

Federal Post

New Leave Relating to COVID-19 under *Canada Labour Code*

Date: March 26, 2020

On March 25, 2020, the federal government passed Bill C-13, [COVID-19 Emergency Response Act](#), which contains various fiscal and other measures designed to deal expeditiously with the COVID-19 pandemic in Canada. Included among these measures is an amendment to the *Canada Labour Code* (Code) which provides an unpaid leave of up to 16 weeks for employees who are unable or unavailable to work for reasons related to COVID-19. The COVID-19 Leave came into force on March 25, 2020. Note that we are addressing other measures contained in Bill C-13 in a [separate article](#).

The COVID-19 Leave

A new Division XIII.01, Leave Related to COVID-19, has been added to Part III (Standard Hours, Wages, Vacations and Holidays) of the Code.

Under this new leave, employees who are “unable or unavailable to work for reasons related to COVID-19” are entitled to a leave of absence of up to 16 weeks, or such number of weeks that may be set by regulation. [*Editor’s Note: This leave [has been extended to 24 weeks](#), by regulation.*]

An employee is required to give written notice to the employer as soon as possible with respect to the reasons for the leave and its intended length or any change in the length of the leave. An employer may also require the employee to provide a written declaration in support of the reason for the leave, or any change to the length of the leave.

The new leave contains the following provisions, which are consistent with the terms of other leaves provided under the Code:

- **Employment opportunities:** While on leave and where the employee provides a written request, the employer must inform the employee of every employment, promotion or training opportunity that arises during the time the employee is on leave for which the employee is qualified.
- **No reprisal:** As with other leaves under the Code, an employer cannot dismiss, suspend, lay off, demote or discipline an employee because the employee intends to take a COVID-19 Leave, nor can the employer take that leave into account in any decision to promote or train the employee. However, if the employee is unable to perform their previous work as a result of the absence, the employer may reassign the employee to a different position with different terms and conditions.
- **Benefits:**
 - pension, health and disability benefits, and seniority continue during the period of the leave
 - where required, the employee is responsible for benefit contributions during the period of the leave unless the employee states they wish to discontinue contributions for this period
 - employers who pay contributions must continue to do so during the leave, among other things
 - where contributions are not made, the benefits do not accumulate during the absence
 - generally, the employment of an employee who takes a COVID-19 Leave is deemed continuous for the purposes of calculating benefits
- **Vacation:** Consistent with other leaves under the Code, a vacation may be interrupted to take the COVID-19 Leave.
- **Parental Leave:** The period in which a parental leave may be taken (78 weeks) may be extended by the COVID-19 Leave, and the number of weeks available for that leave (63) may be interrupted as a result of a COVID-19 Leave.

Repeal of COVID-19 Leave

The COVID-19 Leave is time-limited and will be repealed on October 1, 2020. At that time, a new provision will come into force as part of the existing Medical Leave (s. 239) entitling employees to a medical leave of absence from employment of up to 16 weeks as a result of quarantine, with corresponding amendments to reflect this new provision.

Other Amendments

A provision is added to the Code that an employee may exercise their entitlement to a leave of absence under sections 206.3 (Compassionate Care Leave), 206.4 (Leave Related to Critical Illness) and 239 (Medical Leave) even where a certificate is not issued by a health care practitioner. This provision will be repealed on September 30, 2020.

We will continue to provide timely updates as new information becomes available. To further assist you, please consult our [COVID-19 Resource Centre](#) which sets out some of the emerging questions and answers, along with some key resources.

[Amy Tibble](#) at 416.864.7539, or [your regular Hicks Morley lawyer](#) should you require more information about these changes to the Code.