



TEAMSTERS CANADA RAIL CONFERENCE

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September 16, 2021

Provincial Legislative Board Chairs
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RE: Important changes to the *Canada Labour Code*

Bereavement Leave

The bereavement leave provisions of the *Code* do not apply to employers and employees who are parties to a collective agreement that provides rights and benefits at least as favourable as those in the *Code* and where there is provision for third party settlement. In this case, the settlement of disagreements relating to bereavement leave issues is governed exclusively by the collective agreement.

This was the case for many years with most of our collective agreements but with recent and upcoming changes to the *Code* regarding bereavement leave some of the provisions are more favourable than our collective agreements given our negotiating cycles.

As you will recall with the substantive changes to the *Code* that came into force in September 2019, the provisions regarding bereavement leave changed along with many other leave provisions. Bereavement leave was increased from three days to five days. This change entitled employees who have completed three consecutive months of continuous employment to be paid for the first three days of leave and to take the leave in one or two periods. The entitlement to leave begins on the day the death of the immediate family member occurs, up to six weeks after the latest of the days on which any funeral, burial or memorial service occurs.

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Currently, the *Code* reads as follows.

DIVISION VIII

Bereavement Leave

Employee entitled

210 (1) Every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family, a leave of absence from employment of up to five days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of that immediate family member occurs.

Extension

(1.1) At the request of the employee, the employer may extend, in writing, the period during which the leave of absence from employment may be taken.

Division of leave

(1.2) The leave of absence may be taken in one or two periods. The employer may require that any period of leave be of not less than one day's duration.

Notice to employer

(1.3) Every employee who takes the leave of absence shall, as soon as possible, provide the employer with written notice of the beginning of any period of leave of absence and of the length of that leave.

Bereavement leave with pay

(2) If the employee has completed three consecutive months of continuous employment with the employer, the employee is entitled to the first three days of the leave with pay at their regular rate of wages for their normal hours of work, and such pay shall for all purposes be considered to be wages.

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Regulations

(3) The Governor in Council may make regulations

(a) defining the expression “immediate family” for the purposes of subsection (1);

(b) defining the expressions “regular rate of wages” and “normal hours of work” for the purposes of subsection (2); and

(c) for the purposes of this Division, defining the absences from employment that shall be deemed not to have interrupted continuity of employment.

Application of section 189

(4) Section 189 applies for the purposes of this Division.

Immediate Family is defined in the *Canada Labour Standards Regulations* as;

33 (1) For the purpose of subsection 210(1) of the Act, immediate family means, in respect of an employee,

(a) the employee’s spouse or common-law partner;

(b) the employee’s father and mother and the spouse or common-law partner of the father or mother;

(c) the employee’s children and the children of the employee’s spouse or common-law partner;

(d) the employee’s grandchildren;

(e) the employee’s brothers and sisters;

(f) the grandfather and grandmother of the employee;

(g) the father and mother of the spouse or common-law partner of the employee and the spouse or common-law partner of the father or mother; and

(h) any relative of the employee who resides permanently with the employee or with whom the employee permanently resides.

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(2) In this section, common-law partner means a person who has been cohabiting with an individual in a conjugal relationship for at least one year, or who had been so cohabiting with the individual for at least one year immediately before the individual's death.

Further changes to the bereavement leave provisions will soon be in effect. Bill C-220, An Act to Amend the *Canada Labour Code* (bereavement leave), received Royal Assent on June 29, 2021, and comes into force on September 29, 2021.

Bill C-220 amends the *Code* as follows;

Canada Labour Code

1 Subsection 210(1) of the *Canada Labour Code* is replaced by the following:

Employee entitled

210 (1) Every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of the deceased person occurs.

The amended provision recognizes bereavement for the death of an immediate family member, and for the death of a family member the employee is already caring for on compassionate care leave or leave related to critical illness pursuant to the *Code*.

The definition of "family member" captured under compassionate care and critical illness leaves of absence is extensive and comes from the Employment Insurance Regulations. "Family member" includes a spouse or common-law partner, child, sibling, parent, grandparent, parent- or grandparent-in-law, uncle or aunt, niece or nephew, foster parent or child. The legislation also provides "a person, whether or not related to the individual by marriage, common-law partnership or any legal parent-child relationship, whom the individual considers to be like a close relative or who considers the individual to be like a close relative."

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Employee can take bereavement leave for all family members who fall under this broad definition as long as the employee is on compassionate care or critical illness leave to care for the individual at the time of death.

The three days of paid bereavement leave for employees with at least three consecutive months of employment with the employer will remain unchanged.

General Holidays

Bill C-5, An Act to amend *the Bills of Exchange Act, the Interpretation Act* and the *Canada Labour Code* (National Day for Truth and Reconciliation) received Royal Assent on June 3, 2021 and came into force August 3, 2021.

Bill C-5 amends the *Code* as follows;

Canada Labour Code

4 The definition general holiday in section 166 of the Canada Labour Code is replaced by the following:

general holiday means New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, National Day for Truth and Reconciliation, which is observed on September 30, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day and includes any day substituted for any such holiday under section 195;

The National Day for Truth and Reconciliation will be observed each year on September 30th, starting September 30, 2021. This brings the Code up to 10 general holidays per year. The National Day of Truth and Reconciliation is to be treated in the same manner as the other general holidays under the *Code*. In 2015, the Truth and Reconciliation Commission of Canada proposed establishing a new statutory holiday to honour residential school survivors and their families, and to ensure that public commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process.

Sincerely,



Don Ashley
National Legislative Director



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January 11, 2022

Provincial Legislative Board Chairs, General Chairs
National Executive Board

RE: Important changes to the *Canada Labour Code*

Subsequent to my letter of September 14, 2021, there has been further changes to *Part III* of the *Canada Labour Code* that impact the provisions of personal leave, bereavement leave and medical leave by;

- extending the period during which an employee may take a leave of absence from employment in the event of the death of a child and provide for the entitlement of an employee to a leave of absence in the event of the loss of an unborn child;
- repealing the personal leave that an employee may take to treat their illness or injury;
- providing that an employee may earn and take up to 10 days of medical leave of absence with pay in a calendar year; and
- authorizing the Governor in Council to make regulations to modify, in certain circumstances, the provisions respecting medical leave of absence with pay.

The changes are as a result of the Government's enactment of *Bill C-3* which received Royal Assent on December 17, 2021. Although the Bill has received Royal Assent these provisions are not in force, they will come into force on a day to be fixed by order of the Governor in Council, but that date is unknown at this time. The explanation we have been provided is that the Government will engage with stakeholders, including representatives of small and medium-sized enterprises towards the implementation of paid sick leave in Canada. This will allow time for employers to implement payroll changes and work with unions as needed to adjust collective agreements.

Specifically, Bill C-3 has made the following amendments;



**Paragraph 206.6(1)(a) of the *Canada Labour Code* which currently reads;
Personal Leave
Leave — five days**

- **206.6 (1)** Every employee is entitled to and shall be granted a leave of absence from employment of up to five days in every calendar year for
 - (a)** treating their illness or injury;

is repealed.

**Subsection 210(1) of the *Act* which currently reads;
Bereavement Leave
Employee entitled**

210 (1) Every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of the deceased person occurs.

is replaced by the following:

Employee entitled

210 (1) Except when subsection (1.01) or (1.02) applies, every employee is entitled to and shall be granted, in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of the death, on leave under section 206.3 or 206.4, a leave of absence from employment of up to 10 days that may be taken during the period that begins on the day on which the death occurs and ends six weeks after the latest of the days on which any funeral, burial or memorial service of that deceased person occurs.

Employee entitled — child

(1.01) Every employee is entitled to and shall be granted, in the event of the death of a child of the employee or the death of a child of their spouse or common-law partner, a leave of absence from employment of up to eight weeks that may be taken during the period that begins on the day on which the death occurs and ends 12 weeks after the latest of the days on which any funeral, burial or memorial service of the child occurs.

Employee entitled — stillbirth

(1.02) Every employee is entitled to and shall be granted, in the event of a stillbirth experienced by them or their spouse or common-law partner or where they would have been a parent, as defined in subsection 206.7(1), of the child born as a result of the pregnancy, a leave of absence from employment of up to eight weeks that may be taken during the period that begins on the day on which the stillbirth occurs and ends 12 weeks after the latest of the days on which any funeral, burial or memorial service in respect of the stillbirth occurs.

Definitions

(1.03) The following definitions apply in subsections (1.01) and (1.02).

child means

- a) a person who is under 18 years of age;
- b) or a person in respect of whom the employee or their spouse or common-law partner, as the case may be, is entitled to the Canada caregiver credit under paragraph 118(1)(d) of the Income Tax Act. (enfant) stillbirth means the complete expulsion or extraction of a fetus from a person on or after the twentieth week of pregnancy or after the fetus has

attained at least 500 g, without any breathing, beating of the heart, pulsation of the umbilical cord or movement of voluntary muscle from the fetus after the expulsion or extraction. (mortinaissance)

Subsection 239(2) of the Act which currently reads;

Certificate

(2) If a medical leave of absence is three days or longer, the employer may require that the employee provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of time that they were absent from work.

is replaced by the following:

Leave with pay

(1.2) An employee earns,

(a) in the case of an employee whose employment with an employer begins on or before the day on which this subsection comes into force, in the calendar year in which this subsection comes into force, after completing 30 days of continuous employment with the employer, three days of medical leave of absence with pay and, after 60 days of continuous employment with the employer, at the beginning of each month after completing one month of continuous employment with the employer, one day of medical leave of absence with pay, up to a maximum of 10 days;

(b) in the case of an employee whose employment with an employer begins after the day on which this subsection comes into force, in the calendar year during which they were employed, after completing 30 days of continuous employment with the employer, three days of medical leave of absence with pay and, after 60 days of continuous employment with the employer, at the beginning of each month after completing one month of continuous employment with the employer, one day of medical leave of absence with pay, up to a maximum of 10 days; and

(c) in each subsequent calendar year, at the beginning of each month after completing one month of continuous employment with the employer, one day of medical leave of absence with pay, up to a maximum of 10 days.

Rate of wages

(1.3) Each day of medical leave of absence with pay that an employee takes must be paid at their regular rate of wages for their normal hours of work, and that pay is for all purposes considered to be wages.

Annual carry forward

(1.4) Each day of medical leave of absence with pay that an employee does not take in a calendar year is to be carried forward to January 1 of the following calendar year and decreases, by one, the maximum number of days that can be earned in that calendar year under subsection (1.2).

Division of leave with pay

(1.5) The medical leave of absence with pay may be taken in one or more periods. The employer may require that each period of leave be of not less than one day's duration.

Certificate — leave with pay

(1.6) The employer may, in writing and no later than 15 days after the return to work of an employee who has taken a medical leave of absence with pay of at least five consecutive days, require the employee to provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of their medical leave of absence with pay.

Certificate — leave without pay

(2) If a medical leave of absence without pay is three days or longer, the employer may require that the employee provide a certificate issued by a health care practitioner certifying that the employee was incapable of working for the period of their medical leave of absence without pay.

Subsection 239(13) of the Act which currently reads;

Regulations

(13) The Governor in Council may make regulations defining terms for the purposes of this Division.

is replaced by the following:

Regulations

(13) The Governor in Council may make regulations

(a) defining terms for the purposes of this Division, including “regular rate of wages” and “normal hours of work”; and

(b) modifying any provision of this Division respecting the medical leave of absence with pay for the purposes of applying this Division to any class of employees if, in the opinion of the Governor in Council,

(i) the application of the provision without the modification would be unreasonable or inequitable in respect of the employees in that class or their employers, due to the work practices of that class, and

(ii) those employees will, despite the modification, earn periods of medical leave of absence with pay at a rate that is substantially equivalent to the rate provided for in subsection (1.2).

As with the previous changes to bereavement leave **Subsection 210(2)** was not amended, therefore, the three days of paid bereavement leave for employees with at least three consecutive months of employment with the employer will remain unchanged.

In addition to *Bill C-3* the **leave related to COVID-19** under *Part III* of the *Code* was reintroduced and is now available until May 7, 2022. This aligns with the extension of the Canada Recovery Sickness Benefit (CRSB) and the Canada Recovery Caregiving Benefit (CRCB) to ensure that employees in the federally regulated private sector continue to have access to job-protected leave under the *Code* while they avail themselves of those benefits.

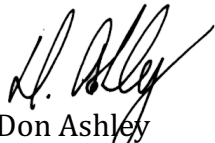
To ensure continued alignment with corresponding changes to the CRSB and CRCB, the maximum duration of the leave was increased as follows:

- from four to six weeks for employees who have contracted COVID-19 or need to self-isolate; and

- from 42 to 44 weeks for employees who are unable to work because of caregiving responsibilities related to COVID-19.

Further updates will be provided as engagement with Labour Canada occurs and we get some idea when these changes will come into force. If you have any questions regarding these changes, please send them to me and I will seek answers from Labour Canada.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Ashley", written over a faint, illegible typed name.

Don Ashley
National Legislative Director