



Senate National Finance Committee Bill C-63 – Budget Implementation Act 2017, No. 2

**Submission By: Canadian Chamber of Commerce
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I would like to thank the Senate of Canada and the National Finance Committee for the invitation to address the committee on the topic of bill C-63, Budget Implementation Act 2017.

We will be focused mainly on a few areas of this bill which relate to the Canada Labour Code, which will impact a number of federally regulated employers among our membership. These provisions relate to the issues of the employee's right to request flexible work arrangements, new leave provisions, and new limitations on scheduling and overtime.

Summary of Changes:

Bill C-63 is the budget implementation act for a number of measures contained in budget 2017. Included in this bill are a number of changes to the Canada Labour Code, including the following measures¹:

Division 8 of Part 5 amends the Canada Labour Code in order to, among other things,

- a) provide employees with a right to request flexible work arrangements from their employers;
- b) provide employees with a family responsibility leave for a maximum of three days, a leave for victims of family violence for a maximum of ten days and a leave for traditional Aboriginal practices for a maximum of five days; and
- c) modify certain provisions related to work schedules, overtime, annual vacation, general holidays and bereavement leave, in order to provide greater flexibility in work arrangements.

Division 9 of Part 5 amends the Economic Action Plan 2015 Act, No. 1 to repeal the paragraph 167(1.2)(b) of the Canada Labour Code that it enacts, and to amend the related regulation-making provisions accordingly.

The effect of these changes is²:

- a) providing employees with a formal right to request flexible work arrangements from their employers
- b) providing employees with at least 24 hours' notice of a change in shift
- c) providing employees with a right to refuse overtime in order to fulfill a family responsibility
- d) a new three-day unpaid family responsibility leave
- e) a new 10-day unpaid leave for victims of family violence
- f) a new three-day unpaid leave for traditional Aboriginal practices
- g) extending the current paid bereavement leave by an additional two unpaid days, and extending the time period in which bereavement leave can be taken
- h) other modifications to provisions on work schedules, overtime, annual vacation and general holidays intended to provide greater flexibility in work arrangements.

Impact:

Overall, the Canadian Chamber of Commerce is sympathetic to the goals of these new leave measures, and towards the general movement towards flexible work arrangements that have already been seen in the workforce.

¹ <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-63/third-reading>

² <https://hicksmorley.com/2017/10/30/federal-government-introduces-changes-to-canada-labour-code/>

All of those reasons listed for granting leave – such as traditional observances, domestic violence, family responsibilities, and others - are important issues and amount to valid reasons for needing time away from a workplace.

However there are a number of concerns with the methods by which they are being implemented, and the disparate impacts they may have on businesses of varying sizes. Furthermore, we have concerns around the establishment of an automatic right to flexible work arrangements, rather than a more organic process resulting from negotiations between employers and employees.

The creation of a unilateral right to request flexible work arrangements does not necessarily reflect the needs of diverse businesses that exist in the federally regulated sector. Already many businesses are moving in the direction of offering more flexible schedules where possible, but the ability of various industries to make that transition varies, and depends on a process of negotiation between employers and employees to determine the best balance of flexibility and predictability. While there are a number of grounds permitted for denying such a request - such as it incurring additional costs, detrimental impact, inability reorganize work, or other grounds – putting the onus on employers to demonstrate those impacts creates a higher degree of uncertainty.

Recommendation: Flexible leave provisions should be based on a process that supports the mutual agreement between employers and employees. The blunt mechanism of requiring any request be approved barring certain provisions could be replaced with a mechanism of offers and counter offers.

With regards to the new leave provisions, these changes amount to a long list of additional responsibilities for employers, each of which is given for specific reasons and which is subject to different rules regarding eligibility, exemptions, and different justifications. While each change individually may not amount to a significant burden, when considered collectively and added with other recent changes around programs such as EI benefits, these changes incrementally increase the costs to employers of hiring new employees.

These additional costs could negatively impact the ability of Canadian workplaces to compete globally, especially in a time when employers in other jurisdictions are seeing lighter regulatory burdens, reductions in costs and elimination of red tape. While the basis for the new types of leave may be justified, the implementation should consider the costs that are imposed on business, and look for ways of minimizing the complexity and burden, or finding areas elsewhere to relieve regulations on business.

While there are exceptions listed for measures around shift changes, overtime, many of them set a high bar for refusal, regardless of whether those arrangements make sense for the employer. For instance, the requirements for exemptions for 24 hour notice on shift changes can only be waived based on “a “threat of serious interference with the ordinary working of the employer’s industrial establishment”. The same is given as one of the few grounds for refusing overtime for caring for family responsibilities, as well.

Given the circumstances for which these particular provisions apply, they create risks for employers refusing the requests, even if the employer’s reasons for refusal meet the listed criteria. Dispute resolution about borderline cases would take time to resolve, yet these leave provisions would apply within 24 hours or even the same day. Employers wish to respect the rights of their workers,

however for uncertain cases the short notice and uncertainty can create risks that may become burdensome.

A further concern is the issue of privacy and sharing personal information, and the liability of employers with keeping that information confidential. Given the specificity of the various new leave provisions, the way these are being implemented may require employers to become aware of a significant amount of personal and sensitive information.

Recommendation: Find ways to simplify the implementation of various new leave provisions, and otherwise reduce the regulatory burden so that employers do not face increasingly escalating costs in a competitive global market. Ensure clarity for employers regarding leave provisions and other concerns to avoid creating any new liabilities.

Overall, we support the general direction of the changes listed in this bill. However, we urge senators to give due consideration to additional costs being laid onto businesses and to look for opportunities to simplify, streamline and give certainty to employers where possible.

About the Canadian Chamber of Commerce:

Since 1925, the Canadian Chamber of Commerce has connected businesses of all sizes, from all sectors and from all regions of the country to advocate for public policies that will foster a strong, competitive economic environment that benefits businesses, communities and families across Canada.

With a network of over 450 chambers of commerce and boards of trade, representing 200,000 businesses of all sizes in all sectors of the economy and in all regions, we are the largest business association in Canada, and the country's most influential. The primary and vital connection between business and the federal government, our views are sought after and respected by government, business leaders and the media thanks to our well-researched reports, analyses, position papers and policy resolutions that reflect a broad business perspective.