

# **Canada Labour Code Update: Reforms Since November 2019**

**Currency Date: November 27, 2021**

**Jackie Esmonde and Amanda Pask**

**CAVALLUZZO LLP**

## **Table of Contents**

Table of Contents.....	1
Introduction .....	1
Using this Document .....	1
“Previous Contractor” (contract flipping).....	3
New Workplace Harassment and Violence Provisions.....	3
Definition: harassment and violence.....	3
Expansion of Purpose of Part II .....	4
Application of Part II .....	4
Protections of Canadian Human Rights Act Unaffected .....	5
Expansion of Duties of Employers under Part II .....	5
Internal Complaint Resolution Process.....	6
Investigations – Workplace harassment and violence .....	8
Health and Safety Committees – Exemptions .....	9

Annual Reports and Five-Year Reviews .....	9
New General Holiday – Truth and Reconciliation Day .....	10
Employee Misclassification .....	10
Suspension of need for medical certificate for leaves (COVID-19 temporary measure).....	11
\$15 minimum wage .....	11
Vacation - Interruption and Postponement .....	11
General Holidays falling on day off – National Day for Truth and Reconciliation.....	13
Interrupting leaves & extending parental leave – COVID-19 & Quarantine Leaves .....	13
IPG, “Parental Leave” .....	13
Leave related to death or disappearance of a child.....	14
Leave for Victims of Family Violence.....	14
Bereavement Leave .....	15
Medical Leave – Quarantine .....	15
COVID-19 Leave (temporary measure).....	15
** These are temporary measures. COVID-19 leave provisions are repealed as of November 20, 2021, unless extended by regulations made under s. 24.1 of the <i>Canada Recovery Benefits Act</i> . The date was not extended... 15	
Sexual Harassment Repealed Provisions .....	16

## Introduction

Since 2017, the federal government has made extensive changes to the *Canada Labour Code* (“the Code”). Some of the changes came into effect as soon as the law was passed, while others were to be phased in later.

Note that these standards are “the floor” of workers rights and no collective agreement can provide for lesser rights, although parties to a collective agreement are of course free to negotiate more beneficial rights.

This memo provides an update to our [November 2019 overview of the Canada Labour Code](#) reforms and reviews reforms from the following federal Bills and should be reviewed in conjunction with that document.

The full text of these Bills can be access by clicking on the hyperlinks:<sup>1</sup>

- Bill C-63: [Budget Implementation Act, 2017, No. 2](#)
- Bill C-65: [An Act to amend the Canada Labour Code \(harassment and violence\), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1.](#)
- Bill C-86: [Budget Implementation Act, 2018, No. 2](#)
- Bill C-13: [COVID-19 Emergency Response Act](#)
- Bill C-5: [An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code \(National Day for Truth and Reconciliation\)](#)
- Bill C-30: [Budget Implementation Act, 2021, No. 1](#)
- Bill C-220 – [An Act to amend the Canada Labour Code \(bereavement leave\)](#)

## Using this Document

This document is best used on an electronic device. The Table of Contents contains active links to the sections described.

---

<sup>1</sup> This document does not address reforms made to Canada Labour Code Regulations. There have been some significant changes and additions to these regulations, including expanding the application of Part III of the Canada Labour Code to interns, COVID-19-related provisions; new work place harassment and violence prevention regulations; and new administrative monetary penalties for employers who violate Part II and Part III of the Code (up to \$250,000).

The table below summarize each provision rather than quoting the entire provision. A link is provided to the full text.

In addition, there are links to Labour Canada Interpretations, Policies and Guidelines (“IPGs”) relating to the new Code provisions. The IPGs are interpretations of legislation created by Labour Canada to provide to its employees and to ensure consistent application of the legislation across the country by those employees. They are not legally binding and are provided for information purposes only.

This document is provided a convenient reference document. For any specific legal issue the applicable current provisions of the Code should be reviewed and legal advice obtained as necessary.

## Changes to the Canada Labour Code since November 2019

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">47.3</a> CLC  (s. 245, Bill C-30)	<b>“Previous Contractor” (contract flipping)</b>	An employer who replaces a “previous contractor” in providing services in certain federal industries honour unionized employees’ compensation under the original contractor’s collective agreement (if it exists). This applied solely to contractors who provide pre-board screening services to another employer in the air transportation industry.	The definition of “previous contractor” is expanded to include all contractors that provide any services at an airport to another employer in the air transportation industry.  The definition is also expanded to potentially include additional contractors who provided services to another employer in in other industries and locations identified in the regulations. As yet there are no such regulations.	June 29, 2021
s. <a href="#">122(1)</a> CLC  (s. 0.1, Bill C-65)	<b>New Workplace Harassment and Violence Provisions</b>  <i>Definition: harassment and violence</i>		Adds definition of harassment and violence: any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee,	January 1, 2021 <sup>3</sup>  IPG, <a href="#">“Work Place Harassment and Violence Prevention”</a>

<sup>3</sup> See Order in Council Number 2020-0455.

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
			including any prescribed action, conduct or comment. <sup>2</sup>	
s. <a href="#">122.1</a> CLC (ss. 1, Bill C-65)	<b>Expansion of Purpose of Part II</b>	Purpose of Part II is to prevent workplace-related accidents and injury to health.	Expands the purpose to include preventing occurrences of harassment and violence, and physical or psychological injuries and illnesses.	January 1, 2021  IPG, “ <a href="#">Work Place Harassment and Violence Prevention</a> ”
ss. <a href="#">123</a> , <a href="#">123(2.1)</a> CLC (ss. 1, Bill C-65)	<b>Application of Part II</b>		Expanded to cover ministerial staff and their employer, including individuals appointed by a minister as their executive assistants and other persons required in a minister’s office. Coverage is not extended to persons appointed by the Leader of the Opposition in the Senate of House of Commons.	January 1, 2021  IPG, “ <a href="#">Work Place Harassment and Violence Prevention</a> ”

<sup>2</sup> Note that there is a new regulation setting out further details, rights and obligations relating to workplace harassment and violence. This regulation should be reviewed in detail when addressing any harassment or violence issues in federally-regulated workplaces: [Work Place Harassment and Violence Prevention Regulations](#), SOR/2020-130.

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">123.1</a> CLC (s. 2.1, Bill C-65)	<b><i>Protections of Canadian Human Rights Act Unaffected</i></b>		Protections afforded under the <i>Canadian Human Rights Act</i> will not be affected by any of the provisions under Part II of the Code, including the right to seek redress related to harassment of sexual harassment under the Act.	January 1, 2021  IPG, “ <a href="#">Work Place Harassment and Violence Prevention</a> ”
s. <a href="#">125</a> CLC (s. 3, Bill C-65)	<b><i>Expansion of Duties of Employers under Part II</i></b>		<p>Expands duties to include duties related to workplace harassment and violence.</p> <p>Employers must respond to occurrences and offer support to affected employees; investigate, record and report.</p> <p>These duties apply to former employees if the occurrence becomes known to the employer within three months of the employee ceasing employment.</p> <p>Employers are required to provide training in the prevention of workplace harassment and violence and to inform employees of their rights and obligations.</p>	January 1, 2021  IPG, “ <a href="#">Work Place Harassment and Violence Prevention</a> ”

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
			<p>Employers must also undergo such training.</p> <p>Employers must ensure that the person they designate to receive complaints has the requisite knowledge, training and experience.</p> <p>Certain duties related to posting information are streamlined (such as a copy of Part II, statement of general policy regarding health and safety), and making a copy of regulations under Part II readily available. Information must be available in printed or electronic format, with training to ensure employees can access electronic information.</p>	
<p>s. <a href="#">127.1</a> CLC (s. 5, Bill C-65)</p>	<p><b><i>Internal Complaint Resolution Process</i></b></p>	<p>An employee must make a complaint to a supervisor if the employee believes, on reasonable grounds, that there has been a contravention of Part II of the Code, or that there is likely to be a workplace-related accident or injury to health.</p>	<p>The amendments require a complainant to also make a complaint where there is a risk of workplace-related “illnesses.”</p> <p>Where the complaint relates to workplace harassment and violence, the employee may</p>	<p>January 1, 2021</p> <p>IPG, <a href="#">“Work Place Harassment and Violence Prevention”</a></p>



Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
		<p>Unresolved complaint may be referred for investigation to a chairperson of the workplace committee or to the health and safety representative.</p>	<p>make the complaint either to their supervisor or to the person designated in the workplace harassment and violence prevention policy. The employee and the supervisor or designated person must try to resolve the complaint as soon as possible.</p> <p>Unresolved complaints about workplace harassment and violence may be referred directly to the Minister. The Minister must investigate the complaint unless they are of the opinion that the complaint has been adequately dealt with or the matter is an abuse of process. The Minister may combine the investigation with complaints involving the same employer and issue a single decision.</p> <p>Where the Minister refuses to investigate, they must notify the employer and employee in writing as soon as feasible.</p>	

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
<p>ss. <a href="#">134.1(4.1)</a>, <a href="#">135(7.1)</a>, <a href="#">135.11</a>, <a href="#">136(5.1)</a>, <a href="#">136.1</a></p> <p>(ss. 6, 7, 10, Bill C-65)</p>	<p><b><i>Investigations – Workplace harassment and violence</i></b></p>		<p>Health and safety committee members are prohibited from participating in an investigation related to occurrences of workplace harassment and violence. They may participate in investigations into work refusals relating to workplace harassment and violence.</p> <p>Health and Safety committees and representatives cannot be provided with or have access to information likely to reveal the identity of a person involved in an occurrence of harassment and violence in the workplace without that person’s consent.</p> <p>This restriction does not apply to an employer who gives a copy of an appeals officer’s decision, reasons or direction to the workplace committee or health and safety representative; or, where information on work refusals is provide to a health and safety committee.</p>	<p>January 1, 2021</p> <p>IPG, “<a href="#">Work Place Harassment and Violence Prevention</a>”</p>

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">135</a> CLC (s. 7, Bill C-65)	<b>Health and Safety Committees – Exemptions</b>	The Minister may, at the employer’s request and after considering specified factors, exempt employers from the requirement to establish a workplace committee where the Minister is satisfied that the nature of the work is relatively free from risks to health and safety.	Repealed.  Exemptions will only be allowed in circumstances where employers have an alternative that meets the same occupational health and safety needs (e.g. under a collective agreement). Employers must now submit a request for an exemption, which must be posted in a visible place.	January 1, 2021  IPG, “ <a href="#">Work Place Harassment and Violence Prevention</a> ”
ss. <a href="#">139.1</a> , <a href="#">139.2</a> CLC (s. 11.1, Bill C-65)	<b>Annual Reports and Five-Year Reviews</b>		Minister of Labour is required to publish an annual report with statistical data on harassment and violence in work places to which Part II applies, including information that is categorized according to prohibited grounds of discrimination under the <i>Canadian Human Rights Act</i> .  The Minister is also required to conduct five-year reviews on the application of the new harassment and violence provisions, to be tabled in each House of Parliament within 15 sitting days following its completion.	January 1, 2021  IPG, “ <a href="#">Work Place Harassment and Violence Prevention</a> ”

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">166</a> CLC (s. 4 of Bill C-5)	<b>New General Holiday – Truth and Reconciliation Day</b>	“General holiday” means New Year’s Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing day and any day substituted for any holiday under section 195.	Added: National Day for Truth and Reconciliation (September 30)	August 3, 2021
ss. <a href="#">167.1</a> and <a href="#">167.2</a> CLC (s. 443, Bill C-86)	<b>Employee Misclassification</b>	A worker bore the burden of establishing that they were a Federal Employee. There was no equivalent to the new ss 167.2 or 167.2.	Section 167.1 prohibits employers from treating an employee as if they were not an employee in order to avoid their obligations under the Code.  Section 167.2 places the onus on the employer to prove that the worker is not an employee.	January 1, 2021 <sup>4</sup>  IPG, <a href="#">“Misclassification”</a>  IPG, <a href="#">“Determining the Employer/Employee Relationship”</a>

<sup>4</sup> According to section 534(2) of Bill C-86, this reform comes into effect on the first day on which both s. 441 of the Bill and section 377 of the *Budget Implementation Act, 2017, No. 1* are both in force. Section 441 of the Bill came into effect on September 1, 2019 (See s. 534(1) of the Bill; Order in Council SI/2019-0031). Section 377 of *Budget Implementation Act, 2017, No. 1* came into force on January 1, 2021 (Order in Council SI/2020-0074).

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
<p><a href="#">s. 168.1</a> CLC (s. 36, Bill C-13)</p>	<p><b>Suspension of need for medical certificate for leaves (COVID-19 temporary measure)</b></p>	<p>In effect from March 25, 2020 to September 30, 2020: Provided that an employee shall be granted a medical leave, compassionate care leave or critical illness leave even without a medical certificate.</p>	<p>This provision was instituted temporarily as part of the federal government's response to COVID-19. It was repealed and medical certificates are required once again for these leaves of absence.</p>	<p>September 25, 2021</p>
<p>ss. 178, 178.1 CLC  (ss. <a href="#">246-248</a>, Bill C-30)</p>	<p><b>\$15 minimum wage</b></p>	<p>Minimum wage is tied to the provincial/territorial minimum wages.</p>	<p>Establishes a freestanding minimum wage of \$15 / hour, automatically adjusted annually to reflect inflation. Increases will be based on the comparative change to the Consumer Price Index.</p> <p>Where the provincial / territorial minimum wage is greater, federal sector employees are entitled to receive the higher wage, or its equivalent where an employee is paid on a non-hourly basis.</p>	<p>December 29, 2021</p>
<p>s. <a href="#">187.1</a>, <a href="#">187.2</a> CLC  (s. 202, Bill C-63)</p>	<p><b>Vacation Interruption and Postponement</b></p>	<p>n/a</p>	<p>An employee may interrupt annual vacation in order to take another type of leave of absence, including maternity leave, parental leave, compassionate care leave, family responsibility leave,</p>	<p>Extended to COVID-19 and quarantines: October 1, 2020</p>

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
(ss. 37-38, Bill C-13)			<p>leave for victims of family violence, leave for traditional Aboriginal practices, or bereavement leave, sickness or work-related injury.</p> <p>Where an employee interrupts annual vacation for one of these reasons, their job protections continue. For example, in the case of maternity leave, the employee is entitled to be reinstated in the position occupied when the leave began.</p> <p>An employee may also postpone an annual vacation until after the end of any of the leaves listed above.</p> <p>Employees who interrupt or postpone vacation must abide by various notice requirements.</p> <p>These protections were extended to leaves related to COVID-19 or medical leave as a result of quarantine.</p>	

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">193(2)</a> CLC (s. 4(2), Bill C-5)	<b>General Holidays falling on day off – National Day for Truth and Reconciliation</b>	<p>Provides that when New Year’s Day, Canada Day, Remembrance Day, Christmas Day or Boxing Day falls on a Sunday or Saturday that is a non-working day, the employee is entitled to a holiday with pay on the working day immediately preceding or following the general holiday.</p> <p>Note that this provision does not apply in respect of employees who are employed under the terms of a collective agreement that entitled those employees to at least 9 holidays with pay, exclusive of any annual vacation, in each year (s. 194).</p>	Adds the National Day for Truth and Reconciliation (September 30) to the applicable general holidays.	August 3, 2021
ss. <a href="#">206.1(2.1)</a> , <a href="#">206.1(2.4)</a> , <a href="#">206.1(4.1)</a> CLC (ss. 37-40, Bill C-13)	<b>Interrupting leaves &amp; extending parental leave – COVID-19 &amp; Quarantine Leaves</b>		The right to interrupt various types of leaves and extend the length of the period during which a parental leave may be taken extended to the new COVID-19 and quarantine leaves.	October 1, 2020  IPG, “ <a href="#">Parental Leave</a> ”

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">206.5</a> CLC (s. 249, Bill C-30)	<b>Leave related to death or disappearance of a child</b>	Provides for parental leave of up to 104 weeks for the death of a child and up to 52 weeks for the disappearance of a child, where it is likely the result of a crime. These leave provisions do not apply where the parent is charged with the crime or it is likely the child was a party to the crime. A child is defined as a person under 18. The definition of parent includes a legal parent, an adoptive parent, has custody, has parental authority, has guardianship, has tutorship, or with whom the child has been placed for the purposes of adoption.	Raises the applicable age for the “child” to 25 years. The definition of parent is expanded to include a person defined in the regulation; a “curator”; a person with decision-making responsibility under the Divorce Act.  Increases the maximum length of the leave for the disappearance of a child to 104 weeks. Where the child is likely a party to the crime, parental leave provisions now apply if the child was younger than 14 years.	June 29, 2021
s. <a href="#">206.7</a> CLC (s. 250, Bill C-30)	<b>Leave for Victims of Family Violence</b>	Entitlement of leave of absence up to 10 days per calendar year for a victim of family violence, the parent of a child who is a victim of family violence.  The first five days are paid if the employee has three months of service.	“Child” is defined as younger than 18.	June 29, 2021



Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
s. <a href="#">210</a> CLC (s. 1, Bill C-220)	<b>Bereavement Leave</b>	Bereavement leave of 5 days could be taken between the date of the death and 6 weeks after the funeral, burial, memorial service. This period can be extended and can be taken in one or two periods.  The first three days are paid for employees with at least 3 months of service.	Extended bereavement leave to ten days. Expanded eligibility to include employees who, at the time a family member dies, are on compassionate care leave or leave related to critical illness in respect of the deceased person.	September 29, 2021
s. <a href="#">239(2)</a> CLC (s. 41, Bill C-13)	<b>Medical Leave – Quarantine</b>	n/a	Established a medical leave of absence up to 16 weeks as a result of quarantine.	October 1, 2020
s. <a href="#">239.01(1)</a> CLC (ss. <a href="#">296-297</a> , Bill C-30)	<b>COVID-19 Leave (temporary measure)</b>	First established by Bill C-13 and in force March 25, 2020: Established a new job-protected unpaid leave of absence for up to 16 if the employee is unable or unavailable to work for reasons related to COVID-19.  This provision was amended to establish two types of COVID-19 leaves. First, a leave of up to 2 weeks for an employee who has contracted (or might have contracted COVID-19, if they have underlying conditions that would	Increases the maximum duration of unpaid leave for COVID-19-related caregiving duties from 38 to 42 weeks. This is also the maximum aggregate number of weeks that can be taken for this type of leave, both for individuals and for members of the same household.  If an employee is on a COVID-19-related caregiving leave when the section extending the maximum duration to 42 weeks	June 19, 2021.  ** These are temporary measures. COVID-19 leave provisions are repealed as of November 20, 2021, unless extended by regulations made under s.

Section of Statute / Bill	Affected Rights	Prior Law	What has changed	In Force
		<p>make them more susceptible to COVID-19 or they have isolated themselves on the advice of their employer, medical practitioner, person in authority, government or public health authority for reasons related to COVID-19.</p> <p>Secondly, there is a caregiving leave available for an employee unable to work because they must care for a child (under 12) because the child cannot attend school for reasons related to COVID-19. It is also available for employees who must care for a family member who requires supervised care and cannot access it for reasons related to COVID-19.</p>	<p>come into force, the person may extend their leave to 42 weeks. Periods of COVID-19-related leave taken before June 19, 2021 count towards the new maximum of 42 weeks.</p>	<p>24.1 of the <i>Canada Recovery Benefits Act</i>. The date was not extended.</p>
<p>ss. <a href="#">247.1</a>, <a href="#">247.2</a>, <a href="#">247.3</a>, <a href="#">247.4</a> CLC (s. 16, Bill C-65)</p>	<p><b>Sexual Harassment Repealed Provisions</b></p>	<p>Entitled employees to workplace free from sexual harassment. Employers had a duty to make every reasonable effort to ensure employees were not subjected to sexual harassment. Employers were required to issue a policy statement concerning sexual harassment.</p>	<p>Repealed (subject matter dealt with in new provisions in Part II of the Code)</p>	<p>January 1, 2021</p>