



What's New in HR Law

Federally Regulated Employers: Are You Ready for the Onslaught of Legislative Change That Will Take Effect September 1?

August 19, 2019

Federally regulated employers should be aware that substantial changes to the *Canada Labour Code* (the “Code”) will come into effect at the beginning of next month, on September 1, 2019.

Amendments to the *Code* were enacted by Bill C-63, the *Budget Implementation Act, 2017, No. 2*, and Bill C-86, the *Budget Implementation Act, 2018, No. 2*. These legislative amendments make sweeping changes to the employment standards that apply in workplaces across the federal sector.

To assist federally regulated employers prepare to meet the new and, in many cases, enhanced, employment standards, we have put together a summary of the key changes that will come into effect at the end of the summer:

Scheduling

Employers will be required to provide employees with a minimum of 96 hours’ written notice before implementing a work schedule. Employees will have the right to refuse a shift where 96 hours’ notice is not provided.

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The 96 hour notice requirement will not apply where: (1) a collective agreement overrides notice; (2) there is an unforeseen emergency situation requiring the employee's attendance at work, or; (3) an employee has made a request to alter his or her own schedule as part of the flexible work arrangement changes enacted by Bill C-63 (detailed below).

Advanced notice will also be required when implementing a schedule *change*. Except for unforeseen emergency situations, employers will be required to provide 24 hours' written notice of any shift change. The notice period is based on the hour when the new or altered shift is scheduled to begin.

Overtime

The amendments will introduce "time in lieu of overtime". Where the employer and employee enter into such an agreement, in writing, an employee may elect to take 1.5 hours of time off with pay instead of receiving pay for overtime hours worked.

If the employee does not take the time off in lieu within a period of three months, (or a longer period of up to 12 months as may be agreed upon), the employer must pay out any banked time. Payout of banked time is also required if employment is terminated for any reason.

Employees will also have the right to refuse overtime in order to fulfil family responsibilities. Such refusal may only occur if the employee has taken reasonable steps to carry out their family responsibilities by other means prior to refusing. This right of refusal will not apply to overtime that is required to deal with unforeseen emergency situations.

Rest Periods & Break Requirements

Employees will generally be entitled to a minimum of 8 consecutive hours of rest between shifts.

Employees will also be entitled to a 30 minute unpaid break for every 5 consecutive hours of work. If an employer requires an employee to be available to work during his or her break, the employee must be paid for the break.

Employees will also be entitled to unpaid breaks that are necessary for medical reasons, or that are necessary for nursing or expressing breast milk. These breaks are to be unpaid but, otherwise, have no restrictions or limitations regarding time. Employers may request a medical certificate to substantiate an employee's request for an unpaid medical break.

Flexible Work Arrangements

The *Code* will now permit employees to request changes to the terms and conditions of their employment (except where governed by a collective agreement), and will require employers to respond to any such requests.

Employees who have completed 6 months of continuous employment may request a change to their:

- hours of work;
- work schedule;

- work location; or
- any other term and condition as may be prescribed by regulation.

The employee's request must be in writing and must include the prescribed information. No later than 30 days after receiving the request, the employer must provide written notice of its decision to the employee. Employers may: (1) grant the request; (2) provide an alternative option to the employee; or (3) refuse the request. Refusals must be based on one of the following grounds:

- the requested change would result in additional costs that would be a burden on the employer;
- the requested change would have a detrimental impact on the quality or quantity of work within the employer's industrial establishment, on the ability to meet customer demand or on any other aspect of performance within that industrial establishment;
- the employer is unable to reorganize work among existing employees or to recruit additional employees in order to manage the requested change;
- there would be insufficient work available for the employee if the requested change was granted; or
- any other ground prescribed by regulation.

New Leaves of Absence

The *Code* amendments will introduce a number of new leaves of absences. The new leaves are as follows:

Personal Leave

Employees will be entitled to take 5 days per year as personal leave, with the first 3 days *paid* if the employee has completed 3 consecutive months of continuous employment. Employees can take personal leave for the following reasons:

- treating personal illness or injury;
- carrying out responsibilities related to the health or care of any of their family members;
- carrying out responsibilities related to the education of any of their family members who are under 18 years of age;
- addressing any urgent matter concerning themselves or their family members;
- attending their citizenship ceremony under the *Citizenship Act*; and
- any other reason prescribed by regulation.

Leave for Traditional Aboriginal Practices

Employees will be entitled to take up to 5 unpaid days of leave per year if they are Aboriginal and have completed 3 consecutive months of continuous employment. This new leave must be taken for activity involving traditional Aboriginal practices.

Court or Jury Duty Leave

Employees will be entitled to an unpaid leave of absence to attend court as a witness, juror, or participate in jury selection.

Victims of Family Violence Leave

Employees will be entitled to 10 days of leave per year if they are the victims of family violence, or are the parent of a child who is the victim of family violence. Leave days can be used to:

- seek medical attention for themselves or their child in respect of a physical or psychological injury or disability;
- obtain services from an organization which provides services to victims of family violence;
- obtain psychological or other professional counselling;
- relocate temporarily or permanently;
- seek legal or law enforcement assistance or to prepare for, or participate in, any civil or criminal legal proceeding; or
- take any measures prescribed by regulation.

If the employee has completed 3 consecutive months of continuous employment, the first 5 days of Victims of Family Violence Leave must be paid. The leave can be taken in one or more periods. The employer may require the employee to provide substantiating documentation within 15 days of the employee's return, but only if it is reasonably practicable for the employee to obtain and provide it.

Changes to Existing Leaves of Absence

The *Code* amendments also include changes to a number of existing leaves of absence. These changes are as follows:

Minimum Service Changes

The *Code* amendments will eliminate minimum length of service requirements for certain existing leaves, including parental leave, maternity leave, leave related to critical illness, and leave related to death or disappearance.

Employees who are members of the reserve force will be entitled to take a leave of absence for military training and operations after 3 consecutive months of service (instead of after 6 consecutive months).

Bereavement Leave

Bereavement leave in respect of an immediate family member is increased to 5 days (previously 3 days), with the first 3 days being *paid* for employees who have accrued at least 3 consecutive months of continuous service. The leave can be taken during the period that begins on the day on which the death occurs and ends 6 weeks after the latest of the days on which any funeral, burial or memorial service occurs. The leave may be taken in one or two periods.

Medical Leave

Sick leave under the *Code* will be renamed "medical leave". Eligible employees will be entitled to a medical leave of absence of up to 17 weeks, which can be taken on account of personal illness or injury, organ donation or medical appointments during working hours. Where an employee's period of leave exceeds three days, the employer can require a certificate from a health care

practitioner. An employee is entitled, on written request, to be informed in writing of every employment, promotion, or training opportunity that arises during a period of medical leave for which the employee is qualified.

Health Care Practitioner

The *Code* amendments will replace the term “qualified medical practitioner” with “health care practitioner”. “Health care practitioner” is a broader category, defined as: “any person lawfully entitled under the laws of a province to provide health services”. This change expands the list of professionals who are able to provide medical certificates to substantiate employees’ absences from the workplace.

Vacation and Holiday Pay

Employees will be entitled to the following vacation time and vacation pay annually:

- 2 weeks of vacation after 1 year of employment (with 4% vacation pay);
- 3 weeks of vacation after 5 consecutive years of employment (with 6% vacation pay); and
- 4 weeks of vacation after 10 consecutive years of employment (with 8% vacation pay).

The amendments will also eliminate minimum length of service requirements for general holiday pay. As a result, employees will be entitled to pay for general holidays that occur within the first 30 days of their employment.

Deemed Continuity of Employment

Currently, deemed continuity of employment under the *Code* occurs where a federal work, undertaking or business is transferred from one employer to another through a sale, lease, merger or other applicable transaction.

The *Code* amendments will change the successorship provisions such that deemed continuity of employment will also apply in the following circumstances:

- a provincial business becomes a federal work, undertaking or business upon sale, lease, merger or transfer; and
- a second employer becomes responsible for carrying out a federal work, undertaking or business due to the retendering process.

More Changes on the Horizon...

As if the above changes were not enough for federally regulated employers to assimilate, additional legislative and regulatory change is afoot in the sector. The enactment of new regimes under the *Pay Equity Act* and *Accessible Canada Act* are forthcoming, as are regulations that will govern the issue of workplace harassment and violence.

We are monitoring these developments closely and will keep readers abreast of additional changes as they occur.

Need more information?

If you would like additional information regarding these new legislative changes, or assistance reviewing your existing workplace policies and practices to ensure compliance, contact [Lucas Mapplebeck](#) at 905-972-6875, or speak to your regular lawyer at the firm.



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