Employment and Social Development Canada
Emploi et Développement social Canada

Fair, safe and productive workplaces

Labour

Discussion Paper: Caregivers and Federal Labour Standards

April 2014

Canada

This discussion paper is not intended to propose or advocate particular legislative changes to Part III of the *Canada Labour Code*, nor should it be interpreted as a package of actual forthcoming changes to Part III. Moreover, this paper is not intended to propose or advocate particular changes to other possible federal legislation (i.e., *Employment Insurance Act*). Rather, the provisions examined in this paper are presented as examples, with the aim of encouraging informed comments and suggestions. The provisions examined are also not an exhaustive list of potential changes.

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A. INTRODUCTION

In its 2014 Budget, the Government of Canada committed to maximize the labour market participation of all Canadians including those with caregiving responsibilities. The Honourable Dr. K. Kellie Leitch, Minister of Labour and Minister of Status of Women, has been undertaking discussions with federally regulated employers, labour organizations and key stakeholders to discuss potential flexible workplace arrangements for federally regulated employees with caregiving responsibilities and other employees with similar needs. The goal of these discussions is to: (i) determine whether it would be advisable to amend Part III of the Canada Labour Code (referred to hereafter as Part III) to better support employees with caregiving responsibilities (and other employees with similar needs); and (ii) if so, what legislative or regulatory changes should be made.

Moreover, the Honourable Alice Wong, Minister of State for Seniors, will be engaging with Canadian employers to help identify promising workplace practices that support caregivers through the Canadian Employers for Caregivers Plan.

1. What is Part III (Labour Standards) of the Canada Labour Code?

Part III regulates labour standards such as hours of work, minimum wages, statutory holidays, annual vacations, and various types of statutory leave for employers and employees under federal jurisdiction. It applies to approximately 10,900 enterprises and 6.1 percent of all Canadian employees in various industries such as banking, telecommunications, broadcasting, inter-provincial and international transportation (including air, rail, ports, and trucking), grain handling, certain activities on First Nations reserves, and federal Crown corporations.

2. Why discuss caregiving in the context of Part III?

Many Canadians face challenges in attempting to balance paid employment and informal caregiving responsibilities.

Estimates derived from Statistics Canada's 2012 General Social Survey (GSS) suggest that nearly 28 percent (8.1 million) of Canadians over the age of 15 provide care to a chronically ill, disabled or aging family member or friend. Among those, 60 percent (4.9 million) are employed. This figure is expected to rise as the population ages more baby boomers make the transition into their senior years.

Many observers have underscored the growing social importance of informal caregiving, noting that it reduces the demands on health care and social systems, and often allows care recipients to enjoy a higher quality of life by continuing to live in their homes. However, such caregiving arrangements often come at a cost to both employees and employers. According to the GSS, 43 percent of employed caregivers (and 54% of those providing 20 or more hours of caregiving per week) reported having had to arrive to work late, leave early, or take time off during the day in order to provide care. Additionally, in order to accommodate their caregiving responsibilities, 40 percent of employed caregivers have sought less demanding jobs and a further 10 percent have rejected or declined to pursue new job opportunities or promotions. Many caregivers have had to reduce their weekly hours of work for significant periods of time, which can negatively

affect their career development and, in some cases, deny them access to employer-sponsored benefits, such as insurance and pension plans.

On the employer side, the estimated cost of caregiving in terms of lost productivity and employee absenteeism ranges from $1.28 billion to $3.8 billion annually[1].

Caregiver burdens also have broader social implications. According to the GSS, women comprise the majority (54%) of all caregivers, and are more likely to be involved in intensive caregiving than men. This raises concerns as to whether informal caregiver responsibilities may constitute a barrier to the participation of women in the workforce.

3. Purpose of This Discussion Paper

The purpose of this discussion paper is to provide federally regulated employers and employees, as well as other interested organizations and individuals, an opportunity to share their views about how to support employees with caregiving responsibilities outside of work, without placing an undue burden on employers.

This discussion paper is not intended to propose or advocate particular legislative changes to Part III of the *Canada Labour Code*, nor should it be interpreted as a package of actual forthcoming changes to Part III. Moreover, this paper is not intended to propose or advocate particular changes to other possible federal legislation (i.e., *Employment Insurance Act*). Rather, the provisions examined in this paper are presented as examples, with the aim of encouraging informed comments and suggestions. The provisions examined are also not an exhaustive list of potential changes.

4. Structure of the Discussion Paper

This discussion paper is divided into two parts. The first examines provisions regarding hours of work that may impact employees' ability to effectively balance work and family obligations. These provisions include time swaps, modified work schedules, time off in lieu of overtime pay, the right to refuse overtime, shift changes, and the right to request flexible work (and an employer's corresponding duty to consider such a request).

The second part of the discussion paper examines leaves of absence for employees to respond to family obligations, including short- and long-term family responsibility leave and bereavement leave. The division or postponement of vacation leave is also considered.

Each section of the paper provides an overview of existing relevant legislative provisions in Part III and/or other Canadian jurisdictions. A series of questions are then presented to encourage reflection and generate discussion.

[1] Source: Conference Board of Canada and Employment and Social Development Canada.

5. Key Questions for Consideration

While targeted questions are posed for each provision identified, there are also broader issues to consider when contemplating how an employee's caregiving responsibilities can best be supported. Organizations and individuals may find it helpful to consider the following questions when formulating their comments:

- Are any changes to federal labour standards needed to support employed caregivers?
- How could employees be supported without unduly affecting employers' operations? How can any administrative burden or implementation costs be minimized or offset?
- Are any current federal labour standards hampering employers' efforts to provide more flexible work arrangements for employees who wish to meet caregiving responsibilities?
- Are there any existing best practices in the workplace that could further inform this discussion?

6. How to Submit your Comments

We thank you for taking the time to read this discussion paper, and encourage you to submit your views, in writing by April 25, 2014.

Submissions or enquiries can be sent to the following email address: NC-caregivers_fls-aidantsnaturels_ntf-GD@labour-travail.gc.ca or mailed to the address below:

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7. Privacy Notice

The information you provide will be administered in accordance with the federal *Access to Information Act*. Any personal information you provide in relation to this consultation will be administered in accordance with the *Privacy Act* and other applicable laws. That being said, we ask that you do not provide detailed information about yourself (other than your name, organization and contact information), or personal information about others.

The information you provide is collected under the authority of the *Department of Employment and Social Development Act*. It may be used by ESDC for policy analysis and research. Participation is voluntary and your acceptance or refusal to participate will not affect your relationship with ESDC.

To obtain information related to this consultation you may submit a request in writing to ESDC pursuant to the *Access to Information Act*. For access to your personal information, you may submit a request under the *Privacy Act*. Instructions for making a request can be found on the Info Source webpage at http://www.infosource.gc.ca. When making a request, please refer to the name of this Discussion Paper.

The Department may wish to publish submissions, or portions thereof, in support of the policy development process on the Labour Program's website. Please note that consent will be obtained from the originator prior to any postings.

B. HOURS OF WORK: FLEXIBILITY AND PREDICTABILITY

1. Time Swaps

Under Part III, standard hours of work are set at eight hours per day and 40 hours per week. Employers are generally required to pay the overtime rate (1.5 times the regular rate) when an employee's hours of work exceed that threshold, although there are a number of exceptions.

One of these exceptions, under section 7 of the *Canada Labour Standards Regulations*, provides that an employer is under no obligation to pay the overtime rate where there is an established work practice of allowing employees to swap shifts with each other, even if it means that an employee would work in excess of standard hours. However, there is no provision in Part III or the regulations that exempts an employer from overtime requirements if an individual employee requests time off for personal reasons and offers to make it up by working longer than standard hours on another day (what is sometimes referred to as a "time swap"). .

Providing employees with the option to time swap could give them an additional avenue to adjust their work schedules, on a temporary basis, to meet caregiving or other responsibilities. On the other hand, this might also raise concerns about potential abuses in the event that an employer pressures an employee to time swap to avoid paying them overtime wages.

Questions:

1. Should Part III or its regulations be amended to allow an employer to permit an employee to work in excess of daily or weekly standard hours of work at regular time rates, in order to make up for time off?

2. Should this require that an employee first make a written request for the time swap?

3. Should time swaps be limited so that maximum working hours under Part III (normally 48 hours per week) cannot be exceeded?

4. What other conditions or requirements, if any, should be imposed?

2. Modified Work Schedules

Part III currently permits modified work schedules, under which hours of work may be averaged over a period of two or more weeks as long as the average does not exceed 48 hours per week. One example would be a compressed work schedule (i.e., longer daily hours with fewer days of work per week). Where a modified work schedule is in place, employees are entitled to overtime for time worked in excess of daily or weekly hours in the schedule, or in excess of 40 hours times the number of weeks in the averaging period. A modified work schedule under Part III (or its modification or cancellation), must be agreed in writing by the employer and the applicable trade union. Where employees are not covered by a collective agreement, a modified work schedule must be approved by 70 percent of the affected employees, and the employer must post a notice of the schedule for at least 30 days before it comes into effect.

These provisions might not meet the needs of individual employees. Among other issues, the current wording may leave the impression that they apply only with respect to groups of employees. By contrast, legislation in a number of other jurisdictions (Alberta, Manitoba, Yukon and Ontario) makes it clear that an employee may reach an agreement with his or her employer to work compressed work weeks. Moreover, the 30-day notice obligation under Part III may preclude employers from accommodating employee requests for immediate or short-term scheduling changes to deal with unexpected personal or family obligations.

Questions:

1. Should Part III be amended to clarify that modified work schedules can be agreed to between an employer and an individual employee?

2. Should employers be exempted from the 30-day notice requirement if they grant an individual employee's written request for a modified work schedule?

3. Should any specific conditions or requirements be imposed in these cases? For example, should there be a time limit on the duration of the schedule? Under what circumstances could a modified work schedule be cancelled by the employee or employer?

4. Are there any other issues that should be addressed with respect to modified work schedule provisions under Part III?

3. Time Off in Lieu of Overtime Pay

A number of stakeholders and labour experts have suggested that employees should have the option to take paid time off in lieu of receiving overtime pay (at the rate of 1.5 hours of paid time off for each hour of overtime), at a time agreed with their employer. For employed caregivers, this could be a way to take additional time off, without loss of income, to meet certain family or other responsibilities. Such a measure could also be of benefit to employers by allowing them to meet the needs of their employees while also reducing their overall overtime costs.

Although arrangements to provide time off in lieu of overtime appear to be common in many federally regulated workplaces, these are not specifically permitted under Part III.

By contrast, employment standards legislation in nine Canadian jurisdictions allows such arrangements. (A tenth jurisdiction, Saskatchewan, has recently passed legislation that, once in force, will also allow time off in lieu of overtime pay). However, these statutes also set a number of conditions. For example, in Ontario, both the employer and the employee must agree to the time off and the employee must take it within three months of the week in which overtime was earned. This period can be extended up to a maximum of 12 months upon consent of both parties.

Questions:

1. Should Part III be amended to explicitly allow overtime to be compensated by time off with pay, at the rate of 1.5 hours per overtime hour worked, if the employee so requests and the employer agrees?

2. Should there be an obligation that the time off be taken within a 12-month period, failing which the employer would have to pay out any accumulated overtime? Should this be subject to any exceptions?

3. Should there be a maximum amount of time off that can be accumulated? What other conditions or requirements, if any, should be imposed?

4. Should different rules apply with respect to employees who are covered by a collective agreement?

4. Right to Refuse Overtime

Although Part III currently sets a maximum 48-hour work week, this rule is subject to exceptions, and there are no limits on daily hours of work (as long as overtime pay is provided). As a result, employees may at times be required to work long hours, with little notice, even if this interferes with caregiving or other obligations.[2]

While Part III does not provide employees with the right to refuse overtime, such a right exists – with some restrictions – in the employment standards legislation of Manitoba, Yukon, Quebec and Saskatchewan:

- Manitoba's legislation specifies that employers do not have an "implied right" to request overtime, which means that overtime may normally only be required if this is a term of the employee's employment contract.
- In Yukon, employees may refuse to work overtime for "just cause", if the reasons are specified in writing.
- In Quebec and Saskatchewan, employees may refuse to work more than a specified number of hours, subject to exceptions (e.g., in the event of unforeseen circumstances or emergency situations). Quebec's legislation also allows employees to refuse to work beyond their regular hours in order to fulfill family obligations, if they have taken reasonable steps to deal with these obligations through other means.

Providing employees with the right to refuse overtime work could potentially help those who have important personal commitments that cannot be postponed or set aside without forewarning. However, this could also have a negative impact on the operations of certain employers, especially those that regularly have to deal with unpredictable workloads.

[2] An employer's ability to require excessive hours of work may in some circumstances be restricted by other legislation, including the *Canadian Human Rights Act* and Part II (Occupational Health and Safety) of the *Canada Labour Code*.

Questions:

1. Should Part III be amended to provide employees with the right to refuse overtime?

2. If so, should this right to refuse be restricted to hours of work exceeding a specified threshold (e.g., work exceeding 12 hours in a day or 48 hours in a week)? Should it be limited to specified circumstances (e.g., where an employee must meet caregiving responsibilities or respond to a family emergency)? Should there be any other conditions, qualifying requirements or exceptions?

3. Should unions and employers be allowed to negotiate alternative rules as part of a collective agreement?

4. If a right to refuse overtime with few restrictions is provided to employees, should employers be given more flexibility with respect to maximum hours of work provisions under Part III? What type of flexibility would be appropriate?

5. Instead of or perhaps in addition to providing employees a right to refuse overtime, should Part III be amended to provide minimum breaks and daily rest periods (e.g., giving employees the right to at least eight hours of rest per day)?

5. Shift Changes

Many workplaces subject to Part III operate 24 hours a day, seven days per week. While employees may be scheduled to work a particular shift for a long period of time, and arrange their personal time accordingly, others work rotating shifts or have to deal with less predictable scheduling changes. For employees with significant caregiving responsibilities, and the people for whom they care, last-minute shift changes without notice can be stressful and cause serious inconvenience.

Legislation in some Canadian provinces requires that employers provide employees advance notice of a shift change, thereby providing a measure of predictability for shift workers and giving them an opportunity to make necessary arrangements in their personal lives (e.g., making plans for child- or elder-care). Saskatchewan's current *Labour Standards Act* stipulates that an employer must give at least one week's advance notice of any change to an employee's work schedule, unless an unforeseeable occurrence arises that is sudden or unusual.[3] In Alberta, advance notice of a shift change must be made in writing at least 24 hours prior to the change, and the employee must have at least eight hours of rest between shifts.

Amending Part III, or making regulatory changes, to require that notice be provided before changing a shift could potentially benefit caregivers and other employees who must juggle work and other responsibilities. However, such a change could also entail some additional costs and administrative burdens for a number of employers.

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[3] Once the new *Saskatchewan Employment Act* comes into force, employers will be exempt from this notice requirement if unexpected, unusual or emergency circumstances arise.

Questions:

1. Should Part III be amended, or regulations be adopted, to provide that employees are entitled to at least 24 hours' advance notice of a shift change?

2. Should employers be exempted from this requirement when there are unforeseeable circumstances beyond their control? Should employers be exempted from providing notice to on-call employees who have the right to turn down a proposed shift? Are there any other grounds for waiving notice requirements?

3. Should different rules or an exemption apply with respect to employees who are covered by a collective agreement?

4. Instead of or in addition to requiring employers to provide notice of shift changes, should Part III be amended to provide minimum rest periods between shifts?

6. Right to Request Flexible Work and the Duty to Consider

Over the past two decades, many countries have enacted legislation to give employees more flexibility with respect to when, where and how long they work. The policy objective has generally been to improve employees' work-life balance, increase female labour market participation, and support employed caregivers.

Some countries, such as France, Germany and the Netherlands, afford employees the right to reduce their working hours, subject to certain conditions, and require employers to accommodate employees in doing so.

In contrast, the United Kingdom (UK), New Zealand (NZ) and Australia have adopted a different approach. These three countries give eligible employees with caregiving responsibilities a statutory right to request flexible working arrangements (FWA), such as compressed work schedules, reduced hours and telework, and place an obligation on their employer to give due consideration and respond to such requests in writing, within a specified time frame. However, employers also have substantial leeway to refuse such requests on the basis of reasonable business grounds. In essence, these provisions are aimed at encouraging individual employees and their employers to develop flexible arrangements that suit their respective needs, rather than imposing "one size fits all" solutions.

There is currently no legislation in Canada explicitly giving employees a right to request flexible working hours and requiring that employers consider such requests. A number of stakeholders and academics have argued that providing such a right under Part III would allow employees to express their individual needs for FWA to meet caregiving obligations and other similar needs.

That said, such a provision could be viewed by some employers as an unnecessary administrative burden, given that employees in many workplaces already benefit from a wide range of flexible working arrangements.

Questions:

1. Should Part III be amended to provide employees with a statutory right to request, in writing, flexible working arrangements and require employers to respond in writing, within a set deadline?

2. Should there be any conditions, such as a minimum length of continuous service, for employees to exercise this right? Should this right only be available to employees who must meet caregiving responsibilities? Should there be any measure to limit frivolous or vexatious requests?

3. What specific obligations should employers have to meet? Within what timeframe should they be required to respond to an employee's request for a FWA? Should an employee whose request is rejected be given an opportunity to discuss the issue further with the employer?

4. Should different rules apply with respect to employees who are covered by a collective agreement?

C. LEAVES OF ABSENCE

1. Short-Term Family Responsibility Leave

Short-term family responsibility leave refers to time off work – normally no more than a few days – taken by an employee to attend to family obligations, such as caring for a sick child, taking a dependent family member to a medical appointment, or arranging home care for an elderly parent.

While Part III provides for various types of leave, including parental leave and leaves to care for and support family members with critical illnesses, it currently contains no provision allowing employees to take short periods of time off to meet other caregiving responsibilities.

With the exception of Alberta and the three territories, all other Canadian jurisdictions provide unpaid, job-protected leave to attend to family responsibilities. However, the leaves vary greatly with respect to their maximum duration (3 to 12 days/year), their scope (the circumstances in which that may be taken) and eligibility requirements. In some jurisdictions (Manitoba, Newfoundland and Labrador, Nova Scotia and Saskatchewan), family responsibility leave also covers personal sick leave. In Ontario, 10 unpaid days of “personal emergency leave” is available to eligible employees for urgent family matters, personal illness and bereavement purposes.

Questions:

1. Should Part III be amended to allow employees to take a specified amount of unpaid leave per year to meet responsibilities regarding the care of a family member?

2. If so, what types of responsibilities should be covered by that leave?

3. Should the short-term responsibility leave be in addition to, or combined with, other leaves?

4. Should employees be permitted to fraction the leave into periods shorter than one day (e.g., to attend a morning medical appointment)? Should this be subject to any restrictions?

2. Long-Term Family Responsibility Leave

Long-term family responsibility leave generally refers to time off taken by an employee to care for a seriously ill family member. Two types of long-term family responsibility leave currently exist under Part III:

- Parents of a critically ill child under the age of 18 may share up to 37 weeks of leave, if they have completed at least six months of service with their employer.
- Employees, regardless of their length of service, may take up to eight weeks of compassionate care leave to provide care or support to a family member who is suffering from a significant medical condition. However, to qualify for this leave, the family member must have a significant risk of dying within a 26-week period, as attested by a medical certificate. Furthermore, the eight weeks of leave must be shared if two or more employees provide care to the same person.

Employees who take one of these two leaves and who meet eligibility requirements can receive some income replacement through special benefits under the Employment Insurance Program.

Eight provinces and all three territories provide for an eight-week unpaid compassionate care leave[4] under their employment standards legislation.[5] These leaves are very similar to the Part III compassionate care leave provision, although some provinces provide additional protection for employees. For instance, British Columbia, Manitoba and Nova Scotia do not require employees caring for the same individual to share the eight weeks of leave – each employee can take a full eight-week leave.

Saskatchewan and Quebec have distinct leave provisions that allow employees to take up to 12 weeks[6] of unpaid leave per year to care for a seriously ill or injured family member. Federal legislation in the United States, the *Family and Medical Leave Act*, also allows employees to take up to 12 unpaid weeks per year to care for a family member with a serious health condition (this leave can also be taken as personal sick leave or parental leave). In contrast with Part III provisions, these leaves can be taken even if the family member's medical condition is not likely to be fatal.

Some employees and unions have previously expressed the view that the scope of existing compassionate care leave provisions under Part III is too narrow, and that they should be expanded to cover situations beyond end-of-life care. Others may consider it preferable to establish a new distinct leave to cover broader long-term family responsibilities, while also keeping existing compassionate care leave provisions that are aligned with the Employment Insurance Program.

Questions:

1. Should Part III be amended to introduce a new long-term family responsibility leave to allow employees to provide care or support to a seriously ill or injured family member, even if the illness is not considered critical?

2. If so, what conditions and requirements (e.g., length of service, notice, proof of family member's condition) should employees have to meet to qualify for the leave?

3. Employees are not currently required to notify their employer of their intention to take compassionate care leave. Should any such requirement or other conditions be added?

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[4] Known as "family medical leave" in Ontario.

[5] Once in force, recently passed legislation in Saskatchewan will also provide for an eight-week compassionate care leave.

[6] In Quebec, this leave can be extended to 104 weeks if the employee's child is under 18 years of age and either (1) has a potentially fatal illness or (2) has suffered serious bodily injury during or resulting directly from a criminal offence that renders the child unable to carry on regular activities.

3. Bereavement Leave

Under Part III, employees may take bereavement leave during the three calendar days immediately following the death of an immediate family member. An employee who has at least three months of continuous service with the employer may receive a day off with pay for each of those days that is a regular working day.

While most other Canadian jurisdictions do not entitle employees to any pay during a bereavement leave, their leave provisions tend to give employees more time off – in some cases up to a week – and allow them to schedule it more flexibly than under Part III.[7] Unlike most provincial employment statutes, Part III does not allow an employee to defer bereavement leave to cover the date of the funeral. Nor does it provide additional leave for employees who need to travel or take time to attend to family matters.

Questions:

1. Should additional days of bereavement leave be provided to employees? If so, by how many?

2. Should any additional leave be provided with or without pay? Should the entire period of leave be unpaid, as is the case in most Canadian jurisdictions?

3. Should employees be allowed to postpone their bereavement leave to attend a funeral or a memorial service, or to accommodate travel time? If so, should there be any conditions?

4. Should current qualifying requirements for bereavement leave be modified?

4. Division of Vacation Leave

Part III does not specify in what manner an employee's annual vacation must be taken: whether it should be offered in an unbroken period or divided in shorter periods.

Half of the provinces require that employers provide vacation leave to their employees in an unbroken period; most of the others specify that annual vacations must be given in periods of at least one week. Nevertheless, provincial legislation in many cases offers employees and employers some flexibility to split annual vacations into shorter periods. For example, in Alberta and Ontario, employees may request in writing to take their annual leave in periods of less than one week, including in one-day increments if their employer agrees.

While many employees may prefer to make the most of their annual vacation by taking it in an unbroken period, others may wish to divide it in shorter periods to afford them paid time off to address various family and other obligations.

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[7] Alberta and Nunavut, which do not have statutory bereavement leave provisions, are the exception.

Questions:

1. Should Part III be amended to specify in what manner annual vacations are to be provided?

2. If so, should Part III require employers to provide annual vacations in an unbroken period? Should this be subject to any exceptions?

3. Should employers be allowed to divide an employee's annual vacation in shorter periods if requested to do so in writing? What should be the minimum duration of each vacation segment, and should it be set by regulation?

4. Should an employer and union be allowed to set different rules under a collective agreement?

5. Postponement of Vacation Leave

Under Part III, an employee's annual vacation must normally be scheduled so that it begins within 10 months after completion of the year of employment for which the employee became entitled to the vacation. However, there may be times when an employee is not able to take a vacation within the specified period because he or she is already on another leave. Unforeseen events, such as the death of a relative or a family emergency, may also arise while an employee is on an annual vacation. As a result, the employee may wish to interrupt his or her vacation to take bereavement, compassionate care or another leave provided under Part III.

Subsection 14(1) of the *Canada Labour Standards Regulations* allows an employee to postpone an annual vacation, with the written agreement of the employer. Part III also specifically allows an employee to postpone an annual vacation in order to participate as a reservist in an operation of the Canadian Forces. However, the legislation is silent regarding the interruption of an annual vacation in other circumstances.

Employment standards legislation in some jurisdictions allows employees to postpone their vacation if they are already away from work on another leave. For example, in Ontario, employees who are on a parental, personal emergency, family medical or other leaves may defer taking their vacation until the leave expires or, with their employer's consent, until a later date. Manitoba has very similar provisions.

Questions:

1. Should an employee be allowed to interrupt a vacation and postpone unused vacation days to a later date, to be agreed with the employer, when another leave recognized under Part III coincides with the vacation period?

2. Should this be subject to any conditions or exceptions?

3. Should different rules apply with respect to employees who are covered by a collective agreement?