

Amendments to Part III of the *Canada Labour Code*

July 9, 2019

Bill C-63, the *Budget Implementation Act, 2017, No. 1*, passed Third Reading in the Senate on December 13, 2017 and received Royal Assent on December 14, 2017. Bill C-86, the *Budget Implementation Act, 2018, No. 2*, passed Third Reading in the Senate on December 10, 2018 and received Royal Assent on December 13, 2018.

Taken together, these two pieces of legislation introduce significant amendments to Part III of the *Canada Labour Code* (the “Code”). Many of these amendments take effect on **September 1, 2019**. Others will take date by order of the Governor in Council.

This briefing note summarizes the key amendments to the *Code*.

KEY AMENDMENTS IN FORCE SEPTEMBER 1, 2019

Hours of Work

- **Breaks.** An employee is entitled to an unpaid break of 30 minutes during every period of five consecutive hours of work. If the employer requires the employee to be at its disposal during the break, the employee must be paid for the break. The employer can postpone or cancel this break if it is necessary for the employee to deal with a situation the employer could not have reasonably foreseen and one that could reasonably be expected to present an imminent or serious (1) threat to life, health or safety of any person, (2) threat of damage to or loss of property or (3) threat of serious interference with the ordinary working of the employer’s industrial establishment.
- **Rest Period.** An employee is entitled to a rest period of eight consecutive hours between work periods or shifts. An employer may require an employee to work in excess of this threshold if it is necessary for the employee to deal with a situation the employer could not have reasonably foreseen and one that could reasonably be expected to present an imminent or serious (1) threat to life, health or safety of any person, (2) threat of damage to or loss of property or (3) threat of serious interference with the ordinary working of the employer’s industrial establishment.
- **Notice - Shift Change.** An employee must be provided with 24 hours’ written notice of any change in a work period, including the addition of a work period or shift. This requirement will not apply if the shift change or addition is necessary in order to deal with a situation the employer could not have reasonably foreseen and one that could reasonably be expected to

present an imminent or serious (1) threat to life, health or safety of any person, (2) threat of damage to or loss of property or (3) threat of serious interference with the ordinary working of the employer's industrial establishment.

- **Notice - Work Schedule.** An employee must be provided with his or her work schedule in writing at least 96 hours before the start of his or her first work period under that schedule. An employee given fewer than 96 hours can refuse to work unless it is necessary for the employee to work in order to deal with a situation the employer could not have reasonably foreseen and one that could reasonably be expected to present an imminent or serious (1) threat to life, health or safety of any person, (2) threat of damage to or loss of property or (3) threat of serious interference with the ordinary working of the employer's industrial establishment.

An employer cannot engage in a reprisal against an employee for refusing to work in accordance with this section.

This section does not apply to an employee under a collective agreement that specifies an alternate time frame for providing a work schedule or states this section of the *Code* does not apply to that employee.

Overtime

- **Overtime Time Off.** An employee is entitled to time off in *lieu* of overtime pay, to be granted at a rate of not less than 1 ½ hours off with pay for each hour of overtime worked. Time off in *lieu* is only permissible where it is provided at the employee's request and the employer and employee enter into a written agreement about when banked overtime will be taken. Banked overtime is to be used within three months of the pay period in which it was worked or any longer period that may be agreed upon in writing, but in no case can it be banked in excess of 12 months. If banked time is not taken in the time period agreed upon (or there is banked time when employment terminates) it is to be paid out.
- **Right to Refuse Overtime.** An employee may refuse to work overtime in order to carry out a family responsibility, where the employee has taken reasonable steps to carry out the family responsibility in order to be able to work the overtime but remains unable to do so. An employee is not to refuse overtime if it is necessary in order to deal with a situation the employer could not have reasonably foreseen and one that could reasonably be expected to present an imminent or serious (1) threat to life, health or safety of any person, (2) threat of damage to or loss of property or (3) threat of serious interference with the ordinary working of the employer's industrial establishment.

Flexible Work Arrangements

- **Right to Request.** After six months of employment, an employee has the right to request a change to work hours, schedule, location of work, or any other prescribed term and condition of employment. Any such request must be made in writing and must include:

- the employee name;
 - the date of request;
 - a description of the change requested;
 - the date on which the change would take effect and, if temporary, the date it would cease; and
 - an explanation of the effect the requested change would have on the employer and the manner in which the employer could manage that effect (in the employee's opinion).
- **Employer Decision.** An employer shall make a decision as to whether or not to grant the request, in whole or in part. A decision must be provided in writing within 30 days of the request being made. A request may be refused on the following grounds where:
 - the requested change would result in additional costs that would be a burden on the employer;
 - the requested change would have a detrimental impact on quality or quantity of work, ability to meet customer demand, or any other aspect of performance within the employer's establishment;
 - the employer is unable to reorganize work or recruit additional employees to manage the change; or
 - there would be insufficient work available for the employee if the request were to be granted.
 - **Reprisal Prohibited.** An employer shall not dismiss, suspend, lay off, demote or discipline an employee for making a request for a flexible work arrangement, or take the request into account in deciding whether to train or promote the employee.

Annual Vacation

- **Annual Vacation with Pay.** An employee is entitled to and shall be granted an annual vacation with vacation pay of:
 - at least two weeks after one year of employment with the same employer;
 - at least three weeks after five or more consecutive years of employment with the same employer; and,
 - at least four weeks after 10 or more consecutive years of employment with the same employer.
- **Calculation of Vacation Pay.** An employee is entitled to vacation pay equal to:
 - 4% of the wages earned in the vacation entitlement year;
 - 6% of the wages earned in the vacation entitlement year, after five or more consecutive years of employment with the same employer; and,
 - 8% of the wages earned in the vacation entitlement year, after 10 or more consecutive years of employment with the same employer.

General Holidays

- **First 30 Days of Employment.** An employee is now entitled to receive holiday pay for a general holiday that occurs in the first 30 days of employment.

“Health Care Practitioner” Definition

- This term is defined as a person lawfully entitled to provide health services. Prior to this amendment, there had been references in Part III of the *Code* to certain information being provided by a “medical practitioner”; that information may now be provided by a “health care practitioner”.

Breaks for Medical Reasons or Nursing

- **Medical Breaks.** Every employee is entitled to and shall be granted an unpaid break necessary for medical reasons. The employer can request and the employee must provide a certificate from a health care practitioner setting out the length and frequency of the break needed and any additional information that may be prescribed by regulation.
- **Nursing Breaks.** Every employee who is nursing is entitled to and shall be granted an unpaid break necessary for the employee to nurse or express breast milk.

Service Recognition for Leaves of Absence

- **Maternity Leave Entitlement.** An employee does not need to be employed for six consecutive months to be eligible for maternity leave – every applicable employee will be entitled to take this leave, regardless of length of employment.
- **Parental Leave Entitlement.** An employee does not need to be employed for six consecutive months to be eligible for parental leave – every applicable employee will be entitled to take this leave, regardless of length of employment.
- **Leave Related to Critical Illness Entitlement.** An employee does not need to be employed for six consecutive months to be eligible for critical illness leave – every applicable employee will be entitled to take this leave, regardless of length of employment.
- **Leave Related to Death or Disappearance Entitlement.** An employee does not need to be employed for six consecutive months to be eligible for a leave related to death or disappearance – every applicable employee will be entitled to take this leave, regardless of length of employment.

Leave for Victims of Family Violence

- **Length of Leave.** An employee who is a victim of family violence or is the parent of a child who is the victim of family violence is entitled to up to 10 days of unpaid leave each calendar year to enable the employee, in respect of such violence, to:
 - seek medical attention in respect of any physical or psychological injury or disability;
 - obtain services from a victim of family violence organization;
 - obtain psychological or other professional counselling;
 - relocate temporarily or permanently;

- seek legal or law enforcement assistance or prepare for or participate in any legal proceeding.
- **Leave with Pay.** If an employee has completed three consecutive months of continuous service, the first five days of the leave are with pay at the employee's regular rate of wages for the employee's normal hours of work.
- **Documentation.** The employer may request, within 15 days of an employee's return to work, documentation to support the reasons for the leave. The employee shall only be required to produce the documentation if it is reasonably practicable to obtain and provide it.

Leave for Traditional Aboriginal Practices

- **Length of Leave.** After three months of continuous employment, an employee who is an Aboriginal person (Inuit, Indian or Metis) is entitled to up to five days of unpaid leave each calendar year to engage in traditional Aboriginal practices, including hunting, fishing and harvesting.
- **Documentation.** The employer may request, within 15 days of an employee's return to work, documentation showing the employee as an Aboriginal person. The employee shall only be required to produce the documentation if it is reasonably practicable to obtain and provide it.

Bereavement Leave

- **Length of Leave.** Every employee is entitled to up to five days of unpaid leave for the death of an immediate family member. This is an increase from three days of leave. The period in which the leave can be taken has been extended, such that it may be taken as of the date of death and ending six weeks after the funeral, burial or memorial service (whichever occurs last).

Personal Leave

- **Length of Leave.** Every employee is entitled to up to five days of leave every calendar year to:
 - treat his or her illness or injury;
 - carry out responsibilities related to the health or care of a family member;
 - carry out responsibilities related to the education of a family member under 18;
 - address an urgent matter concerning the employee or an employee's family member;
 - attend the employee's citizenship ceremony;
 - any other prescribed reason.
- **Leave with Pay.** If an employee has completed three consecutive months employment, the first three days of the leave are with pay at the employee's regular rate of wages for the employee's normal hours of work.

- **Documentation.** The employer may request, within 15 days of an employee's return to work, documentation to support the reasons for the leave. The employee shall only be required to produce the documentation if it is reasonably practicable to obtain and provide it.

Leave for Court or Jury Duty

- **Entitlement.** Every employee is entitled to an unpaid leave of absence to act as a witness, act as a juror, or to participate in jury selection.

Medical Leave (This section replaces the former Sick Leave)

- **Entitlement.** Every employee is entitled to and shall be granted an unpaid medical leave of absence from employment of up to 17 weeks for:
 - personal illness or injury;
 - organ or tissue donation; or
 - a medical appointment during working hours.
- **Certificate.** An employer can request a certificate from a health care practitioner certifying the employee was incapable of work during the period of absence if the leave is for three days or more.
- **Notice.** An employee must provide the employer with written notice of the leave at least four weeks in advance unless there is a reason notice cannot be given, in which case notice must be given as soon as possible.
- **Employment Opportunities.** Upon written request, an employee is entitled to be informed of every employment, promotion or training opportunity for which the employee is qualified, that arises during the period of the leave.
- **Prohibition.** Employer may not reprimand an employee for intending to or taking a medical leave.

Leave of Absence for Member of the Reserve Force

- **Entitlement.** An employee will be entitled to this leave after three consecutive months of continuous employment, or a shorter period as prescribed.
- **Length of Leave.** This leave cannot exceed an aggregate of 24 months in a 60-month period.

Transfer of Work, Undertaking or Business

- **Expanded Application.** The existing section provides that, where a transfer of work occurs from one employer to another, employment shall be deemed to continue despite the transfer. This has been expanded to expressly provide that this provision will also apply where an

employer was provincially-regulated but becomes federally-regulated by virtue of a lease or transfer of all or part of its operation.

- **Application on Retendered Contract.** The provision has also been expanded to apply to the circumstance where a second employer becomes responsible for carrying out any particular federal work through the re-tendering of a contract.
- **Exception for Break in Service.** These sections will not apply where there has been a break in service of more than 13 weeks.
- **Notice of Termination Exception.** An employee will not be entitled to have his or her notice of termination entitlement calculated based on the total length of service with both employers if the first employer provided notice of termination, or pay in *lieu*, in accordance with the *Code* at the time of the transfer.

KEY AMENDMENTS NOT YET ENACTED

Application

- **Prohibition.** An employer is prohibited from treating an employee as if he or she was not an employee in order to avoid its obligations or deprive the employee of his or her rights. Where an employer claims a person is not an employee, the employer bears the onus of proof.

Minimum Wage and Age of Employment

- **Employee Under 18 Years of Age.** Restrictions are now imposed on the employment of a person under 18 years of age as opposed to under 17 years of age.

Equal Treatment

- **Prohibition - Rate of Wages.** An employer is prohibited from paying one employee a rate of wage that is less than another employee due to a difference in employment status if:
 - they work in the same industrial establishment;
 - they perform substantially the same kind of work;
 - performance of that work requires substantially the same skill, effort and responsibility;
 - their work is performed under similar working conditions; and
 - any other prescribed factor.

Unless, the difference in the rate of wage is due to a system based on:

- seniority;
- merit;
- quantity or quality of each employee's production; or
- any other prescribed criterion.

An employer cannot reduce an employee's wage rate to comply.

- **Request for Review.** An employee can request in writing that the employer review his or her rate of wage. The employer must conduct this review within 90 days and provide the employee with a written response which includes whether an increase is being given or reasons the employee's current rate of wage is compliant. If the rate of wage is increased, it is to apply retroactively to the day the request was made. An employer cannot reprimand an employee for requesting a review of wages under this section.
- **Notice of Employment Opportunities.** If it is the employer's practice to notify employees in writing of employment or promotion opportunities, the employer must inform all its employees, regardless of employment status.
- **Collective Agreement Provisions.** Where a collective agreement contains a provision permitting a difference in wage rate based on employment status, the provision is grandfathered for a period of two years after the equal pay provisions come into force.

Temporary Help Agencies - This applies specifically to a temporary help agency employer whose employees work on assignments in an industrial establishment.

- **Prohibition.** A temporary help agency employer is prohibited from:
 - charging a fee to a person for becoming its employee;
 - charging a fee to an employee for assigning or attempting to assign the employee to perform work for a client;
 - charging a fee to an employee for an assignment or job preparation service, including preparing a resume or for a job interview;
 - charging a fee to an employee for 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 the employee starts is greater than six months from the day the employment relationship is established; and
 - preventing or attempting to prevent an employee from establishing an employment relationship with a client.

If an employee pays any fee described above, the employer must pay to the employee an amount equal to that fee.

- **Equal Treatment.** A temporary help agency employer is prohibited from paying an employee a rate of wages lower than the rate the client pays to its employee. The same conditions for equal treatment apply as set out in the Equal Treatment division above and with the same exceptions. A client is prohibited from reducing the wage rates of its employees to ensure a temporary help agency employer complies with this equal pay requirement.
- **Request for Review.** An employee can request in writing that the temporary help agency employer review his or her rate of wage. The employer must conduct this review within 90 days and provide the employee with a written response which includes whether an increase is

being given or reasons the employee's current rate of wage is compliant. If the rate of wage is increased, it is to apply retroactively to the day the request was made. An employer cannot reprise against an employee for requesting a review of wages under this section.

- **Collective Agreement Provisions.** Where a collective agreement contains provisions permitting a difference in wage rates between an employee of the temporary help agency and a client's employee, the collective agreement provisions are grandfathered for a period of two years after the equal pay provisions come into force.

Group Termination of Employment

- **Application.** If an employer gives notice of a group termination and the number of employees is fewer than 50 (or a lesser number as prescribed) the termination of those employees is deemed to be a group termination.
- **Notice to the Minister.** An employer must give notice in writing to the Minister of any group termination at least 16 weeks before the employment of the first employee in a group termination is terminated.
- **Exception.** Rather than giving the Minister 16 weeks' notice of a group termination, if an employer terminates the employment of at least 50 employees (or a lesser number as prescribed) on the same day and pays them at least 16 weeks' notice, the group notice period is deemed to begin on that day and notice is to be given to the Minister at least 48 hours before that date. If notice is given under this section, a copy must be provided to any trade union representing a redundant employee on the date of the group termination.
- **Copies of Notice.** Copies of the notice must be given immediately to the Minister of Employment and Social Development (the "Minister"), the Canada Employment Insurance Commission and any trade union representing a redundant employee. If a redundant employee is not represented by a trade union, a copy must be immediately given to the employee or immediately posted in a conspicuous place within the industrial establishment in which the employee is employed.
- **Notice to the Employee.** In addition to notice to the Minister, an employer must provide each redundant employee whose employment is terminated during the group notice period:
 - notice in writing of the intention to terminate his or her employment on a date specified in the notice, which cannot be before the day after the group notice period ends, at least eight weeks before that date;
 - wages in *lieu* of notice, at his or her regular rate of wages for his or her regular hours of work, for at least eight weeks, or if it is greater, the number of weeks between the day on which employment is terminated and the day on which the group notice period ends; or
 - any combination of notice and wages in lieu of notice so that the total of the number of weeks of notice in writing and the number of weeks for which wages are paid in lieu of notice is equivalent to at least eight weeks, or, if it is greater, the number of

weeks between the day on which the employee is given notice of the date of the termination of his or her employment and the day on which the group notice period ends.

- **Failure to Give Notice.** For the purposes of calculating notice to the employee, if notice to the Minister is not given or copies are not provided to the appropriate parties, the group notice period is deemed to start on the earlier of the day on which the redundant employee receives written notice of the termination of their employment and the day of the termination of the employment of the employee.
- **Insufficient Group Notice.** If notice to the Minister is given fewer than 16 weeks before the date of the termination of employment of the redundant employee, the group notice period is deemed to start on the earlier of the day on which the employer gives notice to the Minister and the day on which the redundant employee received written notice of his or her termination of employment.
- **Displacement.** If an employer is bound to a collective agreement that allows a redundant employee to displace another employee on the basis of seniority, the displaced employee is a redundant employee. If a redundant employee displaces another employee, the employer must give the displaced employee notice and must give a copy of that notice to the trade union.
- **Conditions of Employment.** If an employee is provided with notice, or a combination of notice and pay in *lieu* thereof, the employer:
 - is prohibited from reducing the rate of wages or altering any term or condition of employment of the redundant employee without written consent of the employee; and
 - must, between the time the notice is given and the day on which the employee's employment is terminated, pay the employee his or her regular rate of wages for the employee's regular hours worked.
- **Expiration of Notice.** If an employee who is provided with notice or a combination of notice and wages in *lieu* thereof continues to be employed with the employer for more than two weeks after the date specified in the notice, the employer is prohibited from terminating the employee unless:
 - it is with their written consent;
 - it is by way of dismissal for just cause;
 - it is a termination of employment under another group termination and the employer complies with that Division; or
 - it is an individual termination of employment and the employer complies with Division X.
- **Statement of Benefits.** An employer must give each redundant employee whose employment is terminated a statement in writing that sets out their vacation benefits, wages, severance pay, and any other benefits and pay as at the date of the statement. This statement must be provided:

- in the case of an employee who receives notice (no wages in lieu of notice), as soon as possible but not later than two weeks before the date of the termination of his or her employment;
 - in the case of an employee who receives wages in lieu of notice, not later than the date of the termination of his or her employment; and
 - in the case of an employee who receives a combination of notice and wages in lieu of notice, as soon as possible, but not later than two weeks before the date of termination of his or her employment unless the period of notice is shorter, in which case, the day on which notice is given to the employee of the date of the termination of his or her employment.
- **Transitional Support Measures.** Unless an employer gives a redundant employee only notice (*i.e.*, not wages in lieu of notice or a combination of the two) they must provide the prescribed transitional support measures. If the employer fails to do so, the employee is entitled to be paid an amount equal to the prescribed value of those measures.

Individual Terminations of Employment

- **Application.** This Division does not apply to an employee who is redundant or subject to group termination or to an employee dismissed for just cause.
- **Notice.** An employer must give an employee notice in writing, wages in lieu of notice or any combination of notice and wages in *lieu* of notice so the total is equivalent to the applicable number of weeks:
 - two weeks, if the employee has completed at least three consecutive months of continuous service;
 - three weeks, if the employee has completed at least three consecutive years of continuous service;
 - four weeks, if the employee has completed at least four consecutive years of continuous service;
 - five weeks, if the employee has completed at least five consecutive years of continuous service;
 - six weeks, if the employee has completed at least six consecutive years of continuous service;
 - seven weeks, if the employee has completed at least seven consecutive years of continuous service; and
 - eight weeks, if the employee has completed at least eight consecutive years of continuous service.
- **Notice to Trade Union.** If a collective agreement authorizes an employee whose position becomes redundant to displace another employee on the basis of seniority, and the position of an employee who is so authorized becomes redundant, the employer must give at least the applicable number of weeks' notice in writing to the trade union and the employee that the employee's position has become redundant.

- **Right of displaced employee.** A displaced employee whose employment is terminated is entitled to notice or wages in *lieu* thereof.
- **Statement of Benefits.** An employer must give each employee whose employment is terminated a statement in writing that sets out their vacation benefits, wages, severance pay, and any other benefits and pay as at the date of the statement. This statement must be provided:
 - in the case of an employee who receives only notice (no wages in lieu of notice), as soon as possible but not later than two weeks before the date of the termination of his or her employment;
 - in the case of an employee who receives only wages in lieu of notice, not later than the date of the termination of his or her employment; and
 - in the case of an employee who receives a combination of notice and wages in lieu of notice, as soon as possible, but not later than two weeks before the date of termination of his or her employment unless the period of notice is shorter, in which case, the day on which notice is given to the employee of the date of the termination of his or her employment.

Reimbursement of Work-related Expenses

- **Entitlement.** Every employee is entitled to reimbursement for reasonable work-related expenses within the prescribed time limit or the time limit set out in a collective agreement or other agreement between the employer and employee. An employee is not entitled to be reimbursed for an expense prescribed by regulation to be ineligible, or one the employee is required to pay in accordance with a collective agreement or other agreement with the employer.

Administration and General

- **Information Related to Employment.** Within the first 30 days of employment, the employer must make available to the employee any material the Minister makes available regarding the rights and obligations of employers and employees. An employer must also provide these materials within 30 days of them being updated and post the most recent versions. In addition, not later than the last day of an employee's employment, an employer must provide the most recent materials that relate to termination of employment.

Employment Statement. Within first 30 days of employment, or 30 days of a change being made, an employer must provide an employee with a written statement of information prescribed by regulation. An employer must also retain the statements for 36 months after employment ends and provide copies to the employee if requested.

Head of Compliance and Enforcement

- **Minister to Designate.** The Minister can designate a person the Head of Compliance and Enforcement. If no Head of Compliance and Enforcement is designated, the Minister shall exercise those powers.

- **Powers of the Head.** Certain administrative and enforcement functions previously performed by other parties (*e.g.*, the Minister, inspectors, *etc.*) will be the responsibility of the Head.

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