





Modernization of the *Canada Labour Code*

Amendments to Federal Labour Standards – Presentation to UNIFOR representatives

June 11, 2019

Part III of the Canada Labour Code – Overview

 Part III of the Code sets minimum labour standards for employees in federally regulated private-sector enterprises and Crown corporations (but does not cover the federal public service and employees of Parliament).

Federal labour standards have traditionally pursued three main objectives:

- Providing a floor of rights, by extending minimum conditions of employment to those in a weak bargaining position (e.g. nonunionized workers)
- Preventing unfair competition by providing a level playing field for employers
- Demonstrating national leadership and ensuring compliance with Canada's international obligations

More recently, federal labour standards have also served to pursue other policy goals, for example:

- Removing barriers to women's participation in the workforce
- Regulating terminations of employment
- Supporting family caregivers



Part III of the Canada Labour Code – Overview (cont'd)

Hours of work (overtime after 8 hrs/day and 40 hrs/week, 48-hour weekly maximum hours of work, weekly day of rest)

Wages (minimum wage, 3 hours' reporting pay, equal wages, payment of wages)

Minimum age of employment (17 years for dangerous work)

Annual vacations (2 weeks after 1 year; 3 weeks after 6 years)

General holidays (9 days)

Maternity-related reassignment

Leaves of absence (maternity, parental, compassionate care, death or disappearance of a child, critical illness of a family member, bereavement, sickness, work-related illness or injury, reservist duty)

Termination requirements (2 weeks' notice of individual and 16 weeks' notice of group termination of employment, severance pay of 2 days/year of service)

Insurance of Long-term disability plans

Sexual harassment

Recourses for unjust dismissal, genetic discrimination, unpaid wages

Part III of the Canada Labour Code – Overview (cont'd)

- Subject to some exceptions, Part III provisions apply notwithstanding any other law, custom, contract or arrangement – but do not prevent more favourable rights or benefits for employees.
- Specific regulatory exemptions (e.g. nuclear facilities) and special rules (e.g. hours of work for trucking and shipping industries) apply in some cases.
- Provisions concerning the minimum wage, general holidays, annual vacations and bereavement leave do not apply to an employer and employees covered by a collective agreement that confers on employees rights and benefits that are at least as favourable re: length of leave, rates of pay and qualifying periods for benefits. Disputes regarding these matters are governed exclusively by the collective agreement's grievance and arbitration procedures.
- An inspector may also reject certain types of complaints made by an employee who is subject to a collective agreement that covers the subject-matter of the complaint and provides a third party dispute resolution process.



Modernization of the Canada Labour Code: legislative developments

Bill S-201 (May 2017): new recourse to prevent genetic discrimination

Bill C-4 (June 2017): re-establishment of card check certification process under Part I

Bill C-44 (June 2017): new compliance and enforcement tools for Parts II and III, including administrative monetary penalties regime; parental leave extension

Bill C-63 (December 2017): new Part III provisions to support flexible work arrangements (e.g. right to request FWAs); labour standards protections for interns

Bill C-65 (October 2018): measures to prevent harassment and violence; expansion of Part II coverage to parliamentary employees

Bill C-86 (December 2018): significant amendments to Part III to ensure a robust and modern set of labour standards; new Head of Compliance and Enforcement; additional parental leave when shared; improvements to Wage Earner Protection Program; *Pay Equity Act*

Mandate Letter

"Promote good quality jobs, address the changing way that people work, and work to increase the workforce participation of women and underrepresented groups [...] [by] updating the Canada Labour Code to address emerging issues such as unpaid internships, and to ensure that Canadians continue to have a robust and modern set of federal employment standards. This can build on the federal report, Fairness at Work: Federal Labour Standards for the 21st Century" [a.k.a. Arthurs Report].

Mandate Letter of the Minister of
 Employment, Workforce Development and
 Labour (February 2017)

Bill C-44: Budget Implementation Act, 2017, No. 1

Implementation of two key initiatives announced in Budget 2017

Strengthen and modernize compliance and enforcement provisions of Part II (Occupational Health and Safety) and Part III (Labour Standards) of the Canada Labour Code

Improve certain leaves and related EI benefits

- Leave for critical illness of family member: 37 weeks to care for child; 17 weeks to care for adult
- Extension of parental leave from 37 to 63 weeks
- Start of maternity leave up to 13 weeks before expected date of birth

Objectives – to help resolve:

- high levels of recidivism;
- lack of tools and incentives, short of prosecution, to deal with employers who refuse to voluntarily comply;
- gap with provisions in other jurisdictions and federal regulatory regimes.

First reading April 11, 2017; Royal Assent June 22,2017

Budget 2017: to "ensure that hardworking Canadians can more easily recover wages owed to them by their employer" and that "employers who repeatedly offend will be punished".

New compliance and enforcement tools

Administrative monetary penalties (AMPs) (new Part IV of the Code)

- For violations of Part II or Part III of the Code
- Penalty scheme to be set by regulation (max. penalty: \$250,000; no due diligence defence; standard of proof: balance of probabilities)

Public naming of employers who have committed an offence or violation

Transfer of adjudicative functions to the Canada Industrial Relations Board (CIRB)

- Appeals under Part II and Part III of the Code and WEPP Act
- Adjudication of unjust dismissal and genetic testing complaints
- Appeals of Administrative monetary penalties

Compliance orders (and other new inspector powers)

Recourse against employer reprisals

- Covers all employees who have been dismissed, suspended, laid off, demoted, threatened, etc. in contravention of Part III of the Code
- Complaint to be filed with CIRB within 90 days
- Remedies include reinstatement and compensation for financial loss

Employer internal audits (in force)

Measures to improve the wage recovery process (in force)

- Administrative fees of \$200 or 15% on payment orders to employers
- Extension to 24 months of retroactive period that may be covered by a payment order
- Orders to debtors of directors of a corporation

Bill C-63: Budget Implementation Act, 2017, No. 2

Implementation of two additional initiatives announced in Budget 2017

Give federally regulated employees the right to request more flexible work arrangements; expand leaves

Limit unpaid internships in federally regulated sectors

Budget 2017:

Limiting unpaid internships "While internships can give young Canadians the hands- First reading Oct. 27, 2017; Royal Assent December 14, 2017

on work experience they need to make a successful transition into the workforce, some internships—in particular those that are unpaid—can be unfair and exploitative."

Giving federally regulated employees the right to request more flexible work arrangements

"To help Canadians better balance work and family demands, Budget 2017 proposes to give federally regulated workers the right to request flexible work arrangements from their employer, such as flexible start and finish times and the ability to work from home. Proposed changes will also provide federally regulated workers with new unpaid leaves for family responsibilities, to participate in traditional Indigenous practices, and to seek care if they are victims of family violence. Changes will also make bereavement leave more flexible."

Flexible Work Arrangements

Right to Request Flexible Work

Eligibility: Six months of consecutive employment

Employee may request a change to terms and conditions of employment, including:

- Number of hours worked;
- Work schedule; and
- Location of work

Employer must within 30-day provide a written notice of decision to grant, modify or refuse a request with reasons for refusing or not granting in part

Reprisals for exercising right are prohibited

Modified Work Schedule

• Can apply to individual employees, not just to groups of employees

Shift Changes

• 24-hour written notice for change or addition of shift

Overtime Work

- Employee may request time off in lieu of overtime pay (with written agreement of employer)
- Time off to be taken within specified period (3-12 months max.)
- Limited right to refuse overtime to fulfil certain family responsibilities

Annual Vacation with Pay

- May be taken in one or more periods
- May interrupt or postpone vacation to take a leave under the Code

Substitution of General Holidays

• Can apply to individual employees, not just groups

Bereavement Leave

- Increased from 3 days to 5 days (first 3 days paid)
- Period during which leave may be taken extended (from day of death until six weeks after any funeral, burial or memorial service)

Limiting Unpaid Internships

Unpaid internships are prohibited unless they fulfill the requirements of a program offered by a secondary, post-secondary or vocational educational institution, or equivalent educational institution outside Canada.

Interns outside educational program	Student interns (fulfilling requirements of an educational program through work- integrated learning)
 Covered by all labour standards, including minimum wage 	 Excluded from wage-related provisions (e.g. minimum wage) and long-term leaves Covered by labour standards to be specified by regulation (draft regulations published June 8, 2019): Hours of work restricted to 8/day and 40/week (subject to modified work schedule agreed to by intern) All breaks and rest periods All notices of schedules General holidays Maternity-related reassignment Short-term leaves without pay (personal leave, leave for victims of family violence, bereavement leave, medical leave) Recourse for reprisals and genetic discrimination

Bill C-86: Budget Implementation Act, 2018, No. 2

Implements three inter-related initiatives concerning the Canada Labour Code

- Amendments to *Employment Insurance Act* and parental leave provisions (Part 4, Division 8).
- Measures to modernize federal labour standards (Part 4, Subdivision 15(A)).
- Establishment of new Head of Compliance and Enforcement for the purposes of Parts II to IV of the Code (Part 4, Subdivision 15(B)).

First reading Oct. 29, 2018; Royal Assent Dec. 13, 2018

Bill C-86 also:

- enacts a new Pay Equity Act (Part 4, Division 14) to redress, through a proactive process, systemic gender-based discrimination experienced by employees who occupy positions in predominantly female job classes;
- amends the *Wage Earner Protection Program Act* (Part 4, Division 16) to increase the maximum amount that may be paid under the Act and expand the conditions under which payments may be made.

Labour standards amendments: purpose and priority issues

Key Objective: ensure that employees in the federally regulated private sector are protected by a robust and modern set of labour standards that reflects the realities of the 21st century workplace, sets the stage for good quality jobs and supports productive workplaces.

Amendments in five main areas					
Improved eligibility for labour standards	Better work- life balance	Fair treatment and compensation for employees in precarious work	Financial security when jobs are terminated	Improved administration	



Improved eligibility for labour standards

Currently: minimum period of continuous employment to qualify for certain protections and entitlements

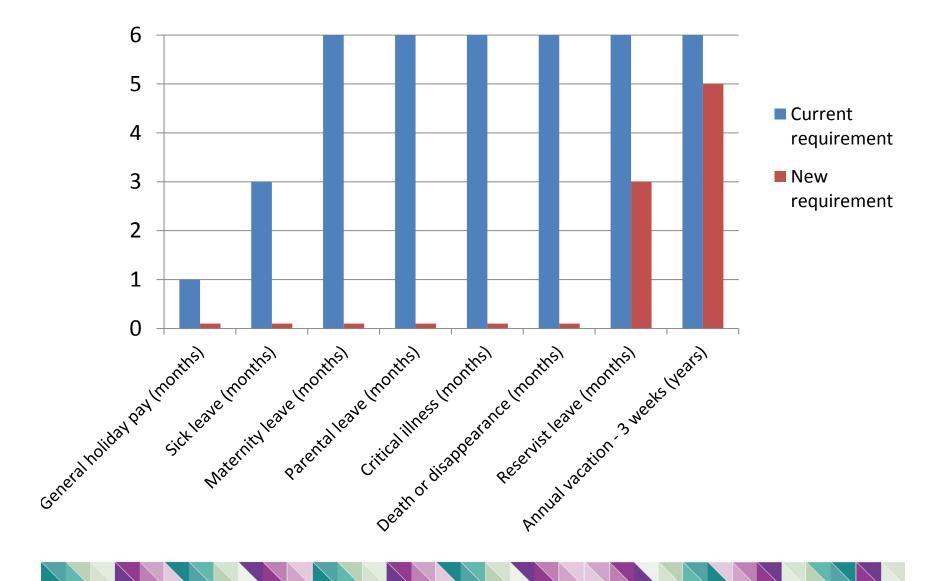
Length of service requirement eliminated for:

- General holiday pay
- Medical leave (sick leave)
- Maternity and parental leave
- Leave related to critical illness
- Leave related to death or disappearance of a child

Length of service requirement reduced to 3 months for reservist leave; extension of reservist leave to cover Canadian Armed Forces military skills training (max. leave 24 months of leave/60-month period)

Length of service requirement for 3 weeks of paid vacation reduced from 6 years to 5 years

Improved eligibility for labour standards (cont'd)



• Amendments to address challenges in balancing demands of work and family due to lack of control over time and scheduling conflicts



Personal leave

Leave duration

- 5 days/calendar year
- First 3 days with pay (see eligibility criteria below), at regular rate of wages for normal hours of work (recoverable as "wages")
- May be divided in shorter periods (employer may require periods of no less than one day)

Eligibility Criteria

- Minimum length of service for <u>paid</u> leave only: 3 consecutive months of continuous employment
- Documentation to support reasons for the leave: if requested in writing by the employer no later than 15 days after return to work, employee must provide documentation if it is reasonably practicable for him/her to obtain and provide it.

Situations covered

- Personal illness or injury (note: this is in addition to medical leave)
- Responsibilities re: health or care of a family member
- Responsibilities re: education of a family member who is less than 18 years of age
- Urgent matter concerning employee or a family member
- Attending citizenship ceremony

Potential regulations

- Set out other reasons for taking the leave (i.e. additional situations covered)
- Define "regular rate of wages" and "normal hours of work"
- Specify who are "family members"

Leave for victims of family violence

Leave duration

- 10 days/calendar year
- First 5 days with pay (see eligibility criteria below), at regular rate of wages for normal hours of work (recoverable as "wages")
- May be divided in shorter periods (employer may require periods of no less than one day)

Eligibility Criteria

- Minimum length of service for <u>paid</u> leave only: 3 consecutive months of continuous employment
- Documentation to support reasons for the leave: if requested in writing by the employer no later than 15 days after return to work, employee must provide documentation if it is reasonably practicable for him/her to obtain and provide it.

Situations covered

- Seeking medical attention for employee or his/her child (under 18) in respect of a physical or psychological injury or disability
- Obtaining services from an organization which provides services to victims of family violence
- Obtaining psychological or other professional counselling
- Relocating temporarily or permanently
- Seeking legal or law enforcement assistance or preparing for or participating in any civil or criminal legal proceeding

Potential regulations

- Prescribe other situations covered by the leave
- Define "regular rate of wages", "normal hours of work" and "family violence"

Leave for court or jury duty

 Leave duration (and other protections) Leave to attend court (no specified maximum) On request, employee on leave to be informed of employment, promotion and training opportunities Reprisals prohibited Continuation of benefits Resumption of employment in same or comparable position after leave 	 Situations covered Attend court to: act as a witness in a proceeding act as a juror in a proceeding participate in a jury selection process
 Eligibility Criteria No minimum length of service Written notice of start and expected duration of leave, or change in the length of the leave: as soon as possible; 4 weeks' notice of any change to leave that is more than 4 weeks (unless valid reason why that cannot be done; no postponement of return to work) Documentation to support reasons for the leave and of any change in the length of the leave: if requested by the employer 	 Potential regulations Prescribe documentation that the employer may require Specify what does not constitute a valid reason for not reinstating an employee in the same position



Medical leave (formerly "sick leave")

Leave duration (and other protections)

- 17 weeks of <u>leave</u> w/o pay (rather than protected absence)
- On request, employee on leave to be informed of employment, promotion and training opportunities
- Reprisals prohibited
- Continuation of benefits (no change)
- Resumption of employment: employee may be assigned to different position, with different terms and conditions of employment, if unable to perform work performed prior to the leave (*no change*)

Eligibility Criteria

- No minimum length of service
- Medical certificate: if leave is 3 days or longer, employer may require certificate issued by "health care practitioner"
- Written notice of start and expected duration of leave: 4 weeks before or, if valid reason why it cannot be given, as soon as possible; notice of any change in length of leave ASAP

Situations covered

- Personal illness or injury
- Organ or tissue donation
- Medical appointments during working hours

Potential regulations

• Define terms such as "health care practitioner"

Better work-life balance: Work scheduling

96 hours'	 Work schedule to be provided in writing to each employee 	•	Different standard set by collective agreement	
advance notice of schedules	 Employee may refuse to work any shift or work period that starts less than 96 hours after schedule received Protections against reprisals 	•	Scheduling change resulting from employee's request for flexible work arrangement	
24 hours' written notice of shift change	• Before original work period or shift was to begin or, if earlier, before start of work period or shift that results		Unforeseeable emergency: To deal with a situation that the employer <u>could not have</u> <u>reasonably foreseen</u> and that presents or could reasonably be expected to present an <u>imminent or</u> <u>serious</u> (a) threat to the life, health or safety of any person;	EXCEPTIONS
Right to refuse overtime due to family responsi- bilities	 Can refuse OT to carry out responsibilities related to health, care or – in the case of a minor – education of a "family member" (to be defined by regulation) Employee must first have taken reasonable steps to carry out family responsibilities by other means Protections against reprisals 	Re	 (b) threat of damage to or loss of property; or (c) threat of serious interference with the ordinary working of the employer's industrial establishment Managers and specified professional exempted. Egulatory powers to adapt provisions empt a class of employees (see next slite 	or

Better work-life balance: Breaks and rest periods

30-minute break	 During every period of five consecutive hours of work Break unpaid, unless employer requires the employee to be at their disposal during the break period 	Unforeseeable emergency (See previous slide) Managers and specified professionals exempted	EXCEPTIONS
8-hour rest period	 At least 8 consecutive hours of rest between work periods or shifts 	 Modify a provision re: its application to a class of employees if it would otherwise be (a) unduly prejudicial to the interacts of these amployees or 	()
Medical break	 Employee may take any unpaid breaks necessary for medical reasons On employer's written request, employee must provide certificate from health care practitioner indicating length and frequency of medical breaks needed Regulations can specify additional 	 interests of these employees or (b) seriously detrimental to the operation of an industrial establishment (scheduling and rest periods). Exempt any class of employees from the application of a provision if it cannot reasonably be applied to them (scheduling and rest periods) 	NTIAL REGULATIONS
Nursing break	 Information certificate must include Employee who is nursing may take any unpaid breaks necessary to nurse or express breast milk 	 Specify circumstances in which a medical or nursing break cannot be taken; adapt these provisions or specify exemptions re: a class of employees 	POTE
	or express breast milk		

Fair treatment and compensation

Amendments to support workers in non-standard employment and facing precarious work

Equal rate of pay for casual, part-time, temporary, seasonal employees	Protections for temporary help agency employees from unfair practices
Information for employees about labour standards requirements, conditions of employment and employment opportunities	Prohibition on misclassifying an employee to avoid obligations under the Code
Continuity of employees' length of service in cases of contract retendering or transfer from provincially regulated employer	Reimbursement of work-related expenses
Increase of minimum age for work in hazardous occupations from 17 to 18 years of age; regulation-making powers to set differential rules for younger employees	New regulation-making powers to expand Part III coverage to any class of persons

Fair treatment and compensation: Equal treatment

Employer prohibited from paying an employee a lower rate of wages than another employee due to a difference in their employment status, if

- they work in the same industrial establishment;
- they perform substantially the same kind of work;
- the performance of that work requires substantially the same skill, effort and responsibility;
- their work is performed under similar working conditions; and
- any other factor prescribed by regulation is present.

Request for review of rate of wages

- Following written request, employer must review employee's rate of wages and provide written response within 90 days
- Employee may make wage recovery complaint

Difference in rate of wages permitted if due to a system based on

- seniority;
- merit;
- the quantity or quality of each employee's production; or
- any other criterion prescribed by regulation.

Prohibition on reducing an employee's rate of wages in order to comply with these obligations

Prohibition on retaliating against employee requesting review of wages

- Specify additional factor or criterion
- Define any term
- Modify requirements re: any class of employees
- Exempt any class of employees

POTENTIAL REGULATIONS

Fair treatment and compensation: Temporary help agency employees

Employer (temp help agency) prohibited from:

- charging a fee to a person to become its employee;
- charging a fee to an employee for assigning or attempting to assign them to perform work for a client;
- charging a fee to an employee for any assignment or job preparation services (e.g. resume writing or interview preparation);
- charging a fee to an employee for establishing an employment relationship with a client;
- charging a fee to a client for establishing an employment relationship with an employee (unless fewer than 6 months have elapsed since the employee's first assignment with the client); and
- attempting to prevent an employee from establishing an employment relationship with a client.

Employer (temp help agency) prohibited from paying its employee a lower rate of wages than an employee of the client performing substantially the same work

(see previous slide for factors that must be present, permitted differences in wages and review provisions)

Prohibition on reducing a client's employee's rate of wages in order to comply with these obligations

Prohibition on retaliating against employee requesting review of wages

- Specify additional factor or criterion
- Define any term
- Modify requirements re: any class of employees
- Exempt any class of employees

POTENTIAL REGULATIONS

Fair treatment and compensation: Information for employees

Information on Part III of the Code	 Provide employees with materials prepared by Labour Program within first 30 days of employment (and within 30 days of any update). Post materials in workplace. Provide materials relating to terminations of employment no later than last day of employment. 				
Employment statement	 Provide each employee with written statement containing information relating to their employment, within first 30 days of employment (and within 30 days of any change to previous employment statement). Provide additional copies to an employee on request. Record-keeping requirement (until 36 months after end of employment). 	Potential Regulations Prescribe information to be provided in an employment statement			
Notice of employment opportunities	 If employer's practice is to inform employees of employer opportunities in writing then it must inform all of its employees, regardle employment status. 				

Fair treatment and compensation: Reimbursement of work-related expenses

Entitlement	Exceptions	Timing of payment	Recovery of unpaid
Employee must be reimbursed reasonable work-related expenses	 No reimbursement required if: expense is not work-related or reasonable; expense is prescribed by regulation as ineligible; written agreement between union and employer (or between non- unionized employee and employer) specifies that employee is to pay that expense. 	Within timeline set in set in written agreement between union and employer (or between non- unionized employee and employer). Otherwise, within time limit set by regulation.	amounts Employee can file complaint under wage recovery provisions of the Code.

Potential regulations

- Prescribe factors to consider in determining if an expense is work-related or reasonable.
- •Specify expenses that are ineligible for reimbursement.
- •Setting time limit for reimbursement of expenses.

Financial security when jobs are terminated

Amendments to support financial security and transition when an employee's job is terminated

Group termination

- 16-week notice, pay in lieu or a combination of notice and pay in lieu
- 8 weeks' individual notice of termination or pay in lieu
- Transitional support measures (if employee provided pay in lieu of notice)
- No more waivers

egulations

Potential

- Prescribe circumstances where an employer is exempted from requirement(s) and any measure to take re: redundant employees
- Specify transitional measures to be provided
- Define certain terms and expressions

Individual termination

- New graduated notice of termination (or pay in lieu) based on continuous length of service:
 - \geq 3 months \rightarrow 2 weeks' notice
 - \geq 3 years \rightarrow 3 weeks' notice
 - \geq 4 years \rightarrow 4 weeks' notice
 - \geq 5 years \rightarrow 5 weeks' notice
 - \geq 6 years \rightarrow 6 weeks' notice
 - \geq 7 years \rightarrow 7 weeks' notice
 - \geq 8 years \rightarrow 8 weeks' notice
- Does not apply to employees covered by group termination provisions
- Copy of notice to be given to trade union

Improved administration

Amendments to improve client service by increasing operational flexibility and efficiency, resolving technical issues, eliminating duplication of recourse mechanisms, and clarifying existing provisions.

Adjudication of genetic discrimination complaints by Canada Industrial Relations Board		Treatmer of abandone complain	ed	Head of Compliance and Enforcement: transfer of statutory powers, duties and functions of the Minister,
Broader definition of "health care practitioner"	Limits to multiple recourses	Treatment of confidential complaints		inspectors and regional directors under Parts II (Occupational Health and Safety), III (Labour Standards) and IV (Administrative Monetary Penalties) of the Code; delegation of authorities to "qualified persons" (e.g. Labour Program inspectors)
Clarified rules for suspension and rejection of complaints		R	Regulation-making powers to extend deadlines for filing complaints	

Coming into Force: Modernization of Labour Standards (tentative dates)

December 2018 (Royal Assent)	March 2019 (OIC – tied to EI changes)	June 2019 (Tied to transfer of responsibilities to CIRB)	September 2019 (or, if later, CIF of flexible work arrangements provisions in Bill C-63)	Early 2020 (Tied to CIF of AMP regime)	2020 and later (CIF by OIC – up to 6 distinct groups)
Regulation- making powers: scheduling and hours of work; Part III coverage; pilot projects		Changes to complaint mechanisms (adjudication of genetic testing complaints; rejection and suspension of complaints; revealing identity of complainants)	Advance notice of schedules Notice of shift changes Limited right to refuse overtime Breaks Rest period between shifts Elimination of length of service requirements for general holiday pay, maternity, parental, critical illness, death/disappearance leaves Annual vacations (3 weeks/5 years, 4 weeks/10 years) Personal leave Leave for victims of family violence Leave for court or jury duty Medical leave Reservist leave New definition of "health care practitioner" Continuity of employment (contract retendering; PT transfers)	Transfer of statutory responsibilities to new Head of Compliance and Enforcement Measures to prevent misclassification of employees	Minimum age of employment Equal treatment Temporary help agencies Group termination Individual termination Recovery of work- related expenses Written employment statement Notice of Part III labour standards