

## New Labour Standards: Leave for Reservists, the Concept of Cohabitation and the new Advance Notice for Paternity Leave

By **Nicolas Joubert**

*The various amendments recently made to the Act respecting labour standards<sup>1</sup> (hereinafter the “ARLS”) essentially apply to the following:*

- the introduction of a new type of authorized leave for employees who are also reservists of the Canadian Forces and take part in operations;
- the clarification of the concept of spousal cohabitation especially with regard to leave for family or parental reasons;
- details on the advance notice to be given by employees who want to take paternity leave.

These amendments came into force on October 29, 2008<sup>2</sup>.

### **New authorized leave for employees who are reservists and take part in an operation**

Under new Section 81.17.1 of the ARLS, an employee who is also a reservist of the Canadian Forces may now be validly absent from work to participate in a mission or an operation in Canada or abroad while retaining his or her employment.

If the employee is credited with at least 12 months of uninterrupted service, he or she may be absent from work for a maximum period of 18 months to take part in an operation outside Canada.



This operation includes the employee's preparation, training, rest and transportation from his residence and back.

In addition, regardless of the length of his or her uninterrupted service, an employee who is also a reservist may be absent to take part in an operation in Canada, the purpose of which is to:

- provide assistance in the case of a major disaster<sup>3</sup>;
- aid the civil power<sup>4</sup>;
- intervene in any other emergency situation designated by the Government.

The Act does not set any time limits regarding authorized leaves for these missions in Canada. However, it does provide that the conditions and period may be subsequently prescribed by regulation.

Lastly, regardless of the length of his or her uninterrupted service, an employee who is a Canadian Forces reservist may now be absent for a period of not more than 15 days to take part in annual training.

<sup>1</sup> *An Act respecting labour standards*, R.S.Q., N-1.1.

<sup>2</sup> *An Act to amend the Act respecting labour standards principally with regard to reservists* (Bill 98 - 2008, Chapter 30).

<sup>3</sup> Section 2 of the *Civil Protection Act* defines the notion of “major disaster” as “an event caused by a natural phenomenon, a technological failure or an accident, whether or not resulting from human intervention, that causes serious harm to persons or substantial damage to property and requires unusual action on the part of the affected community, such as a flood, earthquake, ground movement, explosion, toxic emission or pandemic”.

<sup>4</sup> At the request of the Attorney General of Quebec under the *National Defence Act* (Revised Statutes of Canada, 1985, chapter N- 5).



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Note that an employee cannot take advantage of the leave under new Section 81.17.1 of the ARLS if his or her absence could endanger the life, health or security of other employees or the population or cause the destruction or serious deterioration of certain property or in a case of superior force, or if the absence is inconsistent with the employee's professional code of ethics

In all cases, the employee who wishes to take a leave for reservist employees must give the employer advance written notice of not less than four weeks stating the reason for the absence and its duration, unless he or she is prevented from doing so for serious cause. In addition, the employee may return to work before the date specified in his or her notice, subject to giving the employer a new written notice of not less than three weeks. Under the ARLS, an employee who takes advantage of such leave is entitled to be reinstated in his or her former position once the mission is completed.

However, an employee who is absent for a period of more than 12 weeks may not take advantage of a leave under Section 81.17.1 before the expiry of a period of 12 months from the date of return to work.

Finally, when an employee is on leave for a mission at the end of the 12 months following the end of a reference year for annual vacation leave, his or her employer may either defer the annual leave until the following year or pay the indemnity for that leave.<sup>5</sup>

## The new concept of cohabitation

Various provisions of the ARLS refer to the concept of spouses especially those provisions dealing with absence for family or parental reasons and recourses against prohibited practices.

Under Sub-section 1(3) of the ARLS, the term "spouse" refers to persons who:

- are married or in a civil union and cohabiting;
- being of opposite sex or the same sex, are living together in a *de facto* union and are the father and mother of the same child;
- are of opposite sex or of the same sex and have been living together in a *de facto* union for one year or more.

The legislator clarified the concept of cohabitation<sup>6</sup> by specifying that spouses continue to cohabit even despite the "temporary absence" of one of them. Such is the case when, for instance, a spouse is temporarily absent because of his or her work.

The ARLS does not define the term "temporary". However, based on the case law interpretation of a statute using a similar term, there is every reason to believe that this notion refers to an absence that is brief and limited in time as opposed to one that is unlimited, undefined, lasting or permanent.<sup>7</sup>

In addition, the ARLS now provides that spouses cohabit even if one of the persons is required to live permanently in another place for health reasons (for instance, where a spouse is hospitalized) or because of imprisonment, unless the employee is cohabiting with another spouse.

## Advance notice for paternity leave

Much like the notice an employee must give for maternity leave<sup>8</sup>, new Section 81.2.1 of the ARLS now stipulates that an employee who wishes to take paternity leave<sup>9</sup> must give written notice of not less than three weeks to his employer, stating the expected date of the leave and that of the return to work. However, the notice may be shorter if the birth of the child occurs before the expected date.

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<sup>5</sup> New Section 70 of the ARLS.

<sup>6</sup> New Section 1 (3) of the ARLS.

<sup>7</sup> *Social assistance - 75*, [1994] C.A.S. 431 (interpretation of Section 2 of the *Act respecting income security*, R.S. Q., c. S-3.1.1).

<sup>8</sup> Section 81.6 of the ARLS

<sup>9</sup> Section 81.2 of the ARLS.

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