



BILL NO. 107

Government Bill

*1st Session, 63rd General Assembly
Nova Scotia
67 Elizabeth II, 2018*

An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, Respecting Leaves of Absence

CHAPTER 13
ACTS OF 2018

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
APRIL 18, 2018**

The Honourable Labi Kousoulis
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 246
of the Revised Statutes, 1989,
the Labour Standards Code,
Respecting Leaves of Absence**

Be it enacted by the Governor and Assembly as follows:

1 Section 7 of Chapter 246 of the Revised Statutes, 1989, the *Labour Standards Code*, as amended by Chapter 14 of the Acts of 1991, Chapter 4 of the Acts of 2003 (Second Session), Chapters 10 and 13 of the Acts of 2006, Chapter 18 of the Acts of 2009, Chapter 37 of the Acts of 2010, Chapter 19 of the Acts of 2011, Chapter 11 of the Acts of 2013 and Chapter 11 of the Acts of 2016, is further amended by adding immediately after clause (bk) the following clauses:

(bl) prescribe a purpose for which a victim of domestic violence may take a leave of absence under clause (f) of subsection (1) of Section 60Z;

(bm) specify the nature, form, content and timing of information an employee must provide to an employer for the purpose of clause (b) of subsection (1) of Section 60ZB;

(bn) prescribe the circumstances under Section 60Z under which an employee's employer may require the employee to provide the employer with the information referred to in subsection (1) of Section 60ZB;

(bo) make regulations respecting paid leave in place of all or part of any unpaid leave under this Act;

2 (1) Subsection 23(1) of Chapter 246, as amended by Chapter 37 of the Acts of 2010 and Chapter 19 of the Acts of 2011, is further amended by striking out "in the form set out in the rules of the Board governing its practice and procedure" in the last line.

(2) Subsection 23(2) of Chapter 246, as amended by Chapter 37 of the Acts of 2010 and Chapter 19 of the Acts of 2011, is further amended by

(a) striking out "in the form set out in the rules of the Board" in the fourth line;

(b) striking out "either" in the second line of clause (b); and

(c) striking out "or notice that a hearing shall be held by the Board in accordance with Section 24" in the fourth and fifth lines of clause (b).

3 Subsection 30(2) of Chapter 246, as enacted by Chapter 14 of the Acts of 1991 and amended by Chapter 6 of the Acts of 2004, is further amended by striking out "(d)" in the third line and substituting "(i)".

4 Chapter 246 is further amended by adding immediately after Section 58 the following heading and Sections:

PROTECTED LEAVE GENERAL PROVISIONS

58A (1) For the periods of time specified in Sections 59, 59A to 59C, 60A, 60B, 60E, 60G to 60J, 60L, 60O, 60U, 60V, 60X and 60Z, the employer shall grant to the employee the option of maintaining a benefit plan in which the employee participated prior to the commencement of that period and shall notify the employee in writing of the option and the date beyond which the option may no longer be exercised at least ten days prior to the last day on which the option could be exercised to avoid an interruption in benefits.

(2) Where the employee opts in writing to maintain a benefit plan referred to in subsection (1), the employee shall enter into an arrangement with the employer to pay the cost required to maintain the benefit plan, including the employer's share thereof, and the employer shall process the documentation and payments as arranged.

(3) Nothing in subsection (2) prevents an employer from contributing to the cost of a benefit plan referred to in subsection (1).

58B (1) When an employee returns to work upon the expiry of a leave of absence taken pursuant to Section 59, 59A, 59B, 60A, 60B, 60E, 60G, 60H, 60I, 60J, 60L, 60O, 60U, 60V, 60X or 60Z or returns to work pursuant to Section 59C, the employer shall permit the employee to resume work

(a) in the position held by the employee immediately before the leave began or, where that position is not available, in a comparable position with not less than the same wages and benefits; and

(b) with no loss of seniority or benefits accrued to the commencement of the leave.

(2) Where the employer's operations are or will be suspended or discontinued when the employee returns to work upon the expiry of a leave of absence taken pursuant to Section 59, 59A, 59B, 60A, 60B, 60E, 60G, 60H, 60I, 60J, 60L, 60O, 60U, 60V, 60X or 60Z or returns to work pursuant to Section 59C, subsection (1) does not apply, and the employer shall comply with Section 72 and, when the operation resumes, subsection (1) applies subject to the employer's seniority system, if any.

(3) For greater certainty, nothing in this Section limits any protection provided to an employee by a collective agreement or other contract of employment or by the *Human Rights Act*.

58C For greater certainty, nothing in Sections 58A and 58B limits any benefits to which an employee would otherwise be entitled.

58D An employee's entitlement to a leave of absence under Section 59, 59A, 59B, 60A, 60B, 60E, 60G, 60H, 60I, 60J, 60L, 60O, 60U, 60V, 60X or 60Z or to interrupt a leave of absence under Section 59C is in addition to any entitlement the employee may have to another type of leave under this Act.

58E (1) An employee, who is denied a leave of absence, the opportunity to resume work, seniority or benefits to which the employee is entitled by Section 58A, 58B, 59, 59A, 59B, 59C, 60A, 60B, 60E, 60G, 60H, 60I, 60J, 60L, 60O, 60U, 60V, 60X or 60Z, may make a complaint to the Director in accordance with Section 21.

(2) The Director shall treat a complaint under subsection (1) that alleges that an employee has not been paid all pay as a complaint under Section 81.

(3) An employee who has made a complaint under subsection (1) and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23.

58F (1) An employer shall

(a) maintain confidentiality with respect to all matters that come to the employer's knowledge in relation to an employee's leave of absence taken under Section 59, 59A, 59B, 60A, 60B, 60E, 60G, 60H, 60I, 60J, 60L, 60O, 60U, 60V, 60X or 60Z, or the interruption of a leave of absence under Section 59C; and

(b) not disclose information relating to an employee's leave of absence or the interruption of a leave of absence referred to in clause (a) except

(i) with the employee's written consent,

(ii) to employees or agents who require the information to carry out their duties, or

(iii) as required by law.

(2) A person who has received information under subsection (1) may not disclose it to any other person unless it is to be used for the purpose for which it was originally disclosed or for a purpose authorized by subclause (ii) or (iii) of clause (b) of subsection (1).

5 Sections 59F to 59H, 60 and 60D, subsections 60E(6) to (8), Section 60F, subsections 60G(2), 60H(5), 60I(8) and 60J(4) and (5) and Sections 60R, 60S, 60Y and 60Z of Chapter 246 are repealed.

6 Chapter 246 is further amended by adding immediately after Section 60X the following heading and Sections:

LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE

60Y In this Section and Sections 60Z to 60ZB,

(a) "child" means, in relation to an employee, an individual who

(i) is under eighteen years of age, and

(ii) is a child, step-child, foster child or child under the legal guardianship, of the employee;

- (b) “domestic violence” means
- (i) an act of abuse between
 - (A) an employee and
 - (I) the employee’s current or former intimate partner,
 - (II) a child of the employee or an individual under eighteen years of age who resides with the employee, or
 - (III) an adult who resides with the employee and is related to the employee by blood, marriage, foster care or adoption, or
 - (B) a child of the employee and
 - (I) the child’s current or former intimate partner, or
 - (II) an individual who resides with the child of the employee,

whether the abuse is physical, sexual, emotional or psychological and may include an act of coercion, stalking, harassment or financial control, or

- (ii) a threat or attempt to do an act described in subclause (i);
- (c) “intimate partner” means a spouse, boyfriend or girlfriend, dating partner, sexual partner or other individual in a similar relationship;
- (d) “transition house” means a member organization of the Transition House Association of Nova Scotia.

60Z (1) An employee who has been employed by an employer for a period of at least three months is entitled to an unpaid leave of absence if the employee or a child of the employee experiences domestic violence and the leave of absence is taken

- (a) to seek medical attention for the employee or the child of the employee for a physical or psychological injury or disability caused by the domestic violence;
- (b) to obtain services for the employee or the child of the employee from a victim services organization, an employee of a transition house or a person employed by the Department of Justice, a municipal police department or the Royal Canadian Mounted Police who provides victim services;
- (c) to obtain psychological or other counselling from a qualified person for the employee or the child of the employee;
- (d) to relocate temporarily or permanently;
- (e) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence; or
- (f) for a purpose prescribed by the regulations.

(2) An employee is entitled to take, in each calendar year, the leave of absence described in subsection (1) for

- (a) up to ten days, which the employee may take intermittently or in one continuous period; and
- (b) up to sixteen weeks in one continuous period.

(3) Nothing in this Section precludes an employee from taking a leave of absence to which the employee is otherwise entitled under this Section, at any time, irrespective of when the domestic violence occurred.

60ZA (1) Where an employee takes any part of a day as leave under Section 60Z, the employer

- (a) may count that day as one day of leave for the purpose of that Section; and
- (b) shall pay the employee for the part of the day worked.

(2) An employee shall advise the employer in writing as soon as possible of any intention to take a leave of absence under Section 60Z, the anticipated start date of the leave and the anticipated end date of the leave.

(3) Where an employee must begin a leave under Section 60Z before advising the employer pursuant to subsection (2), the employee shall advise the employer as soon as possible of the date the leave began and the anticipated end date of the leave.

(4) An employee shall make reasonable and practicable efforts to schedule an appointment for a purpose set out in subsection (1) of Section 60Z to take place during non-working hours.

(5) An employee may end a leave of absence taken under clause (a) of subsection (2) of Section 60Z early by giving the employer as much notice as is reasonably practicable of the intention to end the leave.

(6) Unless the employee and employer agree otherwise, an employee may end a leave of absence taken under clause (b) of subsection (2) of Section 60Z earlier than the expiry of the leave period by

- (a) giving the employer written notice of at least fourteen days before the employee wishes to end the leave; or
- (b) where there are fewer than fourteen days remaining in the leave period, giving the employer as much written notice as is reasonably practicable before the employee wishes to end the leave.

60ZB(1) Where permitted by the regulations, an employer may require an employee who takes a leave of absence for a purpose set out in subsection (1) of Section 60Z to

- (a) identify the purpose of the leave, with reference to the specific purposes set out in subsection (1) of Section 60Z; and
- (b) provide such information in support of the employee's entitlement to the leave as may be prescribed by the regulations or, in the absence of applicable regulations, as is reasonable in the circumstances.

(2) In the event of a conflict, the information provided under clause (b) of subsection (1) concerning the length of the leave prevails over the information provided by the employee under subsection (2) of Section 60ZA as to the anticipated length of the leave.

7 Section 83A of Chapter 246, as enacted by Chapter 14 of the Acts of 1991, is amended by striking out “Mechanics’ Lien Act” in the last line and substituting “Builders’ Lien Act”.

8 Subsection 85(1) of Chapter 246, as enacted by Chapter 19 of the Acts of 2011, is amended by striking out “Board” in the third last line and substituting “Director”.

9 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
