Attention Federal Employers: Significant Changes to Canada Labour Code as of September 1, 2019

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Federally regulated employers should take note of significant reforms to the *Canada Labour Code* (Code) that have been proclaimed into force and have taken effect as of September 1, 2019. These changes are part of sweeping reforms aimed at modernizing the outdated Code through a series of Budget Implementation Bills (notably, Bill C-63 and Bill C-86). Some of these proposed changes were highlighted in our newsletter article Bill C-86: Federal Government Proposes Significant Changes to Minimum Labour Standards of Canada Labour Code. These reforms have taken effect as of September 1, 2019, and are summarized below.

Work Schedule

An employer will be required to give an employee notice of their work schedule in writing at least 96 hours prior to the start of the employee's first work period or shift under that schedule. Failure to provide 96 hours' notice may result in the employee refusing to work that shift. 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. If an employer changes a period or shift during which an employee is required to work or adds another work period or shift to the employee's schedule, the employer must give at least 24 hours' notice.

Break Periods

Employees will be entitled to an unpaid 30 minute break during every period of five consecutive hours of work. If employees are required to work through their breaks, they must be paid. An employer can postpone or cancel a break period in the case of unforeseen situations that present an imminent or serious threat to the life, health or safety of a person, threat of damage to or loss of property, or that present a serious interference with the ordinary working of the employer's industrial establishment that was not reasonably foreseen by the employer. Employees will also be entitled to a rest

period of at least eight consecutive hours between work periods or shifts. While the Code was previously silent on the issue of break periods, these standards are consistent with many provincial employment standards.

Breaks for Medical Reasons or Nursing

Employees will now be entitled to unpaid breaks that are necessary for medical reasons, or in order to nurse or express breast milk. The new provisions do not specify a maximum frequency or duration of such breaks, but do permit an employer to request a medical certificate issued by a health care practitioner setting out the length and frequency of the breaks required by the employee for medical reasons.

Time Off in Lieu of 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 time off must taken within three months of the pay period during which overtime was worked (but 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 or if the employee ceases to be employed, it must be paid out within 30 days. 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

Employees with six consecutive months of continuous employment have a right to request a flexible work arrangement relating to the number of hours the employee is required to work, the employee's work schedule or work location, and other prescribed terms and conditions. The request must be in writing and include certain particulars. Upon receiving such a request, the employer must decide to either grant the request in full, or in part, or refuse the request. The employer must give written notice of the decision and reasons for refusing the request or any part of it. The legislation prohibits reprisals for making a flexible work arrangement request.

Vacation

Vacation entitlements have increased to:

- Two weeks after one years' service (paid at a minimum of four per cent of wages);
- Three weeks after five years consecutive service (paid at a minimum of six per cent of wages); and
- Four weeks after 10 years of consecutive employment (paid at a minimum of eight per cent of wages).

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.

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. For employees with three consecutive months of continuous employment, the first three days of the leave must be paid (with the remaining two days unpaid).

New Leaves

The Code now includes new leaves as follows:

- **Personal Leave.** An employee is entitled to a leave of absence for up to five days per calendar year for treating their illness or injury, carrying out responsibilities related to health care of a family member, carrying out responsibilities related to the education of family members under the age of 18, addressing any urgent matter concerning themselves or a family member, or attending a citizenship ceremony. Employees who have completed three consecutive months of continuous employment are entitled to the first three days of personal leave with pay.
- **Leave for Victims of Family Violence**. An employee who is the victim of family violence or the parent of a 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 to seek medical attention for the employee or their child, to obtain services or counselling, legal or law enforcement assistance, or to relocate. Employees who have completed three consecutive months of continuous employment are entitled to the first five days of personal leave with pay.
- **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.

Each of the leaves can be taken in one or more periods of at least one day. 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.

Medical Leave

Medical Leave replaces the former Sick Leave provisions of the Code. Employees remain entitled to up to 17 weeks of unpaid leave, which may now be used because of (a) personal illness or injury; (b) organ or tissue donation; or (c) medical appointments during work hours. The employee must give written notice of the leave (and its duration)

four weeks prior to the first day of the leave, unless there is a valid reason why such notice cannot be given, and otherwise as soon as possible.

Jury Duty

Employees are entitled to be granted a leave of absence for attending court in order to act as a witness or juror in a proceeding, or for jury selection. The length of the leave is not limited by the Code.

Transfer or Retendering

Continuity of service applies to cases where a contract is retendered to a new employer, or where a provincially regulated operation becomes a federally regulated operation due to a change in activities.

Comment

Federal employers continue to face sweeping legislative changes with more to come as additional provisions of the Budget Implementation Bills come into force going forward. In addition to the modernization of the *Canada Labour Code,* a new regime to address workplace harassment situations will come into effect some time in 2020 as a result of the adoption of Bill C-65: See Federal Employers: Prepare for a Wave of Change in Workplace Harassment Obligations. To be sure, the only constant for federally regulated employers, is change.

By

Jennifer M. Fantini

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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