

# Canadian Master Labour Guide

*30th Edition*



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## **Canadian Master Labour Guide, 30th Edition**

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## FOREWORD

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The CANADIAN MASTER LABOUR GUIDE is a complete, accurate, and up-to-date Guide intended to serve as a handy reference source on Canadian labour and employment law. It includes comprehensive commentary across Canada in all areas of labour and employment law including the Division of Legislative Powers, Employment Standards, Human Rights, Pay and Employment Equity, Trade Unions, Collective Bargaining, Occupational Health and Safety, and Employment Insurance, current to March 1, 2015. As well, references to pertinent decisions of Courts, Labour Relations Boards, and Human Rights and Pay/Employment Equity Commissions and Tribunals are incorporated throughout.

Current minimum wage rates, prescribed hours of work, entitlement to leaves of absence, required termination notice, prohibited grounds of discrimination, and other similar topics are also included in the form of quick reference charts for ease of access and comparison.

Amendments to existing legislation, passage of new legislation, and the issuance of caselaw occur so frequently and in such volume that no bound book can remain up-to-date for very long. Only updatable reporting can keep up with the changes. For those who must keep themselves informed of the very latest changes in labour law and their application, the following products report, integrate, and comment on these changes as quickly as they occur: “HR3” (consisting of EMPLOYMENT STANDARDS, LABOUR RELATIONS, and CANADIAN LABOUR LAW CASES) available online (updated continuously) or on DVD (updated monthly); and the five-volume loose leaf service entitled the CANADIAN LABOUR LAW REPORTER (updated twice a month).

March 2015

LexisNexis Canada Inc.

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## HOW TO USE THIS BOOK

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This Guide has been written to serve as a handy reference source on Canadian labour and employment law.

It is not necessary to read this book from cover to cover. A comprehensive Topical Index has been provided at page 1643 to make it easy for you to find the specific information you need quickly.

However, if you are not concentrating on a particular problem, but rather want to become familiar with labour and employment law in Canada today, then the book can be profitably read from cover to cover.

A general Table of Contents appears at page vii and more detailed Tables of Contents listing points covered have been included at the beginning of each chapter.

### Paragraph Number References

References in the Topical Index, Tables of Contents, and cross references in the text of the Guide are to *paragraph numbers* (¶) in the Guide — not page numbers. The first one or two digits of the reference indicate the Chapter in which that paragraph is located: for example, ¶ 4010 is in Chapter 4, (“Hours of Work”), and ¶ 16,005 is in Chapter 16, (“Canada Labour Code”).

This referencing system should help you go directly to the particular commentary you are looking for. The gaps in the numbering of the paragraphs are provided for use in future years’ editions and do not represent any missing material in your copy of this Guide.

### Source References

A general source reference is provided in parentheses at the end of each paragraph of the Guide. In all but Chapter 27, “Occupational Health and Safety”, the source references are preceded by “*Canadian Labour Law Reporter*”.

The “*Canadian Labour Law Reporter*” references refer to fuller coverage of the subject in the publisher’s EMPLOYMENT STANDARDS, LABOUR RELATIONS, and HUMAN RIGHTS electronic services, as well as its loose leaf service, the CANADIAN LABOUR LAW REPORTER. **The paragraph numbers following “*Canadian Labour Law Reporter*”, as well as those following labour statute sections throughout the text of the Guide, refer to these services.**

In Chapter 27, “Occupational Health and Safety”, the paragraph references are to the publisher’s CANADIAN EMPLOYMENT SAFETY AND HEALTH GUIDE, also available in electronic and loose leaf formats.

## Case Law References

Court, Labour Relations Board, and Human Rights Commission and Tribunal decisions are referenced throughout the Guide. A full Case Table has been provided at page 1551, supplying the paragraph number of the Guide where the reference to the case can be found and the citation to the full text of the case. The majority of the cases referred to are cited in the following manner: 94 CLLC ¶17,015 or 2005 CLLC ¶210-001.

CLLC refers to the publisher’s CANADIAN LABOUR LAW CASES service, available on the Internet, on DVD, or as part of the loose leaf service entitled the CANADIAN LABOUR LAW REPORTER. The numbers preceding CLLC refer to the year the case was published in the *Canadian Labour Law Reporter* and the numbers following CLLC refer to the paragraph number in the service where the full text of the case can be found.

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## TABLE OF CONTENTS

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Foreword .....	Page
	iii
How to Use This Book .....	v
	Paragraph
Introduction .....	10
What's New in the 30th Edition.....	50
Highlights of Pending Legislation.....	100

### Part I Labour Jurisdictions

Chapter		
1.	Legislative Powers .....	1000

### Part II Labour Standards

	Introduction .....	2000
2.	Minimum Age for Industrial Employment.....	2005
3.	Personnel Records .....	3000
4.	Hours of Work .....	4000
5.	Minimum Wages .....	5000
6.	Overtime Pay .....	6000
7.	Payment of Wages .....	7000
8.	Vacations with Pay .....	8000
9.	Statutory Holidays .....	9000
10.	Leaves of Absence .....	10,000
11.	Termination of Employment .....	11,000

### Part III Fair Employment Practices

12.	Human Rights .....	12,005
13.	Equal Pay/Pay Equity .....	13,000
14.	Employment Equity .....	14,000

Chapter	Paragraph
<b>Part IV</b>	
<b>Organized Labour</b>	
15. Trade Unions.....	15,000
<b>Part V</b>	
<b>Collective Bargaining</b>	
16. Canada Labour Code .....	16,000
17. Alberta Labour Relations Code .....	17,000
18. British Columbia Labour Relations Code.....	18,000
19. Manitoba Labour Relations Act.....	19,000
20. New Brunswick Industrial Relations Act .....	20,000
21. Newfoundland and Labrador Labour Relations Act .....	21,000
22. Nova Scotia Trade Union Act.....	22,000
23. Ontario Labour Relations Act .....	23,000
24. Prince Edward Island Labour Act.....	24,000
25. Quebec Labour Code and Related Acts .....	25,000
26. The Saskatchewan Employment Act .....	26,000
<b>Part VI</b>	
<b>Special Issues</b>	
27. Occupational Health and Safety .....	27,000
28. Employment Insurance .....	28,000
	<b>Page</b>
Table of Cases.....	1551
Topical Index.....	1643



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## ¶10 INTRODUCTION

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Historically, the employment relationship involved little more than a contract between two individuals whereby one individual agreed to perform work or services under the control and direction of another individual for an agreed-upon form of remuneration. The two parties to the contract were held to be equals in bargaining power, and therefore the terms and conditions of employment were considered a private matter properly left to the determination of the parties and the market place. Any disputes as to the nature or terms of the contract could be settled in Court on the basis of contract law.

While the Courts did, over the years, establish common law rules delineating the nature of the employment contract and the various rights and duties of both the employer and the employee, it became apparent that the bargaining power of the parties was not equal. The coming of the Industrial Revolution resulted in social and economic upheaval as society shifted orientation from craft hall and agriculture to mechanization and manufacturing. Employment conditions in the developing manufacturing industries were often unsafe and unhealthy. Hours of work were long and wages poor. This exploitation resulted in widespread worker unrest which produced two responses.

Throughout the later part of the nineteenth century and the early part of the twentieth century, governments began to pass laws to eliminate some of the worst abuses of employees by employers. Initially, these laws were aimed at the conditions under which work was performed and took the form of mining and factory acts designed to improve safety, and minimum age laws designed to reduce or end child labour. By the early 1900s governments also became interested in the terms of employment. Thus, labour welfare legislation, such as minimum wage and hours of work laws, were passed.

In passing such laws, governments began to establish minimum labour standards within which the parties were still free to negotiate the terms and conditions of employment. These early standards were the basis for present day employment standards legislation.

While governments took legislative action, employees themselves began to form trade associations and sought to increase their bargaining power by collective negotiation of their terms and conditions of

employment. Initially, such trade unions were considered illegal and as operating in restraint of trade. In Canada, it was not until the 1870s that legislation was passed legalizing an employee's right to unionize, and not until the 1940s that legislation was passed requiring employers to recognize unions as the exclusive bargaining agent for a group of employees. Since that time, labour relations legislation governing the collective bargaining process has been passed all across Canada.

The development of labour law did not stop with the passage of employment standards and labour relations legislation. The chronic unemployment and related social costs of the Great Depression of the 1930s led to the realization that protection from the effects of unemployment was as great a need as was protection while employed. The result was the development of Employment Insurance legislation, under which both employees and employers make payments into a national fund from which employees receive payments in the event of unemployment.

The atrocities of the Second World War and the formation of the United Nations and its passage of the 1948 Universal Declaration of Human Rights saw the beginning of the realization that certain attributes of humanity should not be the basis of differentiation in opportunity or treatment. Human rights legislation prohibiting discrimination in employment, amongst other things, on the basis of age, sex, colour, religion, race, disability etc., has been passed all across Canada. The significance of human rights legislation in the workplace continues to grow with recent attention to equal pay/pay equity, employment equity, family and marital status, gender identity, sexual and psychological harassment, and sexual orientation.

Moreover, industrial accidents as well as continued advances in occupational medicine have increased our knowledge and awareness about workplace health and safety issues. In turn, industrial health and safety concerns have led to the passage of legislation regulating health and safety in the workplace. Such legislation has been passed across Canada.

Due to the number of issues and the existence of 14 legislative jurisdictions — the federal government, the three territories, and the ten provinces — each with the authority to pass its own labour legislation, Canadian labour law has often been viewed as complex and fragmented. The CANADIAN MASTER LABOUR GUIDE is designed to displace that view by providing national coverage of comprehensive commentary on all topics, from the division of legislative powers to employment standards, human rights, pay and employment equity, trade unions, collective bargaining, occupational health and safety, and Employment Insurance.

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## ¶50 WHAT'S NEW IN THE 30TH EDITION

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The past year has seen a number of changes in employment standards, labour relations, human rights, and Employment Insurance legislation. The 30th edition of the CANADIAN MASTER LABOUR GUIDE is current as of March 1, 2015. Below are some highlights of the updates which have been incorporated into this edition.

### ¶60 Canada

#### ***Jobs and Growth Act, 2012***

On March 16, 2015, certain provisions of the *Jobs and Growth Act, 2012* came into force. These provisions simplified the calculation of statutory holiday pay under the *Canada Labour Code* and removed the requirement that employees must work 15 out of the 30 days preceding a holiday to be eligible for holiday pay (see ¶9200).

#### ***Economic Action Plan 2014, No. 1***

Certain provisions of the *Economic Action Plan 2014, No. 1* amended the leaves of absence provisions of the *Canada Labour Code*, effective October 12, 2014. The amendments provide that an employee who is on compassionate care leave, critically ill child care leave, or crime-related child death or disappearance leave may interrupt his or her leave in order to take sick leave or a leave related to a work-related illness or injury (¶10,467, ¶10,501). Where an interruption is taken, the interrupted leave resumes immediately after the interruption ends.

### ¶66 Manitoba

#### ***New Special Minimum Wage Rate for Security Guards***

Effective October 1, 2014, Manitoba has implemented a new minimum wage rate applicable to security guards (¶5315). Currently, the new security guard rate is the provincial minimum wage plus \$0.25 per hour; it will gradually increase to reach a rate of the provincial minimum wage plus \$2.25 per hour by October 1, 2017.

### ***Time Limits for Board Decisions***

On June 12, 2014, *The Labour Relations Amendment Act (Time Lines for Labour Board Decisions and Hearings)* came into force. It added provisions to *The Labour Relations Act* which require the Labour Board to make regulations that specify the time in which its decisions must be rendered following the conclusion of a hearing, as well as when a hearing must be held following the receipt of an application for certification or an application to cancel certification or “to terminate the bargaining rights of an uncertified bargaining agent.” The regulations must be made within one year after the section came into force (§ 19,810).

## **¶68 New Brunswick**

### ***New Mechanism To Set Minimum Wage***

Effective December 19, 2014, the Minimum Wage Board has been dissolved and the minimum wage rate, or the manner in which the rate is determined, may now be fixed by regulation. In addition, the government is now required to conduct a review of the minimum wage rate every two years that engages employers and employees, and takes into account a number of issues, including cost of living increases and general economic conditions. See § 5320 for full details.

### ***Employment Standards Enforcement and Compliance***

New provisions, in effect September 1, 2014, were implemented to improve enforcement and compliance with New Brunswick’s *Employment Standards Act*:

- administrative penalties may now be imposed on employers who violate the *Employment Standards Act*, in the amount of \$150 for a first violation and increasing in increments of \$150 for subsequent violations, to a maximum of \$900 (§ 7818);
- in certain circumstances, a director of a corporation can now be held jointly and severally liable with the corporation for up to six months of unpaid wages and up to 12 months of vacation pay owing to an employee (§ 7818); and
- employees’ banking rights were clarified — in particular, an employee may choose the Canadian financial institution where his or her pay is directly deposited (§ 7325), and, if an employee’s statement of wages is delivered electronically, the employer must provide confidential access to the statement at the employee’s place of employment (§ 3220).

## ¶70 Newfoundland and Labrador

### ***Changes to Labour Relations Legislation***

On June 5, 2014, Newfoundland and Labrador amended its *Labour Relations Act*. The most important change involved the reversal of an amendment made just two years earlier related to the certification process. Automatic certification where an application had the support of 65 per cent or more of the employees in a unit at the time of application and certain other requirements were met was done away with. It has been replaced with a process where a vote must be held where an application for certification has the support of 40 per cent or more of the employees in the unit (¶21,220). Additionally, the provisions in Parts V and VI of the Act were reversed and renumbered, so that Part V is now Conciliation Proceedings and Part VI is Strikes and Lockouts.

## ¶74 Ontario

### ***New Leaves of Absence***

As of October 29, 2014, three new leaves of absence are available to Ontario employees (¶10,530):

- family caregiver leave allows an employee to take up to eight weeks' unpaid leave to provide care or support for an eligible family member who has a serious medical condition;
- critically ill child care leave allows an employee to take an unpaid leave of up to 37 weeks to provide care or support for his or her critically ill child; and
- crime-related child death or disappearance leave allows an employee to take an unpaid leave of up to 52 weeks if his or her minor child has disappeared as the probable result of a crime, and up to 104 weeks if his or her minor child has died as the probable result of a crime.

An employee's entitlement to any of these new leaves is in addition to any entitlement to personal emergency leave (¶10,530) or family medical leave (¶10,475).

### ***Stronger Workplaces for a Stronger Economy Act, 2014***

The *Stronger Workplaces for a Stronger Economy Act, 2014*, which received Royal Assent on November 20, 2014, amended a number of labour and employment statutes, including the *Employment Standards Act, 2000* and the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009*. Key changes include:

- beginning on October 1, 2015, the provincial minimum wage shall be adjusted annually in accordance with a formula based on the provincial Consumer Price Index (§ 5335);
- the \$10,000 cap on orders to pay wages to an employee was removed, and the time limit for recovery of wages was extended from six months before a complaint is filed to two years (§ 7824);
- temporary help agencies and their clients will be subject to new provisions effective November 20, 2015, including joint liability for unpaid wages owing to assignment employees (§ 7824) and new record-keeping requirements (§ 3235); and
- the current prohibitions (§ 7535) and record-keeping requirements (§ 3235) applicable to employers of foreign live-in caregivers will be extended to employers of all foreign nationals, effective November 20, 2015.

## ¶78 Quebec

### ***Labour Relations Provisions Applicable to Farming Businesses***

In response to the decision of the Quebec Superior Court in *L'Écuyer v. Côté*, 2013 QCCS 973, 2013 CLLC ¶220-029, Quebec passed *An Act to amend the Labour Code with respect to certain employees of farming businesses*, which created the new chapter in the *Labour Code* applicable “to the employees of an employer who are assigned to a farming business, unless at least three such employees are ordinarily and continuously employed”. These amendments came into force on October 22, 2014 (§ 25,205).

## ¶80 Saskatchewan

### ***New Employment and Labour Legislation***

On April 29, 2014, *The Saskatchewan Employment Act* (the “SEA”) and its regulations came into force. The SEA repealed 12 former statutes that dealt with employment and labour in Saskatchewan, including *The Labour Standards Act*, *The Occupational Health and Safety Act, 1993*, and *The Trade Union Act*, and replaced them with a single, comprehensive statute.

Part II of the SEA covers employment standards. It incorporates many provisions from *The Labour Standards Act* and its regulations, some with modifications, as well as a number of new provisions. Key changes in the employment standards provisions include:

- The standard weekly hours remain at 40 per week; however, the SEA permits two types of standard work schedules:
  - eight hours per day for no more than five days per week; or
  - 10 hours per day for no more than four days per week (§ 4250).
- Employers and employees are now permitted to enter into agreements that allow for banking overtime hours or averaging overtime hours (§ 6350).
- The Minimum Wage Board has been dissolved, and the provincial minimum wage shall now be adjusted annually on October 1 in accordance with a formula based on the previous year's Consumer Price Index and average hourly wage for Saskatchewan (§ 5350).
- Employees who report for work must now be paid for at least three hours at their regular hourly wage (previously, the requirement was at least three hours at minimum wage) (§ 5350).
- New provisions in the SEA specify what deductions can legally be made from an employee's wages (§ 5350, § 7550).
- The SEA contains detailed provisions regarding recovery of unpaid wages; employees are able to recover up to 12 months wages owing (§ 7830).
- Record-keeping requirements remain substantially the same. An employer may now provide an electronic statement of wages to an employee, so long as the employee is permitted to print a copy (§ 3250).
- Minimum vacation entitlement remains at three weeks for the first nine years of employment and four weeks after 10 years of employment. Vacation pay may now be paid on the employee's normal payday, unless the employee requests for it to be paid before his or her vacation begins (§ 8350).
- Statutory holiday entitlement remains at 10 days per year, with slight modifications to the procedure for calculating holiday pay (§ 9350).
- The qualifying period for maternity, parental, or adoption leave has been reduced from 20 weeks of service to 13 weeks of service (§ 10,075, § 10,255).

- Five new leaves of absence have been implemented:
  - compassionate care leave: provides up to eight weeks of leave for an employee to provide care or support for a family member who has a significant risk of death within 26 weeks (§ 10,478);
  - critically ill child care leave: allows for up to 37 weeks of leave for an employee to provide care or support for his or her critically ill child (§ 10,545);
  - crime-related child death or disappearance leave: an employee may take up to 52 weeks of leave where his or her child has disappeared as the probable result of a *Criminal Code* offence, and up to 104 weeks of leave where his or her child has died as the probable result of a *Criminal Code* offence (§ 10,545);
  - organ donor leave: an employee may take up to 26 weeks of leave to undergo a surgical procedure that involves organ or tissue donation (§ 10,455); and
  - citizen ceremony leave: allows one day of leave for an employee to attend a citizenship ceremony to receive a certificate of citizenship (§ 10,645).
- Notice of termination requirements for employers remain the same for both individual and group termination; a new provision requires that a resigning employee must provide written notice of at least two weeks when leaving his or her job (subject to certain exceptions) (§ 11,350).

Part VI of the SEA covers labour relations. It incorporates many provisions from *The Trade Union Act* and its regulations, some with modifications, changes in terminology, and expanded definitions. As well, there are a number of new provisions. Key changes in the labour relations provisions include:

- A new provision specifies that unions and employers must “in good faith, engage in collective bargaining in the time and in the manner required pursuant to this Part or by an order of the board.” (§ 26,315).
- There is a new provision that requires unions to make audited financial statements available, without charge, to their members, within six months following the end of their fiscal years. In addition, unaudited financial statements of a bargaining unit must be made available to bargaining unit members. These statements may be provided personally, by mail, by posting in the workplace, by



online posting to a secure website to which members have access, or by any other means that ensure that the statements will be received (§ 15,510).

- New provisions allow applications to be made by bargaining unit employees or the employer to cancel a certification order in situations where it is alleged that the union is no longer a union, that the union no longer exists, or that the union has “been inactive in promoting and enforcing its bargaining rights for a period of three years or more” (§ 26,230).
- It is specified that *all* votes that are required by Part VI or which are directed by the Board must be taken by way of secret ballot (except where the bargaining agent consists of two or fewer members). The result of such votes must be made available to all employees who were entitled to vote. The results must include the number of votes cast for and against, and the number of spoiled ballots (§ 26,617).
- Unlike *The Trade Union Act*, the SEA does not specify a quorum of eligible employees for votes.
- The period during which notice to bargain collectively for the renewal or revision of a collective agreement must be given has been extended. In *The Trade Union Act*, such period began 60 days before the expiry of the collective agreement and ended 30 days before such expiry. Under the SEA, those periods are now 120 days and 60 days, respectively (§ 26,305).
- The prerequisites before strikes and lockouts have been modified and now include a 14-day “cooling-off period” (§ 26,610).
- The provisions in *The Trade Union Act* which permitted a union to fine members who worked for a struck employer during a legal strike in certain circumstances were not carried over in the SEA.
- The Labour Relations Board is now able to “reconsider any matter that it has dealt with”, and to rescind or amend its own decisions or orders (§ 26,815).
- The penalties on summary conviction for offences have increased to a maximum of \$5,000 for individuals and a maximum of \$100,000 for corporations, unions, and other persons. As well, contraventions related to strikes or lockouts are punishable by a fine of up to \$1,000 for each day that the strike or lockout continues (§ 26,900).