

Recent and Upcoming Changes to Federal and Provincial Minimum Standards

July 16, 2019

Employers across Canada are being kept on their toes as the federal, provincial, and territorial governments continue to revise laws applicable to Canadian workplaces.

As we previously reported, on April 2, 2019, the Ontario government passed a number of amendments to the *Employment Standards Act, 2000* with Bill 66, the *Restoring Ontario's Competitiveness Act*. On May 15, 2019, Saskatchewan amended and expanded the leave provisions in *The Saskatchewan Employment Act*, and the Northwest Territories is considering amendments to the leave provisions of its *Employment Standards Act*.

The federal government, as well as Alberta and BC's provincial governments, have also been in the process of reviewing and amending minimum employment standards legislation. Certain amendments have already come into effect, while others are expected to take effect this fall. Some of these amendments are extensive and significant. We've outlined some of the key changes employers will want to know about below.

Changes to the *Canada Labour Code*

Over the past few years, the federal government has been drafting numerous significant changes to Part III of the *Canada Labour Code* (CLC) in an effort to modernize the minimum employment standards laws applicable to federally regulated employers and workers (for example, those in Crown Corporations, or those engaged in a federal undertaking such as banking, telecommunications and broadcasting, and air transportation). These changes have been provided for in a number of omnibus budget implementation bills, including Bill C-63, the *Budget Implementation Act, 2017, No. 2*, and Bill C-86, the *Budget Implementation Act, 2018, No.2*. Below are some of the key changes scheduled to come into force on September 1, 2019.

Shift Changes

- When an employer makes a change to an employee's shift, or adds another shift to the employee's schedule, the employer will be required to provide at least 24 hours written notice to the employee before the change or new shift is to begin.

Notice of Work Schedule

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- Employers will be required to provide employees with their work schedules in writing at least 96 hours before the start of the employee's first work period or shift under that schedule. Except in emergency circumstances, employees will have the right to refuse to work any work period or shift in their schedule that starts within 96 hours of the time the schedule is provided to them.

Overtime

- Entitlement to paid time off in lieu of overtime pay will be expressly provided for in the CLC. Paid lieu time will require the employee's request and written agreement with the employer providing for the time off.
- In certain cases, employees will have the right to refuse to work overtime requested by an employer in order to fulfil certain family responsibilities.

Right to Request Flexible Work Arrangements

- Employees with six consecutive months of service will be entitled to request a change to the number of hours the employee is required to work, the employee's work schedule, and/or the employee's location of work. The request must be in writing and include specific information, including the employee's opinion of both the effect that the requested change would have on the employer and how the employer could manage that effect.
- Employers must either grant the request, offer to grant the request in part or make an alternative change, or refuse the request on the basis of one of the specific grounds provided for in the CLC. These include if the change would result in additional costs that would be a burden, if the change would have a detrimental impact on the quality or quantity of work, or if the employer is unable to reorganize work or the workforce to manage the change. Written notice of the employer's decision, including reasons, must be provided to the employee within 30 days of the request.

Leaves

- The service requirements to be eligible for Maternity Leave, Parental Leave, Critical Illness Leave, Leave Related to Death or Disappearance, and Bereavement Leave, will be removed.
- Personal Leave – Employees will be entitled to a leave of up to five days in every calendar year for treating illness or injury, family health or care responsibilities, education of a family member under 18, urgent matters, and citizenship ceremonies. Employees with at least three consecutive months of service are entitled to have the first three days of personal leave paid.
- Leave for Victims of Family Violence - Employees who have experienced, or who have a child who has experienced family violence will be entitled to a leave of up to 10 days in every calendar year in order to enable the employee to seek various services and/or medical attention for themselves or their child in respect of that violence, or to relocate.
- Leave for Traditional Aboriginal Practices – Aboriginal employees with three months of service will

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be entitled to up to five leave days in order to engage in traditional Aboriginal practices, including hunting, fishing and harvesting.

- Medical Leave – The current Sick Leave entitlement will be called a Medical Leave, and the three-month service requirement for eligibility will be removed. 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 may require the employee to provide a medical certificate if the leave of absence is three days or longer.
- Leave of Absence for Members of the Reserve Force – The six-month service requirement for eligibility will be reduced to three months. A maximum leave time of 24 months in any 60-month period when the leave is taken in certain circumstances will be added.
- Bereavement Leave – Employees will be eligible for up to five days of bereavement leave (the first three of which will be paid for employees with at least three consecutive months of service) in the event of the death of a member of their immediate family.
- A Court/Jury Duty Leave will be added.

Breaks

- Employees will be entitled to an unpaid break of at least 30 minutes during every period of five consecutive hours of work.
- Employees will be entitled to a rest period of at least eight consecutive hours between work periods or shifts.
- Employees will be expressly entitled to:

o unpaid breaks that are necessary for medical reasons. Employers may request that the employee provide a medical certificate setting out the length and frequency of the breaks needed; and,

o unpaid breaks necessary for them to nurse or to express breast milk.

Vacation

- Employees will be entitled to:

o two weeks of paid vacation after one year of service;

o three weeks of paid vacation after five years of service; and,

o four weeks of paid vacation after 10 years of service.

Holiday Pay

- The 30-day service requirement in order to be eligible for public holiday pay will be removed.

Successor Employers

- The transfer of work, undertaking or business provisions will be expanded and revised, and will include provisions to apply to contract retendering, and to deem employment continuous where a transfer of a business occurs from a provincially regulated employer to a federally regulated employer.

Bill C-86 proposes certain other changes to the CLC related to employee misclassification, temporary help agencies, individual and group notice of termination, and reimbursement of work-related expenses. The date these changes are to come into force is still to be fixed by an order of the Governor in Council. We will continue to monitor these amendments and provide updates as information becomes available.

Changes to Alberta's Employment Standards Code

The recently elected United Conservative Party government has introduced a number of changes to *Alberta's Employment Standards Code* (the Code), including changes to minimum standards legislation which they have stated are part of their efforts to enhance Alberta's economy.

Already in effect is a reduction in the youth minimum wage. As of June 26, 2019, the minimum wage for employees 17 or younger was reduced from \$15 to \$13 per hour for the first 28 hours worked in a week while school is in session, and for all hours worked while school is not in session.

In addition, Bill 2, *An Act To Make Alberta Open For Business*, was passed on July 3, 2019. Bill 2 reverses certain amendments to the Code made by Alberta's former NDP government and provides for a number of changes to the overtime and general holiday pay provisions, effective September 1, 2019. These changes are outlined below.

Overtime

- Lieu time entitlements for overtime work will return to a ratio of 1:1 for time off with pay, instead of the existing ratio of 1:1.5

General Holiday Pay

- In order to be eligible for general holiday pay, employees must have worked at least 30 days in the previous 12 months before the general holiday.
- The Code will return to distinctions made on the basis of "normal" workdays, as follows:

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o If a holiday falls on a day that is **normally a workday** for the employee, and the employee works on the holiday, the employee is entitled to either:

- a) 1.5 times their regular wage rate for hours worked and their average daily wage; or,
- b) their regular wage rate for hours worked and one day off of work paid at the employee's average daily wage.

If the employee does not work on the holiday, the employee is entitled to his or her average daily wage.

o If a holiday falls on a day that is **not normally a workday** for the employee, and the employee works on the holiday, the employee is entitled to 1.5 times their regular wage rate for hours worked. If the employee does not work on the holiday, they are not entitled to any holiday pay.

o For employees with irregular schedules, the determination of whether the holiday falls on a “normal” work day is based on whether the holiday is on a weekday that the employee has worked five of the previous nine weeks.

Changes to British Columbia's *Employment Standards Act*

On May 30, 2019, Bill 8, the *Employment Standards Amendment Act, 2019* (ESA), received royal assent. Bill 8 significantly amends BC's ESA. The amendments are extensive and take effect in stages. Below are some of the key amendments in effect as of May 30, 2019.

ESA and Collective Agreements

- Previously, the ESA provided that if a collective agreement contained provisions relating to certain ESA standards, such as hours of work, overtime, vacation, recall, termination, or layoffs, the ESA would not apply. Now, collective agreements must meet or exceed the standards provided for under the ESA. This applies to collective agreements settled after May 30, 2019, the date this amendment came into force.

Resignation Notice Period and Termination Pay

- Where an employee with at least three consecutive months of employment provides notice of resignation, and the employer dismisses the employee without cause prior to the end of the resignation notice period, the employer is now required to pay the lesser of the remainder of the resignation notice period or, the employee's minimum notice entitlements required under the ESA.

Leaves

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- A new Critical Illness or Injury Leave has been added, providing eligible employees with up to 36 weeks of unpaid leave to provide care or support to a family member under the age of 19, or up to 16 weeks of unpaid leave to provide care or support to a family member who is 19 or older.
- A new Leave Respecting Domestic or Sexual Violence has been added. This provides up to 17 weeks of unpaid leave for employees who have experienced domestic or sexual violence, or who have certain specific relationships with a person who has experienced domestic or sexual violence, for the purpose of seeking various social and legal services, medical attention, and/or relocation in relation to the domestic or sexual violence.

Unpaid Wage Liability

- The period of time for which an employee may be awarded unpaid wages has increased from six months to 12 months prior to the complaint or termination of employment.
- New definitions of “director”, “officer” and “corporation” have been added for the purpose corporate officer personal liability for unpaid wages.

Information for Employees

- Employers must make available or provide a form to each employee describing their rights under the ESA.

Assignment of Wages

- Previously, employers were allowed to honour an employee’s written assignment of wages to “meet a credit obligation” and this could include an amount owing to the employer. This general reference to “credit obligation” has been narrowed to apply only to the following:

o An advance of wages paid to the employee from the employer, including vacation pay;

o An outstanding balance in respect of the purchase of goods or services from the employer by the employee; and,

o An outstanding balance in respect of the personal use of real and personal property of the employer by the employee.

Records

- The period for retaining certain employment records required under the ESA has been increased from two years to four years after employment ends or after the expiry of certain employer-employee agreements (e.g. an averaging agreement).

Sale of Business

- The ESA's sale of business provision deems employment continuous where all or part of a business or a substantial part of the entire assets of a business is disposed of by way of a sale or other corporate transaction. This has now been expanded to apply when a business goes into receivership.

Bill 8 makes a number of other amendments to the ESA which will come into force on a date to be set by regulation. These include amendments in relation to hiring children, temporary help agencies, and investigative powers and procedures. We will continue to monitor these amendments and provide updates as information becomes available.

For more on these changes, please contact Pamela Hinman or any other member of our Employment & Labour Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.