
BILL C-3 - CANADA LABOUR CODE AMENDMENTS EXPLAINED AND A CHECKLIST TO SUPPORT COMPLIANCE

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INTRODUCTION

During the COVID-19 pandemic, several jurisdictions in Canada created new paid sick day leave for COVID-related absences. These temporary measures were subsidized by the government and applied only to COVID absences.

However, in light of the pandemic, many countries around the world began to re-examine employee sick leave protections, and Canada was no exception. This re-examination resulted in Bill C-3.

BILL C-3

In November 2021, Bill C-3, an act to amend the Criminal Code and the Canada Labour Code (the Code) was introduced into the House of Commons. It received Royal Assent on December 17th, 2021.

With the passing of Bill C-3, federally regulated companies of any size are expected to:

- Provide 10 days of paid sick leave for employees; and
- Provide a leave of absence from work of up to eight weeks in the event of the death of a child or the loss of an unborn child.

WHEN AMENDMENTS UNDER BILL C-3 TAKE EFFECT

The new provisions come into effect no later than December 1st, 2022.

AMENDMENT DETAILS

Medical Leave – 10 days of paid sick leave

The new provisions require employers to provide employees with up to 10 days of paid sick leave per year depending on their length of service. Further details include:

- Employees are entitled to three days of paid medical leave after 30 days of continuous employment;
- After the initial 30-day period, employees will earn one day of paid leave at the beginning of each month;
- Employees can earn up to 10 days of paid leave in a calendar year;

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- Paid leave may be taken in one or more periods, and the employer may require that each period of leave be a minimum of one day in duration;
- An employee is entitled to receive pay for their normal hours of work at their regular rate for each day of medical leave;
- Any days of medical leave with pay that an employee does not take in a calendar year will carry forward to the next calendar year (starting January 1st), but each day carried over reduces the number of days that can be earned in that next year by one. At any given time, the maximum entitlement per employee is 10 days;
- Employers who calculate annual vacations using a year other than the calendar year must use that same year to calculate entitlements for paid medical leave;
- Employers may require employees who take at least five consecutive days of paid medical leave to provide medical certificates within 15 days of their return to work;
- Employees who change employers due to for example a contract being awarded through a retendering process are deemed to be continuously employed with one employer; and
- Employers will need to establish record-keeping practices to track the start and end dates of leaves, the year of employment in which leave was earned, and each employee's carry-over entitlement.

The new paid medical leave amendments provide the government with the authority to make regulations, defining terms such as “regular rate or wages” and “normal hours of work” or modifying the application of the medical leave to employees or classes of employees who are entitled to earn “substantially equivalent” periods of medical leave of absence with pay.

Bereavement Leave

The changes to the Canada Labour Code also include an increase in bereavement leave under two specific circumstances:

- If a child of an employee or a child of the employee's spouse or common-law partner passes away, the employee will be entitled to eight weeks of bereavement leave; and
- If an employee experiences the loss of an unborn child who they would have been a parent to under the definition in the Canada Labour Code, then the employer must grant a bereavement leave of eight weeks to the employee.

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Up to eight weeks may be taken during the period that begins on the day that the death occurs and ends twelve weeks after the latest of the days on which any funeral, burial or memorial service of the child takes place.

The provisions outlining how many days of the leave would be paid remain the same under the Code, but the total length is extended for these specific circumstances.

Existing Entitlements to Leave

While it is important to understand the details of the new enhanced leaves of absence, it is also important to be clear on what remains the same. Key points include:

- An employee's current entitlement under the Code of up to five days (including three paid days) of Personal Leave for treating the employee's own "illness or injury" will be repealed in connection as it will now be covered under the new medical leave provisions. However, Personal Leave on other grounds (e.g., to carry out responsibilities related to family members' health or care) remains in place.
- The current unpaid medical leave provisions of the Code will remain in place notwithstanding the new paid medical leave entitlement.
- The extended bereavement leave for the death of a child/unborn child continues to be unpaid. The Code sets out a separate entitlement for bereavement leave with pay. If the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of bereavement leave with pay.

CHECKLIST FOR COMPLIANCE

The following checklist can help ensure your company policies and practices align with the new requirements.

Review and update leave policies including:

- **Sick Leave** – Revise policy to reflect all new Medical Leave entitlements under Bill C-3. See Sample Medical/Sick Leave Policy.

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- **Personal Leave** – Revise guidelines to remove “personal illness or injury” as a reason for requesting time off under the Personal Leave entitlement under the Code. This will now be covered in connection to the new medical leave. All other conditions related to Personal Leave under the Code remain the same (e.g., to carry out responsibilities related to family members’ health or care).
- **Bereavement Leave** – Update guidelines to reflect that the legislation extends bereavement leave to provide up to eight weeks of leave for employees who lose a child or experience a stillbirth.

Communicate changes and updated policies to employees

It is always good practice to be transparent and upfront when it comes to legislative policy changes. Use one or a variety of these methods to inform your employees of the changes:

- Hold a staff meeting to communicate policy updates;
- Post new workplace policies in common areas – such as break rooms, intranet sites – where employees can easily see them;
- Hand out hardcopies of new policies in the form of memos or updated employee handbooks; and
- Inform your employees of changes electronically via e-mail or other information sharing sites.

Implement a record keeping system

Documentation and employee records should include the following information:

- Dates of commencement and termination of leave;
- The year of employment when leave was earned;
- The number of days of leave carried over from a previous year;
- A copy of any written request for a medical certificate made by an employer; and
- A copy of any medical certificate submitted by an employee (store separately from the employee file).

Review collective agreements

If applicable, review collective agreement provisions to determine whether any changes may be required to ensure compliance with the new requirements.

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