

March 16 - 17, 2021 • Workshop: March 15, 2021 • Virtual Conference

Preparing for Further Changes to The Canada Labour Code

Plus changes to Pay and Employment Equity, Transparency & The Accessible Canada Act

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Dianne Rideout
McMillan LLP



Matthew Demeo
DLA Piper



Norm Keith
Fasken

Tanya Sarracini
Employment and Social
Development Canada
Organization, Labour
Standards



Duncan Shaw
Employment and Social
Development Canada

... and more



Receive expert guidance and advice from some of Canada's leading authorities including all of the following:

- Are you where you should be in implementing demanding new harassment and violence prevention regulations?
- What do we know about complaints and enforcement now that we are 3 months in?
- Reduce your exposure with important new information on Individual and group terminations and benefit and leave entitlements
- Calculate hours of work, notice of shift & scheduling changes, breaks, to avoid costly mistakes
- Learn how, where and why Covid-19 has had an impact on labour and employment policies and practices
- Find out how inspectors are enforcing new provisions
- Hear about complexities that have arisen in accommodating employees
- Understand your new obligations under: The Pay Equity Act, The Employment Equity Act, The Accessible Canada Act, the Transparency Act and more!

PRECONFERENCE SESSION FOR INDIGENOUS AND OTHER ORGANIZATIONS

March 15, 2:00-4:30 p.m.

Which Law Applies?

Canada Labour Code OR Provincial Legislation

Instructor: Kyle Lambert, Partner, McMillan LLP

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DAY ONE PROGRAM AGENDA: TUESDAY, MARCH 16, 2021

10:00 - 10:15 EDT



Welcome and Opening Remarks from the Chairs

Kyle Lambert, Partner, McMillan LLP

Dianne Rideout, Partner, McMillan LLP



10:15 - 11:00 EDT



**Implementing Demanding New Harassment and Violence Prevention Regulations
What Should You, The Employer, Have Completed By Now?**

Kyle Lambert, Partner, McMillan LLP

- Review of your January 2021 Obligations
 - Review existing policies, practices and procedures on harassment and violence
- What the policy must include:
 - **A workplace assessment** to be completed by relevant personnel to develop and implement preventative measures within six months
 - **Identified risk factors** including office culture, external circumstances and the physical design of the workplace
 - **Emergency procedures**
 - **A workplace harassment and violence prevention policy** with reports, records and data to assist the investigator
 - **A resolution process**, including time frames to better support employees or people accused
 - **Support measures** for employees
 - **Documentation on how to protect the privacy** of people involved,
 - **An annual report** (first one due March 2021) to the minister of labour.
 - **Mandatory training** for employees
 - **Need to be aware** of each required investigation or resolution step and the timelines associated with those steps

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DAY ONE PROGRAM AGENDA: TUESDAY, MARCH 16, 2021

11:00 - 11:45 EDT



Preventing Violence and Harassment: Implementation Update - Key Insights

Moderator: Kyle Lambert, Partner, McMillan LLP



Duncan Shaw, Senior Director, Occupational Health and Safety, Labour Director, Harassment and Violence Prevention Division, Labour Program, Employment and Social Development Canada



Ana Maria Iliescu-Stieghelbauer, Policy Officer, Labour Program, Employment and Social Development Canada

Renee Roussel, Senior Director, Regional Operations and Compliance Directorate

The new stand-alone Work Place Harassment and Violence Prevention Regulations effective January 2021 bring significant change to federal labour law rules. Employers are expected to move from discussion to action.

- 3 months in how is implementation going?
- What stakeholder feedback has been received?
- Is the law being enforced?
- Are complaints being received?
- Management and Union observations and comments

11:45 - 12:30 EDT

Reducing Your Exposure: New Individual and Group Terminations

Caroline Richard, Partner, Bird Richard LLP

Recent change and the impact of Covid -19 have created special and unusual demands and some industries have been harder hit than others. Make sure your termination policies and practices reflect important changes to the CLC including:

- Rights on termination of employment
- Modified notice period entitlements for termination without cause
- The graduated notice system based on number of consecutive months of continuous employment
- What is continuous employment?
- Changes in employer obligations for group terminations
- Severance pay
- Unjust dismissal
 - New mechanisms for summary dismissal of complaints before the CIRB
 - Unjust dismissal noteworthy cases
- Group termination
- When does a layoff become a termination

12:30 - 13:15 EDT Break

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DAY ONE PROGRAM AGENDA: TUESDAY, MARCH 16, 2021

13:15 - 14:00 EDT



Canada Labour Code Health & Safety: Covid and Other Work Refusals and Investigations

Norm Keith, Partner, Fasken

Marcia Edgar, Manager of Compliance and Operations, Labour Program, Government of Canada

14:00 - 14:45 EDT



Leave and Benefit Entitlements: Avoiding Costly Mistakes

Matthew Demeo, Associate, DLA Piper

Find out about the important as well as the nuanced and complex changes to leave and benefit provisions:

- Personal leave
- Medical leave
- New family violence leave
- Extended bereavement leave
- Traditional Indigenous practices leave
- Parental sharing benefits
- Removal of service, eligibility requirements
- What if the collective agreement provides a greater right or benefit?
- What will be considered a greater right or benefit?
- Anticipated problems and proactive solutions
- Perspectives on these changes directly from the Labour Program
- Labour Program handouts and interpretive guidelines
- Extension of the COVID-19 leave available under the *Canada Labour Code*

14:45 - 15:00 EDT Break

DAY ONE PROGRAM AGENDA: TUESDAY, MARCH 16, 2021

15:00 - 15:45 EDT



Calculating Hours of Work, Notice of Shift & Scheduling Changes, Breaks, Rests and More to Avoid Costly Mistakes

Danijela Hong, Director, Labour Standards and Wage Earner Protection Program Labour Program, Employment and Social Development Canada

Tatha Swann, Partner, Levitt Sheikh Chaudhri Swann LLP

Recent significant changes to the Canada Labour Code came into effect that will have a particular impact on how employers may manage an employee's work day. This session will provide the information you need to effectively comply and/or anticipate challenges that may arise as well. It will also address the impact of **collective agreement rights and possible regulatory exemptions** for certain industries. It will cover changes relating to:

- Hours of work
- Standard work day and work week
- Day of rest
- Unpaid breaks
- Medical breaks
- Nursing breaks
- Notice of work schedule
- Notice of shift change
- Scheduling requirements for on-call Employees?
- Overtime
 - Right to refuse overtime
 - New time off provisions by written agreement
 - Policy for addressing refusal of overtime due to family responsibility
 - Overtime banking
- Exemptions from standard hours of work
 - Averaging and written agreements
 - Where are permits required?
 - Modified work schedules, compressed work week
 - Written agreements on averaging and modified work
 - Special hours of work regulations in trucking, railway and broadcasting
 - Flexible work arrangements
- Vacation time and pay
- Calculating entitlements to avoid costly mistakes
- Questions to ask to verify compliance with daily and weekly hours of work requirement

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DAY ONE PROGRAM AGENDA: TUESDAY, MARCH 16, 2021

15:45 - 16:30 EDT



Employment Equity, Diversity & Inclusion: Update on Pay Transparency Legislation Across Canada

Simmy Sahdra, Associate, McCarthy Tetrault

Canadians are looking for more accessible information regarding wage gaps of employers. Where wage gaps exist, pay transparency legislation can prompt employers to take action to examine their practices and show leadership in reducing wage gaps that affect various marginalized communities such as women, Indigenous peoples, persons with disabilities, and visible minorities.

16:30 EDT

End of Day One

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DAY TWO PROGRAM AGENDA: WEDNESDAY, MARCH 17, 2021

10:00 - 10:15 EDT



Welcome and Opening Remarks from the Chairs

Kyle Lambert, Partner, McMillan LLP

Dianne Rideout, Partner, McMillan LLP



10:15 - 11:15 EDT

Enforcement of Labour Standards

Emmanuel Armah, Labour Affairs Officer, Employment and Social Development Canada Organization, Labour Standards

Tanya Sarracini, Technical Advisor, Employment and Social Development Canada Organization, Labour Standards

Adriana Savo, Advisor, Labour Affairs, Employment and Social Development Canada Organization, Labour Standards

- Filing complaints
- Compliance through education and counselling
 - Investigation of complaints
 - Inspections of workplaces,
 - Wage recovery and adjudication of unpaid wages,
 - Unjust dismissal
- Role of Labour Standards Inspectors investigating complaints
 - Proactive inspections
 - Providing advice and information to assist federally regulated employers and employees
- Tools to respond to non-compliance with the Code
- Issuing a notice of voluntary compliance,
- Seeking an assurance of voluntary compliance from the employer,
- Issuing a determination letter and payment order to recover unpaid wages,
- Providing mediation to try to settle unjust dismissal complaints

DAY TWO PROGRAM AGENDA: WEDNESDAY, MARCH 17, 2021

11:15 - 12:00 EDT



Fulfilling Pay Equity Obligations: You Don't Have Long to Get It Done!

Daphne Fedoruk, Senior Counsel Legal Services Division, Human Rights Protection Branch, Canadian Human Rights Commission

Under a proactive pay equity regime, employers will need to examine their compensation practices. This will ensure that women and men working in federally regulated workplaces receive equal pay for work of equal value.

The Pay Equity Act: current status

- Who will be covered?
- Requirement for employers to proactively develop a pay equity plan
- Employers required to take action to address systemic disparities
- The pay equity process
- The Commissioner's mandate
- Commissioner's power to initiate audits, conduct investigations, issue orders and administrative monetary penalties
- What the Pay Equity Division is working on

12:00 - 12:45 EDT Break

12:45 - 13:30 EDT



Covid 19 - Canada Labour Code Update: Proceed With Caution!

Michael Sherrard, Partner, Sherrard Kuzz

This session presents the new legal framework within which federally regulated employers must manage developments caused by the spread of the virus. Topics will include:

- Constructive dismissal risks related to change in working conditions and layoff
- Strategic return to work considerations in union and non-union environments
- Protective physical equipment - what is required to meet your obligations?
- Screening protocols - what is appropriate for your organization?
- Privacy issues - meeting employer obligations and reducing risk
- Managing absenteeism and work refusals
- COVID-19 and potential human rights-based accommodation including disability and family status
- **Temporary measures under Part III of the Canada Labour Code**
- Extension of lay-off periods (new as of June 22, 2020)
- Leave related to Covid-19 (new as of October 2, 2020)
- Temporary removal of medical certificate requirements (effective October 14, 2020)
- Extension of first aid certification validity period (new as of September 11, 2020)

DAY TWO PROGRAM AGENDA: WEDNESDAY, MARCH 17, 2021

13:30 - 14:15 EDT



Duty to Accommodate: Emerging Areas of Complexity

Jennifer Hodgins, Partner, Norton Rose Fulbright, Canada LLP

- When does the duty to accommodate arise?
- Procedural vs substantive requirements
- What exactly amounts to undue hardship?
- Demonstrating what considerations, assessment and steps were undertaken to accommodate the employee to the point of undue hardship
- COVID specific issues - accommodating mental health, childcare needs, co-morbidities and more.
- Medical marijuana - does an employer have a duty to accommodate an employee who consumes marijuana?
- Accommodation issues related to family status, gender identity, creed, and other non-disability related grounds.

14:15 - 14:30 EDT Break

14:30 - 15:15 EDT

Accessible Canada Act: Removing Barriers to Full Participation in the Workplace

Justine Lindner, Associate, Labour and Employment Law Group, McCarthy Tetrault

- Three entities created through the Act
- The mandate of the Canadian Accessibility Standards Development Organization
- Priority areas for standard development
- Planning and reporting requirements
- How will accessibility be enforced
- Complaints
- Monitoring progress
- Accessibility Strategy - becoming an inclusive employer of choice

15:15 - 16:00 EDT



Bringing It All Together and Determining Priorities and Next Steps

Kyle Lambert, Partner, McMillan LLP

16:00 EDT

End of Day Two

WORKSHOP PROGRAM AGENDA: MONDAY, MARCH 15, 2021

14:00 - 16:30 EDT



Workshop

**Canada Labour Code OR Provincial Legislation
What Law Applies?**

Kyle Lambert, Partner, McMillan LLP

The question of whether federal or provincial law applies to an organization is important, complex and highly fact specific. This session will help you knowledgeably and systematically assess your situation to make this determination.

- How getting the jurisdictional question “wrong” can lead to costly regulatory violations.
- How federal and provincial courts decided which law should apply in the past: Broad versus restrictive approaches
- How your jurisdiction can be considered, Courts, Tribunals, workplace safety and more.
- How determining whether First Nations employers are provincially or federally regulated determines statutory obligations under labour standards, occupational health and safety, human rights, labour relations and other legislation
- Supreme Court of Canada’s decision in *NIL/TU, O Child and Family Services Society and the B.C. Government and Service Employees’ Union*, et al
- Presumption that labour relations falls under provincial jurisdiction
- 2-step test for displacing the presumption
- Important recent determinations, including inter-provincial trade and telecommunications
Nelson v. Lower Stl/Atl’mx Tribal Council: Fiduciary duties to give First Nations’ peoples the rights pursuant to the laws of Canada, in this case the right to reinstatement
 - Functions that fall under federal jurisdiction
 - When an employer is located on reserve land and its function is to manufacture products or operate retail businesses, it would be governed by provincial laws
 - Examples of where First Nations operations were found to be federally regulated
 - Examples where First Nations operations are provincially regulated

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VIRTUAL CONFERENCE:

Preparing for Further Changes to The Canada Labour Code will be held as a virtual on-line conference. Details on how to access and participate in the event will be sent to all confirmed delegates prior to run date.

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CANCELLATION POLICY:

Substitutions may be made at any time. If you are unable to attend, please make cancellations in writing and email to register@infonex.com or fax to 1.800.558.6520 **no later than March 1, 2021**. A credit voucher will be issued to you for the full amount, redeemable against any other INFONEX course and which is valid for twelve months (one year) from the date of issue.

Registrants who cancel after **March 1, 2021**, will not be eligible to receive any credits and are liable for the entire registration fee.

Confirmed registrants who do not cancel by **March 1, 2021** and fail to attend will be liable for the entire registration fee.

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