

GOVERNMENT OF CANADA PROPOSES SUBSTANTIAL CHANGES TO FEDERAL EMPLOYMENT STANDARDS

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The federal government is proposing significant changes to the *Canada Labour Code* ("**Code**"), the employment standards legislation affecting federally regulated employers.

On October 29, 2018, the government introduced the omnibus Bill C-86 titled "A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures." If passed, Bill C-86 would, among other things, significantly amend the Code's provisions concerning basic employment standards, non-standard employment relationships and termination. These amendments stand in stark contrast to Ontario's proposed reversal of most of many of the changes that would have been made through Bill 148.

Some of the more significant changes proposed in the federal Bill C-86 include:

(a) Scheduling and hours of work

- Employees would be entitled to a 30-minute unpaid break after 5 consecutive hours of work. If an employee is required to be available during that period, they must be paid for the duration of the break. This entitlement is subject to unforeseen emergencies that could result in imminent or serious threats to persons, property or the employer's industrial establishment.
- Employees would be entitled to a minimum rest period of 8 hours between shifts. As with the above, this entitlement is subject to unforeseen emergencies.
- Employers would be required to provide employees at least 96 hours written notice prior to scheduling a shift, without which employees would be free to refuse work without repercussion. This entitlement would also be subject to unforeseen emergencies.
- Employers would be required to provide unpaid breaks needed for medical reasons or for nursing. Employers would, in the case of medical breaks, be permitted to request a written medical certificate.

(b) Expenses

- Employers would be required to reimburse employees for reasonable work-related expenses. While

reasonable expense reimbursement is commonplace, this change may nevertheless lead to disputes over the meaning of “reasonable”.

(c) Vacation time and pay

- Vacation time and pay entitlements would be increased for employees with longer services, with the following levels applicable:
 - Employees with 1 year of service: 2 weeks' vacation and 4% vacation pay;
 - Employees with greater than 5 years of service: 3 weeks' vacation and 6% vacation pay;
 - Employees with greater than 10 years of service: 4 weeks' vacation and 8% vacation pay.

(d) Leaves of absence

Employees will be entitled to up to 5 days of annual personal leave. After 3 months of continuous employment, the first 3 of these days will be paid. Employees will be eligible to take this leave by reason of:

- Personal illness or injury;
- Responsibilities relating to the health care of family members;
- Responsibilities relating to the education of family members under the age of 18;
- Addressing urgent matters concerning themselves or family members;
- Attending their citizenship ceremony; and
- Any other reason prescribed by regulation.
- Bill C-63 (*Budget Implementation Act*) previously provided for 10 unpaid days of leave for victims of family violence. Under Bill C-86, the first 5 of those days (after 3 months' continuous service) would be paid.
- Bill C-86 would amend the Code's existing “sick leave” provisions to provide employees with up to 17 weeks of “medical leave”, including for personal illness or injury, organ or tissue donation or medical appointments during working hours.
- Employees would be entitled to leave for court or jury duty.

(e) Equal treatment for part-time, casual, seasonal and temporary workers

- Bill C-86 would implement a general rule barring employers from paying workers at different rates because of their employment status (i.e. full-time, part-time, casual, seasonal, temporary) where the employees in question perform substantially the same work.
- Employers will also have the onus of proving that employees have not been misidentified as independent contractors and would be required to provide employees with a statement detailing their employment status and terms of employment.

- Temporary help agencies would be barred from preventing employees from entering into employment relationships with their clients, as well as from paying employees less than employees of the client who perform the same job.

(f) Termination of Employment

- The current Code provisions requiring 2 weeks' notice of termination will be replaced with a graduated notice system similar to that provided for under provincial legislation. Required notice ranges from 2 weeks' notice (after 3 consecutive months of employment) to 8 weeks (after 8 years of employment).
- In addition, where a contract is "re-tendered" and an employee continues to work for a new contractor, service with the prior contractor will be recognized for the purposes of certain entitlements.

(g) Federal Pay Equity Act

- Finally, as part of Bill C-86, the federal government is introducing the *Pay Equity Act*, which is intended to establish a process for addressing gender-based discrimination in the workplace. The *Pay Equity Act* would require employers that have 10 or more employees to establish and maintain a pay equity plan.
- *The Pay Equity Act* would also establish a Pay Equity Commissioner, who will be responsible for enforcing the Act's requirements.

Takeaways for federal-regulated employers

We will continue to monitor Bill C-86 and will keep you up apprised of any notable amendments and impending deadlines. For now, federally-regulated employers should be aware of the possible changes to the legislation governing their workplaces and be prepared to make the appropriate workplace policy and practice changes if and when Bill C-86 becomes law. If you have any concerns about how the legislation will affect your workplace, please contact Paul Boshyk, Kyle Lambert or any other member of McMillan's Employment and Labour Relations team.

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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.

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