

# Federal Government Proposes Significant Amendments to the Canada Labour Code in Bill C-86

**Date :** November 29, 2018

On October 29, 2018, the federal government tabled Bill C-86, an omnibus bill aimed at implementing further aspects of the government's Budget 2018. The Bill introduces a new *Pay Equity Act* and contains provisions amending the *Canada Labour Code* (the "Code"). The Standing Committee on Finance adopted some amendments to the proposed *Pay Equity Act* and other provisions of the Bill, while the Code provisions remained unchanged. The amendments were accepted on November 27, 2018 at the Report stage, and the Bill is currently awaiting Third Reading in the House of Commons.

In a previous Focus Alert, we discussed on an introductory basis the *Pay Equity Act* and the Code provisions of the Bill (see "[Federal government introduces significant amendments to labour standards provisions under Part III of the Canada Labour Code as well as proposing new Pay Equity legislation](#)"). In this Focus Alert, we take a more in-depth look specifically at the Bill's changes to the *Canada Labour Code*, which provide employees with greater protections that are more in line with provincial employment standards legislation. A separate Focus Alert discussing the *Pay Equity Act* in greater detail will be released shortly.

## Highlights of the Changes

### Health Care Practitioners

The definition of "qualified medical practitioner," meaning a person who is entitled to practise medicine under the laws of a province, will be repealed, and the term "health care practitioner," meaning a person lawfully entitled, under the laws of a province, to provide health services in the place in which they provide those services, will be used instead.

### Breaks and Rest Periods

Employees will be entitled to an unpaid break of at least 30 minutes during every period of five consecutive hours of work, with exceptions in certain circumstances of serious or imminent threats, including a threat to the life, health, or safety of any person, a threat of damage or loss of property, or a threat of serious interference with the ordinary working of the employer's industrial establishment. If the employer requires the employee to be at the employer's disposal during the break, then the break will be paid.

Employees will also be entitled to a rest period of at least eight consecutive hours between shifts or work periods, unless it is necessary for them to work in order to deal with certain serious or imminent threats.

Employees will be entitled to any unpaid breaks that are necessary for medical reasons. Employees must provide, upon an employer's written request, a certificate from a health care practitioner setting out the length and the frequency of the breaks that are needed for medical reasons.

Employees will be entitled to any unpaid breaks that are necessary for them to nurse or express breast milk.

## **Work Schedules**

Employers will have to provide employees with their schedules in writing at least 96 hours before the start of their first shift under that schedule. Employees will be entitled to refuse to work any shift in that schedule that starts within 96 hours after they receive the schedule, except in the serious or imminent circumstances outlined above.

Employers will not be allowed to dismiss, suspend, lay off, demote or discipline ("take reprisals against") an employee who refuses a shift in these circumstances.

## **Vacation, Vacation Pay and Holidays**

The current *Code* provisions provide two weeks of vacation to all employees, increasing to three weeks after six years of employment. The amendments will provide employees with vacation in accordance with the following:

- Two weeks of vacation for employees who have completed at least one year of employment;
- Three weeks of vacation for employees who have completed at least five consecutive years of employment; and
- Four weeks of vacation for employees who have completed at least ten consecutive years of employment.

Where the *Code* previously provided for vacation pay at the rate of 4%, increasing to 6% after six consecutive years of employment, the new provisions provide for the following:

- 4% of their wages during the year of employment in respect of which they are entitled to the vacation;
- 6% of their wages during the year of employment in respect of which they are entitled to the vacation, if they have completed at least five consecutive years of employment with the same employer; and
- 8% of their wages during the year of employment in respect of which they are entitled to the vacation, if they have completed at least 10 consecutive years of employment with the same employer.

Employees are currently exempted from entitlement to holiday pay for a general holiday that occurs in their first 30 days of employment. The amendments will entitle all employees to holiday pay equal to at least one twentieth of the wages, excluding overtime pay, that the employee earned with the employer in the four-week period immediately preceding the week in which the general holiday occurs.

### **Leave for Court or Jury Duty**

Employees will be provided with a leave of absence to attend court to:

- Act as a witness in a proceeding;
- Act as a juror in a proceeding; or
- Participate in a jury selection process.

### **Medical Leave of Absence**

Employees will be entitled to a medical leave of absence of up to 17 weeks as a result of:

- Personal illness or injury;
- Organ or tissue donation; or
- Medical appointments during working hours

Employers can request a certificate from a health care practitioner for absence of three days or more. Employees must give notice of their intention to take medical leave of absence at least four weeks in advance, or as soon as possible if there is a valid reason why the notice could not be given.

Employees are entitled to be informed of employment, promotion, or training opportunities during their period of leave for which they are qualified. Employers are prohibited from taking reprisals against an employee as a result of medical leave.

Where an employee, upon return from medical leave, is unable to perform the work that they performed prior to their leave, employers are able to assign employees to different positions with different terms and conditions of employment.

Employers will have obligations to continue benefits coverage, so long as employees uphold their obligations to contribute to their coverage as required.

### **Personal Leave**

Every employee will be entitled to a leave of absence from employment of up to five days in every calendar year for:

- treating their 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.

The first three days of personal leave will be with pay for employees who have completed three consecutive months of employment. Leaves of absence under this heading can be taken in one or more periods, but the employer can require that each period of leave be not less than one day.

The employer may request in writing that the employee provide documentation to support the leave, and the employee will be required to provide where it is reasonably practicable for them to do so.

### **Pregnancy and Parental Leave – Aggregate Leave**

The maternity and parental leave provisions have been amended to address aggregate leave taken by more than one employee. Where the language previously referred to the aggregate leave taken by “two employees” in relation to parental leave, or pregnancy and parental leave, that wording now refers to aggregate leave taken by “more than one employee.”

For parental leave, the maximum aggregate leave has been increased from 37 to 71 weeks, but the amount of leave taken by one employee in respect of the same birth or adoption cannot exceed 63 weeks. For pregnancy and parental leave, the maximum aggregate leave has been increased from 52 to 86 weeks, but the aggregate amount of leave taken by one employee in respect of the same birth shall not exceed 78 weeks.

### **Leave of Absence for Members of the Reserve Force**

This leave will now be available to employees who have completed at least three consecutive months of continuous employment, rather than six months. Leave taken under this section for an operation in Canada or abroad, an activity as set out in the regulations, annual training or training required by law cannot exceed 24 months in a 60-month period, unless it is the result of a national emergency.

### **Leave Related to Death or Disappearance**

Every employee, and not just those who have completed six consecutive months of continuous employment, will be entitled to leave if they are the parent of a child who has died or disappeared, and it is probable that the death or disappearance was the result of a crime. The length of the leave

will stay at 104 weeks where it is probable that the child has died, and 52 weeks where it is probable that the child has disappeared.

## **Family Violence Leave**

The first five days of family violence leave will be paid for employees who have completed three months of consecutive employment.

## **Equal Treatment Based on Employment Status**

Employers may not pay an employee a lesser rate of wages than another employee because of a difference in employment status (for example, full-time, part-time, casual, temporary, seasonal) if:

- they work in the same industrial establishment;
- they perform substantially the same kind of work;
- the performance of that work requires substantially the same skill, effort and responsibility;
- their work is performed under similar working conditions; and
- any other factor that may be prescribed by regulation is present.

Where the differences in wage rates are due to a system based on seniority, merit, or the quantity or quality of each of the employees' production, the prohibition will not apply.

Employers will not be allowed to reduce wages in order to comply with this provision.

If an employee believes that the employer is not complying with this provision, an employee will be able to request a review. Within 90 days of the request, the employer must conduct a review, and provide the employee with a written response either confirming that the rate of wages has been raised to comply with the provision, or stating that the rate of wages is already in compliance, along with reasons why.

If wages are raised to comply with the provision, then the employee must be provided with an amount equal to the difference between the two rates of wages from the day on which the employee made their request for a review to the day on which the employer starts paying the employee the increased rate.

Employers will be prohibited from taking reprisals against employees who make such requests, or from taking such requests into consideration in decisions to provide employees with promotions or training.

Employees will also be entitled to notice of employment opportunities regardless of their employment status, if the employer has a practice of informing its employees in writing of employment or promotion activities.

## Temporary Help Agencies

The Bill adds a new Division relating to temporary help agencies to the *Code's* Multi-Employer Employment section.

There are general prohibitions applicable to temporary help agencies, including:

- charging a fee to a person in connection with him or her becoming its employee;
- charging a fee to its employee for assigning or attempting to assign him or her to perform work for a client;
- charging a fee to its employee for any assignment or job preparation services, including assisting him or her in preparing resumes or preparing for job interviews;
- charging a fee to its employee for him or her establishing an employment relationship with one of its clients;
- charging a fee to a client for establishing an employment relationship with an employee if the day on which the employee's first assignment with the client started is more than six months before the day on which the client establishes the employment relationship with the employee; and
- preventing or attempting to prevent an employee from establishing an employment relationship with a client.

If an employee is required to pay any of the fees described above, the employer must pay the employee an amount equal to that fee.

Equal treatment provisions similar to those outlined for employment status will exist for temporary help agencies. They will not be able to pay their employees less than the rate that the client pays to its employee if:

- they work in the same industrial establishment;
- they perform substantially the same kind of work;
- the performance of that work requires substantially the same skill, effort and responsibility;
- their work is performed under similar working conditions; and
- any other factor that may be prescribed by regulation is present.

Exceptions include differences in wage rates due to a system based on seniority, merit, the quantity or quality of each employee's production, or any other prescribed criterion.

Similar to the employment status provisions, clients cannot reduce wage rates so that employers comply with this provision. Employees have a right to seek a review, and employers are not allowed to take reprisals against their employees for exercising that right. Employers cannot take such requests into consideration when deciding to promote, train, or provide an assignment to an employee.

The *Code's* inspection provision will apply to an employer's clients as if they were the employer, for the purposes of compliance inspections or complaints relating to the temporary help agencies provisions.

### **Continuous Employment Following Transfer of Work, Undertaking or Business**

An employee's employment will be deemed to be continuous with one employer where the employee is employed in or in connection with the operation of that work, undertaking or business, both before and after a lease or transfer from one employer to another if the work, undertaking or business is federal, or if it becomes federal due to the lease or transfer.

This section specifically stipulates that the provision and its protections apply to a work, undertaking, or business (or any part thereof) that was originally covered under provincial jurisdiction, but which became a federal work, undertaking or business as a result of the lease or transfer.

Where a contract is awarded to another employer through a re-tendering process, and that employer is responsible for carrying out a federal work, undertaking or business, and an employee is employed in or in connection with the operation both before and after the re-tendering, then the employee will be deemed to be continuously employed with one employer.

The provisions above will not apply where the employee starts work with the second employer more than 13 weeks after the day that is the earlier of:

- the employee's last day of employment by the first employer; and
- the day on which the federal work, undertaking or business is transferred or the first day the second employer carries out the federal work, undertaking or business, as the case may be.

The period of continuous employment includes any period of time where the work, undertaking or business was not federal in nature. Any period of time between the employment with the first employer and the employment with the second employer will not count towards the period of continuous employment, although the employee will still be considered to have been continuously employed if the period of time is less than 13 weeks.

With respect to an employee's employment with the second employer, these provisions will not apply regarding the calculation of an employee's notice or wages in lieu of notice if the first employer complied with its notice of termination obligations, or regarding the calculation of an employee's severance pay where the first employer paid severance pay.

### **Individual Termination**

The current individual termination entitlement under the *Code* is two weeks. The amendments increase these entitlements based on length of service. Notice requirements will be as follows, provided that the outlined years of employment below have been continuous:

- Two weeks if the employee has completed at least three consecutive months of employment;
- Three weeks if the employee has completed three years of employment;
- Four weeks if the employee has completed four years of employment;
- Five weeks if the employee has completed at least five years of employment;
- Six weeks if the employee has completed six years of employment;
- Seven weeks if the employee has completed seven years of employment; and
- Eight weeks if the employee has completed eight years of employment.

Notice can be provided in writing, or the employer can pay wages in lieu of notice, or use a combination of the two. Employers must also provide terminated employees with a written statement that outlines their vacation benefits, wages, severance pay and any other benefits and pay arising from employment.

## **Group Termination**

The group termination provisions have been amended to allow employers more flexibility.

In addition to the group termination notice that must be given to the Minister, individuals terminated as part of a group termination will also be entitled to receive notice. Where such notice is currently only two weeks, individuals in group terminations will receive at least eight weeks' notice. As with individual terminations, the notice can be provided in writing, or the employer can provide wages in lieu of notice, or a combination of the two.

Employers also have the option of providing 16 weeks' of wages in lieu of the 16-week notice to the Minister provided that notice to the Minister is given at least 48 hours before the group termination occurs. In such a case, the 16-week notice period will be deemed to begin on the date of the group termination.

If notice is given fewer than 16 weeks before the start date of the termination, and the employer doesn't pay 16-weeks' wages in lieu, the notice period will be deemed to start on the earlier of the day on which the employer gives notice to the Minister, and the day on which the employees receive written notice of termination.

Where an employee receives notice under the group termination provisions, employers are not allowed to reduce their wage rates or alter any other term and condition of employment without the employee's written consent. Between the date that notice is given, and the date that the employee is terminated, the employee must be paid their regular rate of wages for their regular hours of work.



If an employee remains employed for more than two weeks following the date specified in the notice, the employer is prohibited from terminating the employee unless the employee gives written consent, it is a dismissal for just cause, it is part of another group termination and the employer complies with the group termination requirements, or it is an individual termination and the employer complies with the individual termination requirements.

Employees must be provided with a statement outlining their wages and benefits, as with individual terminations.

### **Reimbursement of Work-Related Expenses**

Employers will be required to provide reimbursement for reasonable work-related expenses, except for the following:

- An expense that is ineligible under the regulations;
- For an employee subject to a collective agreement, an expense that the employee is required to pay in accordance with the collective agreement or any other written agreement between the employer and union; and
- In the case of an employee not subject to a collective agreement, an expense that the employee is required to pay in accordance with any written agreement between the employer and the employee.

Time limits for repayment will be governed by the collective agreement, if applicable, or written agreement between the employee or trade union and the employer.

### **Minimum Age of Employment**

Where currently employees under 17 years of age can only be employed in certain occupations prescribed in the regulations, and subject to prescribed conditions (such as not being required by provincial law to attend school), that age has now been raised to 18.

### **In Our View**

The proposed changes are extensive and if the Bill is passed in its current form, it will create greater obligations for federally-regulated employers. Among other things, employers will have to adapt operationally to the new types of leave available to employees, liability upon termination will be greater as a result of the increased notice requirements, and employers will see an increase in costs associated with greater leave and vacation entitlements, as well as the equal pay requirements.

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