

New federal labour standards take root; federal employers take heed!

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Many of the employment standards changes that the federal government worked through Parliament over the past year are coming into effect on September 1, 2019. Federal employers must now be ready to adopt new practices to avoid penalties.

The standards coming into effect on September 1, 2019, are:

Right to request flexible work arrangements

After six (6) consecutive months of employment, employees will be entitled to request changes to their hours of work, work schedule, or work location. The request must be written, and the employer must respond in writing as soon as possible. The request can only be denied on prescribed grounds. In such a case, the employer must provide an explanation for denying the request.

Notice of shift changes

An employer will be required to provide affected employees with written notice of shift changes 24 hours before the change is scheduled to take effect.

Notice of schedule

Employers will be required to provide employees with their work schedule in writing 96 hours before the start of the first scheduled work period. An employee can refuse to work shifts within 96 hours of his schedule being delivered to him.

Right to refuse overtime

Employees will have the right to refuse to work overtime when it prevents them to fulfill their family

responsibilities. "Family responsibilities" are defined to include the health or care of a family member and the education of a family member under 18 years of age. Employees will be required to show that they unsuccessfully took reasonable steps to carry out their responsibilities.

Time off in lieu of overtime pay

Employees and employer will be able to agree in writing to allow for the banking of time off in lieu of overtime pay at the rate of 1.5 times for each hour of overtime worked. Banked time must be used within three (3) months following the pay period in which it was earned, after which time unused banked time must be paid out.

Unpaid breaks

Employees will be entitled to 30 minutes of unpaid break for every five (5) consecutive hours worked. If the employee must remain at the employer's disposal during the break, the break must be paid.

Rest period

Employees will be entitled to a rest period of at least eight (8) consecutive hours between each work period or shift.

Breaks for medical reasons or nursing

Employees will be entitled to unpaid breaks that are necessary for medical reasons. The employer may request a medical certificate justifying the breaks.

Nursing employees will be allowed unpaid breaks when they need to nurse their child or express breast milk.

Holiday pay

All employees will be entitled to holiday pay from the first day of employment. The calculation for holiday pay remains the same.

General holidays substitution

An employer will be allowed to substitute any other day for a general holiday if the substitution is approved by the affected employee, or 70% of employees when more than one employee is affected.

Annual vacation with pay

Employees' vacation entitlement will be improved as follows:

- after 1 year of employment: 2 weeks of vacation and 4% vacation pay
- after 5 years of employment: 3 weeks of vacation and 6% vacation pay
- after 10 years of employment: 4 weeks of vacation and 8% vacation pay

Employees will be allowed to break up their vacation time into more than one period. Employees will also be allowed to interrupt and postpone vacation in order to take statutory leave.

Leave for victims of family violence

This new leave will be available to every employee who is a victim of family violence or who is a parent of a child who is a victim of family violence. Employees will be entitled to take up to 10 days of unpaid leave each year to deal with the impact of family violence. If the employee has worked three (3) consecutive months for the employer, the first five (5) days of this leave are paid.

Leave for traditional aboriginal practices

Employees who are aboriginal persons and who have completed three (3) consecutive months of continuous employment will be entitled to five (5) days of unpaid leave each year in order to engage "in traditional Aboriginal practices", such as hunting, fishing, harvesting, or other practices. The employer may request written proof that the employee is an aboriginal person.

Bereavement leave

Leave for bereavement caused by the death of an immediate family member is increased to five (5) days. The first three (3) days will be paid if the employee has been employed for three (3) consecutive months.

Leave can be taken in one (1) or two (2) periods in the period beginning with the day of death until six (6) weeks after the funeral, burial, or memorial service occurs.

Leave for court or jury duty

Every employee will be entitled to a leave of absence to attend court as a witness in a proceeding, to act as a juror, or to participate in a jury selection process.

Medical leave

This new leave will replace the existing sick leave. An employee will be entitled to take up to 17 weeks of leave as a result of personal illness or injury; organ or tissue donation; and medical appointments during working hours. The employer may require a medical certificate for leaves of three (3) days or more. Pension, health and disability benefits, and seniority continue to accumulate during the leave.

Personal leave

This new leave will provide employees with up to five (5) days of leave each year in order to treat their own illness or injury; care for the health of a family member; help with the education of a family member under 18 years of age; address any urgent matter concerning themselves or a family member; or attend a citizenship ceremony.

The first three (3) days will be paid if the employee has been employed for three (3) consecutive months.

Leave of absence for members of the reserve force

After three (3) consecutive months of employment, employees who are members of the reserve force may take up to 24 months of leave in any 60-month period for the purposes of an operation in Canada or abroad, training or any prescribed activity.

Removal of continuous employment requirement for leave

Maternity leave, parental leave, leave related to critical illness, and leave related to death or disappearance will be opened to all employees, regardless of months of service.

Health care practitioners

"Health care practitioner" is substituted to "qualified medical practitioner". The definition of a "health care practitioner" is wider than a doctor or a nurse and includes "a person who is entitled, under the laws of a province, to provide health services in the place in which they provide those services".

Transfer of work, undertaking or business

When an employee is employed in connection with federal work, undertaking or business that is being transferred, leased or awarded through a re-tendering process, his employment is deemed to be continuous if it was connected to the work, undertaking or business both before and after the transfer, lease or award of work.

In our view

Federally regulated employers should familiarize themselves with the new standards and their new obligations, and rights, under those standards. Employers should also review their policies and practices in order to be ready to respond to new requests from employees. For unionized organizations, the legislation provides for some alterations of the standards described above that are related to scheduling and holidays when a collective agreement is in place.

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