

# Bill C-86: Federal Government Proposes Significant Changes to Minimum Labour Standards of Canada Labour Code

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## Introduction

Through Bill C-86, introduced in First Reading on October 29, 2018, the federal government is proposing to amend a number of provisions of Part III of the *Canada Labour Code* (the Code) prescribing minimum labour standards for federally-regulated employers.

These amendments result from consultations conducted by Employment and Social Development Canada (the ESDC) in 2017 and 2018 with individuals, trade unions, employers, university professors and other experts and groups advocating the reform of the Code. This article will identify the main legislative changes set out in the Bill.

## Proposed Amendments

### 1. Hours of Work

Under the Bill, employees will be entitled to an unpaid break of at least 30 minutes during every five consecutive hours of work. Where an employee is required to remain at the disposal of the employer during the break period, that period will be with pay.

Employees will also be entitled to a minimum rest period of eight consecutive hours between each work period or shift.

Employers will be obliged to give employees written notice of their work schedules 96 hours before the start of their first work periods or shifts, otherwise employees can refuse to work. This new requirement will not apply to employees employed under the terms of a collective agreement that specifies an alternate time frame for providing the work schedule or which provides that this requirement does not apply to those employees.

### 2. Breaks for Medical Reasons or Nursing

The Bill proposes to allow employees to take unpaid breaks for medical reasons or for nursing or expressing breast milk.

### 3. Equal Treatment

The Bill introduces the concept of “equal treatment”. This new concept will prohibit employers from paying some employees less than others due to a difference in their employment status, if the following conditions apply: the employees work in the same industrial establishment; they perform substantially the same kind of work; the performance requirements are substantially the same and the work is performed under similar working conditions. This new labour standard will not apply, however, if the difference in pay was due to a distinction based on seniority, merit, production or any other criterion prescribed by regulation. Furthermore, an employer will be prohibited from reducing an employee’s rate of wages in order to comply with the equal treatment obligation.

### 4. Annual Vacations

At present, employees are entitled to two weeks of vacation with pay, while employees with six years of service are entitled to three weeks with vacation pay (section 184 of the Code). The Bill will increase the number of weeks of paid vacation as follows:

- Two weeks for employees who have completed one year of employment;
- Three weeks for employees who have completed five years of employment;
- Four weeks for employees who have completed ten years of employment.

The vacation pay will be equal to no less than 4 per cent for all employees, 6 per cent for employees who have completed five years of employment and 8 per cent for employees who have completed ten years of employment.

Presently, the employment of an employee by two successor employers before and after a transfer is deemed to be continuous (section 189 of the Code). Under the Bill, the employment will also be continuous, following a retendering process leading to the awarding of a contract, for employees who are employed in or in connection with the operation of the federal business concerned, before and after the retendering.

#### **5. General Holidays**

The Bill would eliminate the 30-day period of employment presently required for an employee to be entitled to holiday pay for a general holiday.

#### **6. Temporary Help Agencies**

The Bill proposes to enact a new division dealing with temporary help agencies. The agencies will not be allowed to prohibit their employees from obtaining assignments or establishing employment relationships with their clients, or to charge any fees for such reasons. In addition, the provisions on “equal treatment” will apply to temporary help agencies.

#### **7. Leave for Court or Jury Duty**

Employees will have a new period of leave under the Bill, to act as witnesses or jurors in a judicial proceeding or to participate in a jury selection process.

#### **8. Group Terminations**

Currently, employers who terminate the employment of 50 or more employees in any period not exceeding four weeks must give a prior notice of at least 16 weeks to the Minister of Labour, as well as an individual notice or severance pay to the employees affected. In addition, a copy of the notice given to the Minister of Labour must be given immediately to the Minister of Employment and Social Development, the Canada Employment Insurance Commission, the trade unions representing the redundant employees or to the redundant employees themselves, if they are not represented by a trade union.

Under Bill C-86, it will be possible for an employer to pay such employees 16 weeks' wages and to give the Minister of Labour a notice of at least 48 hours. The Bill also specifies the period of the written notice or of the indemnity payable in lieu thereof (or a combination of the two) which must be given to the individual redundant employee in case of a group termination. In view of these new specifications, the provision permitting ministerial exemption will be eliminated.

#### **9. Individual Terminations**

At the present time, an employer must give individual employees a two-week notice of termination of their employment or pay them two weeks' wages in lieu thereof, where they have completed three months of continuous employment (section 230 of the Code). Where a

position becomes redundant and the employer is bound by a collective agreement that authorizes an employee to displace another employee on the basis of seniority, the employer must also give a two-week notice of termination to the trade union and the employee or pay the employee two weeks' wages in lieu of notice.

Bill C-86 proposes that an employer be permitted to give a terminated employee written notice or pay in lieu of notice, or a combination of notice and pay in lieu of notice, and to give a written notice of redundancy of the position concerned to the trade union, when the employer is bound by a collective agreement that authorizes an employee to displace another employee on the basis of seniority.

In all cases, the length of the notice period would be determined in the following manner:

- Two weeks for employees who have completed three months of employment;
- Three weeks for employees who have completed three years of employment;
- Four weeks for employees who have completed four years of employment;
- Five weeks for employees who have completed five years of employment;
- Six weeks for employees who have completed six years of employment;
- Seven weeks for employees who have completed seven years of employment;
- Eight weeks for employees who have completed eight years of employment.

#### **10. Reimbursement of Work-Related Expenses**

The Bill will enact a new division, enabling employees to be reimbursed for reasonable work-related expenses.

#### **11. Medical Leave**

The Bill contemplates replacing the concept of "sick leave" with that of "medical leave". According to the amendments proposed, an employee will be entitled to medical leave of up to 17 weeks, as a result of any personal illness or injury, organ or tissue donation or to attend medical appointments. The employee must provide a medical certificate, at the employer's request, where the leave of absence is three days or longer.

The employee will also have to give the employer written notice of four weeks, or as soon as possible, specifying the starting date and expected duration of the leave, and would also be obliged to notify the employer as soon as possible in writing of any change in that regard. The employer will be required to inform the employee in writing of every employment, promotion or training opportunity that arises during the employee's medical leave of absence, if the employee so requests.

#### **12. Unjust Dismissal**

The Bill provides that no one may make any complaint for unjust dismissal if he or she has already made a complaint for reprisals or genetic tests based on substantially the same facts, unless that complaint has been withdrawn.

#### **13. Information Related to Employment**

Under Bill C-86, the employer, within the first 30 days of an employee's employment, will be required to provide employees with materials concerning employers' and employees' rights and obligations and a written statement containing information relating to their employment,

as well as an updated version of such materials within 30 days of any change thereto. The employer will have to post the materials in readily accessible places and also retain any employment statement for 36 months after the employee's employment ends and provide additional copies upon the employee's request.

#### **14. Personal Leave**

Under the Bill, the three-day leave of absence for family obligations will become a five-day personal leave to which every employee shall be entitled, without having to have completed three months of employment (section 206.6 of the Code). However, only employees who had completed three months of employment will be entitled to the first three days of leave with pay. Grounds for granting such leave will no longer be limited to the carrying out of responsibilities related to the health or care or education of family members under 18 years of age, but will also include the employees' own illnesses or injuries, any urgent matter concerning themselves or their family members, attending their citizenship ceremony or any other reason prescribed by regulation.

#### **15. Leave for Victims of Family Violence**

The Bill will permit employees who have completed three months of employment to be paid for the first five days of leave if they are victims of family violence (section 206.7 of the Code).

#### **Conclusion**

Bill C-86 reached second reading on November 6, 2018 and has now been referred to the Standing Committee on Finance. It also contains new pay equity legislation which will be the subject of another bulletin shortly. Bill C-86 no doubt contains the most significant number of changes to the *Canada Labour Code* that have been seen in decades. As it will have considerable impact on the activities of federally-regulated employers, we will keep you informed of developments as the Bill progresses.

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