

SWEEPING CHANGES TO FEDERAL EMPLOYMENT STANDARDS SET TO TAKE EFFECT

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Federally regulated employers should be advised that many of the federal government's sweeping changes to the *Canada Labour Code* (the "**Code**"), proposed through various Budget Implementation Bills (Bill C-44, Bill C-63 and Bill C-86), are now set to take effect on September 1, 2019.

The changes taking effect on September 1 largely expand employees' entitlements in employment standards areas such as hours of work, vacation time and pay, and leaves of absence. Other changes, expected to take effect at a later date, will impact other entitlements such as termination notice. Employers that have followed employment standards amendments in several provinces in the last few years will recognize many of the new federal standards set to take effect.

I. Hours of Work

Break time

Beginning September 1, 2019, employees will be entitled to an unpaid break of at least 30 minutes for every five consecutive hours of work. If employees are required to be at the employer's disposal during this break, it must be paid. An employer may postpone or cancel this break if the employer requires the employee to deal with a situation that it could not have reasonably foreseen and that presents, or could reasonably be expected to present, an imminent or serious threat.

Rest Period

Employees will be entitled to a rest period of at least eight consecutive hours between work periods or shifts.

An employer may require that an employee work additional hours, which would result in a rest period of fewer than eight consecutive hours, if the employer requires the employee to deal with a situation that it could not have reasonably foreseen and that presents, or could reasonably be expected to present, an imminent or serious threat.

Breaks for Medical Reasons or Nursing

Employers will have to provide unpaid breaks necessary for nursing, expressing breast milk, or medical reasons. However, upon written request, employers will be able to require a certificate from a health care practitioner setting out the length and frequency of the breaks.

Scheduling

Employers will be required to provide employees with a written work schedule at least 96 hours before the start of the employee's first work period or shift. Employees may refuse to work any work period or shift within 96 hours of receiving the schedule, except in cases where they are needed to deal with a situation that it could not have reasonably foreseen and that presents, or could reasonably be expected to present, an imminent or serious threat. Employers will be able to agree upon modified work schedules with individual employees.

Employers wanting to change an employee's work period or shift will be required to give at least 24 hours' notice.

Overtime

Right to refuse overtime

Employees will be permitted to refuse to work overtime to carry out family responsibilities related to the health or care of any family member or the education of any of their minor family members. To refuse overtime, employees must have taken reasonable steps to carry out their family responsibilities by other means and, even though they took these steps, they are still required to carry out that responsibility.

An employee may not refuse overtime if they are needed to deal with a situation that it could not have reasonably foreseen and that presents, or could reasonably be expected to present, an imminent or serious threat.

Time off in lieu of overtime pay

Employees entitled to overtime pay will be able to request to enter into an agreement with their employer to take time off in lieu of overtime pay. Time taken off in lieu of overtime pay must be taken within 3 months of the end of the pay period in which the overtime was worked, unless the agreement with the employer allows for a longer period of no more than 12 months. If the employee does not take all of this time off, the employer must pay the remaining hours at time-and-a-half, calculated using the employee's regular rate of wage on the day which they worked the overtime. The same applies if the employee ceases to be employed without having taken this time off.

Flexible Work Arrangements

Employees with 6 consecutive months of continuous employment will be entitled to make a written request for flexible work arrangements, notably with regards to the employee's: required number of working hours, work schedule, location of work, and applicable terms and conditions prescribed by regulation.

Employers must respond to such requests in writing and within 30 days of receiving it. Employers may grant the request, offer to grant the request in part with alternative changes, or refuse the request on one or more of the following grounds:

- the change would result in additional costs that would be a burden on the employer;
- the change would have a detrimental impact on the quality or quantity of work within the employer's industrial establishment, on the ability to meet customer demand, or on any other aspect of performance within that industrial establishment;
- the employer is unable to reorganize work among existing employees or to recruit additional employees in order to manage the requested change; and
- there would be insufficient work available for the employee if the requested change was granted.

Employers granting such requests have the power to change the employee's terms and conditions of employment for this purpose. However, if the change is to a term or condition found in a collective agreement, the employer must obtain the union's written consent.

II. Vacation and Holiday Entitlements

As of September 1, 2019, the continuous service thresholds for vacation pay and annual vacation entitlement eligibility will be:

Consecutive Employment	Minimum Annual Vacation	Vacation Pay In Lieu
1 year	2 weeks	4% of wages
5 years	3 weeks	6% of wages
10 years	4 weeks	8% of wages

Employees will be able to take annual vacation time in one period or, upon an approved written request from the employee, more than one period. If taken in more than one period, the employer must pay the proportion of the vacation pay to which the employee is entitled.

Holiday Pay

Employees will be entitled to holiday pay for general holidays that occur in the first 30 days of employment with their employer, where before they were not. Holiday pay must be 1/20th of an employee's wages, based on

the previous four weeks' average, excluding any overtime pay.

Substitution of Holidays

Employers will be able to substitute general holidays with any other day, upon posting a notice for at least 30 days prior to the substitution. The substitution must be approved by at least 70% of the affected employees or, if it affects only one employee, by that employee in writing. If the employees are subject to a collective agreement, the substitution must be approved in writing by the trade union.

III. Leaves of Absence

Personal Leave

Employees with three months' service will be entitled to take up to five days per calendar year of personal leave, the first three of which shall be paid. Personal leave may be taken for any of the following reasons:

- treating an illness or injury;
- carrying out responsibilities related to the health or care of any of a family member;
- carrying out responsibilities related to the education of any of their family member under 18 years of age;
- addressing any urgent matter concerning the employee or a family member;
- attending a citizenship ceremony under the *Citizenship Act*; and
- any other reason prescribed by regulation.

Personal leave may be taken in more than one period, but employers will be permitted to require that a minimum of one day be taken at a time.

Medical Leave

The *Code's* existing sick leave provisions will be replaced with "medical leave." While substantially similar, the new medical leave provisions will provide every employee with up to 17 weeks of leave if required for personal illness or injury, organ or tissue donation or medical appointments during working hours. The prior requirement of three consecutive months' continuous employment has been removed.

Employers will be permitted to request a certificate from a health care practitioner if the medical leave of absence is three days or longer.

Employees will have to provide of at least four weeks prior to taking medical leave, unless doing so is impractical for a valid reason. Any changes to the length of the leave also require written notice.

Employees may also request, in writing, to be informed of every employment, promotion or training opportunity, for which they are qualified, that arises during their medical leave.

Leave for Victims of Family Violence

Employees who are victims of family violence or the parent of a child who is a victim of family violence will be entitled to a leave of absence of up to 10 days per calendar year, the first 5 of which shall be paid if the employee has 3 consecutive months of continuous employment. Perpetrators of the act cannot claim this leave. The leave may be taken in more than one period.

Bereavement Leave

Bereavement leave will be increased from three to five days per year. Employees with three consecutive months of continuous employment are entitled to having the first 3 days paid. Bereavement leave may be taken in up to two periods.

Removal of Six-Month Requirement: Maternity, Parental, Critical Illness and Child Death or Disappearance Leave

Employees will no longer be required to have six consecutive months of no employment with their employer to become eligible for maternity, parental, critical illness or child death or disappearance leave.

Leave for Court or Jury Duty

Employees will be entitled to a leave of absence to act as a witness or juror in a proceeding, or to participate in a jury selection process.

Leave for Traditional Aboriginal Practices

Aboriginal employees that have three consecutive months of continuous employment will be entitled to take an unpaid leave of up to five days per calendar year to hunt, fish, harvest or participate in any traditional practice prescribed by regulation.

IV. Employment Deemed Continuous Upon Transfer

If any part of a work, undertaking or business is transferred from one employer to another by sale, merger or otherwise, so long as the work, undertaking or business is a federal work, undertaking or business, or consequently becomes one due to the lease or transfer, the employee's employment will be deemed continuous. This provision applies similarly to the retendering of a contract by which a second employer becomes responsible for carrying out a part of any particular federal work, undertaking or business.

This deeming provision will not apply if the first day of employment with the second employer is more than 13 weeks after the earlier of:

- The employee's last day of employment with the first employer; or
- In the case of retendering a contract, the day on which the federal work, undertaking or business is transferred or carried out by the second employer.

However, any period between employment with the first employer and employment with the second employer is not included in the 13-week calculation.

If an employer becomes a federal work, undertaking or business due to a change in its activities, an employee's period of continuous employment includes any period employed prior to this change.

These provisions will not apply to the calculation of an employee's entitlement to notice periods for termination or severance pay with the second employer if the first employer has already provided the necessary notice of termination or pay in lieu thereof.

V. Termination of Employment

Several amendments to the *Code's* termination provisions will become effective on a date to be fixed by order of the Governor in Council, not necessarily on September 1, 2019.

Individual Terminations

Employees' entitlement to notice or pay in lieu of notice upon termination without cause under the *Code* will be increased. Presently, the *Code* requires that employees be given two weeks' notice of an individual termination without cause. This will be replaced with a scaling notice system that is similar to that contained in several provinces' employment standards legislation:

Minimum Continuous Service

Minimum Notice Entitlement

3 months	2 weeks
3 years	3 weeks
4 years	4 weeks
5 years	5 weeks
6 years	6 weeks
7 years	7 weeks
8 years	8 weeks

Group Terminations

In addition, employers proceeding with a group termination will be obligated to notify all affected employees (defined as “redundant”) at least eight weeks prior to termination or provide pay in lieu of notice of at least eight weeks. The existing obligation to notify the Minister of a group termination at least 16 weeks in advance will remain.

Benefits Statements

Employers will be required to provide terminated employees with a “statement of benefits” detailing their wages, severance pay, vacation and other employment benefits.

VI. Employee Status

On a date to be fixed by the Governor in Council (not before September 1, 2019), employers will be barred from paying employees performing the same job at different rates based on the employees’ classification (i.e. full time, part time, casual, etc). Employers will be permitted to distinguish between employees’ pay where justified by seniority, education or merit.

In addition, employers will bear a reverse onus if an employee alleges that he or she has been improperly treated as a non-employee.

What Employers Should Know

Beginning September 1, 2019, federal regulated employers will be faced with a wide array of changed employment standards. Employers should be aware of which practices need to be amended and should begin making necessary changes, including changes to employment policies and handbooks.

McMillan’s employment and labour relations team is available to provide guidance or assistance to federally regulated employers faced with these new demands.

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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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