



# What's New in HR Law

## Recent Amendments to the *Canada Labour Code* Regulations: New Record-Keeping Requirements, Administrative Penalties, and More

March 30, 2022

### Overview

In the March 16, 2022 issue of the Canada Gazette, the Federal Government filed the *Regulations Amending Certain Regulations Made Under the Canada Labour Code*, [SOR/2022-41](#) (the “Amending Regulation”). The Amending Regulation amends the *Canada Labour Standards Regulations*, the *Standards for Work-Integrated Learning Activities Regulations*, and the *Administrative Monetary Penalties (Canada Labour Code) Regulations* (collectively, the “Regulations”) to align them with recent changes to the *Canada Labour Code* (the “Code”).

The most significant changes to the Regulations include:

- The addition of record-keeping requirements for federally-regulated employers;
- An expansion of the administrative penalties for non-compliance with the aforementioned record-keeping requirements; and
- An extension of the deadlines, under very limited circumstances, for filing complaints under the Code.

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

## Background Context

In recent years, the Parliament of Canada legislated amendments to *Code*, with an aim to modernizing the employment-related rights under Part III of the *Code* and supporting flexibility in the workplace. These amendments were introduced through the *Budget Implementation Act, 2017, No. 2*, which received Royal Assent on December 14, 2017, and the *Budget Implementation Act, 2018, No. 2*, which received Royal Assent on December 13, 2018.

The resulting changes to the *Code* included:

- new hours of work provisions that require advance notice of work schedules and shift changes, as well as breaks and rest periods;
- the introduction of unpaid medical breaks;
- an expanded range of healthcare practitioners permitted to provide medical certificates with respect to an employee's medical-related matters;
- the ability for employers to compensate overtime work through time of in lieu of overtime pay; and
- extensions to the time limits for filing unjust dismissal and genetic testing complaints under the *Code*, as prescribed by regulation.

The recent changes to the Regulations are comprised of consequential and technical amendments necessary to implement the above changes to the *Code*.

## Amendments to the Regulations

### New Requirements for Employer Record-Keeping

The Regulations now require employers to keep records of:

- unforeseeable emergencies that an employee had to deal with and as a result of which the employer:
  - could not provide the employee with 24 hours' notice of a change to their shift;
  - had to either postpone or cancel the employee's 30-minute break; or
  - had to require the employee to work additional hours which resulted in them having a rest period of fewer than eight hours;
- a copy of any certificate from a health care practitioner related to an employee's or a student intern's medical breaks (which must specify the beginning and end dates of the period during which the breaks are to be taken) and any request by the employer for such a certificate;
- every work schedule and modification of a work schedule that is provided to a student intern; and
- every refusal to work made by a student intern due to not receiving 96 hours' written notice of their work schedule.

### Penalties for Non-Compliance with Record-Keeping Requirements

The *Administrative Monetary Penalties (Canada Labour Code) Regulations* (the "AMP Regulations") designate, classify, and quantify the applicable administrative penalties for violations of the *Code* and all

labour standards regulations thereunder. Each designated violation is classified in one of the categories below according to the level of risk and/or the impact and significance of the violation:

TYPE	PART III
A	Related to administrative provisions.
B	Related to the calculation and payment of wages.
C	Related to leave or other requirements, which could have an impact on financial security, or health and safety, of an individual or group of individuals.
D	Related to the employment and protection of employees who are minors.

The Amending Regulation will amend Schedule 2 of the AMP Regulations to include non-compliance with the new record-keeping requirements in the list of designated Type “A” violations. This amendment is consistent with the existing penalty regime, which classified existing *Code* record-keeping requirements as Type “A” violations.

Part 2 of Schedule 3 of the AMP Regulations sets out the applicable monetary penalties. At the time of writing, Type “A” violations attract a penalty of \$250 for micro-businesses, \$500 for small businesses, and \$2,000 for large businesses or departments (which are determined on a per violation basis in addition to any amounts for historical non-compliance).

### **Extension of Deadlines for Filing Complaints under the *Canada Labour Code***

Finally, the Regulations outline limited circumstances where technically-deficient but timely complaints may be re-filed.

In general, federally regulated employees must file any labour standards complaints within the applicable time period prescribed by the *Code*. However, the Regulations now allow the federal Labour Program’s Head of Compliance and Enforcement (or delegated official) to:

- extend the 90-day time limit for filing a complaint of unjust dismissal or genetic testing if the complaint was filed within the proper statutory time limit but under the wrong complaint category; and
- extend the six-month deadline for filing a monetary or non-monetary complaint that is substantially similar to a previous complaint, where the previous complaint was withdrawn for having incomplete or inaccurate information.

### **Check the Box**

Federally regulated employers may wish to review the above and other changes to the Regulations as soon as possible to ensure statutory compliance. In particular, internal policies and practices should be reviewed for consistency and compliance with the new record-keeping requirements, as non-compliance with these requirements can now result in significant administrative penalties.

## Need More Information?

For additional information about the recent amendments to the *Canada Labour Code* or workforce management in the federal sector, please contact [Charles Muriithi](#) at 647-598-0517, or your regular lawyer at the firm.

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