

And the changes keep coming! Further changes anticipated to the Canada Labour Code

It appears that the federal government isn't done with proposing changes to the *Canada Labour Code* ("Code"). On October 27, 2017, the Minister of Finance introduced Bill C-63, *Budget Implementation Act, 2017, No. 2*, which makes further, significant amendments to Part III of the Code (Standard Hours, Wages, Amendments, Vacations and Holidays).

Unlike the amendments we reported on in our Alert from August 3, 2017, these amendments have not passed and therefore are not yet law; however they are proceeding through the legislative process towards becoming law.

While the legislation contains numerous amendments to Part III, we have highlighted a few below which are expected to make the biggest impact on federally regulated employers, if passed:

Flexible Work Arrangements

A new division would be created under the Code, entitled "Flexible Work Arrangements." Under this division, employees with at least six (6) months of consecutive service would have the right to formally request a change to the following terms and conditions of employment:

- The number of hours that the employee is required to work;
- The employee's work schedule;
- The employee's location of work; and
- Any terms and conditions that apply to the employee and that are prescribed by regulation.

The employee must make the request in writing and an employer must respond to the request no later than thirty (30) days from the receipt of the request. The employer may (1) grant the request, (2) propose an alternative change, or (3) deny the request. Employers may deny the request on one or more of the following grounds:

- The requested change would result in additional costs that would be a burden on the employer;
- The requested 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;
 - There would be insufficient work available for the employee if the requested change was granted; and/or
 - Any ground prescribed by regulation.

If the employer proposes an alternative change or denies the request, the employer must provide the employee with written reasons.

Employers would be prohibited from dismissing, suspending, laying-off, demoting, or disciplining an employee because the employee made a request for a flexible work arrangement, and the employer may not take the request into account in making any decision to promote or train the employee.

Notice of Shift Change

Employers would be required to provide employees with written notice twenty four (24) hours in advance of a shift change or cancellation. The Code would provide an exception where the situation could not be reasonably foreseen and that presents (or could reasonably be expected to present) an imminent or serious threat.

Right to Refuse Overtime

Employees would have the right to refuse to work overtime where overtime conflicts with a “family responsibility” under the Code. Family responsibility is defined as:

- The health or care of any of the employee’s family members; or
- The education of any of the employee’s family members who are less than eighteen (18) years of age.

However, this right is subject to the employee first having taken reasonable steps to carry out their family responsibilities by other means. Employees are also not entitled to refuse to work overtime where the situation could not be reasonable foreseen and presents (or could reasonably be expected to present) an imminent or serious threat.

New and Revised Leaves of Absences

Family Responsibility Leave

Employees with at least three (3) consecutive months of service would be entitled to a new unpaid leave of up to three (3) days per calendar year in order to meet responsibilities concerning family responsibilities as already defined above.

Employers are permitted to request documentation to support the leave; however, the employee's obligation to provide the documentation is subject to the documentation being reasonably practicable for the employee to obtain and provide.

Leave for Victims of Family Violence

All employees would be entitled to a new unpaid leave of up to ten (10) days where an employee is a victim of family violence or is the parent of a child who is a victim of family violence. The unpaid leave is tied to taking time off to undertake specific situations outlined in the Code.

Leave for Traditional Aboriginal Practices

Employees who are Aboriginal persons (defined as Indian, Inuit, or Métis) and who have completed three (3) consecutive months of service would be entitled to a new unpaid leave of up to five (5) days leave to engage in traditional aboriginal practices as defined in the Code.

Extended Bereavement Leave

In addition to the three (3) paid days currently provided by the Code, employees would be entitled to an additional two (2) unpaid days, resulting in a total of five (5) days of bereavement leave (three (3) of which are paid).

Again, these amendments, which will apply to federally regulated employees only, have not yet been passed, and as a result are subject to change. However, we believe that this bill will pass in some form. We will be sure to keep you updated as this bill makes its way through the Senate.

In the meantime, please feel free to contact e2r® to speak with an Advisor if you have any questions regarding how these proposed changes might affect your workplace.