
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 came into effect December 1st, 2022.

AMENDMENT DETAILS

Medical Leave – 10 days of paid sick leave

The new provisions require employers to provide employees, including full-time, part-time, casual, and fixed-term contract employees, with up to 10 days of paid medical leave per year depending on their length of service. This section clarifies regulations and the key principles that employers will need to follow to be compliant.

A. An employee is entitled to medical leave with pay if they are personally:

- Ill or injured;

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- Donating an organ or tissue;
- Attending medical appointments during work hours; or
- Required to be in quarantine

Sick leave with pay can only be taken if the employee is scheduled to work or is reasonably expected to be available for work. For example, an employee works a standard schedule Monday to Friday. If the employee is sick on Saturday and Sunday, they are not eligible for paid medical leave for those days as they were not scheduled to work or expected to be available to work.

B. An employee will earn their first 3 days of medical leave with pay once they complete their initial 30-day qualifying period of continuous employment.

To earn additional paid medical leave days, the employee must then complete 1 calendar month of continuous employment. At the beginning of each month following a month of continuous employment, an additional day of medical leave with pay will be earned up to a maximum of 10 days per year.

For example, Steve started working for his employer on March 15th. His 30-day qualifying period ended on April 14th at which time he earned 3 days of medical leave with pay. Next, Steve completed 1 month of continuous employment after the initial 30-day qualifying period. This month of continuous employment is the calendar month following the 30-day period. It started on May 1st and ended on May 31st. Therefore, on June 1st, he earned his 4th day of medical leave and continued to earn 1 day of medical leave with pay at the beginning of each of the following months up to a maximum of 10 days.

NOTE: Employees already employed as of December 1st, 2022, when this amendment came into effect, started their initial 30-day qualifying period on December 1st, 2022.

Employees hired after December 1st, 2022, start their initial 30-day period on their first day of employment.

C. Paid medical days earned but not used during the year will be credited to the employee at the beginning of the following year. Employers can credit up to a maximum of 10 days and will count toward the maximum of 10 days that an employee can earn during the following year.

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For example, in a calendar year, Min earned 10 days of medical leave and only used 3 to recover from minor surgery. She will have 7 unused days carried over into the next calendar year. This means she will only need to earn 3 more days of medical leave with pay to have her full 10-day entitlement for the new calendar year.

D. If an employee requests a medical leave with pay and it meets the requirements of the Code, then it is granted as medical leave with pay versus being categorized as another type of leave entitlement. Employers don't have the authority to decide when employees take medical leave with pay.

For example, Marcel missed 4 days of work because of a bronchial infection. The employer said he must use his vacation entitlement for the time he was away from work. Marcel does not want to use his vacation and wants to use his paid medical leave of which he has earned 6 days to date. The employer can't mandate that Marcel use his vacation; it is Marcel's decision to categorize the type of leave taken.

E. An employer may choose to use the calendar year, or if they base their calculation of annual vacation on a year other than the calendar year, then they are allowed to choose that year instead of the calendar year for the purposes of paid medical leave.

F. 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.

G. Employees are to be paid for their normal hours of work at their regular rate of pay for each day of medical leave.

For employees whose hours of work vary or who are paid on a basis other than time, employers must calculate their medical leave pay by taking the average of the employee's daily earnings (excluding overtime hours) for the 20 days the employee has worked immediately preceding the first day of the period of paid leave.

If unionized:

- the collective agreement can either contain an explicit method of calculation for medical leave with pay or a calculation method that encompasses all paid leaves that is agreed to under the collective agreement and is binding on the employer and employee.

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- If the collective agreement does not contain an agreed upon calculation method, then medical leave pay is calculated by taking the average of the employee's daily earnings (excluding overtime hours), for the 20 days the employee has worked immediately preceding the first day of the period of paid leave.

H. Employers may require employees who take at least five consecutive days of paid medical leave to provide medical documentation certifying that the employee was not able to work during the period of their medical leave with pay. Requesting certification must align with the following criteria:

- The request needs to be made within 15 days of their return to work;
- The request must be made in writing; and
- The certification must be provided by a health care practitioner that is lawfully entitled under provincial law to provide health services in the place they are providing these services.

I. When there is a transfer of business and work activities between employers due to transactions such as sales, mergers or retendering of contracts, and the worker's employment is connected to that business and related work activities, then their employment is continuous. In other words, the employee is deemed to be continuously employed with one employer.

J. Employers will need to establish record-keeping practices and keep records related to each period of paid medical leave taken by an employee. The records should include the following:

- The dates when the leave started and ended;
- The year of employment in which the leave was earned;
- The number of days of leave carried over from the 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 (stored separately from the employee file).

Bereavement Leave

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

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- 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.

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.

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Review and update

Leave policies including:

- **Medical Leave** – Revise policy to reflect all new Medical Leave entitlements under Bill C-3. See Sample Medical/Sick Leave Policy.
- **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.
- **Benefit Policies** – Understand how existing benefits currently offered will interact with the medical leave with pay entitlement established in the Code. For more information and interpretations related to stacking of benefits please see “Stacking – Medical Leave with Pay.”

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.

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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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