

UNIFOR Ontario Communication Council

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Denis W. Ellickson, CaleyWray Lawyers

- Amendments to the *Canada Labour Code* (“the *Code*”) came into force on September 1, 2019. These amendments were enacted by two pieces of legislation, Bill C-63 and Bill C-86 and are applicable to federally employed workers with the goal of improving work-life balance and compensation for employees.

Leaves and Overtime

- **Personal Leave:** Employees will be provided with up to 5 days off per year for illness, injury, health-related family responsibilities, education-related responsibilities for family members under 18, urgent matters, citizenship conferral, or any other prescribed reason. Employees who have worked for a minimum of three months will receive pay for the first 3 days of leave.
- **Parental Leave:** Previously under the *Code*, employees had to have worked for 6 months to be eligible for parental leave. This eligibility requirement for maternity and paternity leave has been removed under the amendments.
- **Medical Leave:** The requirement for employees to have worked for 3 months to be eligible for medical leave has been removed, all employees will be eligible for up to 17 weeks unpaid for personal illness or injury, organ or tissue donation, or medical appointments during work hours. An employer is permitted to ask for a doctor's certification for absences of 3 days or more.
- **Jury Duty:** Employees will be permitted to take unpaid leave to act as a witness, juror or to participate in jury selection. No maximum leave period has been specified under this amendment.
- **Refusal of Overtime:** An employee may refuse overtime to attend to a family member's medical or education-related responsibilities, subject to emergency circumstances.

Leaves and Overtime

Leave type	Previously under the <i>Code</i>	After the September 1, 2019 Amendments
Personal Leave	<ul style="list-style-type: none"> No provision providing leave 	<ul style="list-style-type: none"> Up to 5 days with the first 3 days paid for employees with minimum 3 months' service
Parental Leave	<ul style="list-style-type: none"> 6 months of service necessary in order to be eligible for parental leave 	<ul style="list-style-type: none"> No eligibility requirements for parental leave
Medical Leave	<ul style="list-style-type: none"> 17 weeks for sick leave 3 months' service required for eligibility 	<ul style="list-style-type: none"> No eligibility requirements for medical leave Up to 17 weeks unpaid for personal illness or injury, organ or tissue donation, or medical appointments during work hours
Jury Duty	<ul style="list-style-type: none"> No provision providing leave 	<ul style="list-style-type: none"> unpaid leave to act as a witness, juror or to participate in jury selection No maximum time limit for leave
Refusal of Overtime	<ul style="list-style-type: none"> No provision providing refusal of overtime 	<ul style="list-style-type: none"> An employee may refuse overtime to attend to a family member's medical or education-related responsibilities, subject to emergency circumstances.

Personal Leave

- If a collective agreement provides for 5 or more days of personal leave (including at least 3 days with pay) employees are not entitled to additional personal leave if:
 - the leave in the collective agreement can be taken for the same reasons as personal leave under the *Code*;
 - it can be divided by the employee in at least five periods of one day each; and
 - the conditions for taking the leave, the amount of pay for the leave, the accrual benefits during the leave and the right to be reinstated in the same or a comparable position after the end of the leave are at least as beneficial for the employee as those under the *Code*.

Personal Leave

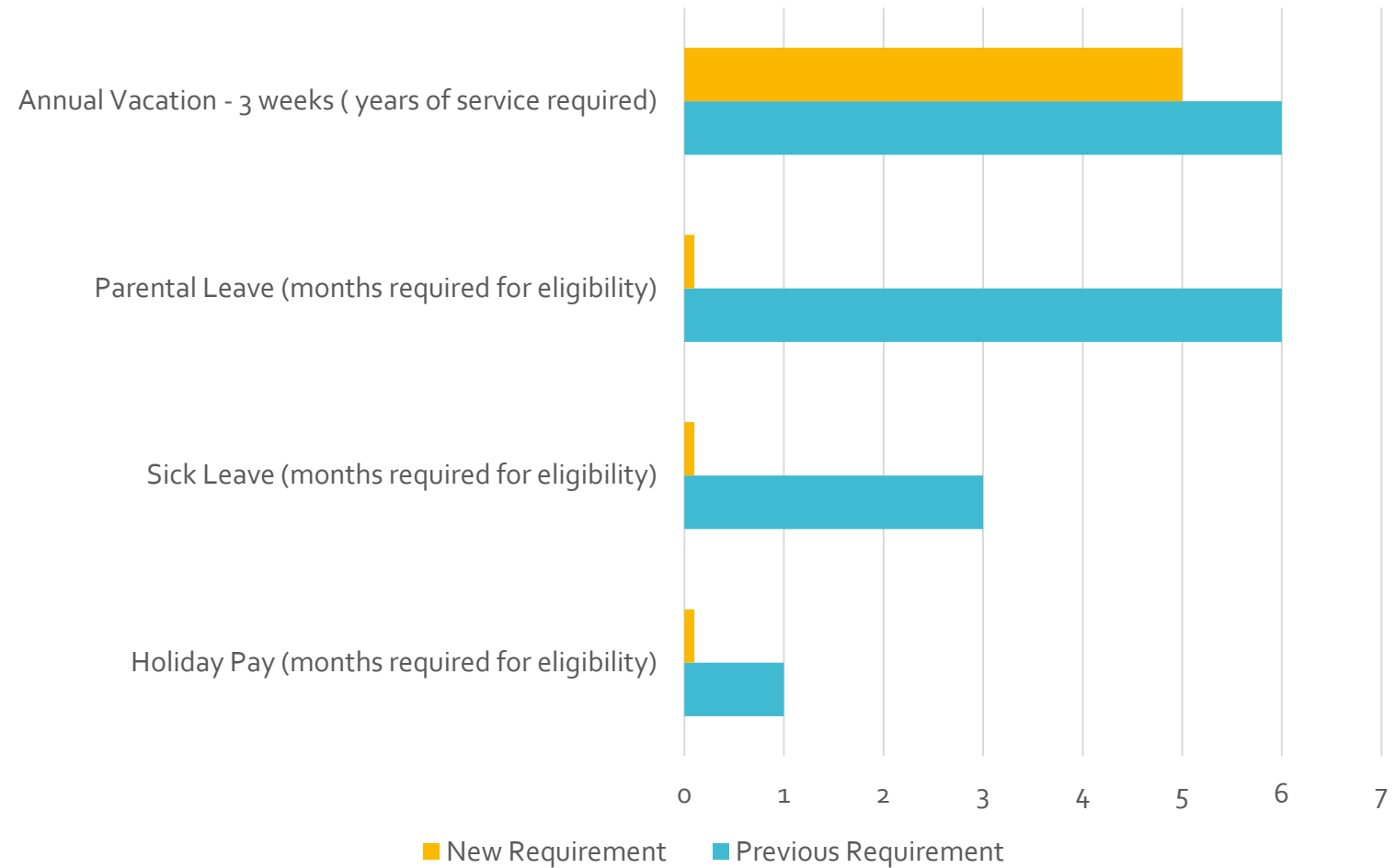
- An employee who has already taken 5 days of personal leave (3 with pay) is not entitled to any additional leave for 2019.
- An employee:
 - whose collective agreement provides for leave with pay can be taken for one but not all of the reasons under the personal leave section of the *Code*; and
 - who has taken less than five days of leave in the calendar year

can take personal leave under the *Code* to address other matters listed in the *Code*. In that case, the employee would be entitled to personal leave equal to five days less any days of leave taken.

- For instance, if a collective agreement does not provide leave with pay for carrying out educational responsibilities of family members, an employee who has taken fewer than 5 days of leave that calendar year can take leave under the *Code* to address this matter.

The amendments eliminate or relax certain eligibility requirements in the *Code*

Eligibility Requirements



Improved Compensation

- **Equal Pay for Equal Work:** The objective of these provisions is to ensure equality of compensation regardless of status as a temporary, seasonal, part-time or full-time employee.
- **Holiday Pay:** Employees will be entitled to at least 1/20th of their wages (not including overtime earnings) based on the 4 week period immediately before the week in which the holiday occurs.
- **Vacation Pay:** Employees are entitled to vacation pay at the following increased rates:
 - At least 2 weeks vacation (4% vacation pay) after one year of employment
 - At least 3 weeks vacation (6% vacation pay) after five years of employment
 - At least 4 weeks vacation (8% vacation pay) after ten years of employment.

Improved Compensation

More on Equal Pay for Equal Work:

- Who does it apply to?
 - Employees working in the same industrial establishment;
 - Under the same working conditions;
 - Performing substantially the same kind of work; and
 - Requiring the same skill, effort and responsibility.
- Employers are prohibited from reducing an employee's wage rate in order to comply with this provision.
- This provision will not apply if the difference in pay is based on seniority, merit, production, or any other factor prescribed by regulations.

Improved Work Life Balance

- **Breaks:** Employees are entitled to a 30 minute unpaid break for every 5 hours of work, subject to emergency circumstances. If the employer requires the employee to be available to work during that break period, the employee must be paid for the break.
- **Rest Periods:** Employees are entitled to a minimum 8 hour rest period between shifts, subject to emergency circumstances.
- **Scheduling:** Employers must provide employees with their work schedule in writing at least 96 hours before the beginning of the employee's first shift on that schedule, subject to emergency circumstances.
- **Notice of shift change:** Employer's must give an employee 24 hours' written notice of a shift change or extension, subject to emergency circumstances.
- **Right to request flexible work arrangements:** After 6 consecutive months of employment, employees may request a change to a term of employment including number of hours worked, work schedule or location of work. The employer must respond within 30 days with a written decision granting or refusing the request. An employee cannot be reprimanded for requesting a flexible work arrangement.

Emergency Circumstances Where Rights May be Revoked

- The *Code* indicates that the new requirements for:
 - ❖ 96 hours' notice of work schedule
 - ❖ notice of shift change;
 - ❖ rest periods;
 - ❖ 30 minute breaks; and
 - ❖ refusal of overtime

may be revoked where there are unforeseen circumstances and a serious threat:

- a) to life, health or safety of any person;
- b) of damage to or loss of property; or
- c) of serious interference with the ordinary working of the employer's industrial establishment.

Emergency Circumstances Where Rights May be Revoked

- What constitutes unforeseen circumstances?
 - To determine whether a situation is “reasonably foreseeable” one must consider whether a reasonable person in the same situation could, or could not, have foreseen the situation.
 - Ex. Adverse weather conditions have been found to be foreseeable.
- What constitutes a serious threat?
 - A serious threat means a threat that could significantly affect the existence or functioning of a person or an operation of a thing that could arise in the short or mid term.

Emergency Circumstances Where Rights May be Revoked

- What constitutes a threat of damage to or loss of property?
 - Any harm, breakage, damage or disaster, whether intentional or unintentional, affecting property owned by the employer resulting in the total or partial loss of the value of the property. To be justified, the threat of damage to or loss of property must be real and must be direct or indirect consequence of a fault, omission or event beyond the employer's control.
- What constitutes serious interference with the operation of the employer's establishment?
 - In order to come to the conclusion that there would have been a serious interference with the operation of the establishment, one must assess whether the business would have faced temporary disruptions or whether its operation would have been seriously affected.

When the *Code* does/does not apply

The provisions of the *Code* will apply regardless of the existence of other laws on the same matters. However, these provisions do not prevent more favourable rights or benefits that may be in place under other laws or regulations. Similarly, so long as a collective agreement provides benefits that are at least as favourable as those under the new *Code* provisions regarding:

- minimum wage;
- general holidays;
- annual vacations;
- rates of pay; and
- qualifying periods for benefits,

then the provisions of the amendments focused on those factors will not apply.

Exemptions

Both employers and employees have been able to apply for exemptions from the *Code*.

After receiving an application for an exemption, the Governor in Council may modify the application of the *Code* if satisfied that the provisions:

- would be or is unduly prejudicial to the interests of the employees in those classes; or
- would be or is seriously detrimental to the operation of the industrial establishment.

The Governor in Council may exempt a class of employees from application of portions of the *Code* if satisfied that the provision of the *Code* cannot reasonably be applied to that class of employees.

Exemptions

Previously

- The Governor in Council could only make regulations modifying the application ss. 169 (standard hours of work) and 171 (maximum hours of work) of the Code. The Governor in Council also had to order an inquiry and receive the inquiry report prior to modifying the *Code*.
- The governor could exempt a class of employees from the application of ss. 169 (standard hours of work), 171 (maximum hours of work), 174 (overtime).

After Bill C-86 Amendments

- The Governor in Council can make orders modifying any provision under Division I of the *Code* which relates to Hours of Work. There is no longer a requirement for an inquiry.
- The Governor in Council can exempt any class of employees from any provision under Division I of the Code.

Exemptions

- So far, government of Canada issued temporary exemptions to the amendments of the *Code* for certain industrial sectors including telecommunications.
- These exemptions will remain in place until new regulations come into force. The Regulations will either exempt classes of employees from certain hours of work provisions or will modify the provisions for the purpose of application to certain classes of employees.
- This temporary exemption is not a guarantee that employees in the telecommunications sector will be the subject of exemption or modification regulations.

Exemptions

Job Title	30 minute break	8 hour rest period	24 hour notice of shift change	96 hour notice of scheduling change
technical support analyst – systems; user support technician		X	X	
business office service representative – telecommunications; complaints clerk – customer service; client service clerk		X		
Electrician (except industrial and power system)		X	X	
communication line technician; access technician – telecommunication		X	X	
telecommunications equipment technician; installation and repair technician – telecommunications		X	X	
cable television installer; cable television maintenance technician		X	X	
electrical mechanic; switchgear repair electrical mechanic		X	X	

X = exempt

Key Takeaway

The amendments under Bill C-63 and Bill C-86 provide improved minimum standards for workers in federally regulated industries. For the members of UNIFOR, such improved standards may be below what has been negotiated for through collective bargaining. Nevertheless, the new minimum standards under the *Code* may provide leverage at the bargaining table.