

HOW AND TOMORROW EXCELLENCE IN EVERYTHING WE DO

**Canada Labour Code,  
Part II  
Occupational Health  
and Safety (OHS)**

An overview...

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2 HOW AND TOMORROW EXCELLENCE IN EVERYTHING WE DO

## What we will cover

- Purpose of Part II of the Code.
- Duties of employers and employees.
- Policy and work place health and safety committees and health and safety representatives.
- The regulations.

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## Session Plan

- Three basic rights.
- Protection against disciplinary action.
- Internal complaint resolution process.
- Health and safety officer role.
- Offences and punishment.

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## Purpose of Part II of the Code – CLC 122.1

- **Prevention** of accidents and injury to health arising out of, linked with or occurring in the course of employment.

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## General Duty of Employer – CLC 124

- Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.

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## Specific Duties of Employer – CLC 125-125.3

- Employers have specific duties in regards to each work place they control and every work activity under their authority that occurs in a work place that is beyond the employer's control.

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### Some key duties of employers — CLC 125-125.3

- Post a copy of the *Canada Labour Code*, Part II and the employer's general health and safety policy.
- Ensure employees have access to the appropriate regulations.
- Establish and train health and safety committees/representatives.
- Develop and implement a hazard prevention program and a violence prevention program.
- Report and investigate work place accidents.
- Respond in writing within thirty days to committee or representative recommendations.

### Training — CLC 125.(1)(g)

- Under the Code, the employer shall provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work.

### Monthly Inspection — CLC 125.(1)(z.12), 135. (7)(k), 136. (5)(j)

- The employer shall ensure that the work place committee or the health and safety representative inspects each month all or part of the work place, so that every part of the work place is inspected at least once each year.

### Accident Investigation and Reporting — COHSR 15.1, 15.4, 15.5, 15.8

- Disabling Injury — any injury resulting in employee time loss or modified duties.
- **Employer must:**
  - investigate all work related hazardous occurrences;
  - report all disabling injuries and other specified hazardous occurrences to a health and safety officer in the form and manner specified;
  - notify the health and safety committee or representative so they can participate fully in the investigation.

### Accident Investigation and Reporting — COHSR 15.5

- **Employer must** report to a Health and Safety Officer within 24 hours, by phone:
  - death of an employee;
  - disabling Injury: two or more employees;
  - loss of body part, it's usefulness, or a body function;
  - explosion;
  - damage to boiler or pressure vessel resulting in fire or rupture;
  - free fall of, or serious damage, to an elevating device.

### Accident Investigation and Reporting — COHSR 15.8

- **Employer must** report to a Health and Safety Officer within 14 days, in writing:
  - a disabling injury to an employee;
  - an electric shock, toxic atmosphere or oxygen deficient atmosphere that caused an employee to lose consciousness;
  - the implementation of rescue, revival or other similar emergency procedures; or
  - a fire or an explosion.

## Annual Reporting – COHSR s.15.10

- **Employer must** submit a written report called the Employers Annual Hazardous Occurrence Report (EAHOR) every year by March 1<sup>st</sup>

## Duties of Employees – CLC 126. (1)(c)

- Employees have a responsibility to take all reasonable and necessary precautions to ensure their health and safety and that of anyone else who may be affected by their work or activities.

## Duties of Employees – CLC 126. (1)(g)

- Employees have to report to the employer any thing or circumstance that is likely to be hazardous to the employees or any other person in the work place.

## Health and Safety Committees and Representatives – CLC 134.1, 135, 136

- Work place committee: 20 or more employees.
- Work place representative: fewer than 20 employees.
- Policy committee: greater than 300 employees.

## Health and Safety Committee – CLC 135, 135.1

- Minimum two people, with at least half selected by employees.
- Meet nine times per year, and post minutes of meetings.
- Inspect work place monthly.
- Participate in all hazardous occurrence investigations.
- Receive/resolve OHS complaints.
- Review employer OHS policies/procedures.
- A representative must perform all duties required of a committee, except holding meetings and submitting annual report.

## Three Basic Rights

- Right to Know.
- Right to Participate.
- Right to Refuse.

## Right to Know

- It is the employee's right to be informed of all known or foreseeable hazards which exist in the work place and could endanger their health or safety.

## Right to Participate

- Every employee has the right to be involved in everything that touches on questions of health and safety at work.

## Right to Refuse — CLC 128

- Any employee covered by Part II of the *Canada Labour Code* has the right to refuse dangerous work if:
  - the refusal does not put the life, health or safety of another person directly in danger; or
  - the danger in question is not a normal condition of employment.

## Protection against disciplinary action — CLC 133, 147

### Purpose:

- To protect employees from arbitrary discipline.

## Internal Complaint Resolution Process — CLC 127.1

- An effective way of having issues dealt with and resolved within the work place.

## Internal Complaint Resolution Process — CLC 127.1(1)

- Initiated if, on reasonable grounds, an employee believes:
  - there has been a contravention of this Part; or
  - that there is likely to be an accident or injury to health.

### Internal Complaint Resolution Process – CLC 127.1(3)

- In the case of an unresolved complaint, a joint investigation must be conducted by:
  - an employee member and an employer member of the work place health and safety committee;
  - in the absence of a health and safety committee, the health and safety representative and a person designated by the employer.

### Canada Occupational Health and Safety Regulations (COHSR)

- Identifies specific requirements in much greater detail.

### Health and Safety Officer – CLC 140

- In the context of the *Canada Labour Code*, a health and safety officer is a person designated by the Minister of Labour to ensure compliance with the Code.

### Compliance Activities – CLC 141, 145, 148

- Assurance of Voluntary Compliance (AVC).
- Direction.
- Court Actions.
- Penalties.

### For More Information


- Employment and Social Development Canada – Labour Program.
- Central Region.
- PO Box 4600
- WINNIPEG MB R3C 0S1
- Phone (24 hrs): 1-800-641-4049
- [www.labour.gc.ca](http://www.labour.gc.ca).



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**Canada Labour Code**  
**Part III**

**Module One**  
**Hours of Work, Minimum Wage, Vacation and General Holiday, Pay Administration, Sexual Harassment, Compliance Approach and Wage Recovery**

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Labour

**Overview**  
**Canada Labour Code**  
**Part III**

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Labour

**Federal Jurisdiction**

- Shipping and Shipping Services
- Railways
- Interprovincial and International Road Transportation
- Air Transportation
- Ferries, tunnels and bridges
- Radio and television broadcasting
- Telecommunications
- Chartered Banks
- Crown Corporations
- First Nations
- Pipelines
- Canals
- Banks
- Other

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## Labour

### Canada Labour Code – Part III

- The primary objective of Part III of the *Canada Labour Code* is to establish and protect workers' rights to fair and equitable conditions of employment.
- Only applies when an employee/employer relationship exists.
- Makes no distinction between part-time, full-time, seasonal, permanent or casual employment, and protects temporary foreign workers.
- Applies notwithstanding any other law, custom, contract or arrangement.

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## Labour

### Minimum Age - Employment under 17

Employers can employ persons under the age of 17 as long as:

- Work not likely to endanger safety or health.
- Work is not underground, in a mine or where otherwise prohibited by law.
- Employee is not required by provincial law to attend school.
- Employee does not work between 11:00 p.m. and 6:00 a.m.

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## Labour

### Hours of Work

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Rail safety and operational regulations

## Labour

### Hours of Work – Excluded Professions

- Architectural
- Dental
- Engineering
- Legal
- Medical
- Managers, superintendents or those who exercise management functions

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Rail safety and operational regulations

## Labour

### Hours of Work – General

- **Standard Hours:** 8 in a day and 40 in a week
- **Overtime Pay:** not less than one and one-half times the regular rate of pay
- **Maximum hours:** 48 per week
  - Maximum hours may be exceeded with Ministerial permit or due to an emergency; and
  - Averaging and modified schedules provide for weekly flexibility.

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Rail safety and operational regulations

## Labour

### Hours of Work – Specific to Occupation

- Bus Drivers - 8 in a day and 40 in a week
- City drivers – 9 in a day and 45 in a week
- Highway Drivers – 60 hours in a week
- Regulations for Rail Occupations

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## Labour

### Hours of Work - Flexibilities

- Maximum hours of work can be exceeded if:
  - Work conducted is considered emergency work; or
  - If the employer applies for and the Minister of Labour grants an excess hours permit for work that is considered to be "exceptional circumstances".

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## Labour

### Hours of Work – Averaging Plans

- Permitted when nature of work necessitates an irregular distribution of hours due to seasonal or other factors
- Periods of two or more consecutive weeks can be averaged if either:
  - (a) no regularly scheduled hours, or
  - (b) regularly scheduled hours where the number of hours differs from time-to-time.
- Notice (Schedule IV) must be posted for at least 30 days before averaging takes effect.
- Copy of Schedule IV must be sent to the Labour Program Regional Director

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## Labour

### Hours of Work – Modified Schedules

Where no collective agreement:

- Subject to approval by at least 70% of affected employees
- Notice (Schedule III) must be posted for at least 30 days before modification takes effect.

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Minimum Wage

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**Minimum Wage – General Entitlement**

- The Code adopts the provincial minimum hourly wage - regardless of occupation or age
- Special provisions for Apprentices and Trainees
- Adjustments can be made if room and board are provided

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**Minimum Wage – Reporting Pay**

- Employee reports to work at the call of employer
- Unscheduled
- Employee must be paid wages for not less than the equivalent of three hours' wages
- Applies whether or not employee is asked to do any work after so reporting

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For use only in the workplace

## Labour

### Annual Vacation and General Holiday

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## Labour

### Annual Vacation – General Entitlement

- Two entitlements – vacation leave and vacation pay
- After one year of service:
  - Two weeks vacation leave with 4% of wages as vacation pay.
- After six years of service:
  - Three weeks vacation leave with 6% of wages as vacation pay.

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## Labour

### Vacation Leave – General Provisions

- Vacation must be granted not later than 10 months after completion of the year entitling the employee to the vacation.
- Waivers:
  - Employee may request to waive or postpone right to vacation time, in writing;
  - Still entitled to receive vacation pay

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**Vacation Pay**

- Vacation pay is payable on wages.

Wages	Exclusions
<ul style="list-style-type: none"> <li>- Regular wages,</li> <li>- Overtime pay,</li> <li>- General holiday pay,</li> <li>- Bereavement leave pay,</li> <li>- Some leaves and</li> <li>- Vacation pay</li> </ul>	<ul style="list-style-type: none"> <li>- Pay in lieu of notice (termination pay),</li> <li>- Severance pay and</li> <li>- Unjust dismissal settlements</li> </ul>

- Must be paid within 30 days of termination of employment.

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**Labour**

**General Holidays**

The Code provides for nine general holidays:

• New Year's Day	• Thanksgiving Day
• Good Friday	• Remembrance Day
• Victoria Day	• Christmas Day
• Canada Day	• Boxing Day
• Labour Day	

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**Labour**

**General Holiday with Pay - Eligibility**

**30 Days of  
Employment**

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**Labour**

**Required to Work on a General Holiday**

Majority of Employees	Managers and Professionals
<ul style="list-style-type: none"> <li>• holiday pay for that day, and</li> <li>• paid at a rate equal to at least one and one-half times their regular rate of wages for the time worked on that day</li> </ul>	<ul style="list-style-type: none"> <li>• normal rate of pay, and</li> <li>• be given a holiday with pay at another time</li> </ul>

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**Labour**

**Holiday Pay – Not Required to Work**

Common Formula	Commissioned-based Formula
<ul style="list-style-type: none"> <li>• Equal to at least one twentieth (1/20th) of the wages, excluding overtime pay that they earned in the four-week period immediately before the week in which the general holiday occurs</li> </ul>	<ul style="list-style-type: none"> <li>• Applies to employees who are paid on commission (in whole or in part)</li> <li>• 12 weeks continuous employment: will be paid holiday pay equal to at least one sixtieth (1/60th) of the wages, excluding overtime pay, that they earned in the 12-week period immediately before the week in which the general holiday occurs</li> <li>• Less than 12 weeks continuous employment: use the common formula</li> </ul>

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**General Holiday – Continuous Operation**

**First 30 days of employment**

- If employee works: regular wages for work performed
- If employee does not work: not entitled to pay

**More than 30 days of employment**

**If employee works, the employer has three choices:**

1. Holiday pay entitlement plus time and one-half for the actual hours worked; or
2. Regular wages for the actual hours worked plus a holiday with pay at a later date; or
3. Per a collective agreement, pay for first day off after the holiday.

**If employee does not work and was not required to work:**

- Holiday pay of 1/20th of wages earned in the four-week period immediately before the week in which the holiday occurs

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### Holiday Falling on a Non-working Day

- When New Year's Day, Canada Day, Remembrance Day, Christmas Day and Boxing Day which fall on a Saturday or Sunday:
  - Employee is entitled to a holiday with pay on the working day immediately preceding or following the general holiday;
- Other general holidays:
  - may be added to the employee's annual vacation or granted at another mutually convenient time.

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## Labour

### Substitution of General Holiday

- Substitution may occur with approval of 70% of affected employees.
- Notice must be posted for at least 30 days before substitution takes effect.
- If collective agreement, substitution must be agreed to in writing by the employer and the trade union.

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## Labour

### Pay Administration

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## Labour

### Payment of Wages

- Employers must establish pay days at least once every 30 days and pay employees on these pay days.
- Employees are entitled to receive any other amounts to which they are entitled within 30 days from the time when the entitlement arose.

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## Labour

### Administration and General – Deductions from Pay

An employer cannot make deductions, except as permitted under the Code.

Permitted deductions are:

- deductions required by federal or provincial law (i.e. taxes, CPP and EI),
- deductions authorized by a court order such as child support garnishment or by a collective agreement such as union dues,
- specific amounts authorized in writing by the employee,
- overpayments of wages.

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## Labour

### Administration and General – Deductions from Pay (cont'd)

- No employer shall make a deduction in respect of damage to property, or loss of money or property, if any person other than the employee had access to the property or money in question.

#### Garnishment

- An employee cannot be dismissed, suspended, disciplined, laid off or demoted because garnishment proceedings may be or have been taken against them.

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## Labour

### Pay Statement

Employer is required to furnish the employee with a statement in writing setting out:

- the period for which a payment is made;
- the number of hours for which the payment is made;
- the rate of wages;
- details of the deductions made from the wages
- actual sum being received by the employee.

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## Labour

### Record Keeping

- Employers are required to keep a record of the employee's dates of employment (i.e. start and end dates) for at least 36 months after the date of termination of employment.
- Other payroll records, including rates and frequency of remuneration of wages (e.g. hourly, weekly, etc.), must be kept for at least three years after the employee performs the work.
- An outline of the Code requirements must be posted in the work place. (Schedule II).

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## Labour

### Sexual Harassment

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## Labour

### Sexual Harassment

The Code defines sexual harassment as:

- *any conduct, comment, gesture, or contact of a sexual nature that is likely to cause offence or humiliation to any employee; or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.*

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## Labour

### Compliance Approach

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## Labour

### Compliance Approach

- Promote, counsel and educate
- Investigation of complaints – monetary and non-monetary
- Inspect records

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Complaints Handling

- Complaint must be made, in writing, within 6 months of the day the employee should have normally been paid (Monetary) or the day that the subject matter of the complaint arose (Non-Monetary)
- Inspectors' powers expanded to include the ability to reject a complaint under specific circumstances.

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Investigating a Complaint

- An employer may be requested to provide the inspector with certain types of documentation to assist in the investigation of the complaint.
- Inspector will make a determination whether any entitlements are owing.
- Parties will be informed and will be afforded an opportunity to provide any additional information.
- If entitlements are determined as owing, the employer will be afforded opportunity to voluntarily comply. If voluntary compliance cannot be achieved, the inspector will escalate the investigation to achieve compliance through enforcement, up to and including prosecution.

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Labour

Wage Recovery

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## Labour

### Wage Recovery

Where wages are owed, the wage recovery process uses both voluntary and enforcement mechanisms to achieve compliance – ranging from assurances of voluntary compliance to payment orders.

### Notice of Unfounded Complaint

If inspector finds employer has paid all wages and other amounts owed to employee, a "Notice of Unfounded Complaint" may be issued to both complainant and employer.

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## Labour

### Wage Recovery

### Payment Order

- Where an employer does not comply, following an inspector's determination that wages or other amounts are owing, a payment order may be issued.

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## Labour

### Wage Recovery – Payment Order Process

- Payment order issued.
- If not paid or if no review has been requested, an order may be issued to debtor of employer.
- If money is not recoverable from the corporation, a payment order may be issued to director.
- Orders may be filed in Federal Court.

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## Labour

### Administrative Review Process

- A person may request (in writing, with reasons, and within 15 days of being served a payment order or notice of unfounded complaint) a review of the decision
  - The amount indicated in the payment order shall be paid to the Minister
- Upon review, a payment order or notice of unfounded complaint may be confirmed, rescinded or varied, in whole or in part:
  - If overturned, the case may be assigned to another inspector
  - Other review decisions may be further appealed to a referee, but only on a question of law or jurisdiction

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## Labour

### Wage Recovery – Appeals

- Review decisions may be further appealed to a referee, but only on a question of law or jurisdiction
- The Labour Program may refer the review request as an appeal directly to a referee.
- A Referee's decision is final.

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## Labour

# Questions?

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## Labour

## Contact – Labour Program

For additional information:

—Toll-free: 1-800-641-4049

–Website:

[http://www.esdc.gc.ca/en/jobs/workplace/employment\\_standards/labour/index.page](http://www.esdc.gc.ca/en/jobs/workplace/employment_standards/labour/index.page)

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Canada Labour Code

Part III

Module Two

Leaves

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Labour

Overview

Canada Labour Code

Part III

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Labour

Federal Jurisdiction

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### Canada Labour Code – Part III

- The primary objective of Part III of the *Canada Labour Code* is to establish and protect workers' rights to fair and equitable conditions of employment.
- Only applies when an employee/employer relationship exists.
- Makes no distinction between part-time, full-time, seasonal, permanent or casual employment, and protects temporary foreign workers.
- Applies notwithstanding any other law, custom, contract or arrangement.

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## Labour

### Minimum Age - Employment under 17

Employers can employ persons under the age of 17 as long as:

- Work not likely to endanger safety or health.
- Work is not underground, in a mine or where otherwise prohibited by law.
- Employee is not required by provincial law to attend school.
- Employee does not work between 11:00 p.m. and 6:00 a.m.

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## Labour

### Sick Leave

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## Labour

### Sick Leave – 17 Weeks

- Unpaid leave
- Three consecutive months of continuous service
- If requested by employer, employee must produce medical certificate within 15 days following return to work

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## Labour

### Bereavement Leave

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## Labour

### Bereavement Leave

- Three days immediately following death of member of immediate family.
- After three months continuous service, employee is entitled to bereavement leave **with pay** for normal working days which fall within the three days following the day of death.

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## Labour

### Immediate Family

Includes:

- spouse, including common-law partner;
- parent and spouse of parent including common-law partner;
- child of employee or of employee's spouse;
- grandchild;
- sibling;
- grandparent;
- parent-in-law including common-law partner; and
- any relative residing with employee.

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## Labour

### Maternity-Related Reassignment Leave

Maternity Leave

Parental Leave

Compassionate Care Leave

Leave Related to Critical Illness

Leave Related to Death or Disappearance

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## Labour

### Maternity-related Reassignment and Leave

- A pregnant or nursing employee may request the employer modify her job functions or reassign her to another job.
- A medical certificate stating current job functions poses a risk to her health or that of her child is required.
- If employee is unable to work, employer must grant leave.
- Leave would be without pay.
- Entitlement is from beginning of pregnancy up to 24 weeks following birth.

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## Labour

### Maternity Leave – 17 Weeks

- Employee must:
  - have completed six months continuous service;
  - provide medical certificate; and
  - give four weeks written notice by employee.
- Leave may not begin earlier than 11 weeks prior to date of confinement.
- Leave may not end later than 17 weeks following date of birth – except for interruption of leave.

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## Labour

### Interruption to Maternity Leave

- Employee can interrupt her maternity leave, with employer's consent, and temporarily return to work, if during the 17 week period following confinement the child is hospitalized.
- Leave is extended by the number of weeks child is hospitalized.
- Her request to interrupt leave must be made, in writing, to employer.
- Employer's decision must be made in writing, within one week of receiving the notice.
- Medical certificate, confirming child is hospitalized, may be requested.
- Maternity leave must end no later than 52 weeks after date of confinement.

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## Labour

### Parental Leave – 37 Weeks

- Employee must:
  - have completed six months continuous service;
  - be the natural or adoptive parents.
  - Give four weeks written notice by employee
- May be taken any time within the 52 weeks following the birth or custody
- Must be taken in one block - except for interruptions

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## Labour

### Interruption to Parental Leave

- An employee can interrupt his/her parental leave, with employer's consent, and temporarily return to work if the child is hospitalized.
- Medical certificate, confirming child is hospitalized, may be requested.
- Leave can also be interrupted to take other forms of leave (i.e. Compassionate Care Leave, Sick Leave, Work-related illness and Injury Leave, et. al)
- If interrupting the leave to take other form of leave, the notice provisions of the other applicable leave(s) apply.
- To interrupt parental leave, an employee must give the employer written notice.
- If employer refuses the employee's request to return to work or does not advise the employee of the decision within one week, the employee's leave can be extended by
  - the number of weeks during which the child is hospitalized; or
  - the length of the other leave taken by the employee.
- Leave must end no later than 104 weeks after the day on which the child is born or comes into the employee's actual care.

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## Labour

### Compassionate Care Leave – 28 Weeks

- All employees are entitled to a leave to care for or support a gravely ill family member with significant risk of death within 26 weeks.
- Leave may be taken in increments as small as one week.
- Medical certificate is required and may be requested from employee within 15 days of the employee's return to work.

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## Labour

### Compassionate Care Leave

Definition of "family member"

- spouse or common-law partner\*;
- child of employee or spouse or common-law partner\*;
- Parent and spouse of parent including common-law partner\*.
- \* **Common-law partner** means a person who has been cohabiting with an individual in a conjugal relationship for at least one year.
- Any other person defined under section 23.1(1) of the EI Act.

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## Labour

### Leave Related to Critical Illness – 37 Weeks

- Employee must:
  - have completed 6 months of employment
  - be a parent of a critically ill child.
  - provide a medical certificate required
  - give employer written notice of their intention to take leave as soon as possible.
- Leave will commence on the first day of the week the certificate is issued; or from the day from which the specialist medical doctor certifies that the child/children is critically ill.
- Leave will end on the last day of the week in which the child/children dies; or when the 52-week period expires.

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## Labour

### Leave Related to Death or Disappearance

- Applies to the death or disappearance of a child resulting from crime as defined by the *Criminal Code*
- Entitlement: up to 104 weeks (in the case of child's death) or up to 52 weeks (in the case of child's disappearance).
- Employee must:
  - have completed 6 months of employment
  - be considered to be the "parent" of the child.
  - on request of employer, provide proof of entitlement to take leave.
- Exception to entitlement: employee is charged with the crime or it is probable, considering the circumstances, that the child was party to the crime.

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## Labour

### Leave Related to Death or Disappearance (cont.)

- Leave period will commence on the day on which the death or disappearance occurs.
- The leave period will generally end:
  - on the day which the circumstances are such that it is no longer probable that the death or disappearance is a result of a crime; or
  - 104-weeks (death) or 52-weeks (disappearance) after the day event occurs.
- If within the 52-week period, but no later than the end of the 52-week period, the child disappears and is subsequently found, the leave will end:
  - Alive: 14 days after the day on which he/she is found
  - Deceased: 104 weeks after the day on which the disappearance occurs
- If the child disappears and is subsequently found deceased, the employee may be eligible to take Leave Related to Death.

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# Labour

### General – Notice Requirements – Critical Illness and Death and Disappearance

- Employees must provide the employer, as soon as possible, a written notice of the reasons for leave and length of leave they intend to take.
- Notice in writing of any change in length of leave must also be provided as soon as possible.
- To shorten the leave with less than four weeks' notice, employer can postpone their return to work by up to four weeks.
- If leave changes from disappearance to death, the employee must provide written notice to the employer notifying of the change in type of leave as soon as possible

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## Labour

## Leave of Absence for Members of the Reserve Force

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# Labour

## Reservist Leave

- Must have completed 6 months of employment.
- Up to 15 days for annual training
- No time limit for leave while taking part in a designated operation or called out for service
- Seniority continues
- Reinstatement to same or comparable position

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Labour

Work-Related Illness and Injury

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Labour

**Work-Related Illness and Injury**

- Employer must subscribe to Workers Compensation Board or comparable plan
- Employee may not be terminated for absence
- Benefits continue
- Must return employee to work after absence
- May assign different tasks if employee is unable to perform former job

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Labour

General Details related to Various Leave Provisions of Division VII

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## Labour

### General Provisions

- Employees on leave are entitled to continue pension, health and disability benefits while on leave.
- Entitlement to training and job opportunities.
- Entitled to their position upon return, or, if not available, a comparable position at same rate of pay and benefits.
- Changes in wages or benefits.
- Seniority accrues.

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## Labour

### General – Employees Entitlements, Rights and Obligations while on Leave

- Employee contributions are required to receive usual entitlements to pension, healthcare and disability benefits.
- Non-payment of contributions for the leave period has no impact on the employee's employment status.
- On written request, employees must be informed of every employment, training and promotion opportunity for which he/she is qualified that arise during the leave period.

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## Labour

### Prohibition

- An employer may not dismiss, suspend, lay off, demote or discipline an employee because she is pregnant or because she or he intends to take leave under this Division.
- An employer cannot take pregnancy or a leave of absence under this Division into account in any decision not to promote or train an employee.

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Labour

Long-Term Disability Plans

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Labour

Long-Term Disability Plans

- Employers are required to insure any long-term disability plans:
  - self-insured plans may remain in place for employees who received or had applied for benefits before July 1, 2014.
- Employers who provide long-term disability benefits must furnish proof that the plan is insured, if requested by and Inspector.

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Labour

Compliance Approach

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For info and updates visit us at

## Labour

# Wage Recovery

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For info and updates visit us at

## Labour

### Wage Recovery

Where wages related to bereavement leave are owed, the wage recovery process uses both voluntary and enforcement mechanisms to achieve compliance – ranging from assurances of voluntary compliance to payment orders.

### Notice of Unfounded Complaint

If inspector finds employer has paid all wages and other amounts owed to employee, a "Notice of Unfounded Complaint" may be issued to both complainant and employer.

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For info and updates visit us at

## Labour

### Wage Recovery

### Payment Order

- Where an employer does not comply, following an inspector's determination that wages or other amounts are owing, a payment order may be issued.

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**Labour**

**Wage Recovery – Payment Order Process**

- Payment order issued.
- If not paid or if no review has been requested, an order may be issued to debtor of employer.
- If money is not recoverable from the corporation, a payment order may be issued to director.
- Orders may be filed in Federal Court.

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**Labour**

**Administrative Review Process**

- A person may request (in writing, with reasons, and within 15 days of being served a payment order or notice of unfounded complaint) a review of the decision
  - The amount indicated in the payment order shall be paid to the Minister
- Upon review, a payment order or notice of unfounded complaint may be confirmed, rescinded or varied, in whole or in part:
  - If overturned, the case may be assigned to another inspector
  - Other review decisions may be further appealed to a referee, but only on a question of law or jurisdiction

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**Labour**

**Wage Recovery – Appeals**

- Review decisions may be further appealed to a referee, but only on a question of law or jurisdiction
- The Labour Program may refer the review request as an appeal directly to a referee.
- A Referee's decision is final.

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Fact sheet and presentation on workplace

## Labour

# Questions?

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Fact sheet and presentation on workplace

## Labour

### Contact – Labour Program

For additional information:

- Toll-free: 1-800-641-4049
- Website:  
[http://www.esdc.gc.ca/en/jobs/workplace/employment\\_standards/labour/index.page](http://www.esdc.gc.ca/en/jobs/workplace/employment_standards/labour/index.page)

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Employment and Social Development Canada

Ministère de l'Emploi et du Développement social Canada

Canada

Labour



Canada Labour Code

Part III

Module Three

Terminations of Employment

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Labour

Overview

Canada Labour Code

Part III

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Labour

Federal Jurisdiction

- Shipping and Shipping Services
- Railways
- Interprovincial and International Road Transportation
- Air Transportation
- Ferries, tunnels and bridges
- Radio and television broadcasting
- Telecommunications
- Chartered Banks
- Crown Corporations
- First Nations
- Pipelines
- Canals
- Banks
- Other

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## Labour

### Canada Labour Code – Part III

- The primary objective of Part III of the *Canada Labour Code* is to establish and protect workers' rights to fair and equitable conditions of employment.
- Only applies when an employee/employer relationship exists.
- Makes no distinction between part-time, full-time, seasonal, permanent or casual employment, and protects temporary foreign workers.
- Applies notwithstanding any other law, custom, contract or arrangement.

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## Labour

### Minimum Age - Employment under 17

Employers can employ persons under the age of 17 as long as:

- Work not likely to endanger safety or health.
- Work is not underground, in a mine or where otherwise prohibited by law.
- Employee is not required by provincial law to attend school.
- Employee does not work between 11:00 p.m. and 6:00 a.m.

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## Labour

Individual Termination  
Severance Pay  
Group Termination

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For full and complete answers see

## Labour

### Termination of Employment

#### Temporary Layoff

- A layoff is considered a termination of employment when the employer has no intention of recalling the employee to work.

#### Record of Employment (ROE)

- Records of Employment are the responsibility of Service Canada.

#### Vacation Pay

- Payable within 30 days of employee's termination of employment

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For full and complete answers see

## Labour

### Individual Terminations

- Where the employer terminates the employment an employee who has completed three consecutive months of continuous employment, the employer must provide two weeks written notice or two weeks pay in lieu of notice.
- Conditions of employment do not change during notice period.
- Notice not required if termination for just cause.
- Code does not require employee to give notice.

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For full and complete answers see

## Labour

### Severance Pay

- Where an employee has completed 12 consecutive months of continuous employment, an employer must pay the greater of:
  - two days pay per completed year of employment; or
  - five days wages at the employee's regular rate of wages for the regular hours of work.
- Severance pay not required if termination is for just cause.

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## Labour

### Group Terminations

- Termination of 50 or more employees from a single industrial establishment either simultaneously or within any period not exceeding four consecutive weeks.
- Written notice of a group termination must be given to the Minister of Labour, at least 16 weeks before date terminations commence.
- A joint planning committee must also be established.
- A request to waive the requirement to provide notice to the Minister and/or to establish a joint planning committee can be submitted.

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## Labour

### Notice of Group Termination

- Must be provided to:
  - the Minister of Labour, the Minister of Employment and Social Development Canada and to the Canada Employment Insurance Commission; and
  - the union, if applicable, must also be provided a copy of the notice, if applicable; or
  - If not represented by a union, the notice must be posted in a clearly visible place in the industrial establishment where the employees are employed.
- Must contain:
  - the name of the employer and nature of the industry;
  - the location(s) at which the terminations of employment will occur;
  - the name of the union(s) that represents the affected employees;
  - the date(s) on which the terminations of employment are intended to occur; and
  - the estimated number of employees in each occupational class who will be affected by the terminations of employment.

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## Labour

### Joint Planning Committee

- The committee must include a minimum of four members; with half the members to represent the affected employees and the other half to represent the employer
- The object of the joint planning committee is to:
  - eliminate the necessity for the terminations of employment; or
  - minimize the impact of the terminations of employment on the redundant employees and to assist those employees in obtaining other employment.

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For L1's and production employees

## Labour

### Layoff v. Termination

**Layoff deemed to be termination unless:**

- Layoff is less than three months;
- Layoff is more than three months with a callback date within six months;
- Employee laid off is a member under a collective agreement with recall rights.

**NOTE:** Recall of less than two weeks does not interrupt layoff period.

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For L1's and production employees

## Labour

### Unjust Dismissal

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For L1's and production employees

## Labour

### Unjust Dismissal Complaints

*(also applies to constructive dismissals)*

**Admissibility**

The employee must not:

- be a manager
- be a member of a group of employees subject to a collective agreement.

The employee must :

- Have completed 12 consecutive months of continuous employment.
- Make their complaint in writing
- Make their complaint within 90 days of dismissal

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## Labour

### Unjust Dismissal Process

- The employer is required to provide written reasons for termination.
- The inspector may assist the parties to settle the complaint.
- Inspector's role is to be a mediator, not an enforcer.
- If the inspector is not able to assist the parties to settle within a reasonable time, the complainant may request that the complaint be referred to an adjudicator.

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## Labour

### Alternative Dispute Resolution

- Voluntary process
- Parties meet together to attempt to resolve the complaint.
- Inspector acts as a mediator only.
- Advantageous to parties in that they can resolve the dispute between themselves quickly and beneficially.
- Details kept confidential.

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## Labour

### Adjudicator's Powers

If Dismissal is ruled "unjust", the adjudicator may:

- Reinstatement the employee;
- Award lost wages incurred as a result of the dismissal;
- Award costs, including legal fees;
- Award anything else to counteract the consequences of dismissal.

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For safety and production improvement

## Labour

### Just Cause

- Clearly communicate to employees the expectations of their job and what will happen if these are not met.
- Actions are measures aimed to help the employee correct an inappropriate behaviour on the job as opposed to punishing them.

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For safety and production improvement

## Labour

### Progressive Discipline

- Verbal Warning (Informal);
- Written Warning, to be put in personnel file;
- Suspension (may vary in length)
- Dismissal

**Note:** Final Warnings - a very important step

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For safety and production improvement

## Labour

### Compliance Approach

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## Labour

### Compliance Approach

- Promote, counsel and educate
- Investigation of complaints – monetary and non-monetary
- Inspect records

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## Labour

### Complaints Handling

- Complaint must be made, in writing, within 6 months of the day the employee should have normally been paid (Monetary) or the day that the subject matter of the complaint arose (Non-Monetary)
- Inspectors' powers expanded to include the ability to reject a complaint under specific circumstances.

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## Labour

### Investigating a Complaint

- An employer may be requested to provide the inspector with certain types of documentation to assist in the investigation of the complaint.
- Inspector will make a determination whether any entitlements are owing.
- Parties will be informed and will be afforded an opportunity to provide any additional information.
- If entitlements are determined as owing, the employer will be afforded opportunity to voluntarily comply. If voluntary compliance cannot be achieved, the inspector will escalate the investigation to achieve compliance through enforcement, up to and including prosecution.

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## Labour

## Wage Recovery

## Labour

## Wage Recovery

Where wages or other amounts of termination pay and/or severance pay are owed, the wage recovery process uses both voluntary and enforcement mechanisms to achieve compliance – ranging from assurances of voluntary compliance to payment orders.

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For labour program inquiries

## Labour

# Questions?

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Toll-free and website information

## Labour

### Contact – Labour Program

For additional information:

- Toll-free: 1-800-641-4049
- Website:  
[http://www.esdc.gc.ca/en/jobs/workplace/employment\\_standards/labour/index.page](http://www.esdc.gc.ca/en/jobs/workplace/employment_standards/labour/index.page)

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