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NORTON ROSE FULBRIGHT

Federal Employment & Labour Guide

For federally regulated employers to help navigate the most notable amendments to Part III of the *Canada Labour Code* set to come into force on September 1, 2019

Contents

Introduction

This guide has been prepared by the Employment and Labour Group at Norton Rose Fulbright Canada to assist federally regulated employers to navigate the new amendments to the *Canada Labour Code* (or the "**Code**") under Bill C-86 and Bill C-63. For many employers, the coming into force of these amendments will have a significant impact on their workplaces and business. Note that this document is limited to the most notable legislative amendments to the Code that will come into force on **September 1, 2019**.

The legislative text, including the amendments that will be in force on September 1, 2019, may be accessed on the website of the Department of Justice.

This guide is available to employers in both official languages. Pour consulter la version française du guide, veuillez cliquer ici.

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Federal Employment & Labour Guide

Amendments to come into force on September 1, 2019

Overtime

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Overtime Banking (Section 174)	**Unionized and non-unionized employees** • Employees may be compensated for overtime with paid time off at not less than one and **one-half (1½) hours** for each hour of overtime worked.[1] • Subject to the conditions set out below, employees are only entitled to bank overtime if, at their request, they enter into a **written agreement** with the employer that provides for the banking of overtime, at dates mutually agreed upon. **Conditions for unionized employees** • Banked time off should be taken within three months after the end of the pay period in which the overtime was worked, or within a longer period of time as set out in the collective agreement. • If the employee does not take all or part of the banked time off within the applicable time period, the employer must pay the employee the banked time off that was not taken within **30 days** after the day on which that period ends.[2] **Conditions for non-unionized employees** • Banked time off must be taken within three months after the end of the pay period in which the overtime was worked, **or**, if a written agreement between the employee and employer is mutually agreed upon, within a longer period of time **not exceeding 12 months**. • If the employee does not take all **or** part of the banked time off within the applicable time period, the employer must pay the employee the banked time off that was not taken within **30 days** after the day on which that period ends.[3]	**Unionized and non-unionized employees** • Employers are not required to grant time off in lieu of overtime. • Overtime hours worked and time off at the overtime rate of pay must be accurately recorded. • Consider requiring employees to cash out banked overtime at regular intervals or putting a cap on banked time, provided that the rest is paid out. • Banked time off is scheduled at a mutually agreeable time. • Employees must be paid accrued overtime as part of outstanding wages when discharged from employment. • Banked overtime must be paid within 30 days of the end of employment.

1 Note that employees may alternatively be paid overtime pay, which means wages not less than one and one-half times the employee's regular rate of wages on the day on which they worked the overtime.

2 In this situation, the employee is paid overtime pay, see footnote 1.

3 In this situation, the employee is paid overtime pay, see footnote 1.

Overtime

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Right of Refusal (Section 174.1)	**Unionized and non-unionized employees** • Employees may refuse to **work overtime** in order to carry out family responsibilities related to the (i) health or care of a family member, or (ii) education of any family member who is less than 18 years of age. • However, employees can only refuse overtime if they have taken **reasonable steps** to carry out their family responsibilities by other means but are unable to make other arrangements for that period. Exceptions • **Employees cannot refuse overtime** work if the overtime is required to deal with: (i) a situation that the employer could not have reasonably foreseen; **and** (ii) that presents, or could reasonably be expected to present, an imminent or serious: (a) threat to the life, health or safety of any person; (b) threat of damage to or loss of property; or (c) threat of serious interference with the ordinary working of the employer's industrial establishment.	**Unionized and non-unionized employees** • The right to refuse overtime only applies to hours of work that exceed standard hours of work under the Code or regulations. • **Standard hours** are defined as **eight hours per day and 40 hours per week**. As a result, a typical employee could refuse to work more than eight hours in a day or more than 40 hours in a week. However, different standard hours of work apply in some cases (e.g. employees working under an averaging period). • Consider creating guidelines for employees and managers regarding the refusal of overtime, taking into account the requirement for reasonable steps to be taken to enable the employee to refuse to do overtime.[4] • Create forms to document overtime refusals and maintain records of all refusals. • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has lawfully refused to work overtime. • Likewise, employers are **prohibited** from taking into account an employee's lawful refusal of overtime in any decision to promote or train the employee or transferee.

4 Note that the Labour Program has stated that in some cases, employers could require the employee demonstrate that he or she has taken reasonable steps to carry out his or her family responsibilities. However, further guidance on this issue has yet to be officially provided by the government's Labour Program.

Hours of work and rest

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
30-minute Break (Section 169.1)	**Unionized and non-unionized employees** • Employers must provide employees with an **unpaid** break of at least **30 minutes** within every period of five consecutive hours of work. • Breaks must be **paid** if the employer requires the employee to remain available to work during the break. Exceptions • The employer may **postpone or cancel** a break if the employee must work to deal with a situation that the employer (i) could not have reasonably foreseen **and** (ii) presents or could reasonably be expected to present an imminent or serious: (a) threat to the life, health or safety of any person; (b) threat of damage to or loss of property; **or** (c) threat of serious interference with the ordinary working of the employer's industrial establishment.	**Unionized and non-unionized employees** • Ensure that any applicable policy allows for an unpaid 30-minute break after every five consecutive hours of work. • Ensure that any applicable policy specifies whether employees are expected to be available during their 30-minute break, in which case, they are to be paid for that break period. • Consider drafting policies that explain to employees when a break may be cancelled and provide examples that illustrate when a situation will be considered (i) both reasonably unforeseen, and present an (ii) imminent or serious threat as identified in sub-points (a), (b) and (c).
Eight-hour Rest Period (Section 169.2)	**Unionized and non-unionized employees** • Employers must provide employees with a minimum of **eight consecutive hours** of rest between shifts or work periods. Exceptions • The employer may require that employees work **additional hours** to their scheduled work periods or shifts, resulting in a rest period of **fewer than eight consecutive hours** between work periods or shifts if the employee must work to deal with a situation that (i) the employer could not have reasonably foreseen, **and** (ii) presents or could reasonably be expected to present an imminent or serious: (a) threat to the life, health or safety of any person; (b) threat of damage to or loss of property; **or** (c) threat of serious interference with the ordinary working of the employer's industrial establishment.	**Unionized and non-unionized employees** • Amend applicable scheduling policies to allow for at least **eight consecutive hours** of rest between work shifts. • Amend policies to explain when a rest period may be less than eight consecutive hours, addressing the **cumulative** notions of (i) a reasonably unforeseen situation **and** (ii) imminent or serious threats identified in sub-points (a), (b) and (c).

Hours of work and rest

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Advance 96-hour Notice of Schedule (Section 173.01)	**Unionized and non-unionized employees** • Provide employees with their work schedules, in writing, at least **96 hours** before the start of the first work period or shift under that schedule, unless/except where a collective agreement provides for a different period. • If less than 96 hours' notice is given, **employees may refuse** to work any work period or shift in their schedule that starts less than 96 hours from when the schedule is provided to them. • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has lawfully refused to work a work period or shift. • Likewise, employers are **prohibited** from taking into account an employee's lawful refusal to work in any decision to promote or train the employee. Exceptions • **Employees shall not refuse** a work period or shift on less than 96 hours' notice unless it is necessary to deal with (i) a situation that the employer could not have reasonably foreseen, **and** that (ii) presents or could reasonably be expected to present an imminent or serious: (a) threat to the life, health or safety of any person; (b) threat of damage to or loss of property; **or** (c) threat of serious interference with the ordinary working of the employer's industrial establishment.	**Unionized employees** • The requirement to provide 96 hours of advance notice **does not apply** to unionized employees if the collective agreement specifies an alternate time frame for providing the work schedule, or specifies that subsection 173.01(7) of the Code does not apply to those employees. **Unionized and non-unionized employees** • The requirement to provide 96 hours of advance notice of work schedules **will not apply** to employees whose schedule has been changed because of a flexible work arrangement. • Consider reviewing scheduling policies and notifying scheduling personnel to ensure that schedules are provided to employees in writing 96 hours in advance. • Amend policies to explain when employees cannot refuse to work, addressing both notions of (i) reasonably unforeseen situation **and** (ii) imminent or serious threats identified in sub-points (a), (b) and (c).

Hours of work and rest

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
24-hour Notice of Shift Change (Section 173.1)	**Unionized and non-unionized employees** • Employers must provide 24 hours' written notice of any change or addition to a work period or shift, as follows: (a) **Schedule change:** The notice must be provided 24 hours before the employee's original work period or shift is to begin. (b) **Schedule change resulting in an earlier shift time:** The notice must be provided 24 hours before the start of the earlier shift time. (c) **Addition to the schedule:** The notice must be provided 24 hours before the added work period or shift is scheduled to begin. Exceptions • However, notice is not required if the change is the result of a flexible work arrangement, **or** if the change or addition is necessary to (i) deal with a situation that the employer could not have reasonably foreseen, **and** that (ii) presents or could reasonably be expected to present an imminent or serious: (a) threat to the life, health or safety of any person; (b) threat of damage to or loss of property; **or** (c) threat of serious interference with the ordinary working of the employer's industrial establishment.	**Unionized and non-unionized employees** • Cannot provide for a shorter notice period but may provide more notice. • All scheduling policies should be reviewed to take into account these new notice requirements, as well as the situations in which notice is not required under the Code. • The government's Labour Program will clarify whether and how the work scheduling provisions should be interpreted as applying to elect-to-work, on-call and reserve employees.
Medical Breaks (Section 181.1)	**Unionized and non-unionized employees** • Employees are entitled to, and must be granted, unpaid breaks that are necessary for medical reasons, such as to take medication, a short rest or exercise periods. • An employer is entitled to make a written request that an employee provide a **certificate** issued by a **health care practitioner** setting out the length and frequency of medical breaks, in accordance with any applicable policies and protocols.	**Unionized and non-unionized employees** • Under the Code, a **health care practitioner means** "a person lawfully entitled, under the laws of a province, to provide health services in the place in which they provide those services." The term "health care practitioner" is broader than a medical doctor, and may include other health care professionals. • Policies should be reviewed to ensure that a proper process is established setting out when a certificate issued by a health care practitioner may be requested, and who will pay for its issuance.

Hours of work and rest

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Nursing Breaks (Section 181.2)	**Unionized and non-unionized employees** • Employees are entitled and must be granted any **unpaid** breaks necessary for them to nurse or to express breast milk.	**Unionized and non-unionized employees** • The Code does not specifically allow employers to request a certificate from a health care practitioner in these circumstances. • Policies should accordingly be reviewed to account for nursing breaks.

Flexible work arrangements

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Requests for Flexible Work Arrangements (Section 177.1)	**Unionized and non-unionized employees** • Employees with six continuous months of service can request changes to: (a) the number of hours they are required to work; (b) their work schedule; (c) their location of work; **and** (d) any terms and conditions applicable to them **and** that are prescribed by future regulation. • Requests must be made in writing and must include: (a) the employee's name; (b) the date on which the request is made; (c) a description of the change to the terms and conditions of employment that is requested; (d) the date on which the change would take effect and, if the change is intended to be temporary, the date on which the change would cease to have effect; (e) an explanation of the effect that, in the employee's opinion, the requested change would have on the employer and how, in the employee's opinion, the employer could manage that effect; **and** (f) any information that may be prescribed by future regulation. • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has made a lawful request. • Likewise, employers are **prohibited** from taking into account such a request in any decision to promote or train the employee.	**Unionized and non-unionized employees** • Employers should review all applicable policies with the following in mind: — Employers have limited discretion to refuse or only partially grant an employee's request. — Employers must assess requests on a case by case basis in good faith and cannot automatically refuse. Employers must provide written reasons for a full or partial refusal to the employee's request. **Non-unionized employees** • If the employer grants the request fully or in part, it may alter the employee's terms and conditions of employment. **Unionized employees** • An employer cannot grant an employee's request where any resulting change to the terms and conditions of the employment would conflict with the terms of a collective agreement, unless agreed upon in writing by both the employer and trade union.

Flexible work arrangements

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Requests for Flexible Work Arrangements (Section 177.1)	• Employers can only refuse the request if one or more of the following criteria are met: (a) the requested change would result in additional costs that would be a burden on the employer; (b) the requested change would have a detrimental impact on the quality or quantity of work within the employer's industrial establishment; (c) the requested change would have a detrimental impact on the ability to meet customer demand or on any other aspect of performance; (d) the employer is unable to reorganize work among existing employees or to recruit additional employees in order to manage the requested change; (e) there would be insufficient work available for the employee if the requested change was granted; (f) any ground prescribed by future regulation. • The employer must provide the employee with written notice of its decision within **30 days after receiving** the request as soon as possible. • Section 177.1 does not limit an employee's right to be accommodated under any other Act of Parliament.	

Vacation

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Enhanced Vacation Entitlements (Sections 184, 184.1, 187.1, 187.2 and subsection 185(b))	**Unionized and non-unionized employees** • Employees are now entitled to: (a) **One Year Continuous Service = 2 weeks' paid** vacation at **4%** gross earnings; (b) **Five Years Continuous Service = 3 weeks' paid** vacation at **6%** gross earnings; (c) **Ten Years Continuous Service = 4 weeks' paid** vacation at **8%** gross earnings. • Employees are to take their statutory vacation entitlements[5] in (i) **one continuous uninterrupted period**, **or**, (ii) if the employee makes a request in writing and the employer approves it in writing, **in more than one period**. • Employees are permitted to interrupt or postpone a vacation to take a leave of absence, subject to certain conditions and notice requirements. In such a case, employees must provide the employer with notice of interruption before or as soon as possible after it begins and if they intend to resume the vacation immediately after the leave.	**Unionized and non-unionized employees** • Employers have discretion to grant all or part of the request to be taken at one time. • Evaluate operational requirements and develop polices for vacation requests over multiple periods.

5 See Division IV under Part III of the Code where minimum statutory vacation entitlements are legislated.

Paid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Family Violence Leave (Section 206.7 and subsections 207.3(1), 207.3(2) & 209.3(2))	**Unionized and non-unionized employees** • Employees who are **(i) victims of family violence**, or **(ii) who are a parent of a child who is a victim of family violence** are entitled to a leave of absence from employment of **up to 10 days** in every calendar year. • Of the these 10 days, employees with at least **three consecutive months of continuous employment** are entitled to receive pay at their regular rate of wages for their normal hours of work for the **first five days** of their leave. For all purposes, pay during this time shall be considered as wages. • **Part-time and temporary/causal employees** are also entitled to this leave. The leave periods are not prorated, nor are the paid days. Paid leave days for part time and temporary employees are prescribed by regulation and will be calculated by averaging the daily earnings during the 20 days period preceding the days the leave was taken. For the year 2019, all employees will be entitled to the full leave period. • Employees may take family violence leave **in one or more period(s)**. • Employers may require that each period of leave be **not less than one day**. • Employees are entitled to take this leave for the following reasons: (a) To seek medical attention for themselves or their child for a physical or psychological injury or disability; (b) To obtain services from an organization that provides services to victims of family violence; (c) To obtain psychological or other professional counselling; (d) To relocate temporarily or permanently; (e) To seek legal or law enforcement assistance or prepare for or participate in any civil or criminal legal proceeding; or (f) To take any measures prescribed by future regulation.	**Unionized and non-unionized employees** • Family violence can take many forms, including physical, sexual, emotional/psychological, and financial abuse as well as neglect carried out by family members or intimate partners. It may include a single act of violence, or a number of acts that form a pattern of abuse. • Revise policies to allow employees to take family violence leave for the purposes set out in the Code, with a **total of 10 days per calendar year, the first five of which are paid** for some employees. • Employees are required, as soon as possible, to provide the employer with **written notice** of the reasons for the leave and the length of the leave that they intend to take, or change. • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has lawfully requested a leave of absence. • Likewise, employers are **prohibited** from taking into account an employee's lawful request for a leave of absence in any decision to promote or train the employee. • Employers should also consider the following when reviewing their policies: (a) Under the Code, a "**child**" means "a person who is under 18 years of age"; (b) Under the Code, a "**parent**" means "a person who, in law, is a parent (including an adoptive parent), has the custody of or, in Quebec, parental authority over the child, or is the guardian of or, in Quebec, the tutor to the person of the child, or with whom the child is placed for the purposes of adoption under the laws governing adoption in the province in which the person resides"; (c) Under the Code, employers may request, in writing, that the employee **provide documentation** to support the reasons for the leave within **15 days** after the employee's return to work;

Paid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Family Violence Leave (Section 206.7 and subsections 207.3(1), 207.3(2) & 209.3(2))	• Employees **charged with an offence related** to an act of family violence are **not entitled** to take leave under this provision if the underlying reason for taking leave relates to that act. • Likewise, when it is **probable**, considering the circumstances, that the employee committed an act of family violence, the employee is **not entitled** to take family violence leave if the reasons underlying the leave are related to that act of violence.	(d) However, employees are only required to provide the requested documentation if it is **reasonably practicable** for the employee to obtain and provide the employer with such documentation; and (e) Policies should accordingly be updated to establish processes for documentation requests made by the employer and the information the documentation should contain.

Paid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Personal Leave (Section 206.6 and subsections 207.3(1), 207.3(2) & 209.3(2))	**Unionized and non-unionized employees** • Employees are entitled to and shall be granted personal leave from employment for up **to five days** in every calendar year. • Of these five days, employees with at least three **consecutive months of continuous employment** are entitled to be paid for the first three days of the leave at their regular rate of wages for their normal hours of work. For all purposes, pay during this time shall be considered as wages. • **Part time and temporary/casual employees** are also entitled to this leave. The leave periods are not prorated, nor are the paid days. • Paid days for part time and temporary employees are prescribed by regulation and will be calculated by averaging the daily earning during the 20 day period preceding the first day the leave was taken. For the 2019 year, all employees will be entitled to the full leave period. • Employees may take personal leave **in one or more period(s)**. • Employers may require that each period of leave be **not less than one day**. • Employees are entitled to take personal leave for the following reasons: (a) treating their illness or injury; (b) carrying out responsibilities related to the health or care of any of their family members; (c) carrying out responsibilities related to the education of any of their family members[6] who are under 18 years of age; (d) addressing any urgent matter concerning themselves or their family members; (e) attending their citizenship ceremony under the *Citizenship Act*; (f) any other reason prescribed by future regulation.	**Unionized and non-unionized employees** • Revise policies to ensure that personal leave requirements are greater than or equal to the statutory minimums. If the employer already provides some paid personal leave, specify whether this is inclusive of or in addition to code amendments. • Employers may request, in writing, that the employee **provide documentation** to support the reasons for the leave within **15 days** after the employee's return to work. Policies should accordingly be updated to address processes for documentation requests made by the employer. • If the employee has already taken five days of paid leave for reasons covered by the Code's personal leave, then the employee is not entitled to any additional personal leave for the same calendar year. The same would be true if the employee has taken three days of leave with pay and two days without pay. • The following **examples offered by the government's Labour Program** would **not** qualify as education-related responsibilities: (a) Attending a school-related performance; (b) Accompanying a child on a school recreational activity or excursion; (c) Accompanying an older child for his/her first day at school; (d) Bringing a child to a community art class or sporting activity; and (e) Helping a family member study for an exam.[7] • Employees are only required to provide the requested documentation if it is **reasonably practicable** for the employee to obtain and provide the employer with such documentation.

6 The Code grants regulatory power to the Governor in Council to specify persons who are the employee's family members. No regulation has yet been enacted.

7 Please note that the examples provided in this section are not an exhaustive list of non-qualifying activities under the Code. For any specific question regarding fact-based scenarios employers should consult the lawyers listed in the "Contacts" section at the end of this document.

Paid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Personal Leave (Section 206.6 and subsections 207.3(1), 207.3(2) & 209.3(2))	• Employees are required, as soon as possible, to provide the employer with **written notice** of the **reasons** for the leave and the **length** of the leave that they intend to take, or any change there to. • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has lawfully requested a leave of absence. • Likewise, employers are **prohibited** from taking into account an employee's lawful request for a leave of absence in any decision to promote or train the employee.	• The following **examples offered by the government's Labour Program** would **not** qualify as health- or care-related responsibilities: (a) Attending a family social gathering; (b) Walking the dog, buying groceries or watering the plants of a family member; (c) Helping with a family member's wedding arrangements; (d) Dealing with non-urgent legal issues (e.g. wills, powers of attorney, do not resuscitate orders) for the family member; (e) Picking up mail, going to the bank, paying bills for the family member. • The following **examples** would **not** be deemed urgent matters: (a) Attending a graduation ceremony; (b) Waiting at home for a non-essential service call (e.g. cable installation); (c) Meeting with a real estate or mortgage agent as part of a house sale/purchase; (d) Taking advantage of a sales event; (e) Arriving in time for a family member's surprise birthday party.[8]

8 Please note that the examples provided in this section are not an exhaustive list of non-qualifying activities under the Code. For any specific question regarding fact-based scenarios employers should consult the lawyers listed in the "Contacts" section at the end of this document.

Paid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Bereavement Leave (Section 210)	**Unionized and non-unionized employees** • Employees are entitled to and shall be granted bereavement leave from employment for up to five days to be taken, between the day of the **immediate family member**'s death and six weeks after the day of the immediate family member's funeral, burial or memorial service.[9] • Of these five days, employees with at least three **consecutive months of continuous employment** are entitled to be **paid** for the **first three days** of the leave at their regular rate of wages for their normal hours of work. For all purposes, pay during this time shall be considered as wages. • **Part time and temporary/casual employees** will also be entitled to this leave. • The leaves are not prorated, nor are the paid days. Paid days for part time and temporary employees are prescribed by regulation and will be calculated by averaging the daily earnings during the 20 day period preceding the first day the leave was taken. For the year 2019, employees are entitled to the full leave period. • The employee may request that the period during which bereavement leave is taken be extended. If the employer agrees, it must do so in writing. • Bereavement leave may be taken in **one or two period(s)**. • Employers may require that each period of leave be **not less than one day**. • Employees must, as soon as possible, **provide the employer with written notice**, setting out the beginning and the length of any period of leave.	**Unionized and non-unionized employees** • Revise policies to allow employees to take bereavement leave for the purposes set out in the Code, for up to **five days per calendar year**, the **first three of which are paid**, for some employees. • Note that the Code does not expressly allow employers to request documentation to support the reasons for taking bereavement leave. • Likewise, the Code does not currently require employees to provide proof of the reason for the bereavement leave. • Under the *Canada Labour Standards Regulations*, note that an "**immediate family**" member is limited to: (a) the employee's spouse or common-law partner;[10] (b) the employee's father and mother and the spouse or common-law partner of the father or mother; (c) the employee's children and the children of the employee's spouse or common-law partner; (d) the employee's grandchildren; (e) the employee's brothers and sisters; (f) the grandfather and grandmother of the employee; (g) the father and mother of the spouse or common-law partner of the employee and the spouse or common-law partner of the father or mother; (h) any relative of the employee who resides permanently with the employee or with whom the employee permanently resides.

9 The Code grants regulatory power to the Governor in Council to specify persons who are the employee's family members.

10 Under this provision, common-law partner means "a person who has been cohabiting with an individual in a conjugal relationship for at least one year, or who had been so cohabiting with the individual for at least one year immediately before the individual's death."

Unpaid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Leave for Court or Jury Duty (Section 206.9 and subsections 207.3(1), 207.3(2), 207.3(3), 207.3(4) & 209.3(2))	**Unionized and non-unionized employees** • Employees are entitled to take an unpaid leave of absence from employment to attend court to: (a) act as a witness in a proceeding; (b) act as a juror in a proceeding; **or** (c) participate in a jury selection process. • Employees are required, as soon as possible, to provide the employer with **written notice** of the **reasons** for the leave and the **length** of the leave that they intend to take, or any change there to. • If the length of the leave is more than four weeks, written notice of any change thereto shall be provided with at least four weeks' notice, unless there is a **valid reason** why that cannot be done. • Employers may **require that the employee provide documentation** in support of the reasons for the leave and of any change in the length of leave that the employee intends to take. • **Part time and temporary/casual employees** will also be entitled to this leave.	**Unionized and non-unionized employees** • Revise policies to allow employees to take unpaid court or jury leave for the purposes set out in the Code, keeping in mind the Code's **notice and documentation** provisions. • Consider addressing what is to be done about any fees that might be paid to participate in legal proceedings; • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has lawfully requested a leave of absence. • Likewise, employers are **prohibited** from taking into account an employee's lawful request for a leave of absence in any decision to promote or train the employee.

Unpaid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Leave for Pregnant or Nursing Women (Sections 205.1 and 205.2)	**Unionized and non-unionized employees** • Employees who are pregnant or nursing are entitled to unpaid leave, from the beginning of the pregnancy **up until the 24th week** following the birth of the employee's child. • This is independent of maternity and parental leave. • The employee must provide the employer with a **certificate** issued by a **health care practitioner of her choice** indicating that (i) she is unable to work by reason of the pregnancy or nursing, and (ii) the duration of that inability. • An employee on leave must provide the employer with at least **two weeks' written notice** of: (a) any change in the duration of risk as indicated on the certificate; **or** (b) the inability to work as indicated on the certificate. • In both cases (a) and (b), the employee must provide the employer with a new medical certificate accompanying the written notice. • However, the employee is not required to provide notice if there a **valid reason** it cannot be given. • **Part time and temporary/casual employees** will also be entitled to this leave.	**Unionized and non-unionized employees** • Revise policies to allow employees to provide documentation from a health care practitioner. Recall that the employer may request a certificate justifying the absence, but employees are entitled to provide one from any **health care practitioner within the meaning of the Code**. • Under the Code, a **health care practitioner means** "a person lawfully entitled, under the laws of a province, to provide health services in the place in which they provide those services." This scope is far broader than a medical doctor, and may include other health care professionals.

Unpaid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Traditional Aboriginal Practices (Sections 206.8 and subsections 207.3(1), 207.3(2) & 209.3(2))	**Unionized and non-unionized employees** • **Aboriginal employees** who have completed **three consecutive months of continuous employment** are entitled to and must be granted up to **five days** of unpaid traditional Aboriginal practices leave in each calendar year. • Under the Code, "Aboriginal" means "Indian, Inuit or Métis." • Traditional Aboriginal leave may be taken in **one or more periods**. • Employers may require that each period of leave be **not less than one day**. • An employee may take this leave to engage in traditional Aboriginal practices, including: (a) hunting; (b) fishing; (c) harvesting; and (d) any practice prescribed by future regulation. • Employees are required, as soon as possible, to provide the employer with **written notice** of the **reasons** for the leave and the **length** of the leave that they intend to take, or change. • Employees who are on traditional Aboriginal practices leave shall, as soon as possible, provide the employer with **written notice** of **any change in the length** of the leave that they intend to take. • Within **15 days** after the employee's return to work, the employer may, in writing, request documentation that shows the employee as an Aboriginal person. The employee shall provide the document only if reasonably practicable for him or her to obtain it. • **Part time and temporary/casual employees** will also be entitled to this leave.	**Unionized and non-unionized employees** • Revise **policies** to allow employees to take leave for traditional Aboriginal practices.

Unpaid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Medical Leave (Section 239)	**Unionized and non-unionized employees** • Employees can be absent from work for up to **17 weeks** as a result of: (a) personal illness or injury; (b) organ or tissue donation; or (c) medical appointments during working hours. • Employers may require that employees who take a medical leave of absence **for three or more days** provide a **certificate** issued by a **health care practitioner** certifying their incapacity to work for the relevant period. • Employees are no longer required to have worked for a continuous period of time prior to taking medical leave. • Employees must provide **four weeks'** written notice[11] to the employer, stating (i) the day on which the leave is to begin **and** (ii) the expected duration of the leave. Exceptions • However, the four-week notice requirement does not apply if there is a **valid reason** why it cannot be given. That being said, employees are still required to provide the employer with written notice **as soon as possible**. • Employees are required to provide the employer with **written notice of any change in the length** of their medical leave of absence **as soon as possible**.	**Unionized and non-unionized employees** • Employers may only request a certificate from a **health care practitioner** when an employee takes three or more consecutive days of medical leave. • Under the Code, a **health care practitioner means** "a person lawfully entitled, under the laws of a province, to provide health services in the place in which they provide those services." This scope is far broader than a medical doctor, and may include other health care professionals. • Employers are **prohibited** from considering a medical leave, or an intention to take such a leave, in decisions regarding promotions and training. • Employers are **prohibited** from dismissing, suspending, laying off, demoting or disciplining an employee because the employee has lawfully requested or taken a leave of absence. • Likewise, employers are **prohibited** from taking into account an employee's lawful request for a leave of absence in any decision to promote or train the employee. • However, employers may assign the employee to a different position, with different terms and conditions of employment, if after a medical leave of absence, the employee is unable to perform the work related to his or her position pre-leave.

11 The four-week period starts four weeks preceding the day on which the employee intends to commence his or her leave.

Unpaid leaves

New Provision	*Canada Labour Code*, Part III Amendments	Takeaways for Employers
Medical Leave (Section 239)	• While on leave, employees who provide a **written request** are entitled to be informed, in writing, of every employment, promotion or training opportunity that arises and for which they are qualified. For clarity, if such a request is made by the employee and received by the employer, it is the **employer's responsibility** to ensure this information is provided to the employee in writing.	• During leave, employees' **pension, health and disability benefits**, as well as their **seniority**, accumulate over the entire period. • If **employee contributions are required** to be entitled to pension, health and disability benefits, the employee is responsible for and must, within a reasonable time, pay those contributions for the period of any medical leave of absence unless, at the commencement of the absence or within a reasonable time after, the employee notifies the employer of the employee's intention to discontinue contributions during that period. • If an **employer pays contributions** for pension, health and disability benefits, it must do so during an employee's medical leave of absence, in at least the same proportion as if the employee were not absent. However, employers are not required to do so if the employee does not pay the employee's contributions, if any, within a reasonable timeframe.

Contacts

If you would like further information please contact:

National and Ottawa

Karen A. Jensen
National Practice Leader, Employment and Labour
+1 613 780 8673
karen.jensen@nortonrosefulbright.com

Global

Richard J. Charney
Global Head of Employment and Labour
+1 416 216 1867
richard.charney@nortonrosefulbright.com

Toronto

Daniel R. McDonald
Partner
+1 416 216 2965
daniel.mcdonald@nortonrosefulbright.com

Montréal

Patrick Galizia
Partner
+1 514 847 4736
patrick.galizia@nortonrosefulbright.com

Québec

Jean-Sébastien Cloutier
Partner
+1 418 640 5046
jean-sebastien.cloutier@nortonrosefulbright.com

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Stéphane Erickson, Natasha Hyppolite, Heather Cameron and Russell Groves

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