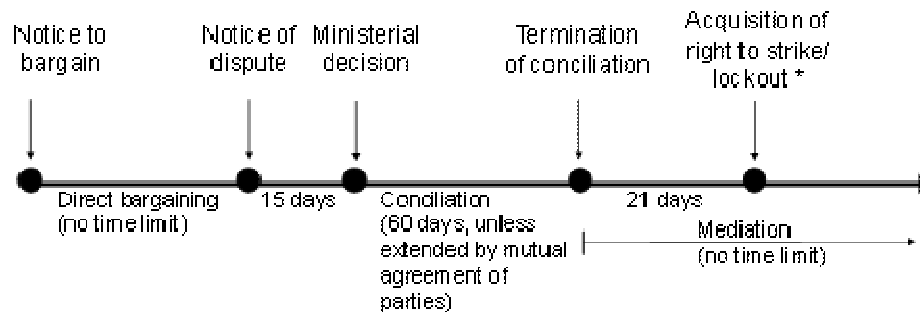


# Collective Bargaining Process

## Collective Bargaining Process

Canada Labour Code Part I



\* Right to strike/lockout cannot be exercised until:

- 1) Strike vote is taken
- 2) 72 hour notice is given

### Collective Bargaining Process timeline

- The collective bargaining process begins with a notice to bargain, a written notification given by either the employer or the union requiring the other party to commence collective bargaining for the purpose of renewing or revising a collective agreement or entering into a new collective agreement. As soon as notice to bargain is given, it is the responsibility of the employer and union to negotiate in good faith.
- If an impasse is reached or if the negotiations have not started within the time specified in [Section 50 of the Canada Labour Code](#), either party may file a notice of dispute to the Minister of Labour.
- In the event of a notice of a dispute which has been filed in full compliance as stipulated in [section 6 of the Canada Industrial Relations Regulations](#), the Minister of Labour appoints a conciliation officer within fifteen days to assist the parties in resolving their differences.
- The conciliation officer has a 60 day mandate, but the parties may, if they both agree, request an extension of the time for conciliation. At the end of the conciliation period, a 21-day cooling off period begins.
- During the cooling off period, the Minister of Labour can appoint a mediator to continue to assist the parties in reaching an agreement. During this time, parties acquire the legal right to strike or lockout. However, a legal work stoppage cannot take place until the 21-days have expired.

- As a requirement to obtain the legal right to declare a strike or lockout, a seventy-two hours' notice to the other party and to the Minister of Labour is needed. In addition, the union must obtain a strike mandate (60 days – [section 87.3 of the Code](#)) from its membership in order to commence strike action.
- If need be, the Minister of Labour can refer specific issues to the [Canada Industrial Relations Board](#) (CIRB). For example, parties must have an agreement on the maintenance of minimal services during a work stoppage to prevent an immediate and serious danger to the safety or health of the public. Where they cannot reach such an agreement, the Minister of Labour may refer the matter to the CIRB for adjudication.
- Another possibility is the appointment of an arbitrator to resolve outstanding issues, however **both parties must agree**.
- In summary, parties may not exercise their right to strike or lockout until a notice to bargain has been given, the conciliation process has taken place, twenty-one days have elapsed since the end of the conciliation process, a strike vote has been taken, and a 72-hour strike notice or lockout has been given.
- In rare instances, the period of the conciliation process (60 days) may be shortened by agreement of the parties or eliminated if the Minister decides not to appoint a conciliation officer, a conciliation commissioner or a conciliation board.
- In rare instances, a strike or lockout may have such a significant impact on the public interest that back-to-work legislation or pre-emptive legislation is needed. Back-to-work legislation or special legislation has always been seen as a last resort.

## Notice of Dispute

A notice of dispute is a formal written notification advising the Minister of Labour that the parties to a collective agreement have reached an impasse in their efforts to enter into, renew or revise a collective agreement and that the intervention of a neutral party is needed. By means of the notice of dispute, the Minister is requested to provide conciliation assistance to the parties.

As specified in [Section 71 of the Canada Labour Code](#), a notice of dispute may be provided by either party to the Minister of Labour once the parties have bargained collectively and reached an impasse, or have failed to enter into negotiations within the time specified in Section 50 of the *Code*. When a notice of dispute has been served, the Minister has the option to appoint a conciliation officer, a conciliation commissioner, establish a conciliation board or choose to not provide assistance. Under normal circumstances, a conciliation officer, who is a member of the staff of the [Federal Mediation and Conciliation Service](#) (FMCS), is appointed no later than 15 days following receipt of the notice of dispute which has been filed in full compliance as stipulated in section 6 of the [Canada Industrial Relations Regulations](#).

## Conciliation

When the employer and unionized employees cannot reach an agreement, and negotiations to renew the collective agreement reach an impasse, the Minister of Labour may decide to appoint a conciliation officer

However, the employer or the union representing the employees must make a request to the Minister by filing a "[notice of dispute](#)". Once appointed, the conciliation officer will meet the parties to assist them in resolving the impasse and reaching a collective agreement. Conciliation officers have considerable expertise in industrial relations gained through years of practical experience.

The conciliation process may take up to 60 days, although the parties may mutually agree to extend this time period.

## **Mediation**

Mediation appointments are often made once formal conciliation procedures under the *Canada Labour Code* have been completed.

The Minister of Labour may appoint a mediator at any time, either at the request of one or both parties, or on the Minister's own initiative. The appointment of a mediator does not influence the acquisition of the right to strike or lockout. In almost all cases, mediation is provided by officers of the [Federal Mediation and Conciliation Service](#).

## **Maintenance of Activities**

A maintenance of activities agreement is an agreement between the employer and the trade union confirming that in the event of a lockout or a strike, the supply of services, operation of facilities or production of goods to the extent necessary must continue to prevent an immediate and serious danger to the safety or health of the public.

To comply with [section 87.4 of the \*Canada Labour Code\*](#), an employer or a trade union may, not later than fifteen days after notice to bargain has been given, give notice to the other party specifying the supply of services, operations of facilities or production of goods that, in its opinion, must be continued in the event of a strike or a lockout. If an agreement is reached, either party may file a copy with the Canada Industrial Relations Board (CIRB). The agreement has the same effect as an order of the CIRB.

When the parties have not been able to reach an agreement on the maintenance of activities, the CIRB shall, on application made by either party no later than fifteen days after a notice of dispute has been given, determine any question with respect to the application of subsection 87.4(1) of the *Code*. In addition, at any time after a notice of dispute has been given, the Minister of Labour may refer to the CIRB any question with respect to the application of subsection 87.4(1) of the *Code*, or any question with respect to whether an agreement entered into by the parties is sufficient to ensure that subsection 87.4(1) is complied with.

## **Strike or Lockout Notice**

A strike notice is an advanced written notice that must be given by the union to the employer indicating the date and time on which a strike will begin. A lockout notice is an advanced written

notice that must be given by the employer to the union indicating the date and time on which a lockout will begin.

If no agreement is reached during the conciliation process, there is a 21-day waiting period (known as a cooling-off period) before the parties may acquire the legal right to strike or lockout. As per [article 87.2 of the \*Canada Labour Code\*](#), advance notice of strike or lockout to the other party and the Minister of Labour is required to be served at least seventy-two hours in advance. Furthermore, to strike, the union must have sought and received a positive strike vote from its members within the previous 60 days.

Strike or lockout notice must be filed in full compliance as stipulated in [section 7 of the \*Canada Industrial Relations Regulations\*](#).

From: <http://www.labour.gc.ca/eng/relations/collective/index.shtml>