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LEGISLATIVE SUMMARY



Bill C-5: An Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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-5
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-5: AN ACT TO REPEAL DIVISION 20 OF PART 3 OF THE ECONOMIC ACTION PLAN 2015 ACT, NO. 1

1 BACKGROUND

Bill C-5, An Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1, was introduced in the House of Commons on 5 February 2016 by the Honourable Scott Brison, President of the Treasury Board of Canada.¹

As indicated by its title, Bill C-5 repeals Division 20 of Part 3 (sections 253 to 273) of the *Economic Action Plan 2015 Act, No. 1*,² which authorizes the Treasury Board to establish and modify terms and conditions of employment related to the sick leave and disability regime of employees of the core federal public administration, notwithstanding the provisions of the *Public Service Labour Relations Act* (PSLRA).³

The provisions in Division 20 of Part 3 were originally contained in Bill C-59, An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures (short title: Economic Action Plan 2015 Act, No. 1). Sponsored by the Honourable Joe Oliver, former Minister of Finance, Bill C-59 was introduced in the House of Commons on 7 May 2015. Enacted as the *Economic Action Plan 2015 Act, No. 1*, Bill C-59 received Royal Assent on 23 June 2015.⁴

1.1 THE *PUBLIC SERVICE LABOUR RELATIONS ACT* AND COLLECTIVE BARGAINING

The PSLRA is the federal legislation that regulates labour relations for the core federal public service, including collective bargaining. Collective bargaining is the process by which an employer and a bargaining agent negotiate an agreement in writing, which typically contains provisions about the terms and conditions of employment and related matters.⁵

In accordance with the provisions of the PSLRA, the Treasury Board negotiates collective agreements with bargaining agents representing the 27 bargaining units in the core federal public service. In 2014, a new round of collective bargaining began between the Treasury Board and federal public service bargaining agents (see the appendix). Issues discussed included the disability and sick leave management system of employees of the core federal public administration.⁶

The existing system of banked, unused sick leave is, in the absence of a short-term disability plan, intended to allow employees who are ill or disabled for extended periods of time to receive their regular salary while waiting a minimum of 13 weeks to access the long-term disability program. Currently, a full-time employee earns sick leave at the rate of 9.375 hours each month, which is equivalent to 15 days each year.⁷ During the round of negotiations that started in 2014, the

Treasury Board proposed a number of changes to the existing disability and sick leave management system, with an expected implementation date of 1 September 2016. The Treasury Board proposal, however, evolved over time. According to some of the most recently available sources, the proposal put forth by the Treasury Board included the following components:

- Reduce the number of annual sick leave credits from 15 to 6 days with a two-day carry-over of unused days.
- Introduce a short-term disability plan outside of the collective agreement for up to a maximum of 26 weeks, which includes a one-week waiting period for benefits, a 100% income replacement rate for the next six weeks and a 70% income replacement rate for the remaining weeks.
- Allow employees to use the accrued sick leave bank to increase their short-term disability benefits to 93% income replacement for the period between 1 September 2016 and 1 September 2018, but eliminate the employees' remaining accrued sick leave bank as of 1 September 2018.
- After 26 weeks in the short-term disability program, employees may be eligible to enrol in a long-term disability program lying outside the scope of the collective agreement.⁸

At the time of the enactment of Bill C-59, no agreement had been reached between bargaining agents and the Treasury Board regarding the disability and sick leave management system.⁹

1.2 BUDGET 2015 AND THE *ECONOMIC ACTION PLAN 2015 ACT, No. 1*

Prior to the coming into force of the *Economic Action Plan 2015 Act, No. 1*, the federal government had announced in Budget 2015 that it would “help ensure a healthier and more productive public service by working with bargaining agents to implement a disability and sick leave management system for federal public servants that [was] modern, comprehensive and responsive to their needs.”¹⁰

The new disability and sick leave management system proposed in Budget 2015 would, for instance, connect sick leave with disability benefits and supports through the introduction of a formal short-term disability plan meant to replace the existing bankable sick day system. It would also focus on early case management, including rehabilitation and return-to-work supports.¹¹ The budget estimated \$900 million in savings from changes to the public service sick leave and disability management system in the fiscal year 2015–2016, with further projected savings of \$600 million in total for the next four fiscal years.¹²

In the event that an agreement could not be reached with bargaining agents, the federal government also indicated that it would take “the steps required to implement a modernized disability and sick leave management system within a reasonable timeframe.”¹³ This proposed measure was accomplished through Division 20 of the *Economic Action Plan 2015 Act, No. 1*, which provided the Treasury Board with the power to impose changes to the public service’s disability and sick leave management system. Prior to the legislation coming into force, any such changes

normally would have been negotiated by the Treasury Board and bargaining agents in accordance with the PSLRA.

Following the 42nd general election, on 21 January 2016, the new President of the Treasury Board, the Honourable Scott Brison, advised federal public service bargaining agents that the federal government would not exercise the powers contained in Division 20 of the *Economic Action Plan 2015 Act, No. 1* and that steps would be taken during the 1st Session of the 42nd Parliament to repeal the relevant provisions of the legislation.¹⁴ On 22 February 2016, the Department of Finance Canada outlined the “reversal of sick leave savings” in a background document on the Canadian economic outlook.¹⁵

Repealing Division 20 of the *Economic Action Plan 2015 Act, No. 1* does not automatically mean that the status quo will remain in place, as federal public service bargaining agents and the Treasury Board must still negotiate a new collective agreement. This new collective agreement may or may not modify the disability and sick leave regime. Negotiations between the Treasury Board and federal public service bargaining agents are scheduled to resume early in 2016.¹⁶

2 DESCRIPTION AND ANALYSIS

Bill C-5 consists of a single clause that repeals Division 20 of Part 3 of the *Economic Action Plan 2015 Act, No. 1*. The existing text of Division 20, as reproduced in the explanatory notes of Bill C-5, is summarized in this section.

2.1 SICK LEAVE

Section 254 of the *Economic Action Plan 2015 Act, No. 1* authorizes the Treasury Board to establish and modify the terms and conditions of employment related to sick leave, despite the PSLRA. Such terms and conditions of employment may include:

- the number of hours of sick leave in a fiscal year;
- the maximum number of hours of unused sick leave that an employee may carry over from one fiscal year to the next; and
- the disposition of sick leave hours that are unused immediately before the date on which the short-term disability program becomes effective.

By operation of sections 255 and 256, properly drafted terms and conditions of employment established or modified by the Treasury Board under section 254 are deemed to be incorporated into any collective agreement or arbitral award that is binding and in force on the date on which the short-term disability program becomes effective, notwithstanding any provision to the contrary in the agreement or award. Pursuant to section 257, these terms and conditions also replace any inconsistent terms and conditions that are continued in force after a notice to bargain collectively has been given.

Finally, sections 258 and 259 provide that any provisions in an arbitral award made during the application period (namely, the four-year period following the date on which the short-term disability program becomes effective) or retroactive to this period, that are inconsistent with the sick leave terms and conditions established or modified under section 254, are of no effect during the application period.

2.2 SHORT-TERM DISABILITY PROGRAM

Section 260 of the *Economic Action Plan 2015 Act, No. 1* authorizes the Treasury Board to establish and modify, despite the PSLRA, a short-term disability program. By operation of section 261, this short-term disability program must provide:

- the rates of benefits and the period during which the rates apply;
- the maximum period for which benefits may be paid; and
- the case management services that are to be provided.

In addition, the short-term disability program may provide for a period during which benefits under it are not to be paid, as well as any other matters that the Treasury Board may consider appropriate.

Pursuant to section 262, the short-term disability program applies despite any provision to the contrary in a collective agreement or arbitral award that is binding and in force on the date on which the short-term disability program becomes effective, and despite any terms and conditions of employment that are continued in force after a notice to bargain collectively has been given. Further, provisions of a collective agreement or arbitral award entered into on or after the short-term disability program becomes effective that are inconsistent with that program are deemed to be of no effect during the application period.

In accordance with section 265, the Treasury Board is required to establish a committee, consisting of employer and employee representatives, to make joint recommendations regarding modifications to the short-term disability program. Under section 263, modifications made in this regard after the expiry of the application period cannot retroactively affect the program with respect to the application period.

Lastly, section 266 allows the Treasury Board to specify the date on which the short-term disability program becomes effective.

2.3 LONG-TERM DISABILITY PROGRAMS

Section 267 of the *Economic Action Plan 2015 Act, No. 1* authorizes the Treasury Board to modify, during the application period, any public service long-term disability program with respect to the period during which employees are not entitled to receive benefits under the program. These modifications may be made by the Treasury Board notwithstanding the PSLRA.

Pursuant to section 268, such modifications apply despite any provisions to the contrary in a collective agreement or arbitral award that is binding and in force on the date on which the short-term disability program becomes effective, and despite any terms and conditions of employment that are continued in force after a notice to bargain collectively has been given. Similarly, provisions of a collective agreement or arbitral award entered into on or after the short-term disability program becomes effective that are inconsistent with the modifications made under section 267 are of no effect during the application period.

By operation of section 269, modifications made to the long-term disability program by the Treasury Board after the expiry of the application period cannot retroactively affect the provisions of that program modified under section 267, with respect to the application period.

2.4 GENERAL

Pursuant to section 270 of the *Economic Action Plan 2015 Act, No. 1*, the right to bargain collectively under the PSLRA is continued, though subject to other provisions under Division 20.

In addition, pursuant to section 271, the right to strike under the PSLRA is not affected.

Finally, by operation of section 272, bargaining agents and employers are not precluded from amending collective agreements or arbitral awards, provided these amendments are not contrary to Division 20.

3 COMMENTARY

Initial commentary indicates that federal public service bargaining agents are generally supportive of the proposed legislative reform. However, some bargaining agents, such as the Canadian Association of Professional Employees and the Public Service Alliance of Canada, have expressed concerns over the fact that some sections of Bill C-4, A second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures, are not being repealed at the same time.¹⁷ Along with Division 20 of the *Economic Action Plan 2015 Act, No. 1*, the reforms introduced in Bill C-4 with respect to the PSLRA are considered to have “unfairly altered the collective bargaining process in the federal public sector.”¹⁸

Federal public service bargaining agents have expressed their opposition to Division 20 of the *Economic Action Plan 2015 Act, No. 1* on several occasions. Notably, during the summer of 2015, opposition to the enactment of Bill C-59 took the form of constitutional challenges and motions for injunctive relief filed at the Ontario Superior Court of Justice by more than 10 federally regulated bargaining agents, including the Public Service Alliance of Canada, the Canadian Association of Professional Employees and the Professional Institute of the Public Service of Canada. In particular, they argued that Division 20 of Bill C-59 violated their right to freedom of association (guaranteed under section 2(d) of the *Canadian Charter of*

Rights and Freedoms) by interfering with the rights of employees to engage in a meaningful process of collective bargaining and by preventing employees from participating in strike action over the issues of sick leave and disability coverage.¹⁹

Further, on 9 September 2015, the Canadian Labour Congress and Public Services International jointly filed a complaint with the International Labour Organization on behalf of 18 federal public service bargaining agents. Drafted by the Association of Canadian Financial Officers, the complaint document alleges that the provisions of Bill C-59 would grant the federal government authority to “unilaterally” modify the sick leave provisions of collective agreements, thereby infringing conventions and principles of the International Labour Organization, including the *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*.²⁰

NOTES

1. [Bill C-5: An Act to repeal Division 20 of Part 3 of the Economic Action Plan 2015 Act, No. 1](#), 1st Session, 42nd Parliament.
2. [An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures](#) (short title: *Economic Action Plan 2015 Act, No. 1*), S.C. 2015, c. 36.
3. [Public Service Labour Relations Act](#), S.C. 2003, c. 22.
4. [Bill C-59: An Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures](#), 2nd Session, 41st Parliament. See also Government of Canada, Treasury Board of Canada Secretariat, “[Government of Canada Moves to Repeal Bill C-59 and Reaffirms Commitment to Fair Negotiations](#),” News release, 5 February 2016.
5. *Public Service Labour Relations Act*, s. 2.
6. *Ibid.*, s. 111. See also Government of Canada [GoC], [Frequently Asked Questions – Collective Bargaining in the Core Public Administration](#) and [Strong Leadership: A Balanced-Budget, Low-Tax Plan for Jobs, Growth and Security](#), 21 April 2015, p. 170.
7. Public Works and Government Services Canada, [Life Events](#); and Government of Canada, [Disability Insurance Plan – member booklet](#). See also Canadian Labour Congress and Public Service International, on behalf of the National Joint Council Bargaining Agents, “[Complaint submitted to the International Labour Organization](#),” 9 September 2015, paras. 36–40.
8. Canadian Labour Congress and Public Service International (9 September 2015), paras. 41–49. See also Professional Institute of the Public Service of Canada, “[Short Term Disability Plan](#)” (Treasury Board proposal), December 2014.
9. Kathryn May, “[Clement wants sick-leave deal before election](#),” *Ottawa Citizen*, 13 May 2015. See also Canadian Labour Congress and Public Service International (9 September 2015), paras. 14–26.
10. GoC (21 April 2015), p. 168.
11. *Ibid.*, pp. 170–171.
12. *Ibid.*, Table 5.2.3, “Fiscal Outlook With Measures,” p. 360. See also Kathryn May, “[Federal budget: Government poised to impose new PS disability plan](#),” *Ottawa Citizen*, 22 April 2015.

13. GoC (21 April 2015), p. 171.
14. Government of Canada, Treasury Board of Canada Secretariat, "[Government of Canada Moves to Repeal Bill C-59 and Reaffirms Commitment to Fair Negotiations](#)," News release, 5 February 2016.
15. Department of Finance Canada, [Backgrounder – Canadian Economic Outlook](#), Annex B, Table B.1, "Summary of Economic and Fiscal Developments Since the Fall Update," 22 February 2016.
16. Julie Ireton, "[Federal public service unions back to bargaining this week](#)," *CBC News*, 5 January 2016.
17. Canadian Association of Professional Employees, [After striking the right tone with public servants, the Canadian government must now take concrete action](#), 26 January 2016. See also Public Service Alliance of Canada, [Government confirms repeal of C-59 division 20, PSAC still pushing on Bill C-4](#), 25 January 2016.

Budget Bill C-4 introduced amendments to the *Public Service Labour Relations Act*, including changes to the processes for resolving collective bargaining disputes and for determining what constitutes essential services in the event of a strike. Federal public service bargaining agents are currently challenging this legislation in court. See [Bill C-4: A second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures \(short title: Economic Action Plan 2013 Act, No. 2\)](#), S.C. 2013, c. 40. See also [Legislative Summary of Bill C-4: A second Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures](#), Publication no. 41-2-C4-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised 5 January 2016.
18. Canadian Association of Professional Employees (26 January 2016).
19. Professional Institute of the Public Service of Canada, [Update – Constitutional Challenge to Bill C-59, Constitutional Challenge to Conservative Government's 2015 Budget Bill and Update on challenge to Bill C-59 – Date set for hearing injunction motion](#). See also Public Service Alliance of Canada, [PSAC launches court action against Bill C 59](#), 30 June 2015.

See the [Canadian Charter of Rights and Freedoms](#), Part I of *Constitution Act, 1982*.
20. Kathryn May, "[Unions complain Tories breaching international labour conventions](#)," *Ottawa Citizen*, 9 September 2015. See also Association of Canadian Financial Officers, "[ACFO-drafted complaint filed at the ILO](#)," News release, 9 September 2015.

APPENDIX – SELECTED DATES REGARDING COLLECTIVE AGREEMENTS

Federal Public Service Bargaining Unit (Bargaining Unit Abbreviation)	Signing Date of Last Ratified Agreement ^a	Expiry Date of Last Ratified Agreement	Notice to Bargain Date
Air Traffic Control (AI)	31 March 2011	30 June 2014	29 Sept. 2014
Aircraft Operations (AO)	21 Nov. 2013	25 Jan. 2015	25 Sept. 2014
Applied Science and Patent Examination (SP)	31 July 2013	30 Sept. 2014	2 June 2014
Architecture, Engineering and Land Survey (NR)	25 Jan. 2012	30 Sept. 2014	2 June 2014
Audit, Commerce and Purchasing (AV)	14 Dec. 2012	21 June 2014	24 Feb. 2014
Border Services (FB)	17 March 2014	20 June 2014	16 April 2014
Computer Systems Administration (CS)	14 Dec. 2012	21 Dec. 2014	21 Aug. 2014
Correctional Services (CX)	5 Nov. 2013	31 May 2014	17 Feb. 2014
Economics and Social Science Services (EC)	15 Oct. 2012	21 June 2014	24 Feb. 2014
Education and Library Science (EB)	1 March 2011	30 June 2014	28 Feb. 2014
Electronics (EL)	26 Oct. 2012	31 Aug. 2014	1 May 2014
Financial Management (FI)	30 Sept. 2013	6 Nov. 2014	9 July 2014
Foreign Service (FS)	4 Dec. 2013	30 June 2014	28 Feb. 2014
Health Services (SH)	12 June 2012	30 Sept. 2014	2 June 2014
Law (LP)	12 March 2013	9 May 2014	9 Jan. 2014
Non-Supervisory Printing Services (PR (NS))	14 Feb. 2012	30 Sept. 2014	10 June 2014
Operational Services (SV)	6 April 2011	4 Aug. 2014	4 April 2014
Program and Administrative Services (PA)	1 March 2011	20 June 2014	24 Feb. 2014
Radio Operations (RO)	25 May 2012	30 April 2014	17 Jan. 2014
Research (RE)	12 Feb. 2013	30 Sept. 2014	2 June 2014
Ship Repair Chargehands (SR (C))	3 April 2013	31 March 2014	4 Dec. 2014
Ship Repair East Coast (SR (E))	2 April 2014	31 Dec. 2014	2 Sept. 2014
Ship Repair West Coast (SR (W))	7 Dec. 2012	30 Jan. 2015	30 Sept. 2014
Ships' Officers (SO)	6 Aug. 2013	31 March 2014	4 Feb. 2014
Technical Services (TC)	18 Oct. 2013	21 June 2014	24 Feb. 2014
Translation (TR)	25 Oct. 2012	18 April 2014	7 March 2014
University Teaching (UT)	11 March 2011	30 June 2014	28 Feb. 2014

Note: a. Almost all of these collective agreements indicate that the agreement shall become effective on the date of signature, unless otherwise expressly stipulated.

Sources: Table prepared by Dominique Fleury of the Parliamentary Information and Research Service, Library of Parliament, using information obtained from Government of Canada, [Collective Bargaining Update](#) and [Collective Agreements](#).