



e2r Alert!

Significant Changes to Federal Sick Time Benefits Are Imminent

Please note the below changes do not impact provincially regulated employers.

REMINDER FOR FEDERAL EMPLOYERS

Pursuant to legislation first tabled on November 26, 2021 as *An Act to amend the Criminal Code and the Labour Code* (Bill C-3 – royal assent on December 17, 2021) which was subsequently modified by *An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures* (Bill C-19 – royal assent on June 23, 2022 – and clearly not the winner of a creative Act title competition), federally regulated employers will now be subject to enhanced medical/sickness leave obligations.

It is worth noting, particularly if you have not reviewed these obligations recently, that the new requirement to provide 10 paid sick days under the *Canada Labour Code* would only have applied to Federal employers with 100 or more employees under Bill C-19; however, that particular amendment is not currently scheduled to come into force no later than December 1, 2022 when the paid sick day requirement becomes effective. This means that Federal employers with less than 100 employees will be subject to the new requirements for sick days as well as those with over 100 employees.

The Requirements

Effective on a date no later than December 1, 2022 the law will be amended and will require:

1. After 30 days of continuous employment with an employer, the employee will be entitled to three days of medical leave with pay. For existing employees this will become effective 30 days after the changes become effective (anticipated to be 30 days after December 1, 2022).
2. Thereafter, the employee will earn, at the beginning of each month following the first month of continuous employment, one paid medical leave day per month to a maximum of 10 days per year.

3. Unused medical leave days may be carried over, subject to the regulations, to January 1 of the following year, but any days carried over will be included in the 10 day maximum for that year (so the benefit cannot be stacked and does not accrue in excess of 10 days in any given year)

An employer may request from an employee who was absent for at least five (5) consecutive days, in writing and not later than 15 days after the return to work, a medical note from a health practitioner; the note will certify that the employee was incapable of working during the period of their medical leave.

Changes to Personal Leave and other provisions

The existing Personal Leave provisions, which also covered personal illness or injury, will be modified to remove those entitlements as they are now encompassed in the 10 days of medical leave. However, the five days of leave will remain for the other stated reasons in that section (e.g. responsibilities related to the health or care of a family member, urgent matters related to family, responsibilities related to the education of a minor, etc.).

Other provisions in the *Canada Labour Code* related to medical leaves remain unchanged.

Proposed Regulations related to paid Medical Leave entitlement

The Federal government has now concluded the period it provided for comment on the proposed regulations. While the final version has not yet been published, it is likely that the draft regulations will entail:

- A definition of regular rate of wages, including a method for calculating that rate for employees whose hours of work vary from day to day or who are paid on a basis other than hourly or salary (such as commission or piece work)
- Record keeping requirements including the dates of all leaves, the year in which the leave took place, copies of any written requests for a medical certificate (and a copy of the certificate submitted), and a record of the number of days carried forward into a given year.
- The regulations may also permit employers to use an entitlement year that is not based on the calendar year.

The proposed (but not yet finalized) regulations can be reviewed here:
<https://gazette.gc.ca/rp-pr/p1/2022/2022-07-16/html/reg1-eng.html>

Takeaway

It is crucial for federally regulated businesses to be aware of the law surrounding medical leaves. If you require assistance deciphering these or other legal entitlements, please reach out to us! Our Advisors are happy to assist.