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More on the Interplay Between *CLC* Paid Leaves and Collective Agreement Entitlements

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In *Teamsters Local Union 987 of Alberta v Purolator Inc*., Arbitrator Robertson considered the interplay between the entitlement to five days of paid personal leave found in two collective agreements and the entitlement under the *Canada Labour Code* (*CLC*) to 10 days of paid medical leave (*CLC* Medical Leave) and five days of personal leave, three of which are paid (*CLC* Personal Leave).

At issue in this grievance were two collective agreements with substantially similar language with respect to personal leave (CA Personal Leave). The CA Personal Leave is a combined leave in that it can be used for an "absence on account of illness or for personal reasons." Employees who have 18 months or more of service and who are regularly scheduled to work more than 20 hours per week are entitled to use up to five paid personal days per year. Accrued but unused days are paid out to the employee at the end of the year. Requisite notice must be given to take the leave for personal reasons.

On December 1, 2022, the *CLC* Medical Leave came into force. The *CLC* Medical Leave provides for up to 10 days of paid leave per calendar year for reasons related to personal illness or injury, organ or tissue donation, medical appointments during working hours and quarantine. After of 30 days of continuous service, employees accrue three days of paid medical leave and then one day of paid medical leave per month to a maximum of 10 days of paid medical leave per year.

The *CLC* Personal Leave provides for a leave of absence of up to five days in a calendar year for reasons related to the health or care of family members and carrying out responsibilities related to the education of family members under 18 years of age, among other things. Employees with at least three consecutive months of continuous service are entitled to be paid for the first three days of *CLC* Personal Leave that are used in a calendar year.

In this case, the employer argued that the CA Personal Leave satisfied the leave requirements under the *CLC* Medical Leave and *CLC* Personal Leave, and its employees were therefore entitled to a total of 13 paid days per year.

The union argued that the reasons for entitlement under the leave provisions of the *CLC* are different from those of the CA Personal Leave and entitlement is therefore 15 paid days per year—10 days *CLC* Medical Leave plus five days CA Personal Leave (under which the three days of paid *CLC* Personal Leave is subsumed).

The Arbitrator noted that nothing in the *CLC* is to be construed as affecting a more favourable benefit provided to employees. He reviewed a recent decision in *United Steelworkers Local 14193 v Cameco Fuel Manufacturing Inc.* (which we discussed in our *Federal Post* of January 18, 2024) in which that arbitrator agreed with the employer that the *CLC* Medical Leave had the same purpose as the short-term disability benefits in the applicable collective agreement. The Arbitrator also reviewed, among other cases, Fresco v. Canadian Imperial Bank of Commerce in which it was found that "benefits should fall 'within the precise compass under consideration.'"

Arbitrator Robertson concluded that in this case, the *CLC* Medical Leave and *CLC* Personal Leave provisions were not the same as the CA Personal Leave: "The two provisions in the *Code*, read together, might be considered on a global assessment to be for the same kinds of purposes as the personal day entitlement in the Collective Agreement, but the fact is that neither of the paid leaves are identical, or functionally similar, and when analyzed they have different purposes." Whereas the *CLC* Medical Leave can be used for very specific purposes, the CA Personal Leave is "taken at the employee's election" and not necessarily for purposes related to the *CLC* Medical Leave. The benefits here are "different in scope and do not serve the same purpose – although they may sometimes coincidentally overlap in use."

The union accepted that the three paid days under the *CLC* Personal Leave are included in the five paid days in the CA Personal Leave. Combined with the *CLC* Medical Leave of 10 paid days, this resulted in a finding of 15 paid days of leave per year. The Arbitrator concluded that employees are entitled to:

- up to 10 days of *CLC* Medical Leave, provided eligibility criteria under the *CLC* are met
- up to five days of *CLC* Personal Leave, provided eligibility criteria under the *CLC* are met
- up to five days of CA Personal Leave, determined in accordance with the collective agreements

The Arbitrator also stated that, where applicable, use of the CA Personal Leave days counts against the employee's entitlement to the *CLC* Personal Leave and in no case shall an employee be entitled to more than five days of personal leave per year, either paid or unpaid.

Key Takeaways

Arbitrator Robertson's decision highlights the importance, for employers subject to the *CLC*, of carefully scrutinizing employees' leave entitlements under their terms and conditions of employment (whether under a collective agreement or otherwise) as compared to their statutory leave entitlements, to assess whether the employment-related leave may be offset against statutory leave entitlements. The juxtaposition of this decision with that in *Cameco Fuel Manufacturing Inc.* demonstrates how different results can flow from the specific definition of employment-related leave entitlements.

Please contact your regular Hicks Morley lawyer if you have any questions about the above decisions or how they may apply to your workplace.