

October 7, 2020

## Federal Government Amends *Canada Labour Code* in Response to COVID-19

The federal government has introduced Bill C-2, *An Act relating to the economic recovery in response to COVID-19* ("**Bill C-2**"), in which it is proposing a series of amendments to the *Canada Labour Code* ("**CLC**") that are meant to ensure that federally-regulated employees may continue to take leave related to COVID-19 until September 25, 2021.

Bill C-2 also introduces the *Canada Recovery Benefits Act* (the "**CRBA**"), which proposes three new temporary benefits to provide compensation to eligible employees that fail to qualify for Employment Insurance.

### [Job-protected Leave](#)

Bill C-2 amends the *CLC* to revise the reasons for which an employee is entitled to leave due to COVID-19. The proposed legislation would replace section 239.01(1) of the *CLC*, which currently provides that employees are entitled to leave of up to 16 weeks if they are unable or unavailable to work for reasons related to COVID-19.

The proposed amendments specify the reasons for which an employee is eligible to job-protected leave related to COVID-19 and lengthen the employee's leave entitlements in certain circumstances. The proposed legislation provides that employees are entitled to leave of:

- 2 weeks if an employee has contracted COVID-19 or is required to self-isolate per the advice of a designated health professional or government authority;
- 26 weeks if an employee is unable to work because they must care for a child of under 12 years of age or a family member that:
  - o Cannot attend school, daycare or any other care facility due to closures related to COVID-19;
  - o has contracted COVID-19 or has been required to self-isolate;
  - o is deemed at risk of contracting COVID-19 due to ongoing health concerns; or,
  - o cannot receive care services that are normally provided at their place of residence for reasons related to COVID-19.

The new legislation defines “family member” more broadly than is commonly done in employment standards legislation. A “family member” includes “anyone whom the person considers to be like a close relative or who considers the person to be like a close relative.”

#### *Additional Considerations*

The proposed amendments provide that the aggregate amount of leave cannot exceed 26 weeks, although leave can be taken in one or more periods. Further, the maximum aggregate amount of leave remains 26 weeks for two or more employees residing in the same household. In such cases, the amendments specify that only one worker can take leave at any given time in a designated household.

Lastly, the new legislation would grant the government the authority to issue a regulation that eliminates the requirement to provide a medical certificate if that obligation becomes too burdensome for the healthcare system.

#### Alternatives to Employment Insurance

Bill C-2 also introduces the *CRBA*. As the Federal Government aims to transition employees from the CERB to Employment Insurance (“**EI**”), the *CRBA* would create three new temporary benefits to

provide compensation to certain classes of employees affected by COVID-19 that fail to qualify for EI. These include:

- **The Canada Recovery Sickness Benefit:** In the event that an employee contracts COVID-19 or is required to self-isolate on the advice of a designated healthcare professional or government authority, this benefit would provide the employee with \$500 per week for up to two weeks.
- **The Canada Recovery Benefit:** This benefit aims to support self-employed Canadians who have not returned to work for reasons related to COVID-19 or whose income has declined by at least 50% due to COVID-19. Eligible applicants would receive \$500 per week for up to 26 weeks. As with EI, beneficiaries would be required to actively seek employment and accept work where a reasonable opportunity arises.
- **The Canada Recovery Caregiving Benefit:** This benefit would be available to employees who are unable to work because they must care for a child under the age of 12 or a family member that:
  - o Has contracted COVID-19 or is required to self-isolate; or,
  - o cannot attend school, daycare and any other care facility due to closures related to COVID-19.

Eligible applicants would receive \$500 per week for up to 26 weeks. Two or more individuals in the same household can claim the benefit, but will be limited to \$500 total per week for 26 weeks.

Eligible employees could apply to receive compensation from the three proposed benefits from September 27, 2020 until September 25, 2021.

McMillan will continue to monitor any developments related to COVID-19 and will provide any updates with respect to the passing of Bill C-2.

by Kyle Lambert and Marie-Eve Jean

For more information on this topic, please contact:

Ottawa	<a href="#">Kyle Lambert</a>	613.691.6117	<a href="mailto:kyle.lambert@mcmillan.ca">kyle.lambert@mcmillan.ca</a>
Ottawa	<a href="#">Marie-Eve Jean</a>	613.691.6108	<a href="mailto:marie-eve.jean@mcmillan.ca">marie-eve.jean@mcmillan.ca</a>

[a cautionary note](#)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2020