



# Labour



## LABOUR STANDARDS Canada Labour Code Part III

# Labour

## **PRESENTATION OUTLINE**

- Highlight Recent Amendments to Part III of the Canada Labour Code
- Brief Overview of the Canada Labour Code, Part III
- Questions

# Labour

## **Amendments to Part III of the Code**

- Implementation of amendments to the Canada Labour Code, Part III, began in December 2012
- These changes have affected various Divisions and processes of the Code.

# Labour

## Timeline of Code Amendments

December 14, 2012	January 1, 2013	June 9, 2013	April 1, 2014	July 1, 2014	March 16, 2015
<ul style="list-style-type: none"><li>• repeal of mandatory retirement</li><li>• extension of length of time for sick leave</li><li>• ability to interrupt maternity parental leave</li></ul>	<ul style="list-style-type: none"><li>• introduce new leave: Leave Related to Death and Disappearance</li></ul>	<ul style="list-style-type: none"><li>• introduce new leave: Leave Related to Critical Illness</li></ul>	<ul style="list-style-type: none"><li>• new inspectors' powers (rejection, settlement and suspension of complaints)</li><li>• legislated complaints' handling process</li><li>• six-month limit to file a complaint</li><li>• limited time period that may be covered by a payment order</li><li>• right to request a review of a rejected complaint</li><li>• administrative review process</li><li>• 30-days limit for payment of vacation pay</li></ul>	<ul style="list-style-type: none"><li>• requirement to insure any long-term disability plans</li><li>• increased maximum fines for labour standards violations</li></ul>	<ul style="list-style-type: none"><li>• simplified process to calculate general holiday pay</li><li>• new eligibility requirements for general holiday pay</li></ul>

# Labour

## Grounds to Reject a Complaint

An Inspector may reject a complaint under the following circumstances:

1. Complaint is not within the inspector's jurisdiction
  2. Complaint is determined by the inspector to be frivolous, vexatious or not made in good faith
  3. Subject matter of the complaint has already been settled
  4. Other means available to resolve subject matter of complaint that the inspector believes should be pursued
  5. Complaint has been adequately dealt with through recourse obtained before a court, tribunal, arbitrator or adjudicator
  6. Insufficient evidence available to uphold the alleged infraction
  7. Employee is subject to a collective agreement which has a third party dispute resolution process
  8. Measures were not taken by the complainant within specified time period while complaint was suspended
- Following the rejection of a complaint, an employee has the right to make a request that the Minister, or delegate, reviews the inspector's decision to reject the complaint.

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## Time Frame to File Complaints

- Monetary complaints: must be filed within six months of the last pay day on which the wages or other amounts were owed.
- Non-Monetary complaints: must be filed within six months of the day on which the alleged violation occurred.
- Extension of time to file a complaint: can be requested, if a complaint is inadmissible based on time.
- Example: Complainant made a written complaint during the six-month period to another federal, provincial or municipal government official whom the complainant believed had the authority to deal with the complaint, but did not have that authority.

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## Time Limit Covered by a Payment Order

- The Code places a limitation on the period that may be used to assess wages or other amounts owed, for the purposes of wage recovery.
- The retroactive time period that will be used to calculate and issue a payment order is:
  - Unpaid wages and other amounts, excluding vacation pay: 12 months
  - Vacation pay: 24 months
- Using these time periods, calculation of retroactivity period will be before:
  - the day on which the complaint is made;
  - the date of termination of employment (if the complainant's employment was terminated prior to making the complaint); or
  - the day on which the inspection began (during the course of which the inspector determined wages or other amounts are owed).

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## Administrative Review Process – Payment Order

- A person may request (in writing, with reasons, and within 15 days of being served a payment order or notice of unfounded complaint) a review of the decision
- The Minister will determine whether the request will be treated as a review or an appeal.
- Upon review, a payment order or notice of unfounded complaint may be confirmed, rescinded or varied:
  - If rescinded, the case would be assigned to another inspector

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## Long Term Disability Plans

- Employers are required to insure any long-term disability plans:
  - self-insured plans may remain in place for employees who received or had applied for benefits before July 1, 2014.
- Upon request, employers who provide long-term disability benefits must furnish proof that the plan is insured.

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## OVERVIEW OF the Canada Labour Code, Part III

- The primary objective of Part III of the *Canada Labour Code* is to provide fair and equitable conditions of employment.
  - Minimum standards.
  - No distinction between part-time and full-time.
  - Applies notwithstanding any other law, custom, contract or arrangement.
  - 18 divisions under Part III of the *Code*

# Labour

**Canada Labour Code, Part III, Division I**

**Hours of Work**

**&**

**Minimum Wages**

# Labour

## Hours of Work

- Standard hours of work are 8 in a day and 40 in a week.
- Overtime pay, at least one and one-half times the regular rate of pay.
- Maximum hours: 48 per week; (some exceptions)
  - a) In exceptional circumstances as per section 176 of the Code.
  - b) To do emergency work as per section 177 of the Code.
  - c) Where averaging or modified is permitted
- Weekly day of rest – exception averaging
- Section 166 of the Code defines a day as any period of 24 consecutive hours. A week is the period between midnight on Saturday and midnight on the immediately following Saturday
- Excluded: Managers, superintendents or those who exercise management functions

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## Hours of Work - Transportation

Class	Daily Standard	Weekly Standard	Weekly Standard - GH	Averaging Permitted	Maximum Hours
Highway Motor Vehicle Operators	N/A	60	50	No	As per Commercial Vehicle Drivers' Hours of Service Regulations
City Motor Vehicle Operators	9	45	36	No	"
Bus Operators	8	40	32	Yes	"
Non-Driving Personnel	8	40	32	Yes	48

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## Hours of Work - Transportation

- Not all time spent on the job is to be counted when calculating hours of work for city and highway motor vehicle operators.
- Similarly for bus operators - Time spent does not count when the bus is in the garage or parked and the employee is not required to stay with it.
- Section 173 of the Code stipulates that hours of work shall be scheduled or worked so that each employee has at least one full day of rest in a week. (Wherever practicable, this day of rest should be Sunday.)

# Labour

## Hours of Work – Averaging / Modified Work Schedule

### Averaging:

- If the nature of the work necessitates irregular hours due to seasonal or other factors, the hours may be averaged
- There is no daily or weekly overtime
- Overtime applies after the standard hours of work in the averaging period have been exceeded
- The standard hours of work in an averaging period are determined by multiplying the number of weeks in an averaging period by 40
- The maximum hours of work in an averaging period are determined by multiplying the number of weeks in an averaging period by 48.

### Modified:

- Example: compressed work week
- Establish, modify or cancel as long as certain criteria are met
- Posting of notice for 30 days
- Written agreement or vote (70% agreement)
- The standard hours of work for a period of 2 or more weeks cannot exceed an average of 40 hours a week, and the maximum hours for the same period cannot exceed an average of 48 hours a week
- Overtime is payable after the approved daily or weekly hours

# Labour

## Minimum Wages Employment under 17

- Provincial adult minimum hourly wages apply.
- Work not likely to endanger safety or health.
- Where not required by provincial law to attend school.
- Not between 11:00 p.m. and 6:00 a.m.

# Labour

## Reporting Pay

- Employees reporting for work at the call of an employer.
- Unscheduled.
- Employee must be paid wages for not less than the equivalent of 3 hours' wages.
- Applies whether or not employee is asked to do any work after so reporting.

# Labour

## Canada Labour Code, Part III, Division IV

# Annual Vacations

# Labour

## Annual Vacations – General Entitlement

- Two weeks vacation with 4% of wages as vacation pay.
- After six years of service:
  - three weeks with 6% of wages as vacation pay.
- Vacation pay is owed on all wages earned
- Vacation pay is payable immediately on termination of employment or within 30 days.

# Labour

## Canada Labour Code, Part III, Division V

### General Holidays

# Labour

## 9 General Holidays:

- New Year's Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- Boxing Day

\*Family Day and Civic Holiday (not a federally legislated general holiday)

# Labour

## **Substitution of General Holiday**

- Substitution may occur with approval of 70% of affected employees.
- Notice must be posted for at least 30 days before substitution takes effect.
- If collective agreement, substitution must be agreed to in writing by the employer and the trade union.

# Labour

## **General Holiday Does Not Meet 30 Day Entitlement Did Not Work**

- Non-Continuous Operation: Not entitled to General Holiday Pay
- Continuous Operation: Not entitled to General Holiday Pay

# Labour

## **General Holiday Does Not meet 30 Day Entitlement Worked**

- **Non-Continuous Operation:** Paid 1.5 times their regular rate of wages for hours worked on that day.
- **Continuous Operation:** Paid regular rate of wages for the hours worked on that day.

# Labour

## General Holiday Pay – Common Formula

- Continuous or non-continuous
- Employee's who do not work on the general holiday
- Employee's who are paid hourly, salary or per mile/per trip
- Employee's receiving commission who have not completed 12 consecutive weeks of employment

Common Formula = wages employee earned in the 4 week period, immediately before the week the general holiday occurs (excluding overtime) / 20

Example: Claudette has earned \$2600 in the 4 week period immediately before the week when Victoria day occurs.

To calculate Claudette's general holiday pay, her employer uses the following calculation:

$$\$2600/20 = \$130$$

# Labour

## General Holiday Pay – Commissioned-based employees

- Non-continuous operations
- Employee's who do not work on the general holiday
- Employee's receiving commission who have completed 12 consecutive weeks of employment

Commission Formula = wages employee earned in the 12 week period, immediately before the week the general holiday occurs (excluding overtime) / 60

Example: Ryan has earned \$5261 during the 12 weeks prior to Good Friday. To calculate Ryan's general holiday pay, her employer uses the following calculation:

$$\$5261.00/60 = \$87.68$$

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## **General Holiday Pay – Multi-Employer Employment**

- Common to employees working in the longshoring industry

# Labour

## **General Holiday Pay – Employees working on a general holiday, non continuous operation**

- Employee's paid salary, hourly, commission based
- Employees who have met the 30 day requirement
- Employees would receive their general holiday pay (common formula/commission formula) + wages at a rate equal to at least one and one-half (1.5) times their regular rate of wages for the time they work on that day.

# Labour

## **Example: Non-Continuous Operation Employee works on General Holiday**

Judith has earned \$2800 in the 4 week period prior to Labour day. Judith is required to work 5 hours on Labour Day and her regular hourly rate works out to be \$18.00/hour.

$$\$2800/20 = \$140.00$$

$$5 \text{ hrs @ } \$18.00/\text{hour} = \$90$$

$$\$90 \times 1.5 = \$135$$

$$\$140 + \$135 = \$275.00$$

# Labour

## **General Holiday Pay – Employee working on a general holiday, continuous operation**

1. Pay general holiday pay (common formula) plus wages at a rate equal to at least one and one half times (1.5) their regular rate of wages for the time they worked on the general holiday
2. Give a holiday with pay at some other time (straight time – hours worked)
3. Collective agreement: receive holiday pay for the first day on which they do not work after the general holiday

# Labour

## Example: Noah works on Thanksgiving Day

Since he worked on Thanksgiving day there are 2 calculations which must be performed.

1. Calculation for General Holiday Pay
2. Calculation for additional work performed on that day

Period ending	# of weeks prior to GH	Gross Wages
Saturday October 17 <sup>th</sup> , 2015 (Noah worked between Oct 11 <sup>th</sup> and Oct 17 <sup>th</sup> )	(The week in which the GH occurred)	\$700
Saturday October 10 <sup>th</sup> , 2015 @midnight	1	\$852.33
Saturday October 3 <sup>rd</sup> , 2015 @midnight	2	\$1,704.67
Saturday September 26 <sup>th</sup> , 2015 @midnight	3	\$947.29
Saturday September 19 <sup>th</sup> , 2015 @midnight	4	\$1578.82
<b>Total not including the week in which the holiday occurred</b>		<b>\$5,083.11</b>

# Labour

## Example Continued...

To calculate Noah's General Holiday Pay for Thanksgiving Day:

*Use section 196 of the Canada Labour Code, Common formula as follows:*

<b>Wages earned in the 4 weeks immediately preceding the week in which the general holiday occurs</b>	<b>\$5,083.11</b>
Wages earned divided by 20 (per section 196)	\$254.16

The employer has opted to pay Noah for this day as per paragraph 196(2)(a)

<b>Noah drives 500 miles x .45c/mile on Thanksgiving Day</b>	<b>\$225.00</b>
Total Wages Earned	\$225.00

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## Example continued...

**To determine Noah's wages for his additional work on Thanksgiving Day:**

Total wages Earned: \$225.00

At one and a half times his regular rate:  $\$225.00 \times 1.5 = \mathbf{\$337.50}$

<b>General Holiday Pay</b>	<b>\$254.16</b>
Pay for work on the holiday	\$337.50
Total wages Noah is owed for October 12 <sup>th</sup> , 2015	\$591.66

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## **General Holiday Pay – Manager, Member of a Profession, Working on a General Holiday**

- Receive a holiday with pay at some other time
- Either added on to their annual vacation or by granting it at a time that is convenient to both the employee and the employer

# Labour

## Canada Labour Code, Part III, Division XIII

### Sick Leave and Work-Related Illness and Injury

# Labour

## **Sick Leave**

- Three months continuous service.
- 17 weeks
- If requested by employer, employee must produce medical certificate within 15 days following return to work.
- Benefits continue, so long as employee maintains their portion of payments
- Employee may not be terminated or disciplined for taking leave under this Division.

# Labour

## **Work-Related Illness and Injury**

- Employee may not be terminated for absence.
- Benefits continue, so long as employee maintains their portion
- Return employee to work after absence.
- May assign different tasks if employee is unable to perform former job.
- Obligation for employer to subscribe to WSIB.

# Labour

## **Canada Labour Code, Part III, Division VII**

**Maternity/Parental Leave, Compassionate Care Leave, Leave Related to Death or Disappearance and Critical Illness**

# Labour

## Maternity Leave

- 17 weeks
- Leave may be interrupted if the child is hospitalized.  
Extension period not to exceed 52 weeks
- Employee must have completed six months continuous service.
- Employee must provide medical certificate.
- Leave may not begin earlier than 11 weeks prior to the estimated date of confinement.
- Typically leave may not end later than 17 weeks following date of birth, unless child is hospitalized.
- 4 weeks written notice by employee.

# Labour

## Parental Leave

- 37 weeks unless extended for reasons below
- Leave may be interrupted in order to take compassionate care leave, sick leave, leave related to work related illness, reservist leave OR if the child is hospitalized. Extension period not to exceed 104 weeks.
- Employee must have completed six months continuous service. Must provide employer with 4 weeks written notice.
- Natural or adoptive parents.
- Normally taken any time within the 52 weeks following the birth or custody, unless extended
- Must be taken in one block, unless request return to work if child hospitalized.

# Labour

## Compassionate Care Leave

- All employees are entitled to a leave of up to 8 weeks to care for or support a gravely ill family member with significant risk of death within 26 weeks.
- Leave may be taken in increments as small as one week.
- A medical certificate is required and may be requested from employee within 15 days of the employee's return to work.

# Labour

## Death or Disappearance

- Employees must have completed 6 months of continuous employment.
- Up to 104 weeks if the employee is the parent of a child who has died and it is probable, considering the circumstances, that the child died as a result of a crime.
- Up to 52 weeks if the employee is the parent of a child who has disappeared and it is probable, considering the circumstances, that the child disappeared as a result of a crime.

# Labour

## Leave Related to Critical Illness

- 37 weeks within a 52 week period
- Completed 6 consecutive months of continuous employment
- Be a parent of a critically ill child
- medical certificate required from a specialist medical doctor stating the child is critically ill and needs care or support of his/her parent(s) and specifies the period during which the child requires care and support
- Employee must provide the employer with written notice of their intention to take leave as soon as possible.

# Labour

## **General Provisions for leaves under Division VII**

- Employees on leave are entitled to continue pension, health and disability benefits while on leave.
- Entitlement to training and job opportunities.
- Entitled to their position upon return, or, if not available, a comparable position at same rate of pay, in the same location, with the same benefits.
- Changes in wages or benefits applies
- Seniority accrues.

# Labour

## **Prohibition**

- An employer may not dismiss, suspend, lay off, demote or discipline an employee because she is pregnant or because she or he intends to take leave under this Division. Nor can an employer take pregnancy or a leave of absence under this Division into account in any decision not to promote or train an employee.

# Labour

## Canada Labour Code, Part III, Division VIII

# Bereavement Leave

# Labour

## Bereavement Leave

- 3 normal working days immediately following death of member of immediate family.
- After three months continuous service, employee is entitled to bereavement leave with pay for normal working days which fall within the three days following the day of death.
- Immediate family includes: Spouse including common-law partner; Parent and spouse of parent including common-law partner; Child of employee or of employee's spouse; Grandchild; Sibling; Grandparent; Parent-in-law including common-law partner; Any relative residing with employee.

# Labour

**Canada Labour Code, Part III, Division IX,  
X, XI AND XIV**

## Termination of Employment

# Labour

## **Group Termination**

- Applies to termination of 50 or more employees within 4 weeks, in a particular industrial establishment
- Notice to Ministers at least 16 weeks prior to termination date.
- Joint planning committee required.
- Waiver of application of Division or part thereof may be obtained from the Minister of Labour.

# Labour

## **Individual Termination (Notice)**

- Where the employer terminates an employee who has completed 3 months of continuous service, the employer must provide two weeks written notice or two weeks pay in lieu thereof.
- Conditions of employment do not change during notice period.
- Notice not required if termination for just cause.

# Labour

## **Severance Pay**

- Where employee has completed 12 months of continuous service, employer must provide two days pay per complete year of service.
- Minimum 5 days.
- Severance pay not required if termination is for just cause.
- Employees now qualify for severance pay regardless of whether or not they are entitled to a pension upon retirement.

# Labour

## Layoff versus Termination

### Layoff deemed to be termination unless:

- Layoff is less than 3 months;
- Layoff is more than 3 months with a recall date within 6 months;
- Layoff is more than 3 months, but not more than 12 months and the employee maintains recall rights pursuant to a collective agreement
- Note: Recall of less than two weeks does not interrupt layoff period.

# Labour

## Unjust dismissal admissibility Criteria

- Complaint must be in writing.
- Complaint must be made within 90 days of dismissal.
- An employer-employee relationship must exist.
- The company must fall under Federal jurisdiction.
- Employee was not a manager.
- Employee was dismissed (also constructive dismissal).
- Employee is not a member of a group of employees subject to a collective agreement.
- Employee has completed 12 consecutive months of continuous employment.
- Employee was not laid off due to lack of work or any other discontinuance of a function.
- Employee does not have other legislative means of redress.

# Labour

## **Payment of Wages**

- Employees are entitled to receive their wages on their regular pay day.
- Employees are entitled to receive any other amounts to which they are entitled within 30 days from the time when the entitlement arose.

# Labour

## Division XV.1 – Sexual Harassment

- Any conduct, comment, gesture or contact of a sexual nature:
  - that is likely to cause offence or humiliation to any employee; or
  - that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or any opportunity for training or promotion.
- Every employee is entitled to employment free of sexual harassment.
- Employer is required to make reasonable effort to ensure no employee is subject to sexual harassment.
- Policy statement required.

# Labour

## Canada Labour Code, Part III, Division XVI

# Administration and General

# Labour

## **Deductions and Permitted deductions from pay**

- No employer shall make deductions from wages or other amounts due to an employee, except as permitted by or under this section.
- Those required by federal or provincial law.
- Amounts authorized by court order or collective agreement.
- Amounts authorized in writing by employee.
- Overpayments of wages.

# Labour

## **Permitted deductions from pay**

- No employer shall make a deduction in respect of damage to property, or loss of money or property, if any person other than the employee had access to the property or money in question.

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## **Pay Statement**

Must Include:

- The period for which a payment is made;
- The number of hours for which the payment is made;
- The rate of wages;
- Details of the deductions made from the wages;
- Actual sum being received by the employee.

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## Record Keeping

- Employers are obliged to keep payroll and other records relating to employment for at least 36 months.
- They must post an outline of the *Code* requirements in the work place, along with an indication where one may obtain further information.

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## Reference Materials – New and Updated

- For additional information, please consult the following reference documents on the Labour Program Internet site ([www.labour.gc.ca](http://www.labour.gc.ca)) :
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- For more information, please contact the Labour Program toll free at 1-800-641-4049

# Labour

## Web Links

### **Canada Labour Code – Part III Publications**

<http://www.labour.gc.ca/eng/resources/publications/index.shtml#es>

### **Labour Standards - Interpretations, Policies and Guidelines (IPGs)**

<http://www.labour.gc.ca/eng/resources/ipg/index.shtml#st>

### **City versus highway drivers Motor Vehicle Operator Surveys:**

[http://www.labour.gc.ca/eng/standards\\_equity/st/surveys.shtml](http://www.labour.gc.ca/eng/standards_equity/st/surveys.shtml)

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## Labour Standards

**QUESTIONS?**