



COVID-19 Canada Labour Code Amendments

Part 10 - Canada Labour Code

The NWMMA provides for a number of amendments to the *Canada Labour Code*, which is the governing statute for federally regulated employers in Canada. In particular, the amendments added a new section 'Division XIII.01 Leave Related to COVID-19', as well as amended current sections of the Code relating to vacation and parental leave entitlements.

Generally, the amendments are targeted at providing employees with various job protections in order to allow them to exercise their entitlements to leaves of absence under section 206.3, (Compassionate Care Leave) 206.4 (Leave Related to Critical Illness) or 239 (Medical Leave) (collectively "COVID-19 Leaves"). As a starting point, the amendments confirm entitlements to these leaves, even if a certificate is not issued by a health care practitioner (168.1(1)) – it is important to note that currently, this section will be repealed on September 30, 2020.

The following provides an overview of the new additions to the Code, as well as the amendments.

Amendments to Vacation and Parental Leave Entitlements

The amendments seek to protect employees who may have been on vacation or on an unrelated leave of absence but then are impacted by COVID-19 such that their vacation or other leave will be extended or postponed. For example, if an employee is on vacation, s/he is permitted to interrupt vacation in order to commence a leave of absence related to COVID-19 (187.1(1)). Following the leave the employee is not deemed to have resumed their vacation immediately prior to returning to work (239.91(7)) and can postpone their vacation (187.2(1)). Similarly, subsection 206.1(2.1) of the Code is amended so that if an employee is on a parental leave, the parental leave can now be extended by the number of weeks during which the employee is on COVID-19 leave.

Amendments to Division XIII - Medical Leave

There is a specific addition to account for the concept of a leave of absence due to quarantine. Section 239 is amended to add 239(1.1) and states that *every employee is entitled to and shall be granted a medical leave of absence from employment of up to 16 weeks as a result of quarantine.*

NEW- Division XIII.01 Leave Related to COVID-19

The following is a summary of the various provisions added to the Code and described therein as "Leave Related to COVID-19".

Beginning with Section 239.01 – Entitlement to leave, the amendments state that *every employee is entitled to and shall be granted a leave of absence from employment of up to 16 weeks – or, if another number of weeks is fixed by regulation, that number of weeks – if the employee is unable or unavailable to work for reasons related to the coronavirus disease 2019 (COVID-19)*. In addition to contemplating that the period of 16 weeks may be extended, these new provisions within the Code provide for the following details about the rights and obligations of employees and employers associated with the application of the COVID-19 leave.

- *Notice* - An employee who intends to take a leave of absence must, as soon as possible, give written notice to the employer of the reasons for the leave and the length of the leave that they intend to take.
- *Change in length* - An employee must, as soon as possible, give written notice to the employer of any change in the length of the leave of absence taken.
- *Declaration* - A written declaration may be requested from employer in support for leave or any change of length.
- *Employment Opportunities* - An employee is entitled, on written request, to be informed in writing of every employment, promotion or training opportunity that arises during the period when the employee is on a leave of absence and for which the employee is qualified.
- *Prohibition* - An employer is prohibited from dismissing, suspending, laying off, demoting or disciplining an employee because the employee intends to take or has taken a leave of or taking such an intention or absence into account in any decision to promote or train the employee. However, an employer may assign to a different position, with different terms and conditions of employment, any employee who, after a leave of absence under this Division, is unable to perform the work performed by the employee prior to the absence.
- *Benefits continue* - The pension, health and disability benefits and the seniority of an employee who is absent from work due to a leave of absence under this Division accumulate during the entire period of the leave.
- *Contributions by employee* - If contributions are required from an employee in order for the employee to be entitled to a benefit referred to above, the employee is responsible for and must, within a reasonable time, pay those contributions for the period of any leave of absence. This requirement can be waived by the employee if 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.
- *Contributions by employer* - An employer who pays contributions in respect of a benefit referred to above must continue to pay those contributions during an employee's leave of absence in at least the same proportion as if the employee were not absent, unless the employee does not pay the employee's contributions, if any, within a reasonable time.

- *Failure to pay contributions* - the benefits do not accumulate during the leave of absence and employment on the employee's return to work is deemed to be continuous with employment before the employee's absence.
- *Deemed continuous employment* - an employee who is absent from work due to a leave of absence under this Division, employment on the employee's return to work is to be deemed to be continuous with employment before the employee's absence.

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