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March 23, 2019

Good evening Presidents and Executive Boards

ATU Canada is working with Legal council and has provided a summary of current and revised legislations stemming from COVID-19. This is what we know as of today and as issues change, we will provide updated.

**PLEASE NOTE** BC Government is currently introducing amendments once we have an update, we will forward to all.

## **CANADA LABOUR CODE AND COVID-19 – WHAT DO I NEED TO KNOW?**

ATU Locals under Federal jurisdiction should be aware that the Federal Government has not introduced any amendments to the *Canada Labour Code* at this time, but the situation is developing. If the Federal Government amends the *Canada Labour Code* in response to COVID-19, we will issue a further update.

### **SUMMARY OF KEY PROVISIONS:**

Under the existing legislation, federally regulated workers are entitled to five days of paid leave to treat an illness or attend to ill family members or urgent matters. The employer may request documentation to support the absence, but the worker is only required to provide documentation if it is reasonably practicable to do so.

If a federally regulated worker becomes ill, the worker is entitled to 17 weeks of unpaid job-protected medical leave. The employer may require the worker to provide a doctor's note. While on medical leave, Employment Insurance benefits are available. The worker is protected against employer reprisals for seeking and taking medical leave.

Should a worker's child or adult family member become critically ill, the worker is entitled to 37 weeks and 17 weeks of unpaid job-protected leave, respectively. To access this leave, the worker is obliged to provide a doctor's note.



## DETAILS:

### Personal Leave

The *Canada Labour Code* provides for five day leaves of absence with pay to workers in the following circumstances:

1. the worker is treating his or her illness;
2. the worker is carrying out duties related to the health or care of any of their family members; or
3. the worker is addressing any urgent matters concerning themselves or their family members.

### Medical Leave

The *Canada Labour Code* provides for job-protected medical leaves of absence without pay for up to 17 weeks under the following conditions:

1. the worker is personally ill;
2. the worker is required to give the employer notice of the absence at least four weeks before that day unless there is a valid reason that notice cannot be given;
3. the employer is permitted to require that the worker provide a doctor's note indicating that the worker was incapable of working for the period absent from work; and
4. the worker can collect Employment Insurance benefits during this time.

### Family Illness

The *Canada Labour Code* provides for job-protected leaves of absence when a family member is critically ill in the following circumstances and for the following durations:

1. if a worker's child is critically ill, the worker is entitled to an unpaid leave of absence for 37 weeks with a doctor's note; and
2. if an adult family member is critically ill, the worker is entitled to an unpaid leave of absence for 17 weeks with a doctor's note.

### Reprisals

The *Canada Labour Code* prohibits reprisals from employers against workers taking or intending to take a medical leave. Additionally, if an employer takes reprisals against an employee seeking leave entitlements for health reasons, the worker would likely be protected under the federal *Human Rights Code*.



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### **Greater Benefit?**

As is always the case, the employment standards provisions of the *Canada Labour Code* will trump your collective agreement leave provisions if they provide a greater benefit. In the event that employers show any indication of not abiding by these provisions we recommend contacting your legal counsel.

### **More Questions?**

As always, information sheets like this do not constitute legal advice. If you need more information, call your regular legal counsel.



March 23, 2020

## ALBERTA EMPLOYMENT STANDARDS (COVID-19) LEAVE REGULATION UPDATE

### EMPLOYMENT STANDARDS CODE AMENDMENTS – WHAT DO I NEED TO KNOW?

Alberta Locals should be aware that the Alberta government passed the *Employment Standards (COVID-19) Leave Regulation* on March 17, 2020.

#### SUMMARY OF KEY PROVISIONS:

The Regulation allows employees to take a leave of absence without pay for 14 consecutive days if they are under quarantine as a result of COVID-19.

Employees under quarantine do not have to provide a medical certificate to their employer in order to access COVID-19 Leave.

The Regulation applies retroactively to March 5, 2020, meaning employees under quarantine since that date can access the COVID-19 Leave.

#### DETAILS:

The new Regulation, AR 29/2020, provides for a leave of absence without pay if the employee is under quarantine. Quarantine includes self-isolation and self-quarantine.

At this time, the Regulation does not appear to protect employees who provide care for a family member in quarantine as a result of COVID-19. There are protections in the *Employment Standards Code* for employees providing care to terminally ill family members and critically ill children, but those protections are harder to access and may not apply to cases of COVID-19.

#### Length of Leave

Under the Regulation, the length of COVID-19 Leave can be as long as 14 consecutive days.

However, the Regulation authorizes the Minister of Labour and Immigration to extend the leave beyond 14 days if the Chief Medical Officer recommends it is necessary to do so in order to prevent the spread of COVID-19 or protect those who have not already been exposed to it. To date, the Minister has not extended the leave beyond 14 days.

In addition, an employee is not required to give any notice to their employer of the date the employee intends to return to work, which is otherwise mandatory under the Code.



## **No Medical Certificates**

An employee taking COVID-19 Leave is not required to provide their employer with a medical certificate or a copy of a medical certificate. This is an exception to a requirement under the Code that employees provide their employer with a medical note when accessing long-term illness and injury leave.

## **Are Recent Hires Eligible?**

The Regulation makes COVID-19 Leave available to employees regardless of their length of employment.

## **Reprisal**

It is an offence under the Code for an employer to contravene or fail to comply with the new Regulation.

## **Human Rights**

Employers are prohibited under Alberta's *Human Rights Act* from discriminating against employees on the basis of protected grounds such as disability, place of origin and race.

Negative treatment of employees who have or appear to have COVID-19 may be discriminatory if unrelated to legitimate health and safety concerns. Contact counsel if you need advice about a case of potential COVID-19-related discrimination.

## **Greater Benefit?**

The Employment Standards Code will trump your collective agreement leave provisions if the Code provides a greater benefit. However, the COVID-19 Leave was enacted in a Regulation and is not necessarily a provision of the Code.

You should contact your employer and advise that you expect that COVID-19 Leave provisions will be extended to your members retroactive to March 5, 2020. In the event that employers show any indication of not abiding by these provisions we recommend contacting your legal counsel.

## **The Whole Amendment?**

Can be found here:

[http://www.qp.alberta.ca/documents/Orders/Orders\\_in\\_Council/2020/2020\\_064.pdf](http://www.qp.alberta.ca/documents/Orders/Orders_in_Council/2020/2020_064.pdf)

## **More Questions?**

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March 23, 2020

## SASKATCHEWAN EMPLOYMENT ACT AND COVID-19 – WHAT DO I NEED TO KNOW?

Saskatchewan ATU Locals should be aware that the Saskatchewan government passed *The Saskatchewan Employment (Public Health Emergencies) Amendment Act, 2020* on March 17, 2020. The Act applies retroactively from March 6, 2020.

### SUMMARY OF KEY PROVISIONS:

This Act amends *The Saskatchewan Employment Act* by:

1. removing length of employment, period of absence, and doctor's notes requirements for employees taking unpaid sick leave due to COVID-19;
2. entitling employees to take public health emergency leave to self-isolate;
3. removing the 4-weeks' notice requirement for employees taking leave for public health emergency reasons; and
4. entitling employees who work from home to full pay and benefits.

### DETAILS:

#### 1. Conditions for Unpaid Sick Leave Removed

The previous version of *The Saskatchewan Employment Act* has a provision at section 2-40(1) prohibiting employers from taking discriminatory action against employees who miss work because either the employee or the employee's immediate and dependant family member is ill. However, prior to the recent amendments, the availability of that protection was subject to three conditions:

- a. employees had to have been employed for at least 13 weeks prior to their absence;
- b. the period of absence had to fall within certain time limits (12 days in a calendar year for non-serious illness and 12 weeks in a period of 52 weeks for serious illness); and
- c. employees were required to provide a doctor's note if the employer requested one in writing.

The amending legislation removed the above three conditions for employees who are ill, or whose immediate and dependent family member is ill, with COVID-19.



## **2. Employees Are Entitled to Take Leave During Public Health Emergency**

The new legislation amends the previous legislation with a section addressing self-isolation. These new provisions, found at section 2-59.1(1), apply if the World Health Organization and the chief medical health officer have declared a public health emergency that applies to Saskatchewan, or if the chief medical health officer issues an order requiring individuals to self-isolate.

If section 2-59.1(1) applies, then employees are entitled to take public health emergency leave if directed to by their employer, a medical practitioner, the provincial government, or the chief medical health officer. Employees are further entitled to take leave to take care of their children who are affected by a public health order.

## **3. Notice Requirements Do Not Apply to Public Health Emergency Leave**

The previous legislation has—with some exceptions—a 4-week notice requirement for employees who planned to take leave. The new legislation amends the previous legislation to add “public health emergency leave” to the exceptions to this notice requirement.

## **4. Employees Who Work At Home During Public Health Emergency Period Are Entitled to Receive Full Pay and Benefits**

Employees who work from home during the period of public health emergency are entitled to their regular wages and benefits, provided that they are authorized by their employer to work from home and that they are in compliance with public health measures.

### **Human Rights**

Employers are prohibited under the *Saskatchewan Human Rights Code* from discriminating against employees on the basis of protected grounds such as disability, place of origin, and race.

Negative treatment of employees who have or appear to have COVID-19 may be discriminatory if unrelated to legitimate health and safety concerns. Contact counsel if you need advice about a case of potential COVID-19-related discrimination.

### **Collective Agreement**

*The Saskatchewan Employment Act* will trump your collective agreement leave provisions if the Act provides a greater benefit.

You should contact your employer and advise that you expect that COVID-19 Leave provisions will be extended to your members retroactive to March 6, 2020. In the event that employers show any indication of not abiding by these provisions, we recommend contacting your legal counsel.





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### **The Whole Amending Statute**

Can be found here:

<https://publications.saskatchewan.ca/#/products/104481>

### **More Questions?**

As always, information sheets like this do not constitute legal advice. If you need more information, call your regular legal counsel.



March 23, 2020

## EMPLOYMENT STANDARDS AND (COVID-19) IN NEWFOUNDLAND AND LABRADOR – WHAT DO I NEED TO KNOW?

### SUMMARY

As of March 23, 2020, **Newfoundland and Labrador** has not announced any upcoming legislative changes with respect to employment legislation.

However, the Province has enacted a Special Measures Order that mandates fourteen (14) days of self-isolation for anyone who enters the province after March 20, 2020. Transportation workers, while traveling to and from the province for work, are exempted from the self isolation requirement. When not working, these workers must otherwise self isolate while in the Province.

The Province has also indicated that provincial public sector employees affected by self-isolation requirements will “continue to be paid as usual”.

### DETAILS

Effective March 18, 2020, the Minister of Health and Community Services declared COVID-19 a public health emergency under the *Public Health Protection and Promotion Act* which imposes strict penalties, up to and including jail time, for failure to comply with provincial orders.

To date two (2) Special Measures Orders have been enacted ordering the closure of various facilities, limiting the number of people who can gather and requiring fourteen (14) days of self isolation for any person who enters Newfoundland and Labrador from outside the Province on or after March 20, 2020. Asymptomatic “truck and transport drivers”, while traveling to and from the province for work, in the transportation sector are exempted from the fourteen (14) day isolation requirement. When not working, these workers must otherwise self-isolate while in the province.

These Orders are in effect for a period of fourteen 14 days starting from March 18, 2020.

In March 14, 2020 news release from Executive Council the Province indicated that it will provide compensation to private sector employers to ensure continuation of pay for employees affected by the out-of-country self isolation requirements. The details regarding how this compensation will be provided have not been released.

The Province also indicated that “provincial public sector employees affected by the self-isolation requirements will continue to be paid as usual.”

Note however that anyone travelling outside of the country after March 14, 2020 will not be eligible for this compensation. It is also not clear whether the Province also intends to provide compensation for workers who are required to self-isolate due to out-of-province travel.

The Special Measures Orders can be found here: <https://www.gov.nl.ca/covid-19/>



March 23, 2020

## EMPLOYMENT STANDARDS AND (COVID-19) IN NEW BRUNSWICK – WHAT DO I NEED TO KNOW?

### SUMMARY

As of March 23, 2020, **New Brunswick** has not announced any upcoming legislative changes with respect to employment legislation.

However, the Province has enacted a State of Emergency Mandatory Order that requires owners and managers of all workplaces to take every reasonable step to ensure minimal interaction of people within 2 metres of each other. This has resulted in Saint John Transit limiting seating to 10 passengers at a time per bus.

### DETAILS

Effective March 19, 2020, **New Brunswick** declared a state of emergency under section 12 of the *Emergency Measures Act*. The declaration includes a mandatory order limiting the number of patrons for various businesses and requiring “all owners and managers of all workplaces” to reduce to critical functions and take “every reasonable step required to prevent people who exhibit symptoms of COVID-19 from entering the workplace.”

The mandatory order also requires “owners and managers of all workplaces and organizers of all activities will take every reasonable step to ensure minimal interaction of people within two (2) metres of each other and carry out advice to minimize risk as issued by the chief medical officer of health.”

As result of this Mandatory Order Saint John Transit has indicated that it will cordon off some seats on the buses to limit seating to ten (10) passengers at a time/bus. Once any bus reaches the 10-person capacity, additional passengers will not be able to board the bus.

The Mandatory Order can be found here: [Declaration of a State of Emergency and Mandatory Order](#)

### More Questions?

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March 23, 2019

## NOVA SCOTIA LABOUR STANDARDS CODE AND COVID-19 WHAT DO I NEED TO KNOW?

ATU Locals should be aware that the Nova Scotia Government has not to date introduced any amendments to the *Labour Standards Code*, but the situation is developing. If the Nova Scotia Government amends the *Labour Standards Code* in response to COVID-19, we will issue a further update.

Nova Scotia declared a state of emergency on March 22, 2019. Certain provisions of the *Emergency Management Act* will affect Nova Scotia workers.

### SUMMARY OF KEY PROVISIONS:

Under the existing legislation, Nova Scotia workers are entitled to three days of unpaid sick leave. A doctor's note may be required. There are calls to enact Bill No. 46, tabled in 2018, which would increase a worker's entitlement to six days of unpaid sick leave and expressly not require a doctor's note.

Workers are entitled to up to 28 weeks of unpaid protected leave to care for or support a seriously ill family member and 37-weeks of unpaid protected leave to care for or support a critically ill child.

On March 22, 2019, the Nova Scotia Government declared a state of emergency under the *Emergency Management Act*, triggering extraordinary leave provisions under the *Labour Standards Code*. In the event that the emergency prevents a worker from performing his or her duties, the worker has protected unpaid leave until the worker can perform those duties. So far directions under the *Emergency Management Act* have only impacted the operation of beaches and parks.

### DETAILS:

#### Ordinary Sick Leave

The Nova Scotia *Labour Standards Code* entitles an employee to three days of unpaid sick leave per year in the following circumstances:

1. sickness of a child, parent, or family member; or
2. for medical, dental, or other similar appointments during working hours.

There are calls to revisit Bill No. 46, which would amend the *Labour Standards Code* to, among other things, increase the number of protected unpaid sick leave days to six. The proposed amendments would also expressly not require a doctor's note. These proposed amendments have not been enacted.

#### Compassionate Care Leave

The Nova Scotia *Labour Standards Code* provides for job-protected leaves of absence when a family member is seriously or critically ill in the following circumstances and durations:

1. if a worker's family member is seriously ill, the worker is entitled to up to 28 weeks of unpaid protected leave (employer may request a doctor's note); and



2. If a worker's child is critically ill, the worker is entitled to up to 37 weeks of unpaid protected leave (worker must provide a doctor's note).

### **Extraordinary Leave**

Extraordinary leave under Nova Scotia's *Labour Standards Code* are available in the event that a Declaration of a Provincial State of Emergency is made pursuant to the *Emergency Management Act*. Such a declaration was made on March 22, 2019.

The extraordinary leave provisions entitles workers to unpaid leaves of absence for such time as the worker cannot perform the duties of the workers' position in the following circumstances:

1. the emergency prevents the worker from performing their duties;
2. the worker gives notice to the employer as soon as is reasonably practicable; and
3. the worker furnishes reasonable evidence in the circumstances that the worker is entitled to leave.

The only direction made under the declared state of emergency requires the closure of all provincial and municipal parks and beaches. Further directions may impact additional workers.

### **Reprisals**

If an employer takes reprisals against an employee for seeking leaves due to health reasons, the worker would be protected under the Nova Scotia *Human Rights Code*.

### **Greater Benefit?**

As is always the case, the *Labour Standards Code* will trump your collective agreement leave provisions if they provide a greater benefit. In the event that employers show any indication of not abiding by these provisions we recommend contacting your legal counsel.

### **More Questions?**

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March 23, 2020

## MANITOBA EMPLOYMENT STANDARDS CODE AND COVID-19 – WHAT DO I NEED TO KNOW?

Manitoba ATU Locals should be aware that to date, the Manitoba government has not taken any legislative action in respect of Employment Standards legislation and COVID-19.

The current leave provisions in the *Employment Standards Code* (“ESC”) as well as the *Manitoba Human Rights Code* continue to apply to employees during the public health crisis. The ESC provisions do not specifically contemplate the unique circumstances relating to COVID-19.

If the Pallister Government amends the ESC in response to COVID-19, we will issue a further update

### SUMMARY OF KEY LEAVE PROVISIONS IN THE ESC

Under the ESC there are a number of categories of unpaid leave that employees are entitled to. Currently these leave provisions all require the individual seeking leave to have been an employee with the same employer for a minimum amount of time. The provisions also have caps on the length of leave an employee is entitled to take, have notice requirements, and have physician’s note or reasonable verification requirements.

Notably these provisions do not encompass all the circumstances that employees may find themselves in during this public health emergency. These circumstances may include unforeseen childcare obligations, travel-related quarantine directions, directions for self-isolation, family members who have mild COVID-19 symptoms but nonetheless require care, and employees experiencing symptoms of COVID-19 who are unable to obtain physicians notes.

#### 1. Compassionate Care Leave

Employees may take up to 28-weeks of leave to provide care or support for a close family member, such as a child, spouse, or parent, who is critically ill and is at a significant risk of death. To be entitled to this leave, employees must have been employed for a period of 90 days, must provide a physician’s note, and must give notice of at least one pay period—unless circumstances make that impossible.

#### 2. Family Leave

Employees may take up to 3 days of leave per year for family responsibilities concerning immediate family members such as children, spouses, and parents. To be entitled to this leave, employees must have been employed for a period of 30 days and may be required by the employer to provide reasonable verification. Employees must provide as much notice as possible.



### **3. Leave Related To Critical Illness of a Child**

Employees may take up to 37 weeks of leave to care for their critically ill child. To be entitled to this leave, employees must have been employed for a period of 30 days, must provide a physician's note and must give notice of at least one pay period—unless circumstances make that impossible.

### **4. Leave Related to a Critical Illness of an Adult Family Member**

Employees may take up to 17 weeks of leave to care for their critically ill spouse or parent. To be entitled to this leave, employees must have been employed for a period of 90 days, must provide a physician's note and must give notice of at least one pay period—unless circumstances make that impossible.

### **5. Long Term Leave for Serious Injury of Illness**

Employees who are seriously ill such that they incapable of working for a period of at least two weeks may take up to 17 weeks of leave in a 52-week period. To be entitled to this leave, employees must have been employed for a period of 90 days, must provide a physician's note, and must give a reasonable amount of notice.

## **HUMAN RIGHTS**

Employers are prohibited under the *Manitoba Human Rights Code* from discriminating against employees on the basis of protected grounds such as disability, place of origin, and race.

Negative treatment of employees who have or appear to have COVID-19 may be discriminatory if unrelated to legitimate health and safety concerns. Contact counsel if you need advice about a case of potential COVID-19-related discrimination.

## **GREATER BENEFIT?**

As is always the case, the employment standards provisions of the *ESC* will trump your collective agreement leave provisions if they provide a greater benefit. In the event that employers show any indication of not abiding by the statutory provisions we recommend contacting your legal counsel.

## **THE *ESC***

can be found here:

<https://www.canlii.org/en/mb/laws/stat/ccsm-c-e110/latest/ccsm-c-e110.html>

## **MORE QUESTIONS?**

As always, information sheets like this do not constitute legal advice. If you need more information, call your regular legal counsel.



## Ontario

# TRANSIT LAW UPDATE – BILL 186: EMPLOYMENT STANDARDS ACT

## EMPLOYMENT STANDARDS ACT AMENDMENTS – WHAT DO I NEED TO KNOW?

ATU Locals should be aware that Bill 186, An Act to Amend the Employment Standards Act, was passed yesterday in an emergency sitting of the legislature.

### SUMMARY OF KEY PROVISIONS:

The Act allows employees to take a leave of absence without pay in certain emergency circumstances, including circumstances relating to a designated infectious disease, such as COVID-19.

These amendments also prohibit Employers from taking reprisals against employees for taking a leave of absence without pay under the new provisions.

Finally, the amendment prohibits an Employer from requesting a doctor's note to prove entitlement to a leave related to a designated infectious disease, however an employee can still be asked to provide "evidence reasonable in the circumstances, at a time that is reasonable in the circumstances" indicating "the employee is entitled to the leave."

### DETAILS:

The new section 50.1(1.1) of ESA provides for a leave of absence without pay if the employee will not be performing the duties of his or her position, in the following circumstances:

1. because an employee is needed to provide care for a family member - including for reasons of school or day care closures;
2. The employee is under medical investigation, supervision or treatment related to a designated infectious disease;
3. The employee is in quarantine or isolation, as directed by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means;





4. The employee is sent home by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to an infectious disease;
5. The employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.

## **Length of Leave**

Under the new ESA, the length of a leave taken under the above provisions can be as long as the employee is not performing their duties of his or her position for the reason set out above and as long as the Government designates the disease in question.

## **No Medical Notes**

The Act repeals the old sick note requirements of the ESA and provides that an employer “may require an employee” who takes a leave under 50.1(1) “to provide evidence reasonable in the circumstances, at a time that is reasonable in the circumstances” indicating “the employee is entitled to the leave”,

But, where the employee claims to have contracted an infectious disease, the Employer “shall not require an employee to provide a certificate from a qualified health practitioner as evidence.”

So some evidence may be required by the employer for some of these leaves – but not a doctor’s note where an employee claims he or she suffers from COVID-19.

## **Reprisal**

It is an offence under the Act for an Employer to intimidate dismiss or in any way penalize an employee for exercising these rights, inquiring about these rights or filing a complaint with the Ministry in relation to these leaves.

## **Greater Benefit?**

As is always the case, the ESA will trump your collective agreement leave provisions if they provide a greater benefit. You should contact your employer and advise that you expect these leave provisions will be extended to your members retroactive to January 25th, 2020. In the event that employers show any indication of not abiding by these provisions we recommend contacting your legal counsel.



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