Amendments to the Labour Standards Act : What is the rule for paid leave?

November 22, 2019

The latest amendments to the *Labour Standards Act* ("LSA") provide that, in certain specific circumstances, the employers must pay the first two days of absence of their employees instead of granting them a leave without pay.

In some instances, employees claimed two additional days of paid leave from their employers even if they were already offering such leave before the amendments came into force.

Two recent decisions confirmed that the government's intention was to grant two days of paid leave to employees who did not benefit from a paid leave and not to give two additional days to employees who already had such benefits[1].

Amendments to the *Labour Standards Act*

Since January 1, 2019, employees may take leave without pay for the following reasons:

> Family reasons: absences related to the care, health or education of their child or their spouse's child, the state of health of their spouse or a close relative;
> Health reasons: absence owing to sickness, an organ or tissue donation, an accident, domestic violence, sexual violence or a crime.

The duration of such authorized absence without pay depends on the reason for the absence.

However, according to the latest amendments to the LSA, the first two days of absence per year taken for such reasons are now paid to employees who have three months of continuous service.

The LSA stipulates that employees must notify their employer of their absence and the reason for it as soon as possible and, at the employer's request, provide documentation attesting to this reason.

You can refer to the 6 main amendments to the Act respecting labour standards in our guide for employers.

Extra paid leave?

Many employers, with or without unionized employees, already offer their employees various types of leave in addition to annual vacations: personal leave, flexible leave, sick leave, family leave, special leave, etc.

The working conditions of employees were analyzed in two recent arbitration awards and additional paid leave on the basis of the new provisions of the LSA was denied to them.

In these cases, the employers involved already offered flexible leave to their employees, which could

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be used at the employees' discretion, and in particular for absences authorized by the *Labour Standards Act* ("LSA") for the aforementioned family and health reasons.

The arbitrators thus refused to grant these employees two additional paid days of leave for family or health reasons, given that the flexible leave days they already benefited from were equivalent to those the LSA provides for.

The fact is that these employers already paid for the first two days of absence as soon as employees had three months of continuous service, even though the requirements set out in their collective agreements were stricter in this regard.

It was also demonstrated that these employers were not strictly applying the provisions set out in their collective agreements in respect of required absence notices and were thus complying with the *Labour Standards Act* ("LSA"), which only requires that employees indicate that they will be absent as soon as possible.

As long as the working conditions applied comply with the minimum provided for in the LSA, employers are not required to add to them.

In conclusion: Before granting additional paid leave to comply with the latest amendments to the *Labour Standards Act* ("LSA"), managers should check whether, in practice, the paid leave they already offer to employees meets the LSA's requirements.

Our Labour and Employment Law team is available to provide you with advices and solutions related to the new labour standards.

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1. *Syndicat des travailleurs spécialisés de Sintra (CSD) et Sintra inc. (Région Estrie)*, 2019 QCTA 502 and *Union des employés et employées de services, section locale 800 et CANMEC Industriel inc.*, 2019 QCTA 411

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