

Federal Post

Significant *Canada Labour Code* Reforms to Come Into Force September 1, 2019

Date: June 13, 2019

The federal government has proclaimed September 1, 2019 as the coming into force date for several changes to the *Canada Labour Code* (Code) as enacted by Bill C-63, the *Budget Implementation Act, 2017, No. 2* (Bill C-63). As a result of co-ordinated coming into force provisions, a number of substantive amendments to the Code contained in Bill C-86, the *Budget Implementation Act, 2018, No. 2* (Bill C-86) will also come into force on September 1, 2019.

The government has published amendments to the *Canada Labour Standards Regulations* which are intended to support the implementation of these new Code provisions.

The government has also published draft regulations on internships in the federal jurisdiction, which are currently open for public comment.

The details of these legislative and regulatory amendments are set out in this issue of the *Federal Post*.

1. Amendments to Code in force September 1, 2019

Enacted by Bill C-63

Bill C-63, which received Royal Assent on December 14, 2017, makes numerous changes to the Code that will come into force on September 1, 2019. They include:

- **Flexible Work Arrangements:** This new Division I.1 will permit employees with at least six months of continuous service to formally request a change in working conditions, such as a change to their work schedule, work location or such other conditions as prescribed by regulation. Among other things, employers must respond in writing either granting or denying the request or setting out an alternative change. The Division specifies the permissible grounds for denying an employee's request.
- **Notice of Shift Change:** The employer must give an employee at least 24 hours advance written notice of a shift change. This provision will not apply in situations that the employer could not reasonably have foreseen, for example those that present or could reasonably be expected to present an imminent or serious threat to the life, health or safety of any person, among other things.
- **Right to Refuse Overtime:** An employee may refuse to work overtime in order to carry out their family responsibilities as specified and subject to certain exceptions.
- **Leave for Victims of Family Violence:** This new leave provides an employee who is the victim of family violence, or who is the parent of a child who is the victim of family violence, up to ten days leave per calendar year. The leave must be used for certain prescribed purposes. Up to five days paid leave is provided where the employee has completed at least three consecutive months of continuous service (per Bill C-86 amendments).
- **Leave for Traditional Aboriginal Practices:** This new unpaid leave of up to five days per calendar year is restricted to Aboriginal persons (defined as Indian, Inuit or Métis) who have completed at least three consecutive months of continuous service. The leave is for the purpose of engaging in "traditional Aboriginal practices" such as hunting, fishing, harvesting or other prescribed practices.
- **Extended Bereavement Leave:** Bereavement leave entitlement is extended to add two additional unpaid days to the existing three paid days leave. The entitlement to leave begins on the day on which the death of the immediate family member occurs, up to six weeks after the latest of the days on which any funeral, burial or memorial service occurs.

- **Flexibility Regarding Time Off:** Subject to the regulations and certain specified conditions, an employee who works overtime can be granted 1.5 hours of time off with pay for each overtime hour worked. The employee and employer must agree in writing, and the time off must be used within three months unless otherwise agreed (but not longer than 12 months or other period specified in a collective agreement), failing which overtime pay must be paid out.
- **Unpaid Internships:** Bill C-63 repealed changes to the Code which had not yet been brought into force and which would have allowed for short-term internships in limited situations. As a result, unpaid internships are instead restricted to students participating in a recognized post-secondary education program.

Enacted by Bill C-86

Bill C-86, which received Royal Assent on December 13, 2018, makes numerous changes to the Code, a large number of which are tied to the coming into force of the Code amendments contained in Bill C-63. As a result of the coming into force of the provisions noted above, additional amendments found in Bill C-86 will also come into force on September 1, 2019. They include:

- **Unpaid Breaks:** Employees are entitled to an unpaid break of at least 30 minutes during every period of five consecutive hours of work, subject to certain exceptions.
- **Rest Periods:** Employees are entitled to a rest period of at least eight consecutive hours between shifts, subject to certain exceptions.
- **Notice of Work Schedule:** Employers must provide written notice to employees of their work schedule at 96 hours before the start of the first work period, subject to certain exceptions. Employees have the right to refuse to work any periods or shifts that start within 96 hours of the time the schedule is provided to them, subject to certain exceptions.
- **Medical and Nursing Breaks:** Subject to the regulations, employees are entitled to unpaid breaks necessary for medical reasons. Employees who are nursing are entitled to unpaid breaks to allow them to nurse or express breast milk.
- **Vacation Pay:** Vacation pay and time entitlements are increased to the following levels:
 - 2 weeks vacation (4% vacation pay) after one year employment
 - 3 weeks vacation (6% vacation pay) after five years employment
 - 4 weeks vacation (8% vacation pay) after ten years employment.
- **Transfer of Work / Retendering:** The continuity of service provision relating to transfer of work has been expanded to address continuity of service in cases of retendering or where a provincially regulated operation becomes federally regulated due to a change of activities.
- **Service Requirements:** Continuous service requirements for entitlement to holiday pay, maternity leave, parental leave, critical illness leave and death or disappearance leave have been removed. Service requirements for members of reserve forces is reduced to three months from six months.
- **Personal Leave:** Employees are entitled to five days of personal leave, the first three days of which are paid after three months of continuous employment. The leave is for specified reasons, including 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 or any other prescribed reason.
- **Medical Leave:** Medical Leave replaces "Sick Leave." Employees remain entitled to a medical leave of absence of up to 17 weeks. This can be used for personal illness or injury, organ donation or medical appointments during working hours. Where the leave is in excess of three days, the employer may require a certificate from a health care practitioner. Among other things, anti-reprisal protections apply to prevent disciplinary actions against employees who take Medical Leave.
- **Court or Jury Duty Leave:** Employees are entitled to a leave of absence to attend court to appear as a witness, act as a juror or participate in the jury selection process. There is no limitation on the length or frequency of such leaves.
- **Health Care Practitioners:** The requirement that a certificate be provided from a medical practitioner in certain cases has been removed. Certificates may now be provided from a health care practitioner, as defined.

Regulations

To coincide with the coming into force of these provisions of Bills C-63 and C-86, amendments to the *Canada Labour Standards Regulations* will also come into force on September 1, 2019. These supporting regulations, [Regulations Amending the Canada Labour Standards Regulations](#), were published on June 12, 2019.

Supporting Information

It is anticipated that the federal Labour Program will update any related publications to reflect these new Code provisions, as well as the new or modified regulatory requirements. Interpretation and guidance materials relating to these new rights and responsibilities are also expected in a timely manner, so as to allow sufficient time for the review and revision of any impacted workplace policies and procedures.

2. *Standards for Work-Integrated Learning Activities Regulations* – Proposed Regulations

On June 8, 2019, the federal government published the [Standards for Work-Integrated Learning Activities Regulations](#), proposed regulations to support changes to the Code made by the *Economic Action Plan, 2015, No. 1*, which are not yet in force.

The changes relate to internships that may be unpaid and that involve students of specified educational institutions involved in a work-integrated program.

The proposed Regulations set out the labour standards in Part III of the Code that would apply to students in work-integrated learning, including any adaptations of the Code or the *Canada Labour Standards Regulations* that may be necessary. They also set out an employer's record-keeping obligations.

Comments on the proposed regulatory text are invited within 30 days of June 8, 2019.

Should you have any questions about the incoming changes to the *Canada Labour Code*, please contact [your regular Hicks Morley lawyer](#).