

Bill C-63 Drives Modernization of the Canada Labour Code

Thursday, February 1, 2018

On December 14, 2017, Bill C-63,¹ received royal assent.² The impacts of this omnibus Bill are significant and serve to modernize the outdated *Canada Labour Code* ("Code") to address a number of current workplace issues.

Changes to the Code include those related to scheduling of work, overtime pay and banked overtime, the right to refuse overtime to fulfill family responsibilities, flexible work arrangements, vacation, substitute general holidays, extension of bereavement leave, and the introduction of three new leaves — Family Responsibility Leave, Leave for Victims of Family Violence, and Leave for Traditional Aboriginal Practices.

These changes to the Code accompany amendments that came into force on December 3, 2017 as a result of Bill C-44.³ Perhaps most notably, this legislation extended the length of parental leave to 63 weeks (which may be shared between two parents), resulting in a combined pregnancy/parental leave for eligible employees of up to 78 weeks. In conjunction with this change, the federal government-implemented changes to rules surrounding maternity and parental leave benefits, and well as new caregiving benefits under the *Employment Insurance Act*.

The highlights of the changes to the Code introduced by Bill C-63 are discussed below.

Shift Changes

A new provision of the Code requires that if an employer changes or extends a period or shift during which an employee is required to work, the employer must give 24 hours' notice. An exception applies if the change or extension of the shift is due to a threat to the life, health or safety of a person, a threat of damage or loss to property, or threat of serious interference with the ordinary working of the employer's industrial establishment that was not reasonably foreseen by the employer.

Overtime Pay

The Code now specifically allows for employees to be either paid for overtime worked at the rate of one and a half times their regular wages, or to be granted time off with pay (at one and half hours for each overtime hour worked), subject to certain conditions:

- The employee and employer enter into an agreement for taking the time off, on a date or dates agreed upon;
- The time off is taken within three months of the pay period during which overtime was worked. This can be extended if a longer period is set out by collective agreement, or extended to twelve months on agreement of the employer and employee;
- If banked time is not taken within the applicable period, it must be paid out within 30 days; and
- If the employee ceases to be employed by the employer, banked time must be paid out within 30 days of the employee ceasing to be employed.

Employees now have the right to refuse to work overtime if it interferes with any family responsibility provided for under the new Family Responsibility Leave.

Flexible Work Arrangements

The Code amendments introduce an employee's right to request a flexible work arrangement relating to:

- The number of hours the employee is required to work;
- The employee's work schedule;
- The employee's work location; or
- Any terms and conditions that apply to the employees that are prescribed by regulation.

The request must be in writing and include certain information. Upon receiving such a request, the employer must decide to either grant the request in full, or in part, or refuse the request. A refusal must be based on certain grounds that include: additional cost that would be a burden for the employer; detrimental impact on the quality or quantity of work or the ability to meet customer demands; inability to reorganize work amongst existing employees or recruit additional employees; and insufficient work available to the employee if the request was granted. In effect, the employer may refuse a request for legitimate operational reasons, but not without such a reason. It also requires that the employer give written notice of the decision and reasons for refusing the request or any part of it. The legislation provides that a reprisal for making a flexible work arrangement request is prohibited.

Vacation

The Code provides for vacation to be taken in one period, or at the employee's request and the employer's approval (both in writing), more than one period. Vacation can be interrupted for certain leaves. If that occurs, the employee must give written notice of the interruption and resumption of vacation to the employer. There is a provision that allows for the postponement of the balance of a vacation period for employees who commence certain statutory leaves in the middle of a vacation period.

Bereavement Leave

Bereavement leave is extended to five days (from three days), and may be taken beginning on the day the death occurs and ending six weeks after the latest of the days on which any funeral, burial or memorial service of the immediate family member occurs. The first three days of the leave must be paid (with the remaining two days unpaid).

New Leaves

The Code now includes three new unpaid leaves as follows:

a. Family Responsibility Leave

Family responsibility leave of three days per year is available to every employee who has completed three months of continuous employment and may be used for family responsibilities related to the health or care of any of the employee's family members, or the education of any of the employee's family members under the age of 18. The leave may be taken in periods of one day or more. An employer may request the employee to provide documentation to support the reasons for the leave within 15 days of the employee returning to work following the leave.

b. Leave for Victims of Family Violence

An employee who is the victim of family violence or the parent of child who is the victim of family violence is entitled to a leave of up to 10 days per year to be used in periods of one day or more. The leave may be used for the following purposes:

- To seek medical attention for the employee or their child;
- To obtain services from an organization servicing victims of family violence;
- To obtain psychological or other professional counselling;
- To relocate temporarily or permanently; or
- To seek legal or law enforcement assistance, or to prepare for or participate in a legal proceeding.

An employer may request the employee to provide documentation to support the reasons for the leave within 15 days of the employee returning to work following the leave.

c. Leave for Traditional Aboriginal Practices

Any employee who is an Aboriginal person (defined as Indian, Inuit or Métis), and who has completed three months of continuous employment is entitled to take five days per calendar year to engage in traditional Aboriginal practices including hunting, fishing and harvesting. The leave must be taken in one day periods or greater. An employer may request the employee to provide documentation that shows the employee is an Aboriginal person, within 15 days of the employee returning to work following the leave.

These new provisions recognize the need for flexibility in the workplace and will enhance the rights of federally regulated employees. Employers should review their policies and practices to ensure they are in compliance, in order to respond proactively to the changing workplace rules.

¹ *A second Act to implement provisions of the budget tabled in Parliament on March 22, 2017 and other measures*

² The provisions of Bill C-63 will come into effect on a day to be fixed by order of the Governor in Council.

³ *An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures*

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