaid emergency leave each year, which can be used to provide care to family members.
- On January 27, 2004, the Quebec Court of Appeal struck down as unconstitutional the maternity and parental leave provisions of the federal *EI Act*. The Court ruled that the federal government cannot use the *EI Act* to offer social benefits for programs that are exclusively within provincial legislative jurisdiction. If upheld, the Court's ruling would allow Quebec, or any other province, to opt out of the EI maternity and parental leave scheme while receiving full compensation from the federal government in order to help finance its own program. The ruling may also invalidate the federal government's compassionate care program – which was initiated without provincial consent – as being unconstitutional. It is likely that the federal government will appeal the ruling to the Supreme Court of Canada.