



LEGISLATIVE SUMMARY



Bill C-44:

An Act to amend the Canada Labour Code and the Employment Insurance Act and to make consequential amendments to the Income Tax Act and the Income Tax Regulations

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Legislative Summary of Bill C-44

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-44: AN ACT TO AMEND THE CANADA LABOUR CODE AND THE EMPLOYMENT INSURANCE ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO THE INCOME TAX ACT AND THE INCOME TAX REGULATIONS

1 BACKGROUND

Bill C-44, An Act to amend the Canada Labour Code and the Employment Insurance Act and to make consequential amendments to the Income Tax Act and the Income Tax Regulations (short title: Helping Families in Need Act) was introduced in the House of Commons and passed first reading on 20 September 2012. On 2 October 2012 it received a second reading and was referred to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities for consideration.

Bill C-44 primarily amends two statutes – the *Canada Labour Code* (CLC)¹ and the *Employment Insurance Act* (EIA)² – in order to provide new benefits. It amends the CLC to provide unpaid leave to an employee who is entitled to one of the new types of leave created by the bill, for which benefits are to be provided under the EIA.

The CLC amendments allow an employee to take unpaid leave when:

- *a child of the employee is critically ill.* Up to 52 weeks of leave is allotted, and benefits will be provided under the EIA for 35 weeks.
- *a child of the employee dies or disappears as the probable result of a crime.* Up to 104 weeks of unpaid leave are provided for the death of a child, and 52 weeks for the disappearance of a child. According to the government, this new benefit will be available as of 1 January 2013 and parents will receive \$350 per week for 35 weeks, provided that they earned at least \$6,500 in the previous calendar year and take leave from their employment.³

The CLC is also amended to allow parental leave to be extended or interrupted if, for example, the claimant takes a leave of absence to care for a critically ill child or is absent due to illness or a work-related injury.

In addition to creating new benefits, Bill C-44 amends the EIA to enhance access to sickness benefits for 15 weeks because of an inability to work due to illness, injury or quarantine for parents already receiving parental benefits. It will also be possible to receive a number of special benefits consecutively and to extend parental leave if certain conditions are met.

Lastly, Bill C-44 provides access to these new benefits to self-employed persons and members of the Reserve Force.

2 DESCRIPTION AND ANALYSIS

Bill C-44 contains 37 clauses. The following description highlights selected aspects of the bill; it does not review every clause.

2.1 AMENDMENTS TO THE *CANADA LABOUR CODE*

2.1.1 AMENDMENTS TO PART III OF THE *CANADA LABOUR CODE* (CLAUSES 3 AND 4)

The CLC currently states that an employee who has completed six consecutive months of continuous employment with an employer is entitled to and shall be granted unpaid maternity leave of up to 17 weeks. According to the current provisions, this maternity leave begins not earlier than 11 weeks prior to the date of confinement and ends no later than 17 weeks after her confinement. Bill C-44 adds subsection 206(2) to the CLC, extending the period during which the employee may take unpaid maternity leave if the child is hospitalized following confinement. The period is extended by the length of the period of hospitalization, but the period during which maternity leave can be taken must not extend beyond 52 weeks.

The CLC also provides 37 weeks of parental leave for an employee who has completed six consecutive months of continuous employment. This 37-week period corresponds to the maximum length of parental benefits provided by the EIA (35 paid weeks under the EIA) to which is added the two-week waiting period. It may be split between both parents, but may not exceed a total of 37 weeks (subsection 206.1(3)).

The bill adds several new subsections to section 206.1 of the CLC concerning entitlement to parental leave. These new subsections provide a number of possibilities for extending the period of leave. Currently, the 37 weeks of parental leave must be taken during the 52 weeks following the birth or adoption of the child (subsection 206.1(2)). The additions to section 206.1 and subsequent sections by Bill C-44 allow this period to be extended by the number of weeks that the individual is on a leave of absence to care for an individual or on leave related to the critical illness, death or disappearance of a child.

The new subsection 206.1(2.2) of the CLC also provides for the extension of the period during which parental leave may be taken in the event that the newborn or adopted child is hospitalized. The extension is for the length of the child's hospitalization.

The period during which parental leave may be taken under new subsections 206.1(2.1) and 206.1(2.2) may not be extended beyond 52 weeks, bringing the total period to a maximum of 104 weeks (subsection 206.1(2.3)).

The grounds for extending the period during which parental leave may be taken also authorize the employee to interrupt parental leave (new subsection 206.1(2.4)). Parental leave resumes immediately after the other leave allowed by the CLC ends (new subsection 206.1(2.5)).

The new subsections 206.1(4), 206.1(5) and 206.1(6) of the CLC allow the individual who took leave due to sickness or a work-related illness or injury during parental leave to return to his or her former position or, if this is not possible, to be given a comparable position.⁴

2.1.2 LEAVE TO CARE FOR A CRITICALLY ILL CHILD (CLAUSE 5)

Bill C-44 provides leave related to the critical illness of a child (new section 206.4 of the CLC). Subsection 206.4(1) defines the terms “critically ill child,” “parent” and “specialist medical doctor” as having the same meaning as provided in the regulations made under the EIA.

Subsection 206.4(2) establishes the conditions for taking unpaid leave: the employee must have completed six months of continuous employment and may take leave for up to 37 weeks in order to care for or support a critically ill child. In order to qualify, the employee must present a certificate issued by a specialist medical doctor.⁵ The certificate must confirm that the child is critically ill and requires care or support, and it must set out the period during which that care or support must be given.

The period during which the leave may be taken begins on the first day of the week in which the certificate is issued in respect of the child or retroactively to the first day of the week from which the specialist medical doctor certifies that the child is critically ill. The period during which the 37 weeks of leave may be taken ends on the last day of the week during which the child dies, or 52 weeks following the date the certificate is issued or from which the child was certified as being critically ill (new paragraph 206.4(4)(b)).⁶

2.1.3 LEAVE RELATED TO DEATH OR DISAPPEARANCE OF A CHILD AS THE PROBABLE RESULT OF A CRIME (CLAUSE 6)

Bill C-44 provides this new leave entitlement for the parents of a child under 18 years of age whose death or disappearance is the probable result of a crime. The period of unpaid leave will be up to 104 weeks in the case of a death and 52 weeks in the case of a disappearance. The government has also announced plans to establish a new income support program under the Federal Income Support for Parents of Murdered or Missing Children.⁷ This benefit will allow parents to receive \$350 per week for up to 35 weeks.⁸

2.1.3.1 DEFINITIONS

New subsection 206.5(1) of the CLC provides definitions for “child,” “crime” and “parent.” A “crime” is an offence under the *Criminal Code*, other than one that is excluded by the regulations. The “child” is under 18 years of age. The definition of “parent” includes not only the biological father and mother, but also the adoptive parent and the person who has the custody of or, in Quebec, parental authority over the child.

2.1.3.2 LEAVE RELATED TO A DEATH

New subsection 206.5(2) of the CLC provides leave in the case of a child's death that is the probable result of a crime. To qualify, the employee must have completed six consecutive months⁹ of continuous employment with an employer. The employee may take up to 104 weeks of leave.

2.1.3.3 LEAVE RELATED TO A DISAPPEARANCE

New subsection 206.5(3) of the CLC provides leave in the case of a child's disappearance that is the probable result of a crime. In these circumstances, as in the previous case, the employee must have worked six consecutive months¹⁰ to qualify for the leave. However, the maximum leave period is 52 weeks, shorter than that in the case of a death.

2.1.3.4 DENYING LEAVE RELATED TO THE DEATH OR DISAPPEARANCE OF A CHILD

Two circumstances set out in new subsection 206.5(4) of the CLC result in leave in the case of a child's death or disappearance being denied: if the employee is himself or herself charged with the crime or it is probable that the child was a party to the crime.

2.1.3.5 PERIOD WHEN LEAVE MAY BE TAKEN

Subsections 206.5(5) and 206.5(6) of the CLC establish the period during which the leave may be taken. The leave period may begin on the day on which the death or disappearance occurs. In the case of a child's death resulting from a crime, the period ends no later than 104 weeks after the day on which the death occurs. In the case of a disappearance, it ends no later than 52 weeks after the day on which the disappearance occurs. However, if the child is found, the leave ends 14 days later. If the child is found less than 14 days prior to the end of the 52 weeks, the period is not extended.

Only one leave of absence will be granted even if several children die or disappear as a result of the same event. In the case of a death, the maximum leave period is 104 weeks. In the case of a disappearance, the maximum leave period is 52 weeks (new subsection 206.5(8)).

The bill clearly states that, in circumstances where it is no longer probable that the child's death or disappearance was the result of a crime, the leave ends (new subsection 206.5(7)).

2.1.4 NOTIFICATION OF INTERRUPTION OF LEAVE (CLAUSE 7)

New subsections 207.1(1) and 207.1(2) of the CLC provide that an employee who wishes to interrupt parental leave in order to take another type of leave, such as leave in the case of the death or disappearance of a child, must provide the employer with a notice in writing of the interruption before or as soon as possible after it begins. Notice in writing must also be given to the employer when the employee decides to resume parental leave.

As well, new section 207.2 of the CLC provides that an employee who interrupts maternity or parental leave to return to work as the result of the hospitalization of the employee's child must also provide the employer with notice in writing. In this situation, the employee may receive employment insurance benefits and extend the benefit period if the employee's child is hospitalized. The employer has one week to advise the employee whether the interruption of maternity or parental leave is accepted or refused.

The bill provides that, in the case that the employer refuses the interruption or does not advise the employee within the prescribed time limit of one week, the maternity or parental leave is extended by the number of weeks the child is hospitalized (subsection 207.2(3)). This extension may be requested only once for the same child (subsection 207.2(6)).

**2.1.5 NOTICE OF LEAVE RELATED
TO CRITICAL ILLNESS AND LEAVE RELATED
TO THE DISAPPEARANCE OR DEATH OF A CHILD
AS THE PROBABLE RESULT OF A CRIME (CLAUSE 8)**

New section 207.3 of the CLC provides that the employee must notify the employer as soon as possible of the reasons and the length of the leave for critical illness or the leave for the disappearance or death of a child (new subsection 207.3(1)). The employee must also notify the employer as soon as possible of any change in the length of the leave (subsection 207.3(2)). If the period of the leave is longer than four weeks, the employee must provide the employer with at least four weeks' notice of the change in the length of the leave, unless there is a valid reason why that cannot be done. If the employee wishes to return to work earlier than anticipated, but does not provide the employer with at least four weeks' notice, the employer may postpone the employee's return to work for a period of up to four weeks (new subsection 207.3(5)).

Likely this notice is intended to allow the employer to prepare for the employee's departure or return and to continue business operations with minimal inconvenience. As well, in all circumstances, the employer may require the employee to provide documentation in support of the leave or the extension thereof.

**2.1.6 PROHIBITION OF ACTION AGAINST
AN EMPLOYEE EXERCISING HIS OR HER RIGHTS (CLAUSE 9)**

Current subsections 209.3(1) and 209.3(2) of the CLC prevent an employer from dismissing, suspending, laying off, demoting or disciplining an employee because the employee is pregnant or has applied for any leave of absence under the CLC. Subsection 209.3(2) is amended to simply provide that an employer may not take action against an employee who wishes to take one of the new types of leave under Bill C-44, such as leave to care for a critically ill child.

2.2 AMENDMENTS TO THE *EMPLOYMENT INSURANCE ACT* (CLAUSES 13 TO 25)

2.2.1 EXTENSION OF THE BENEFIT PERIOD IN THE CASE OF THE PAYMENT OF SEVERAL SPECIAL BENEFITS (SUBCLAUSE 13(2))

New subsection 10(13) of the EIA, proposed by the bill, sets out the circumstances in which a claimant may extend the benefit period when several special benefits are combined and thereby receive benefits for the maximum total number of weeks. As Bill C-44 also creates new types of benefits, such as the benefit for caring for a sick child, the claimant may then combine the payment of these benefits with other special benefits. Consequently, by creating new subsection 10(13) of the EIA, Bill C-44 simplifies the criteria for extending the benefit period. However, this extension may not be for more than 104 weeks (subsection 10(14)).

The extension is possible only if no regular benefits are paid and two or more special benefits were paid during the benefit period, but for fewer than the maximum number of weeks provided by the EIA and for more than 50 weeks.

2.2.2 MAXIMUM SPECIAL BENEFITS FOR THE CARE OR SUPPORT TO CRITICALLY ILL CHILDREN (SUBCLAUSE 14(1))

Subsection 12(3) of the EIA is amended to provide up to 35 weeks of benefits to an employee providing care or support to one or more critically ill children.

2.2.2.1 CLARIFICATION REGARDING THE PAYMENT OF COMPASSIONATE CARE BENEFITS (SUBCLAUSE 14(2))

Subsection 12(4.1) of the EIA is amended to specify that an employee receiving compassionate care benefits under section 23.1 of that same Act will not receive more than six weeks of benefits within the period of 26 weeks that begins on the first day on which the benefit is paid.

2.2.2.2 MAXIMUM BENEFITS FOR A CRITICALLY ILL CHILD (SUBCLAUSE 14(3))

New subsection 12(4.4) of the EIA states that, if more than one claim is made by a parent for the same critically ill child or if more than one certificate is issued for the same child, the maximum number of weeks of benefits payable is 35 during a 52-week period.

Similarly, new subsection 12(4.5) of the EIA also provides benefits payable for a maximum of 35 weeks during a 52-week period. This subsection applies when more than one application for benefits is made for a number of critically ill children.

2.2.2.3 COMBINED BENEFITS (SUBCLAUSE 14(3))

Subsection 12(5) of the EIA currently provides the maximum number of weeks of benefits if at the same time an employee is receiving other special benefits such as maternity or sickness benefits. The amendments Bill C-44 makes to this subsection

now provide that benefits are paid for a maximum of 50 weeks. However, if the period is extended, the maximum number of weeks will be determined under subsection 10(15) of the EIA, less two weeks (waiting period).

2.2.3 AVAILABILITY FOR WORK (CLAUSE 15)

Of necessity, Bill C-44 amends section 18 of the EIA to allow a claimant to receive sickness benefits concurrently with parental benefits without having to prove that, were it not for the illness, the claimant would have been available for work.

2.2.4 EMPLOYMENT INSURANCE BENEFITS ADJUSTED BY PROVINCIAL BENEFITS (CLAUSE 16)

Under the changes to subsection 21(2) of the EIA, if a claimant receives benefits as a result of illness, injury or quarantine, the benefits will be reduced or eliminated if allowances, money or other benefits are payable to the claimant under a provincial law.

2.2.5 EXTENSION OF THE BENEFIT PERIOD (CLAUSE 17)

Bill C-44 amends subsections 23(3.2) to 23(3.4) of the current Act to allow a claimant receiving a number of special benefits in the period during which he or she is also receiving parental benefits to extend the benefit period if the maximum number of weeks has not been reached. These amendments also take into account the new benefits paid to parents of a critically ill child and allow these claimants to receive parental benefits combined with other special benefits. New subsection 23(3.2) of the EIA therefore sets the criteria for extending the period so that parental benefits are payable for a maximum number of weeks.

2.2.6 BENEFITS FOR A CRITICALLY ILL CHILD (CLAUSE 18)

Bill C-44 creates new section 23.2 of the EIA to provide new benefits to parents of a critically ill child. The section states that, if more than one child becomes critically ill from the same event, up to 35 weeks of benefits are payable. This section contains several subsections that set out all the measures to receive these benefits. Subsections 23.2(8) and 23.2(9) are particularly important, since they set out how the maximum of 35 weeks of benefits may be divided between the parents. Subsection 23.2(11) also states that, when similar benefits are payable under a provincial law, the benefits payable under the new section 23.2 will be consequently reduced or eliminated.

2.2.7 REDUCTION OF THE EMPLOYER'S PREMIUM (CLAUSE 20)

Bill C-44 replaces subsections 69(1) and 69(2) of the EIA to authorize the Canada Employment Insurance Commission, with the approval of the Governor in Council, to make regulations to reduce an employer's premiums when the employer provides benefits similar to those provided under the EIA.

2.2.8 SELF-EMPLOYED PERSONS (CLAUSES 21 AND 22)

Bill C-44 creates new section 152.03(1.1) of the EIA and allows self-employed persons receiving parental benefits to apply for sickness benefits even though they did not cease to work because of the illness. Subsection 152.03(4) of the EIA is also amended. It allows self-employed persons who fall ill while receiving parental benefits to apply for sickness benefits even if they were not involved in the normal operations of the business at the time.

New subsections 152.05(5) to 152.05(7) of the EIA establish the criteria to allow a self-employed person to extend the benefit period when he or she is receiving special benefits during the period that parental benefits are payable. These new provisions take into account the benefit for a critically ill child, and allow the maximum number of weeks of parental benefits to be reached in certain circumstances.

2.2.8.1 BENEFITS FOR A CRITICALLY ILL CHILD – SELF-EMPLOYED PERSONS (CLAUSE 23)

The bill creates new section 152.061 of the EIA, which provides benefits to a self-employed person who must care for a critically ill child. The criteria to be entitled to these benefits are similar to those set out in new section 23.2 of the EIA (see section 2.2.6 of this legislative summary), which entitles an employee other than a self-employed person to benefits.

2.2.8.2 EXTENSION OF THE BENEFIT PERIOD FOR SELF-EMPLOYED PERSONS (SUBCLAUSE 24(2))

New subsections 152.11(14) to 152.11(16) of the EIA allow a self-employed person to combine various special benefits up to a maximum number of weeks. The criteria for extending the benefit period are set out in new subsection 152.11(14) of the EIA. Generally, at least two special benefits must be payable during the benefit period and must have been payable for over 50 weeks, but must have not reached the maximum number of weeks. In almost all circumstances, the benefit period may not exceed 104 weeks.

2.3 CONSEQUENTIAL AMENDMENTS (CLAUSES 26 TO 30)

Bill C-44 also makes consequential amendments to the *Income Tax Act*¹¹ (ITA) and the *Income Tax Regulations* made under it.¹²

It ensures that the benefits provided to parents of a missing or murdered child are included in their income (subclause 26(1), which adds paragraph 56(1)(a.3) to the ITA). However, any benefits that parents may have had to repay are deducted from their income (subclause 27(1), which adds paragraph 60(u) to the ITA). The person paying such a benefit shall withhold a part of it in respect of the tax payable by the recipient (subclause 28(1), which adds paragraph 153(1)(d.2) to the ITA). Bill C-44 also authorizes any official¹³ to provide taxpayer information to the Department of Human Resources and Skills Development for the purposes of the benefit program for parents of deceased

or missing children (clause 29, which adds subparagraph 241(4)(d)(x.1) to the ITA). The definition of “remuneration” in the *Income Tax Regulations* is consequently amended (clause 30 of Bill C-44).

2.4 TRANSITIONAL PROVISIONS AND COORDINATING AMENDMENTS (CLAUSES 31 TO 36)

Clauses 31 to 33 include transitional provisions with respect to the application of the amendments made by Bill C-44. For example, the new leave of absence in the case of a death or disappearance will be available only for parents of a child whose death or disappearance occurs after this new leave of absence comes into force (clause 31 of Bill C-44).

Bill C-44 also coordinates the amendments it makes to the CLC, the EIA and the ITA with provisions of the *Jobs, Growth and Long-term Prosperity Act*¹⁴ and the *Budget Implementation Act, 2000*¹⁵ once these provisions come into force (clauses 34 to 36).

2.5 COMING INTO FORCE (CLAUSE 37)

Clause 37 sets out the day on which some of these provisions come into force or delegates to the Governor in Council the authority to fix this day. The provisions of the bill whose coming into force is not provided by clause 37 or otherwise (see subclauses 26(2), 27(2), 28(2) and 30(2)) will come into force on the day on which the bill receives Royal Assent.¹⁶

Subclause 37(1) of Bill C-44 provides for the creation of a leave of absence for the parents of a critically ill child in the CLC, which will come into force by order.

According to the government news release of 20 April 2012, the new benefit for parents of children who are deceased or missing as the result of a crime should be available as of 1 January 2013. The amendments to the CLC to allow unpaid leave in such circumstances will also come into force on 1 January 2013, or on the day on which Bill C-44 receives Royal Assent if this occurs after 1 January 2013 (subclause 37(2)). However, the Governor in Council may fix by order another day prior to 1 January 2013 (subclause 37(3)) on which these amendments to the CLC come into force.

Subclause 37(4) states that the amendments to the EIA establishing the benefits for a critically ill child come into force on a day to be fixed by order of the Governor in Council.

Subclause 37(5) states that the amendments to allow a claimant to apply for sickness benefits while receiving parental benefits under the EIA will come into force on a day to be fixed by order of the Governor in Council.

Lastly, most of the consequential amendments to the ITA and to the *Income Tax Regulations* will come into force or will be deemed to have come into force on 1 January 2013 (subclauses 26(2), 27(2), 28(2) and 30(2) of Bill C-44).

NOTES

1. [Canada Labour Code](#), R.S.C., 1985, c. L-2.
2. [Employment Insurance Act](#), S.C. 1996, c. 23.
3. Government of Canada, Office of the Prime Minister, "[PM announces new income support program for parents of victims of crime](#)," News release, 20 April 2012.
4. See exceptions regarding a return to work or a reassignment in current subsections 239.1(3) and (4) of the CLC. For a member of the Reserve Force, see new subsection 206.1(6) of the CLC.
5. The certificate may be issued by a "medical practitioner" in the circumstances set out under the *Employment Insurance Act* (new subsection 206.4(3) of the CLC).
6. See new subsections 206.4(5) and (6) of the CLC if more than one child of the employee is critically ill as the result of the same event.
7. This program will be established under the [Department of Social Development Act](#), S.C. 2005, c. 35, which authorizes the Minister to establish programs that contribute to social development and make grants and contributions in support of the programs (s. 7).
8. Government of Canada (2012).
9. The new paragraph 209.4(g) of the CLC provides that the Governor in Council may make regulations prescribing periods of consecutive months of continuous employment that are shorter than six months.
10. See, here again, the new paragraph 209.4(g) of the CLC.
11. [Income Tax Act](#), R.S.C., 1985, c. 1 (5th Supp.).
12. [Income Tax Regulations](#), C.R.C., c. 945.
13. Subsection 241(10) of the ITA defines the term "official"; it explicitly includes employees of the federal public service and of a provincial public service.
14. [Jobs, Growth and Long-term Prosperity Act](#), S.C. 2012, c. 19. For example, s. 685 of this Act repeals the *Department of Social Development Act* (DSDA) and s. 687 transfers some of the ministerial responsibilities it contained to the [Department of Human Resources and Skills Development Act](#) (DHRSDA), S.C. 2005, c. 34. This amendment effectively confirms changes already made by order in council under the [Public Service Rearrangement and Transfer of Duties Act](#), R.S.C., 1985, c. P-34. Subclauses 36(2) and 36(3) of Bill C-44 will replace references in that Act to the DSDA with references to the DHRSDA once the repeal of the DSDA comes into force and the relevant provisions are included in the DHRSDA.
15. *Budget Implementation Act, 2000*, S.C. 2000, c. 14.
16. [Interpretation Act](#), R.S.C., 1985, c. I-21, s. 6.