



What's New in HR Law

Bill C-86 Modernizes the Federal Employment Standards Regime

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BOTTOM LINE

The Federal Government has updated its employment standards regime. Bill C-86 received Royal Assent on December 13, 2018. The Bill introduces new pay equity legislation while also updating the existing *Canada Labour Code*. The changes reflect the trend of modernizing employment standards legislation which is occurring across Canada.

Despite receiving Royal Assent, none of the changes outlined below have yet been scheduled to come into force. We will keep readers apprised as enactment timelines become clear.

Background of Bill C-86

Modernization of the *Canada Labour Code* commenced on August 30, 2018 with the publication of "*What We Heard: Modernizing Federal Labour Standards*" (the "Report"). This Report was the product of 10 months of consultation with Canadian workers, unions, labour organizations, academics, employers, employer organizations and advocacy groups that took place between May 2017 and March 2018. According to the Federal Minister of Employment, Workforce Development and Labour, the goal was "to ensure that Canadians have a robust and modern set of federal labour standards."

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Pay Equity Legislation

Bill C-86 enacts the *Pay Equity Act* (the “*PEA*”), which applies to federally-regulated employers with at least 10 employees. The *PEA* will require employers to establish pay equity plans within three years of the *PEA* coming into force. Additionally, employers with over 100 employees will be required to establish a pay equity committee. The *PEA* will be enforced through an administrative monetary penalty system, and the maximum penalty for non-compliance will be \$50,000.

For more information about the *PEA*, see [New Legislation Will Require Federally-Regulated Employers to be Proactive in Ensuring Pay Equity](#).

Equal Pay for Equal Work

Employers will be prohibited from paying employees different rates of pay because of their employment status (i.e. full-time vs. part-time, temporary, etc.), where the employees are performing substantially the same kind of work in the same establishment.

Nonetheless, there remains various legitimate reasons for compensating certain employees more than others, including seniority, merit, and the quantity or quality of production.

Temporary Help Agencies

Temporary help agencies will be prohibited from charging fees to assignment employees, charging fees to clients for establishing an employment relationship with employees in certain instances, and from preventing employees from establishing an employment relationship with a client.

Scheduling

Employers will be required to provide employees with a minimum of 96 hours’ written notice before implementation of a work schedule. Employees are able to refuse a shift where 96 hours’ notice is not provided. Notwithstanding these changes, a collective agreement can override the 96 hour notice requirement.

Rest Periods & Break Requirements

Employees will be entitled to a minimum of 8 consecutive hours rest between shifts, and 30-minute unpaid meal breaks for every period of 5 consecutive hours of work. Employees will also be entitled to unpaid breaks for medical reasons, or that are necessary for nursing or expressing breast milk.

Leaves of Absence

Bill C-86 eliminates service requirements for parental leave, maternity leave, leave related to critical illness, and leave related to death or disappearance.

Additionally, employees will be entitled to provide medical documentation from a defined group of “health care practitioners” rather than “qualified medical practitioners”.

The amendments also introduce several new leaves:

- Personal Leave (up to 5 days each year, which includes 3 paid days)
- Leave for Victims of Family Violence (up to 5 days of paid leave each calendar year)
- Leave for Court or Jury Duty
- Medical Leave (up to 17 weeks, which replaces the concept of sick leave)

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

Bill C-86 also eliminates length of service requirements for general holiday pay.

Termination of Employment

Employees who are dismissed will be entitled to 1 week of notice for each year of continuous employment, up to a maximum of 8 weeks of notice. An exception is if the employee has between 3 months and 36 months of employment at the time of termination, in which case, the employee is entitled to 2 weeks’ notice.

Employers will be required to provide a written statement setting out vacation benefits, wages, severance pay, and any other benefits and pay arising from employment at the time of termination.

“Redundant employees” dismissed as part of a group termination will be entitled to individual notice of at least 8 weeks.

Miscellaneous Changes

There are a number of other changes addressed in Bill C-86. Some of these changes include raising the minimum age of employment (now 18, but formerly 17), giving employees the right to be reimbursed for certain work-related expenses, and shifting the burden of proof onto the employer when it is alleged that a complainant is not an employee.

Need more information?

Contact [Laura Freitag](#) at 416-408-5505, or speak to your regular lawyer at the firm. The author gratefully acknowledges the assistance of Mark Van Ginkel in preparing this update.

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