



What's New in HR Law

Federal Government Proposes Regulations Addressing New *Canada Labour Code* Paid Medical Leave Entitlement

July 21, 2022 | By [Danny Parker](#)

Bottom Line

Through Bills C-3, [An Act to amend the Criminal Code and the Canada Labour Code](#), and C-19, [An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures](#), Parliament has amended the *Canada Labour Code* (the “Code”) to provide federally regulated employees with up to 10 days of paid medical leave per year. These amendments and the new paid leave entitlement have not yet come into force.

On July 16, 2022, the Federal Government released [proposed regulations](#) that would define the scope of application of the new 10-day paid medical leave entitlement and ensure consistency among the *Code* and the existing regulations thereunder.

Until August 15, 2022, employers and stakeholders can comment on the proposed regulations as part of the Federal Government’s consultation process. Submissions can be filed with the Department of Employment and Social Development through [an online form](#).

This article is for the purposes of only general information and does not constitute legal advice or opinion.

Bill C-3 and Bill C-19 – New Entitlement to 10 Days of Paid Medical Leave

Presently, under section 239 of the *Code*, employees are entitled to an unpaid medical leave of absence of up to 17 weeks for personal illness or injury, organ or tissue donation, or medical appointments.

As a result of Bills C-3 and C-19, section 239 of the *Code* will be amended to provide federal employees with an entitlement of up to 10 days of paid medical leave per year. The new paid medical leave shall be provided as follows:

- After completing 30 days of continuous employment with their employer, an employee will earn three days of paid medical leave. Thereafter, the employee will accrue one day of paid medical leave per month, up to a maximum of 10 paid leave days per calendar year.
- Accrued but unused leave days can be carried over to January 1 of the following year. However, the maximum number of leave days that the employee can earn during the subsequent calendar will be reduced in equal measure, such that in no year does the employee's entitlement exceed 10 days.
- For each day of statutory medical leave taken, the employee must be paid at their regular rate of wages for their normal hours of work.
- The new paid medical leave entitlement applies only to employers who have 100 or more employees as of the date that the new section 239.001 of the *Code* comes into force. If an employer's workforce drops below 100 employees after the coming-into-force date, their employees will still be entitled to paid medical leave.
- Employers can request medical certificates to substantiate an employee's medical leave of absence, but only if the request is:
 - in writing;
 - given no later than 15 days after the employee's return to work; and
 - given to an employee who has taken a medical leave of absence of at least five consecutive days.
- If an employee's employment is deemed continuous as a result of section 189 of the *Code* (i.e., the transfer of work provisions), the employee's medical leave entitlements will be calculated based on the length of such continuous employment.

Although Bills C-3 and C-19 received Royal Assent on, respectively, December 17, 2021, and June 23, 2022, the new entitlement to paid medical leave is not yet in effect. The above-noted amendments to the *Code* will come into force by no later than December 1, 2022, unless brought into force earlier by proclamation. The sole exception is the 100-employee requirement (i.e., the new section 239.001), which will come into force on a day to be fixed by order of the Governor in Council.

Proposed Federal Regulations

On July 16, 2022, the Federal Government released its proposed *Regulations Amending Certain Regulations Made Under the Canada Labour Code (Medical Leave with Pay)* (the "Regulations") to support the implementation of the new paid medical leave entitlement. If proclaimed into law, the Regulations would:

- Ensure that employees in the longshoring sector who are engaged in multi-employer employment are considered to be continuously employed for the purposes of determining eligibility for paid medical leave;
- Define the regular rate of wages to be used in calculating paid medical leave for certain employees;
- Introduce record-keeping requirements;
- Provide that employers who use a year other than a calendar year to calculate annual vacations are to use that same year to calculate paid medical leave entitlements; and
- Make other housekeeping amendments to ensure consistency across existing provisions of the *Code* and its regulations.

Regular Rate of Wages

For the purposes of paid medical leave, the Regulations would use the same definition of “regular rate of wages” that currently applies to calculations for other types of paid leave under the *Code*, such as personal leave. In particular, the regular rate of wages for an employee whose hours of work differ from day to day or who is paid on a basis other than time (e.g., commission employees) would be:

- (a) the average daily earnings of an employee (other than overtime pay) for the 20 days the employee worked immediately before the first day of the period of paid leave; or
- (b) an amount calculated by a method agreed on under or pursuant to a collective agreement that is binding on the employer and the employee.

Record-Keeping Requirements

The Regulations would require all federally regulated employers to keep the following records related to each period of medical leave with pay:

- The dates of commencement and termination of the leave;
- The year of employment in respect of which the leave was earned;
- The number of days of leave carried over from a previous year;
- A copy of any written request for a medical certificate made by an employer; and
- A copy of any medical certificate submitted by an employee.

Housekeeping Amendments

The Regulations would implement the following technical changes to the *Code*:

- Add medical leave with pay to the list of paid leaves that are counted as time worked for the purposes of hours of work averaging under section 6 of the [Canada Labour Standards Regulations](#);

- Amend section 5(g) of the [Standards for Work-Integrated Learning Activities Regulations](#) to confirm that student interns — who are not required to be paid — are not entitled to paid medical leave; and
- Classify violations of the paid medical leave provisions in accordance with the [Administrative Monetary Penalties \(Canada Labour Code\) Regulations](#).

Check the Box

Federally regulated employers with 100 or more employees need to be aware of the new paid medical leave provisions, which will come into force on or before December 1, 2022, and how they will be implemented.

Such federally regulated employers should review their current sick/medical leave plans to assess and determine whether existing paid leave entitlements will satisfy the forthcoming requirements for paid medical leave. If existing entitlements fall short of the *Code's* paid medical leave requirements, employers will need to take steps to ensure compliance once the new leave entitlements comes into force.

Employers who will be subject to the new paid medical leave entitlement may wish to review the Regulations to determine how they will be specifically affected. Any concerns about the Regulations should be voiced as part of the Federal Government's consultation process.

Need More Information?

For more information or assistance with the new federal requirements for paid medical leave or any other federal employment matter, contact [Danny Parker](#) at dparker@filion.on.ca or your regular lawyer at the firm.



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