

Federal Government Launches Consultation On Draft Regulations Related To Equal Pay Under The Canada Labour Code



On February 22, 2025, the federal government published [new draft regulations](#) to support yet-to-be enacted provisions of the [Budget Implementation Act, 2018, No. 2](#) (Bill C-86) that amend the [Canada Labour Code](#) (*Code*) by prohibiting an employer from paying different wage rates to employees based on employment status (subject to certain exceptions) and by enacting new protections for employees of federally regulated temporary help agencies. The regulations are subject to a 30-day consultation period.

Background

Bill C-86 was passed in 2018 but the amendments to the *Code* pertaining to equal pay for work of equal value have not yet been proclaimed in force. Once proclaimed, the *Code* will prohibit employers from paying different wage rates to employees based on employment status when they:

- perform substantially the same kind of work
- apply substantially the same skill, effort and responsibility
- work under similar working conditions
- work within the same establishment

The prohibition does not apply when wage rate differences are attributed to specific factors such as seniority, merit, or the quantity or quality of each employee's output, or any other criteria specified by regulation. Further, an employer will not be permitted to reduce an employee's rate of pay to comply with the prohibition.

In addition, these amendments, once passed, will introduce a mechanism through which an employee can request a review of their wage rate if they believe it does not comply with the equal pay requirements. If an employee believes that their rate of wages does not comply with the *Code*, they may request that the employer review the rate. The employer must, within 90 days after receiving the request, conduct the review and provide the employee with a written response that includes either:

- a statement that they have increased their rate of wages to comply with the *Code*
- a statement, including reasons, that the employee's current rate of wages complies with the provisions

Bill C-86 also included new requirements for temporary help agencies, prohibiting them from charging employees certain fees or attempting to prevent agency employees from accepting employment with a client, and (similar to the requirements discussed above) requiring agencies to pay wages equal to what the client pays to its employees performing the same work, subject to certain exceptions. These amendments are also not yet in force.

Draft Regulations

The new draft regulations introduced by the federal government set out further details with respect to the Bill C-86 amendments noted above, and would include the following:

Employment Status

Defining “employment status” under the *Code’s* equal treatment and temporary help provisions to include variations in hours (full-time, part-time) and duration (permanent, temporary, fixed-term, seasonal, casual, irregular schedules).

Industrial Establishment

Clarifying the meaning of “industrial establishment” for employment sectors where jobs that usually require travel or include multiple work sites by clearly defining what is considered the location of work for road, rail, air and marine transportation sectors. This includes taking into account remote work and atypical workers in the transportation industries.

Calculating Wage Rates

Clarifying that, for the purpose of determining whether two employees are paid the same or a different rate of wages, only identical types of compensation would be comparable (e.g., hourly wage, mileage rate, piece rate, pay per load or commission rate).

Exceptions

Adding exceptions to the equal wage requirement including:

- the practice of “red-circling” where an employee is demoted but retains their previous higher salary
- increasing wage rates due to difficulty in recruiting or maintaining employees during a labour shortage
- northern bonuses related to geographical regions and locations of hardship
- travel status pay for employees on travel status as opposed to those who do not travel (including to regions and locations of hardship)
- employees’ pay when in a development or training program

Records

Requiring employers to maintain detailed records justifying different wage rates and responses to employee wage review requests, with additional requirements for temporary help agencies to keep records of client assignments.

Notices

Under the *Canada Labour Standards Regulations (CLSR)*, employers are required to post a list of federal labour standards (Schedule II) in their establishment. The list

would require updating to now include provisions on equal treatment, temporary help agencies, and an updated website link containing additional information. Moreover, “sick leave” would be replaced by the term “medical leave.”

New “Temporary Help Agencies” Section

Adding a new section to the *CLSR* to provide the same clarifications and exceptions for employees working for a federally regulated temporary help agency.

There is some question as to the scope of application of the new *Code* and *CLSR* provisions related to temporary help agencies as most agencies likely fall within provincial jurisdiction for employment purposes, which the federal government itself recognizes. However, this excerpt from the Regulatory Impact Analysis Statement may shed some light on the federal government’s intentions:

While at present there are few federally regulated temporary help agencies, and thus few temporary help agencies that are subject to Part III of the Code, there is still a rationale to move forward with these changes to the Code. Based on evolving jurisprudence and changes in the economy, additional federally regulated temporary help agencies may appear in the future; therefore, it is best to have clear rules in place if that occurs. Having federal rules also provides a model to emulate for other jurisdictions with less stringent provisions.

Administrative Monetary Penalties

Revising the [Administrative Monetary Penalties Regulations](#) to incorporate references to the new provisions outlined in the *Code* and *CLSR*.

Consultation

The federal government has launched a 30-day consultation period with respect to the proposed regulations, with comments due by **March 24, 2025**.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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