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Canada

Labour Program Stakeholder Engagement

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Regulations in support of strengthening and modernizing the *Canada Labour Code*

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1. Introduction

As part of its commitment to ensuring that employees in the federally regulated private sector are protected by a robust and modern set of labour standards that reflects the realities of the 21st century workplace, the Government of Canada has introduced several amendments to Part III (Labour Standards) of the *Canada Labour Code* (Code) over the course of its current mandate.

This includes amendments to strengthen the Code's compliance and enforcement provisions, passed as part of Bill C-44 – the *Budget Implementation Act, 2017, No. 1*, as well as to protect interns and to support employees who seek flexible work arrangements as introduced in Bill C-63 – the *Budget Implementation Act, 2017, No. 2*. These changes, which were the subject of previous regulatory consultations, are expected to come into force in the coming months.

Following an extensive consultation process from May 2017 to March 2018[1], and building on the recommendations of the Arthurs Commission (*Fairness at Work: Federal Labour Standards for the 21st Century*, 2006), the Parliament of Canada passed further amendments to the Code in December 2018 in Bill C-86 – the *Budget Implementation Act, 2018, No. 2*. These amendments, which are expected to come into force in waves over the next two years, are primarily aimed at improving protections for employees, particularly those in precarious work, while supporting productive workplaces. Once in force, they will:

- make it easier for employees to qualify for certain labour standards;
- add new scheduling, break and leave provisions to improve work-life balance;
- increase the minimum age to be employed in certain types of work;
- adjust the existing leave for members of the Canadian Armed Forces reserve;
- provide measures to ensure employees in non-standard employment are treated fairly;
- modify individual and group notice of termination requirements to help safeguard the financial security of employees whose employment is ended; and
- improve the administration of Part III of the Code. A more detailed overview of these amendments is provided in section 2.

While most new and amended labour standards will be found in Part III of the Code, a number of matters need to be set out by regulation, such as conditions related to the employment of workers under the age of 18 and transitional measures in the context of certain group terminations. Additional regulations will also be needed to define certain terms and update record-keeping and other technical requirements. In response to concerns raised by some stakeholders about the potential negative impacts of a uniform and inflexible application of certain new labour standards (i.e. taking a "one size fits all" approach), regulation-making powers were also added to allow adaptations or exemptions, if warranted, for particular classes of employees or industrial establishments[2]. Such adaptations and exemptions could cover new requirements concerning breaks and rest periods, notice of schedules and

[1] The results of these consultations were released on August 30, 2018 in a "What We Heard" report, available at: https://www.canada.ca/en/employment-social-development/campaigns/modernizing-federal-standards.html.

[2] Except in the context of a group termination, where a different definition applies, "industrial establishment" means any federal work, undertaking or business.

notice of group termination, as well as the new notice of shift changes and right to refuse overtime for family obligations that were passed earlier as part of Bill C-63.

Purpose

The purpose of this paper is to obtain feedback from stakeholders concerning the development of regulations, policies and guidelines that will assist in implementing amendments to Part III of the Code enacted through Bill C-86 as well as provisions introduced by earlier bills that were subsequently modified by Bill C-86 (e.g. leave for victims of family violence), or for which new regulation-making powers were recently added (e.g. notice of shift changes, limited right to refuse overtime).

Even though the Code will include a relatively large number of regulatory authorities, new regulations may not be necessary in all cases, at least in the short term. Some regulatory adjustments could be considered at a later date, once employees, employers and the Labour Program have gained some experience applying new labour standards. It is nevertheless important to identify any regulatory or operational policy changes that in your view should be made before particular legislative provisions come into force and to start thinking about what these regulations or policies should stipulate.

It is expected that, at least with respect to amendments coming into force in 2020 or later, which are listed in section 4, further rounds of discussions will be organized to help with the development of any proposed regulatory changes. Existing regulations exempting certain industries from hours of work provisions, which are outside the scope of the present paper, will also be a topic for future discussion.

Stakeholders

These consultations are aimed at a broad range of stakeholders, including business and labour organizations representing federally regulated employers and employees, Indigenous groups, professional associations and other groups and individuals with an interest in federal labour standards. They are intended to follow-up on previous consultations that led to the legislative amendments contained in Bill C-86.

Please feel free to share this discussion paper with other organizations or individuals who might wish to provide their views on the questions it raises.

Structure of this paper

This paper focuses primarily on amendments brought to Part III of the Code by Bill C-86 – as well as some related provisions. The paper, in section 2, provides an overview of these amendments , followed by, in sections 3, 4 and 5, a more in-depth analysis of specific amendments expected to come into force in 2019 and in 2020 or later, as well as record-keeping and related technical matters, for which regulatory changes might be contemplated in the short term. Finally, section 6 covers more general questions on the implementation of all of these changes.

Responding to this paper

Sections 3 to 6 of this paper contain a number of questions to help guide and facilitate consultations. Respondents should feel free to provide comments on some or all of these questions, or on any other related issues.

When reviewing the consultation paper, the following general questions should also be kept top of mind:

A) Are the new provisions of the Code clear? Are there any aspects of the legislation that should be clarified in regulations or operational policies?

B) Could the implementation of the new provisions of the Code have unintended negative impacts? Could these be reduced or mitigated through regulations or operational policies?

C) If regulatory changes are proposed, particularly any adaptations or exemptions, what would be their impact on employers, employees and other stakeholders? How could any negative effects be reduced or mitigated?

In addition, please consider any **Gender Based Analysis+ (GBA+)** factors that may be relevant to regulatory development associated with the provisions described in this paper. GBA+ is an analytical tool used to assess how diverse groups of women, men and gender-diverse people may experience policies, programs and initiatives. The "plus" in GBA+ acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) differences. We all have multiple identity factors that intersect to make us who we are; GBA+ also takes into account many other identity factors, like race, ethnicity, religion, age, mental or physical disability and Indigenous identity.

The federal government has committed to ensuring that a diversity and inclusion based analysis lens is used when examining policies, programs, legislative options, and agreements. With this lens applied, it is possible to focus on the existing differences between women's and men's socio-economic realities as well as the differential impacts of proposed public policy. The aim of such an analysis is to identify assumptions, which are sometimes incorrect, on which policies, programs and services are based.

Written responses to this paper should be sent no later than **June 28, 2019** to the Labour Program's general delivery mailbox designated for these consultations. Any general questions regarding the consultation process or other comments can also be sent to the same e-mail address:

EDSC.DMT.ConsultationNTModernes-ConsultationModernLS.WD.ESDC@labour-travail.gc.ca

This consultation paper is available in French and in English. For more information on changes to federal labour standards, please follow us on Twitter.

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2. Overview of Amendments to Part III of the Canada Labour Code

Enacted in 1965, Part III of the Code establishes basic working conditions and protections for persons employed in federal Crown corporations (but not the public service) and federally regulated private sector industries, such as:

- International and interprovincial transportation by land and sea, including railways, shipping, trucking and bus operations;
- Port operations;
- Airports and airlines;
- Telecommunications and broadcasting;
- Banks; and
- Industries declared by Parliament to be for the general advantage of Canada or of two or more provinces, such as grain handling and uranium mining.

The provinces and territories have the jurisdiction to enact labour and employment legislation for all other industries that operate within their borders, such as manufacturing firms, restaurants and retail stores, timber and construction companies.

The labour standards currently set out in Part III of the Code cover matters such as maximum hours of work, overtime, weekly rest periods, annual vacations, general holidays, notice of individual and group termination of employment, severance pay, the employment of children as well as various types of job protected leaves: maternity-related reassignment leave; maternity leave; parental leave; compassionate care leave; leave related to critical illness; leave related to death or disappearance of a child; bereavement leave; sick leave; work-related illness and injury leave; and reservist leave. Part III of the Code also provides recourse for employees who have been unjustly dismissed, are facing genetic discrimination or are owed wages.

Amendments passed in 2017 (Bill C-44 and Bill C-63)

Several amendments to Part III of the Code were passed more than a year ago as part of legislation to implement the Budget of 2017 (Bill C-44 and Bill C-63). Some of these changes, such as the expansion of parental leave and adjustments to wage recovery provisions, including the levy of administrative fees on payment orders to employers, have already come into force. Others are expected to be implemented in the coming weeks, namely the transfer of adjudicative functions to the Canada Industrial Relations Board (CIRB) and the establishment of a recourse against unlawful reprisals.

A number of additional labour standards enacted by Bill C-63 are also slated to come into force on September 1, 2019:

- the right to request flexible work arrangements;
- longer and more flexible bereavement leave;
- a new five-day personal leave, five-day leave for traditional Aboriginal practices and ten-day leave for victims of family violence;
- measures to allow for the fractioning and interruption of annual vacations;

- greater flexibility in establishing modified work schedules for individual employees;
- a new obligation for employers to provide 24 hours' notice of a shift change; and
- a new employee right to refuse overtime if necessary to meet certain family obligations.

Bill C-63 has been amended by Bill C-86:

a) to provide that the first three days of personal leave and five days of leave for victims of family violence taken by an employee in a year are to be paid, and

b) to give the Governor-in-Council regulatory authority to modify provisions concerning notice of a shift change and the right to refuse overtime, or to exempt from their application certain classes of employees or industrial establishments.

This is why, despite having had previous consultations on amendments to the Code in Bill C-63, additional questions with respect to some of its provisions will be raised in this discussion paper.

Amendments passed in 2018 (Bill C-86)

Further updates to federal labour standards in Part III of the Code were passed as part of Bill C-86 in December 2018. Once in force, these changes will:

- Improve employees' access to labour standards by eliminating or reducing the minimum length of service requirements for general holiday pay, several leaves, and for three weeks of vacation with pay.
- Improve work-life balance by:
  - adding an unpaid 30-minute break within each five-hour period at work, an 8-hour rest period between shifts, and unpaid breaks for nursing or medical reasons;
  - requiring employers to provide 96 hours' advance notice of schedules;
  - adding a fourth week of annual vacation with pay after 10 or more years of service;
  - improving access to medical leave; and
  - introducing a new unpaid leave for court or jury duty.
- Modify the leave of absence for members of the reserve force to reduce, from six months to three months, the minimum length of continuous employment required to qualify for the leave and to expand its scope to cover military skills training.
- Ensure fair treatment and compensation for employees in precarious work by:
  - prohibiting differences in pay based on the employment status of employees;
  - protecting temporary help agency employees from unfair practices (e.g. charging certain fees, paying lower wages than employees of the client performing substantially the same work);
  - requiring employers to provide employees with information about labour standards and their terms of employment;
  - entitling all employees, irrespective of their employment status, to be informed of employment or promotion opportunities;
  - prohibiting employers from misclassifying employees as independent contractors;

  - protecting employees' continuity of employment when there is contract retendering within the federal private sector, or when their work is transferred from a provincially regulated employer to a federally regulated employer;
  - allowing an employee to seek reimbursement of work-related expenses;
  - raising the minimum age for hazardous work from 17 to 18; and
  - adding new regulation-making powers to allow the expansion of coverage under Part III of the Code to additional categories of workers.

- Ensure that employees receive sufficient notice and/or compensation when their jobs are terminated by:
  - updating group termination provisions, to allow pay in lieu of notice and ensure that affected employees also receive additional individual notice of their precise date of employment termination;
  - replacing the two-week notice of individual termination requirement with a graduated notice of termination based on their length of service (reaching eight weeks of notice after eight years of continuous employment); and
  - requiring employers to inform employees whose employment is terminated about their termination rights.

- Improve the administration of Part III of the Code through technical amendments, including by:
  - broadening the scope of health care practitioners who can issue medical certificates;
  - providing for the designation of a new Head of Compliance and Enforcement responsible for the day-to-day administration of Parts II to IV of the Code, with the support of delegated officials;
  - eliminating the duplication of recourse mechanisms; and
  - clarifying rules for the suspension and rejection of complaints.

These amendments will come into force once necessary regulations and operational policies are in place and guidance materials are completed and published. Implementation is likely to occur on a staggered basis, with more complex provisions, such as protections for precarious workers and group termination requirements, coming into force in 2020 or later. This will allow for more in-depth consultations on these topics.

Examination of other labour standards issues

Finally, it should be noted that the Minister of Employment, Workforce Development and Labour recently appointed the independent Expert Panel on Modern Federal Labour Standards to further examine additional issues related to federal labour standards and the changing nature of work, including: the minimum wage; the "right to disconnect" (the right to refuse to respond to work-related communications outside working hours); labour standards coverage for workers in non-standard employment; access to and portability of benefits; and collective voice for non-unionized workers. The expert panel has been asked to submit its report to the Minister with advice and recommendations by June 30, 2019. Further information on the expert panel and its work can be found at https://www.canada.ca/en/employment-social-development/campaigns/expert-panel.html.

3. New Provisions Expected to Come Into Force in 2019

This section focuses on amendments to Part III of the Code enacted by Bill C-86, and in some cases by Bill C-63, that are anticipated to come into force in the short term and for which regulatory changes might be required. The topics examined below do not include certain issues for which regulatory powers are unlikely to be used in the near future (e.g. creation of pilot projects), changes to length of service requirements for which no regulations are needed and issues that were already discussed at length in earlier consultation processes.

3.1 Amendments to Hours of Work and Rest Provisions

The following new labour standards, which fall within the category of hours of work and rest periods, will cover most employees subject to Part III of the Code. With the exception of medical and nursing breaks, they will not apply to managers and members of professions who are currently excluded from the Code's hours of work provisions, namely members of the architectural, dental, engineering, legal or medical professions.

Thirty-minute Break

Employers will be required to provide their employees with a break of at least 30 minutes within every period of five consecutive hours of work. The period of break will not need to be paid, unless the employer requires the employee to remain at its disposal during the break. An employer will have the right to postpone or cancel a break if the employee must work to deal with an unforeseeable emergency. This is defined as a situation that the employer could not have reasonably foreseen and that presents or could reasonably be expected to present an imminent or serious: threat to the life, health or safety of any person; threat of damage to or loss of property; or threat of "serious interference with the ordinary working of the employer's industrial establishment"[3].

Eight-hour Rest Period

Employees will be entitled to a minimum of eight hours of rest between shifts or work periods. This rest period could be postponed or shortened if the employee must work to deal with an unforeseeable emergency.[4]

Advance Notice of Schedule

Employers will have to provide employees with their work schedule, in writing, at least 96 hours before the start of the first work period or shift under that schedule. Employees will have the right to refuse to work any shift that starts less than 96 hours from the time they received their schedule, unless it is

[3] Note that the same definition applies when referring to "unforeseeable emergencies" with respect to the other provisions described in this paper.

[4] This rest period will be in addition to rules concerning the 48-hour limit on hours of work per week and the 24-hour weekly rest period in Part III of the Code. Note that some industries (e.g. trucking, railways, aviation) are also subject to specific hours of service regulations administered by Transport Canada.

necessary for them to work in order to deal with an unforeseeable emergency. The Code's protections against employer reprisals will apply to an employee who has exercised this right to refuse work.

The requirement to provide advance notice of schedules will not apply to employees whose schedule has changed because they requested a flexible work arrangement from their employer under the new Division I.1 of Part III of the Code. A collective agreement could also set out a different time frame with respect to the advance notice of schedules.

Notice of Shift Change

This new provision will require employers to provide 24 hours' written notice of any change or addition to a work period or shift. The requirement will not apply if the change or addition is the result of the employee's request under the Code for a flexible work arrangement or if the change or addition is necessary to deal with an unforeseeable emergency.

Right to Refuse Overtime

Employees will have the right, under this provision, to refuse to work overtime in order to carry out responsibilities related to the health or care of a family member or to the education of any family member who is less than 18 years of age. The definition of "family member" would be the same for this provision as for the new personal leave, discussed later.

An employee will only be able to exercise this right to refuse overtime work if they have taken reasonable steps to carry out their family responsibility by other means but are unable to make other arrangements during the period of overtime. Furthermore, an employee is not to refuse overtime work if it is necessary for the employee to work overtime to deal with an unforeseeable emergency.

Breaks for Medical Reasons or Nursing

A new medical break will allow employees to take any unpaid breaks that are necessary for medical reasons, such as for example to take medication, or short rest or exercise periods. The employer will have the right to request that the employee provide a certificate issued by a health care practitioner[5] setting out the length and frequency of medical breaks and any additional information that may be prescribed by regulation.

The new nursing break will allow any employee who is nursing to take any unpaid breaks necessary for them to nurse or to express breast milk. No medical or other certificate will be required.

New regulatory authorities will enable the Governor in Council to make regulations respecting these new breaks, including to specify circumstances in which they cannot be taken.

Regulation-making powers will also allow the modification of provisions described above with respect to any class of employees if the application of these provisions, as currently worded, would be unduly prejudicial to these employees or seriously detrimental to the operation of the industrial establishment in which they are employed. There is also regulatory authority to exempt classes of employees from

[5] Changes regarding who can issue medical certificates, and the definition of "health care practitioner", is examined in the following section of this paper.

requirements that cannot reasonably be applied to them. Given concerns raised by employer groups during the legislative process regarding the application of these measures in some situations – such as the impact on existing provisions in collective agreements and the flexibility needs of businesses that must meet customer needs on a continuous 24/7 basis – we would like to invite comments from all stakeholders regarding the potential development of any such regulations.

Questions for discussion

1. Would the application of any of the new provisions described above be unduly prejudicial to a particular class of employees or seriously detrimental to the operation of a business? If so, what modifications to these provisions would you suggest to resolve the identified problem(s), while also ensuring employees protections?
2. Among the new provisions of the Code, are there any that cannot reasonably be applied to a particular class of employees? If so, should these employees be exempted from the application of these provisions? How could any negative impact of such an exemption on affected employees be mitigated?
3. Are there any circumstances in which one or more classes of employees should not be entitled to take a medical or a nursing break? Should this be prescribed in regulations? What would be the impact, on employees and employers, of any such exemption?
4. Is there a need to define by regulation the terms “shift” and “work period” for the new eight-hour rest period? If so, how should these terms be defined?
5. Are there any other aspects of the provisions described above that should be further defined in regulations, where possible, or in operational policies (e.g. what constitutes a “serious interference with the ordinary working of the employer’s industrial establishment”)?
6. What additional information, if any, should be required in a certificate issued by a health care practitioner in relation to medical breaks?
7. Of the requirements described above, are there any that you find unclear or think will be difficult to apply in your particular situation? Do you have suggestions on how any issues could be addressed?

3.2 Amendments to Leave of Absence Provisions

Amendments contained in Bill C-63 and Bill C-86 will both add new leaves of absence and expand access to existing leave of absence provisions under Part III of the Code.

Elimination of Length of Service Requirements for Certain Leaves

The minimum length of service that an employee must complete to qualify for sick leave, maternity leave, parental leave, leave related to critical illness of a family member and leave related to death or disappearance of a child will be eliminated. It will therefore be possible for an employee to qualify for any of these leaves from the first day of employment.

Health Care Practitioners

The term "qualified medical practitioner" in Part III of the Code will be replaced with the broader concept of "health care practitioner", thereby expanding the categories of medical professionals and others, such as nurse practitioners, physiotherapists and midwives, who can provide certificates required for an employee to qualify for the following labour standards: maternity-related reassignment and leave, maternity leave, compassionate care leave, leave for critical illness, interruption of maternity or parental leave for child's hospitalization, medical leave and medical breaks.

Reservist Leave

Amendments to existing reservist leave provisions will:

- reduce the minimum length of service to qualify for this type of leave from six months to three months;
- allow employees to take reservist leave in order to participate in Canadian Armed Forces military skills training (e.g. essential qualification courses for a military speciality; short-term training to maintain readiness); and
- set a 24-month cap to the total amount of leave that may be taken in any period of 60 months, with exceptions for national emergencies, duties for which reservists are called out under the *National Defence Act*, and treatment and rehabilitation required as a result of service.

Medical leave

Sick leave provisions, which allow an employee to be absent from work for up to 17 weeks in case of illness or injury, will be renamed "medical leave" and expanded to explicitly cover organ and tissue donations as well as medical appointments. They will also specify that an employer may only request a certificate from a health care practitioner when an employee takes three or more consecutive days of medical leave.

Leave for Court or Jury Duty

A new leave for court or jury duty will allow an employee to take a leave of absence for the length of time necessary to attend court to act as a witness or juror in a proceeding or to participate in a jury selection process. The employee will be required to provide the employer, if requested to do so, with documentation in support of the reasons for the leave or of any change to its duration.

Leave for Traditional Aboriginal Practices

A new leave for traditional Aboriginal practices will allow Aboriginal employees who have completed at least three consecutive months of continuous employment to take up to five days of unpaid leave each calendar year to participate in traditional practices, such as hunting, fishing and harvesting. Additional practices for which this leave may be taken could be prescribed by regulation.

Leave for Victims of Family Violence

Amendments to the Code will add a new leave of up to 10 days each calendar year, including five days with pay for employees who have at least three consecutive months of continuous employment, which can be taken by an employee who is – or whose child is – a victim of family violence. It will be possible

to take the leave in order to seek medical attention, obtain psychological, counselling or other services, relocate, seek legal or law enforcement assistance, prepare for or participate in legal proceedings. Additional reasons for which this leave may be taken could be prescribed by regulation.

Personal Leave

Employees will be entitled to a new personal leave of up to five days per calendar year, including three days with pay if they have at least three consecutive months of continuous employment. This leave, which is in addition to medical leave and other leaves provided for under the Code, may be taken to: treat a personal illness or injury; carry out responsibilities related to the health, care or – in the case of a minor – the education of a family member; deal with an urgent personal or family matter or attend one's Canadian citizenship ceremony. Additional reasons for which this leave may be taken could be prescribed by regulation.

Most conditions governing these leaves, such as notice and reinstatement obligations, will be set out in the Code, leaving only some technical matters (e.g. calculating the amount to pay for a paid leave taken by employees with irregular schedules, definition of "family member") to be dealt with through regulations. As noted earlier, regulations could also identify additional circumstances in which an employee may take certain leaves and indicate what must be provided as proof of entitlement.

Questions for discussion

8. Are there any situations or circumstances, beyond those listed above, in which an employee should be entitled to take personal leave? If so, should these be specifically prescribed by regulation?
9. Where authority exists to do so, should any regulations be adopted to adjust the scope of other new leaves? For example, should regulations list additional traditional Aboriginal practices or more reasons to take leave for victims of family violence?
10. How should "family member" be defined for the purposes of personal leave – and, by extension, the right to refuse overtime? Should the definition of "immediate family"[6] applicable to bereavement leave also be modified to ensure consistency?
11. Should any regulations be adopted to prescribe the documentation that an employer may require an employee to provide to support the reasons for a leave for court or jury duty, or a change to its duration? If so, what should these regulations stipulate?

[6] For the purposes of bereavement leave, "immediate family" is defined in section 33 of the *Canada Labour Standards Regulations* as: the employee's spouse or common-law partner; the employee's father and mother and the spouse or common-law partner of the father or mother; the employee's children and the children of the employee's spouse or common-law partner; the employee's grandchildren; the employee's brothers and sisters; the grandfather and grandmother of the employee; 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 any relative of the employee who resides permanently with the employee or with whom the employee permanently resides. "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.

12. Are there other matters – such as defining particular terms – that should be addressed in the regulations, or operational policies, with respect to the Code's leave provisions?

3.3 Amendments to Complaint Mechanisms

Employees have access to various recourse mechanisms, allowing them to file complaints with the Labour Program if they believe their employer has violated specific obligations under Part III of the Code. This includes provisions to address unjust dismissals, genetic discrimination and the non-payment of wages.

Several changes will be made to these provisions of the Code in the coming months as a result of Bill C-44, such as transferring the adjudication of complaints under Part II and Part III of the Code to the CIRB, adding a new recourse for employees who are victims of prohibited reprisals, and strengthening the wage recovery process.

A number of related technical changes, passed as part of Bill C-86, will set out the CIRB's power to suspend and reject complaints under Part III of the Code, restrict a person from using multiple recourse mechanisms with respect to the same matter (e.g. filing simultaneously an unjust dismissal, a genetic discrimination and a reprisal complaint after being fired) and clarify how confidential complaints are to be handled.

Extension of Time Limits

New regulation-making powers will allow the Minister of Labour – or a delegated official – to extend the time limits for filing complaints under Part III of the Code, in prescribed circumstances. Time limits – which at this time can only be extended if the complainant, in good faith, filed a timely complaint with the wrong government official – are set as follows:

- Unjust dismissal complaint: 90 days after the date of dismissal;
- Genetic discrimination complaint: 90 days after the date on which the complainant knew, or in the inspector's opinion ought to have known, of the action or circumstances giving rise to the complaint;
- Monetary complaints: six months from the last day on which the employer was required to pay wages or other amounts;
- Non-monetary complaints: six months from the day on which the subject-matter of the complaint arose.

Deemed Withdrawal of Complaint

Other changes to complaint mechanisms under Part III of the Code could require further regulatory adjustments. For instance, new rules will allow an inspector – subject to regulations – to deem an unjust dismissal or genetic discrimination complaint to be withdrawn if:

- the complainant has failed to respond to a written communication of the inspector within a period that the inspector considers reasonable;
- at least 30 days, or any longer period set out by regulation, have elapsed since the complaint was made;

- the inspector has sent, after the end of the periods mentioned above, a final notice to the complainant requesting that he or she confirm whether to send the complaint to the CIRB for adjudication; and
- the complainant has failed to respond to that final notice within 30 days, or within any other longer period prescribed by regulation.

Similar provisions will apply with respect to the abandonment of complaints for unpaid wages.

Questions for discussion

13. In what additional circumstances, if any, should the Minister – or a delegated official – be allowed to extend time limits for filing complaints under Part III of the Code? Why?
14. Should any regulations be adopted to prescribe circumstances under which an inspector may not deem a complaint to have been withdrawn? If so, what specific circumstances should be prescribed?
15. Should any additional conditions have to be met before a complaint may be deemed to be withdrawn and, if so, should these be prescribed in regulations?
16. Should a period longer than 30 days have to elapse before an inspector may send a final notice to a complainant who has failed to respond to earlier written communications? If so, how long should be that period? Should it be prescribed by regulation?
17. Should a complainant be given a period longer than 30 days to respond to an inspector's final notice? If so, how long should be that period? Should it be prescribed by regulation?

4. New Provisions Coming Into Force in 2020 or Later

This section focuses on amendments to Part III of the Code, contained in Bill C-86, which will require detailed regulations or guidelines to explain the manner in which they are to be interpreted and applied. Consequently, all of the labour standards listed below are expected to come into force in 2020 or later.

While the questions raised in this section will hopefully encourage respondents to suggest specific regulations and operational policies, they essentially constitute a preliminary step. Assuming that a need for regulations is identified now, further focused discussions with stakeholders on these issues and related matters should take place in the months to come.

4.1 Minimum Age of Employment

An amendment to the Code will raise the minimum age of employment in hazardous occupations from 17 years to 18 years of age. There is regulatory authority to specify the occupations in which persons under the age of 18, or any class of persons under that age, may be employed and to fix the conditions of that employment.

Current regulations[7] specify that persons under the age of 17 years may be employed if:

- they are not required by provincial law to be in attendance at school;
- the work in which they are to be employed is not carried on underground in a mine and is not prohibited for young workers under the *Explosives Regulations*, the *Nuclear Safety and Control Act* and Regulations, or the *Canada Shipping Act*;
- the work is not likely to be injurious to their health or endanger their safety; and
- they do not work at night (between 11 p.m. and 6 a.m.).

These regulations will need to be updated to reflect changes to minimum age requirements in the Code and to ensure that they comply with Canada's international obligations, particularly the provisions of the International Labour Organization's Conventions 138 (Minimum Age Convention) and 182 (Worst Forms of Child Labour)[8].

Questions for discussion

18. Should the existing limitation on employment for persons under the age of 17 be extended to everyone under the age of 18? Alternatively, should different rules apply to employees aged 16 or 17, or to other age groups? If so, which conditions or restrictions should apply to which age groups?
19. Are there occupations not currently listed in the Code or regulations in which employment for persons under 18 should not be permitted?
20. Should existing restrictions on night work be modified? For example, should they be made more stringent for employees under a specified age?
21. Should there be additional restrictions on the number of daily or weekly hours that may be worked by young employees? To which age groups should these restrictions apply?
22. Should regulations specify any additional conditions or restrictions on the employment of persons under the age of 18 (or persons under a lower age threshold)? Please explain.

4.2 Equal Treatment

The Code will be amended to prohibit an employer from paying a lower rate of wages to one employee than another due to a difference in their employment status (e.g. because one of them is a part-time, casual, temporary or seasonal employee), if both employees:

- work in the same industrial establishment;
- perform substantially the same kind of work;
- perform work that requires substantially the same skill, effort and responsibility; and
- perform work under similar working conditions.

[7] Section 10 of the *Canada Labour Standards Regulations*.
[8] The text of these Conventions is available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312283,en:NO and https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

Regulations could also be made to prescribe other factors that must also be present.

Differences in employees' rates of wages will nonetheless be permitted if they are due to a system based on seniority, merit (e.g. a higher wage rate for exceeding sales targets), the quantity or quality of each employee's production or any other criteria that may be prescribed by regulation. Differences in rates of wages allowed under the provisions of an existing collective agreement will also remain in effect for two years after the coming into force of the Code's new equal treatment requirements.

An employee who believes that they are paid a lower rate of wages because of their employment status will have the right to request, in writing, that their employer review their wage rate. Within 90 days of receiving such a request, the employer will have to conduct a review of the employee's wage rate and, if any discrepancy is found, increase the rate to comply with the equal treatment requirements – with retroactive payments to cover the period starting from the date on which the employee's request was made until the date on which the wage rate was increased. The employer will also have to advise the employee in writing of any increase to their rate of wages or, alternatively, of the employer's determination, with reasons, that no such increase is warranted.

Related provisions will:

- prohibit employer reprisals against an employee who has requested a review of their wage rate;
- allow the filing of a wage complaint with the Labour Program, within a six-month time limit, if an employee believes they have been underpaid and the employer has not corrected the situation;
- prohibit an employer from reducing an employee's wage rate to offset a prohibited difference in wage rates; and
- stipulate that if an employer has a practice of informing employees about employment or promotion opportunities in writing, it must inform all employees, regardless of their employment status.

It will also be possible to adopt regulations, if necessary, to limit – or, with respect to a class of employees, modify – the application of equal treatment provisions, specify exceptions and exemptions, and define certain terms.

Questions for discussion

23. Do any terms in the equal treatment provisions described above need to be defined?
24. Should regulations prescribe additional factors that must be present in order to conclude that two employees are performing work for which the same wage rate should apply? If so, which specific factors should be added?
25. Should regulations prescribe additional criteria justifying the payment of different wage rates to two employees performing substantially the same work? If so, which specific criteria should be added?

26. Should the equal treatment provisions described above be modified in any way for particular classes of employees? If so, in what specific manner? What is the justification for such a modification and how would it affect employees and employers?

27. Should any class of employees be exempted from any of the equal treatment provisions? If so, to which classes of employees and to which provisions should the exemption apply? What is the justification for such an exemption and how would it affect employees and employers?

28. Are there any aspects of the provisions described above that you find unclear, or potentially difficult to apply? Do you have suggestions on how any issues could be addressed?

4.3 Temporary help agencies

A new division VI.1 will be added to Part III of the Code to set out requirements for federally regulated temporary help agencies in relation to employees that they assign to perform work for clients. It will come into force at the same time as the equal treatment provisions described above. Temporary help agencies will be prohibited from:

- charging a fee to someone for becoming their employee;
- charging a fee to an employee for assigning or attempting to assign him or her to perform work for a client;
- charging a fee to an employee for any assignment or job preparation services (e.g. assistance with resume or job interview preparation);
- charging a fee to an employee who becomes employed directly by a client;
- charging a fee to a client for hiring an employee, unless six months or less have elapsed since the day of the employee's first assignment with that client; and
- preventing or attempting to prevent an employee from becoming employed directly by a client.

An employee who is unlawfully charged a fee by a temporary help agency that employs him or her will be able to seek reimbursement of the amount through the Code's wage recovery provisions.

Provisions similar to the equal treatment requirements mentioned earlier will also apply to employees of temporary help agencies. These will prohibit a temporary help agency from paying one of its employees at a lower rate of wages than the rate paid by a client to one of its employees if:

- they work in the same industrial establishment;
- they perform substantially the same kind of work;
- the performance of that work requires substantially the same skill, effort and responsibility;
- their work is performed under similar working conditions; and
- other factors prescribed by regulation, if any, are present.

Differences in wage rates will nonetheless be permitted if they are due to a system based on seniority, merit, the quality or quantity of each employee's production, or other criteria, if any, that are prescribed by regulation.[9]

As is the case for equal treatment provisions, employees of a temporary help agency will be able to request a review of their wage rate and to seek recourse under the Code to recover any amounts owed or to address reprisals taken against them. In addition, a client will be prohibited from reducing one of its employee's wage rate in order to enable a temporary help agency to offset a prohibited difference in wage rates.

A number of regulation-making powers will be added to allow adjustments to requirements under this new Division, including defining terms and setting out exemptions and exceptions.

Questions for discussion

29. Do any terms in the provisions concerning temporary help agencies need to be defined or clarified?
30. Should regulations prescribe additional factors that must be present in order to conclude that an employee of a temporary help agency and an employee of a client are performing work for which the same wage rate should apply? If so, which specific factors should be added?
31. Should regulations prescribe additional criteria justifying the payment of a different wage rate to an employee of a temporary help agency performing substantially the same work as an employee of a client? If so, which specific criteria should be added?
32. Should any of the provisions concerning temporary help agencies be modified in any way for particular classes of employees? If so, in what specific manner? What is the justification for such a modification and how would it affect employees, the temporary help agencies that employ them and the clients for whom they perform work?
33. Should any class of employees be exempted, by regulation, from any of the provisions concerning temporary help agencies? If so, to which classes of employees and to which provisions should a regulatory exemption apply? What is the justification for such an exemption and how would it affect employees, the temporary help agencies that employ them and the clients for whom they perform work?
34. Are there any aspects of the provisions concerning temporary help agencies that you find unclear, or potentially difficult to apply? Do you have suggestions on how any issues could be addressed?

4.4 Reimbursement of Work-related Expenses

A new Division XII.1 will be added to Part III of the Code to stipulate that employers are required to reimburse their employees for reasonable work-related expenses – subject to some exceptions. No reimbursement would be required for an expense:

[9] Differences in rates of wages between employees of a temporary help agency and rates of wages paid to their client's employees allowed under an existing collective agreement will also remain in effect for two years after the coming into force of the Code's new provisions concerning temporary help agencies.

- that the employee is required to pay in accordance with a written agreement between the employee and the employer or in accordance with the applicable collective agreement, if the employee is unionized; or
- that is identified by regulation as ineligible.

Regulations could also be made to prescribe factors to consider when determining if an expense is "work-related" or "reasonable".

Employers will have to reimburse an employee's work-related expenses within the time limit set by any written agreement between the employer and the employee or the union, if the employee is unionized. If there is no such agreement in place, the reimbursement will have to be made within a time limit prescribed by regulation.

Questions for discussion

35. Should regulations prescribe any types of expense as ineligible for reimbursement? Which ones?
36. What factors should be considered when determining if an expense is "work-related" or "reasonable"? Should these factors be prescribed by regulation?
37. In the absence of a written agreement, within what time limit should an employer be required to reimburse an employee for work-related expenses?

4.5 Written Employment Statement and Information Related to Part III of the Code

Once amendments come into force, the Code will require that employers provide each of their employees, within the first 30 days[10] of their employment, with a written statement containing information – to be prescribed by regulation – relating to their employment. An updated written employment statement will have to be provided within 30 days of any change to the information contained in the last statement provided to the employee.

Employers will also have to provide each employee, within the first 30 days of their employment, with a copy of materials – developed and made available by the Labour Program – containing information about employers' and employees' rights and obligations under Part III of the Code. Employees will have to be given a new copy of these materials within 30 days of an update. Moreover, materials specifically dealing with termination rights will have to be provided no later than an employee's last day of employment.

Questions for discussion

38. Do you have any suggestions regarding the content and format of information materials for employees to be prepared by the Labour Program?
39. What specific information should an employer be required to provide to employees as part of a written employment statement?

[10] With respect to persons already in the employer's employ, a written employment statement will have to be provided within 90 days of the coming into force of this provision (unless such a statement was previously provided).

40. From your perspective, are there any additional issues that should be addressed before bringing these provisions into force?

4.6 Notice of Termination of Employment (Individual and Group Termination)

Part III of the Code currently requires employers to provide two weeks' notice – or pay in lieu – when terminating the employment of an individual employee who has completed at least three months of continuous service with some exceptions, including just cause terminations. With respect to group terminations, employers must provide 16 weeks' notice of termination and establish a joint planning committee[11] when they intend to terminate the employment of 50 or more employees in a particular industrial establishment[12] within a four-week period.[13] An employer can seek a ministerial waiver from one or more of these group termination requirements, if it can show that they would be prejudicial to the interests of the affected employees or the employer, seriously detrimental to the operation of the industrial establishment, or unnecessary because equivalent measures to assist redundant employees are already in place (e.g. under the terms of a collective agreement).

Once in force, recently passed amendments will increase the amount of notice of individual termination required based on the employee's continuous length of service. This will range from two weeks of notice for employees who have between three months and three years of service to a maximum of eight weeks after eight years of service. Employers will have the option to provide written notice, equivalent pay in lieu of notice or a combination of notice and pay in lieu.

Changes to group termination obligations will give employers the option of providing pay to affected employees in lieu of the 16-week notice of group termination, or a combination of notice and pay in lieu. Employers who opt for pay in lieu of notice – which could in practice pre-empt the operation of a joint planning committee – will also be required to provide transitional support measures to redundant employees, to be set out in regulations. Moreover, existing ministerial waiver provisions will be repealed. Instead, new regulations could be adopted to prescribe circumstances where an employer is exempted from the application of one or more group termination provisions, as well as any measure that the employer must take with respect to affected employees.

[11] A joint planning committee (JPC) must consist of at least four members, at least half of whom are representatives of redundant employees. It must start meeting within two weeks after the date on which notice of group termination was given. The purpose of a JPC is to develop an adjustment program to eliminate the necessity for the termination of employment or, in any case, minimize its impact on redundant employees and assist them in obtaining other employment.
[12] For the purposes of group termination provisions, an industrial establishment includes all branches, sections and other divisions of federal works, undertakings and businesses that are located in the same employment insurance region. Some larger enterprises (Canadian Pacific Limited, Canadian National Railway Company, Via Rail Canada Inc., Air Canada and Bell Canada) have their various industrial establishments listed in Schedule I of the *Canada Labour Standards Regulations.*
[13] It should be noted that, in addition to notice of termination requirements, severance pay equal to two days' wages per year of service, with a minimum of five days' pay, must be given to employees who have at least one year of continuous employment when their employment is terminated. No amendments are planned to the Code's severance pay provisions.

Questions for discussion

41. What transitional measures should employers who give pay in lieu of group termination notice be required to provide to affected employees? Should the dollar value of such measures be established in regulations?
42. Should any regulations be adopted to set out exemptions from group termination requirements? If so, in what circumstances, and from which provisions, could an employer be exempted? If an exemption were to apply, what alternative measures, if any, should an employer have to take in order to ensure affected employees still benefit from adequate protections?
43. What specific information regarding termination of employment rights would be most relevant for employees?

5. Record-keeping and Other Technical Amendments

Several technical amendments to the *Canada Labour Standards Regulations* (CLSR) will be required as part of the implementation of amendments to the Code. This includes, for example, setting out the manner of calculating amounts due with respect to a paid leave taken by an employee who is not remunerated on a basis of time.

Consequential changes to record-keeping provisions are also anticipated. Existing requirements should be revised to incorporate the retention of records such as medical certificates, details about an unforeseeable emergency justifying an exception to certain labour standards obligations, written employee requests to review their rate of wages, etc. This may also be an opportunity to re-examine current requirements and determine if they can be made clearer or less burdensome.

Questions for discussion

44. What additional record-keeping requirements should be added to the regulations?
45. Are there any existing record-keeping or other requirements in the *Canada Labour Standards Regulations* that should be clarified, or adjusted, to facilitate compliance and reduce any unnecessary administrative burden?

6. Implementation

As previously noted, the legislative changes to the Code listed in this paper are expected to come into force, gradually, over the next two years. In numerous cases, this will first require the drafting and adoption of detailed regulations, based on the results of stakeholder consultations.

In addition to regulatory changes, the Labour Program will need to make adjustments to its operational policies and guidelines, provide training to inspectors, and continue updating compliance tools and administrative processes. Similarly, employers, unions and employees may have to modify workplace policies and practices to reflect the changing legislative landscape.

To ensure that employers and employees are aware of their rights and obligations, information and guidance materials will also be developed and published online and possibly disseminated through other means.

Questions for discussion

46. What specific types of information and guidance materials would be most useful in helping employers and employees understand their rights and obligations with respect to the new provisions mentioned in this paper? What particular topics/issues should be covered?
47. How much time will employers, unions and employees require to make any needed adjustments in order to implement these changes?
48. What additional assistance, if any, could the Labour Program provide to employers, unions and employees to ensure a smooth transition as new labour standards come into force?
49. Are there any other matters you would like to raise regarding the implementation of changes to Part III of the Code?