What's New in HR Law

Meet it or Beat it: Paid Medical Leave under the Canada Labour Code is a Minimum Standard

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Bottom Line

Since December 1, 2022, new provisions of the *Canada Labour Code* (CLC) have required federally regulated employers to provide their employees with up to 10 days of annual paid medical leave. Before the provisions came into force, Employment and Social Development Canada published an interpretation bulletin that describes the interrelation between the CLC entitlement and an employer's pre-existing paid sick leave benefits (IPG-119).

Consistent with IPG-119, the recent case of *United Steelworkers Local 14193 v. Cameco Fuel Manufacturing Inc.* ("*Cameco*") confirms that paid medical leave under the CLC is a minimum standard. As a result, employers do not need to provide CLC sick days to their employees if an existing sick leave practice produces a more favourable benefit to employees.

In other words, an employer must either meet or beat the minimum standard.

Legal Background

Since December 1, 2022, new provisions of the *Canada Labour Code* (CLC) have required federally regulated employers to provide their employees with up to 10 days of paid medical leave per year. Under these new provisions employees are entitled to paid time off for:

- personal injury or illness
- organ or tissue donation
- medical appointments during working hours
- quarantine

Employees taking a paid medical leave day must be paid at their regular wage rate for their regular working hours.

As mentioned above, IPG-119 clarifies that the CLC entitlement is a minimum standard that may be satisfied so long as a pre-existing leave under an employment contract or collective agreement serves the same purpose and produces a more favourable benefit to the employee. In other words, the new CLC provisions do not require an employer to provide additional paid medical leave to employees as long as the employer's existing sick leave practice provides a benefit that is more favourable than the 10 days of paid medical leave mandated under the CLC.

Note that a similar concept applies under provincial minimum standards legislation: a minimum standard is satisfied when an employer's pre-existing practice produces a more favourable benefit to the employee. If this is done, an employer does not need to provide the minimum standard in addition to its pre-existing practice.

The Decision

In *Cameco*, Arbitrator Nyman referenced IPG-119. Consistent with the bulletin, he concluded that the employer's practice of deducting CLC sick days under certain circumstances did not violate the CLC, as even with the deductions, employees received a greater benefit than they would have received under the CLC alone.

Specifically, the employer had a practice of allowing employees to use CLC sick days during the first three days of a medical absence, before they were eligible for benefits under the employer's short-term disability plan (STD Plan). However, the employer also deducted one CLC sick day for each day that an employee received 100% wage indemnity under the STD Plan.

The union grieved this practice. It argued that the new CLC entitlement served a different purpose than the STD Plan, and that it was therefore improper for the employer to reduce an employee's CLC sick days whenever time off was fully indemnified under the STD Plan. In the alternative, the union argued that the CLC entitlement was more favourable to employees and that employees should be able to receive both entitlements.

Arbitrator Nyman disagreed, concluding that the employer had not violated the CLC and that the employer's practice should prevail over the paid medical leave entitlement under the CLC. In his analysis, he began by applying section 168(1) of the CLC, concluding that the CLC sick days are not intended to displace arrangements that are more favourable to the employee.

Arbitrator Nyman then applied the legal test arbitrators use to determine whether an employer's existing benefit is more favourable than a benefit mandated by the CLC:

1. Does the benefit under the CLC serve the same purpose as the non-CLC-mandated benefit?
2. If so, one must determine which benefit is more favourable.
3. If the non-CLC-mandated benefit is more favourable, it prevails over the CLC benefit.

Arbitrator Nyman concluded that the purpose of both benefits was the same: to provide employees with wage indemnification when they were ill or injured. He also concluded that the employer's practice of allowing employees to use both CLC sick days and the benefits under the STD Plan provided employees with a greater benefit than the CLC entitlement alone. Accordingly, the employer was entitled to deduct CLC sick days whenever time off was fully indemnified under the STD Plan.

Takeaway

When comparing paid medical leave under the CLC and an employer's existing paid sick leave benefit, arbitrators will first determine whether the two benefits serve the same purpose. To meet this standard, the purposes do not need to be identical, and all that is normally required is that the two benefits serve the same substantive purpose (i.e., to provide employees with wage indemnification when they are ill or injured).

Federally-regulated employers do not need to provide CLC sick days if their existing sick leave practices provide a more favourable benefit to employees. If an employer's existing sick leave practice provides a less favourable benefit to employees, the practice must be enhanced to comply with the CLC's minimum standard. Finally, employers are free to combine some CLC sick days with other paid sick leave benefits as long as the combined practice meets the minimum standard.

Before considering whether it must provide CLC sick days, an employer should closely examine its existing paid sick leave practices. Only practices that serve the same purpose as CLC sick days and provide employees with a more favourable benefit will satisfy the minimum standard.

Need More Information?

For more information or assistance complying with *Canada Labour Code* requirements or provincial minimum standards legislation, contact Jeremy Cooney at jcooney@filion.on.ca or your regular lawyer at the firm.

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