

Federal Government appoints expert panel to advise on further changes to the Canada Labour Code

Date : March 26, 2019

Bill C-86, which received Royal Assent on December 13, 2018, will introduce a number of significant changes to the *Canada Labour Code* (the “Code”). The Bill C-86 changes to the Code are not yet in force and will come into force on a date to be ordered by the Governor in Council after the government holds regulatory consultations this spring and summer. These changes relate to hours of work and breaks, vacations, equal treatment based on employment status, termination notice and leaves of absence (for more detail see [Federal Government Proposes Significant Amendments to the Canada Labour Code in Bill C-86](#)). Bill C-86 represents an attempt to modernize the federal regime to respond to the changing nature of Canada’s workforce. This changing nature was stated to be characterized primarily by the increase in non-standard, temporary and part-time employment.

The Bill C-86 amendments were largely the product of a consultation report which focused on the following key areas:

- Improving access to leaves and annual vacation;
- Further supporting work-life balance;
- Better protecting employees in non-standard employment;
- Updating termination of employment provisions; and
- Good wages and benefits.

In addition to the detailed commentary relating to the items set out above, the consultation report identified a number of issues that were stated to be so complex they merited further study and consultation before they could be the subject of modernizing Code amendments. These issues were:

- Federal minimum wage;
- Labour standards protections for non-standard workers;
- Disconnecting from work-related e-communications outside of work hours (sometimes known as the “right to disconnect”);
- Access and portability of benefits; and
- Collective voice for non-unionized workers.

The federal government has begun the process to tackle these issues by appointing an independent Expert Panel with a mandate to study, consult on, and ultimately provide advice on each item.

The Expert Panel on Modern Federal Labour Standards

The Panel members are stated to bring a wide and diverse range of knowledge and expertise in labour policy, law and economics. The Panel will be chaired by Sunil Johal, Policy Director at the Mowat Centre, a public policy think tank at the University of Toronto. The rest of the Panel consists of the following individuals:

- Richard Dixon – a retired senior human resources and labour relations executive.
- Mary Gellatly – a community legal worker in the Workers’ Rights Division at Parkdale Community Legal Services in Toronto.
- Dalia Gesualdi-Fecteau – a member of the Quebec Bar and a professor with the Faculty of Law and Political Science at UQAM
- Kathryn A. Raymond, Q.C. – senior partner with BoyneClark in Dartmouth, N.S.
- Craig Riddell – Professor Emeritus at the Vancouver School of Economics, University of British Columbia.
- Rosa B. Walker – a member of Peguis First Nation of Manitoba and the Founder, President and Chief Executive Officer of the Indigenous Leadership Development Institute Inc.

The Five Issues

For each of the five issues, the Expert Panel’s Secretariat has prepared an “Issue Paper” to set out relevant information about the issue and to stimulate the Panel’s discussion. Each Issue Paper provides a brief background of the issue and then discusses some of the research and stakeholder perspectives particular to the issue. In some cases, the Issue Paper conducts a jurisdictional scan and looks at how other countries have dealt with the particular issue. Each Issue Paper concludes the discussion by setting out a number of questions for the Panel to consider.

Federal Minimum Wage

The federal minimum wage is currently pegged to the minimum wage in the province or territory in which the employee is usually employed. The Panel is tasked with considering whether the federal minimum wage should continue to be defined in this way or whether a federal minimum wage should be re-established. If it is the latter, the Panel must consider the legislative mechanism to do so, the dollar amount that the minimum wage should be set at, and which workers would be entitled to it. The Panel is also specifically asked to consider a federal minimum wage of \$15 and whether such a wage would disproportionately benefit or negatively impact anyone.

Labour Standards Protection for Workers in Non-Standard Work

This issue arises as a result of the increase in non-standard employment and the fact that the Code standards mainly apply to workers in traditional employment relationships. As a result, a growing number of workers may not have access to Code protections. The Panel will consider this issue by

addressing the following questions:

- Who should be covered by federal labour standards?
- Should workers in non-standard work be covered by all labour standards or only a selection of core federal labour standards? If so, what standards should apply?
- Should other federal programs be examined to better protect workers in non-standard work?

Disconnecting from Work-Related e-Communications Outside of Work Hours

Both management and workers can relate to this particular issue. Advances in technology and the growing popularity of alternative work arrangements have “blurred” the lines between being “at work” and “off the clock”. The Panel must consider whether this is an issue in the federally-regulated private sector and whether work-related e-communications after work hours are something that should be regulated. If so, the Panel will consider what mechanisms would best serve to do this and what the impact on society, business and the economy would be.

Access and Portability of Benefits

This issue again arises at least in part as a result of the rise in non-traditional employment. Workers in non-traditional employment, as well as workers that change jobs frequently, may not have access to various types of benefits. These include vacations, leaves of absence and employer-provided benefits such as medical, dental, pension and registered savings plans. The Panel will consider the following questions:

- Which benefits should be statutory and/or universal and which should be optional and for whom?
- Who should be responsible for benefits? What should the roles be for the federal government, employers, workers, insurers and others?
- Should the federal government take further steps to enhance access to benefits and enable portability? If so, are there specific models that should be considered and why?
- Should the federal government take further steps to enhance security of employer-provided benefits in the federal private sector and if so, how?

Collective Voice for Non-Unionized Workers

The changes in Canada’s workplace are not limited to simply the rise in non-standard employment. In recent years membership in unions has declined, alternative work arrangements have become more common, and a number of legal decisions relating to the right to collectively bargain have been issued. As a result of these developments, the Panel will consider whether non-unionized workers have opportunities to collectively express their views on labour standard issues. Specifically, the Panel will consider whether there is a need to enhance opportunities for such a

collective voice. The Panel will determine whether there are gaps or barriers in the Code that impact the collective voice of non-unionized workers. If there are, the Panel will consider whether, and how, these should be addressed.

In our view

The Panel is expected to report back to the Minister of Employment, Workforce Development and Labour by June 30, 2019. We anticipate that details relating to the Panel's consultations will be released in the very near future. More information about the Panel, its members and mandate, and the five issues can be accessed through the following link: <https://www.canada.ca/en/employment-social-development/campaigns/expert-panel.html#h2.3>

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