



What's New in HR Law

Lay-Off Time Periods for Federal Workers Extended under the *Canada Labour Code*

June 26, 2020

The Federal Government has announced that time periods under the deemed termination provision of the *Canada Labour Standards Regulations* (the “Regulations”) have been temporarily extended, effective June 22, 2020.

Many employers, including those in the federal sector, have had to make the difficult decision to lay-off employees in the wake of the COVID-19 pandemic. Prior to the regulatory amendments announced this week, under paragraph 30 of the Regulations, an employee would not be deemed terminated from their employment when the lay-off was: (i) less than three months, or (ii) less than six months, provided the employer notified the employee in writing of the employee’s recall date at or before the lay-off took effect.

If the temporary lay-off extended beyond either of these time periods, it became a deemed termination. When a deemed termination is triggered, an employee who meets the eligibility criteria under the *Canada Labour Code* (the “Code”) and accompanying Regulations is entitled to severance pay, termination pay (if notice of termination of employment was not provided) and any accumulated vacation pay. They may also be entitled to common law notice, which can be

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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significantly higher than the payments required by the *Code*. As some employees were laid off in late March or April, their employment could have been deemed terminated as early as June or July.

However, the amendments, which came into force on June 22, 2020, temporarily extend the above-mentioned time periods under the Regulations, thereby allowing employers additional time within which to recall laid off employees before their employment is deemed terminated. Specifically:

- The period of three months or less set out in paragraph 30(1)(c) of the Regulations is extended:
 - by six months for employees laid off prior to March 31, 2020; or
 - to December 30, 2020 for employees laid off between the period of March 31, 2020 and September 30, 2020.
- The fixed date or fixed period in the written notice given under subparagraph 30(1)(d)(i) of the Regulations is extended:
 - by six months or until December 30, 2020, whichever occurs first, for employees laid off prior to March 31, 2020; or
 - to December 30, 2020 for employees laid off between the period of March 31, 2020 and September 30, 2020, and where the fixed date or fixed period specified in the written notice occurs before December 30, 2020. If the fixed date or fixed period specified in the written notice occurs on or after December 30, employers will have until that date to recall their employees.

These amendments are temporary and will have no impact on lay-offs that are issued after September 30, 2020. These amendments also do not apply to employees whose employment had already been deemed terminated prior to June 22, 2020, nor do they apply to employees who are covered by a collective agreement that contains recall rights.

Where a worker's employment is terminated, the amendments to the Regulations have no impact on an employer's obligation to pay, or the calculation of, termination pay, severance pay, and vacation pay to eligible employees under the *Code*. This holds true if a lay-off continues beyond the temporarily extended time periods under the amendments to the Regulations, such that the lay-off is deemed to be a termination. Deemed terminations will likewise trigger employers' termination obligations under the *Code* or the common law, and the employee's period on lay-off must be counted when calculating the individual's entitlements.

The amendments to the Regulations under the *Code* referenced in this update have not yet been published. The information contained in this update is based on the [news release](#) and [backgrounder](#) published by Employment and Social Development Canada.

Future Updates

These temporary amendments to the Regulations will be welcome news to employers operating in the federal sector as they provide a degree of temporary relief from termination and severance obligations that may otherwise have been triggered by extended lay-offs.

Filion Wakely Thorup Angeletti LLP continues to closely monitor the developments surrounding the COVID-19 pandemic and will provide additional updates as new information becomes available.

Need more information?

For more information regarding reopening and workplace management during the COVID-19 pandemic, contact [Cassandra da Costa](#) at 519-435-6009, or your regular lawyer at the firm.



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