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New Job-Protected Leave for Military Reservists

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On December 3, 2007, the Ontario government introduced and passed Bill 2, the *Fairness for Military Families Act (Employment Standards and Health Insurance), 2007.* In part, this legislation amends the *Employment Standards Act, 2000* (the "ESA") to create a new job-protected leave for military reservists serving on domestic operations (such as search and rescue or national disasters) or international deployments. All employers covered by the ESA, regardless of size, are now required to provide the leave to eligible employees. We have provided a brief overview of the key Bill 2 amendments below.

BACKGROUND

Prior to the introduction of Bill 2, Canadian Forces military reservists working as civilians in Ontario did not enjoy any special legislative job protection while performing tours of duty at home or abroad. Accordingly, reservists did not have a right to reinstatement into their previous jobs or comparable positions upon completion of their deployments, unless one had been negotiated contractually.

A NEW JOB-PROTECTED LEAVE

The most significant change introduced by the Bill 2 amendments for provincially-regulated employers is the creation of a leave of absence for military reservists. "Reservist" is now defined in the ESA to mean a member of the reserve force of the Canadian Forces referred to in s. 15(3) of the *National Defence Act* (Canada). Reservists who have worked for their employer for at least six (6) consecutive months are entitled to an unpaid, indefinite leave of absence, where the employee will not be performing the duties of his or her position because of a domestic or international deployment. The duration of the leave will depend on the operation to which the reservist is deployed, and may include participation in both pre- or post-deployment activities. The leave is available only if the deployment begins on or after December 3, 2007.

EMPLOYEE OBLIGATIONS

Reservists are required to provide "reasonable notice" in writing before beginning or ending the leave, unless an alternate period of notice is prescribed by regulation, and may be required to provide proof of service if requested by the employer.

EMPLOYER OBLIGATIONS

Upon the reservist's return from leave, employers are required to reinstate the reservist to the same position if it still exists, or to a comparable position if it does not. This requirement is similar to existing reinstatement obligations under the ESA, and presumably the same basic principles and considerations will apply. Reinstatement may be postponed by the later of one (1) pay period or two (2) weeks after the end of the leave, or a period prescribed by regulation. Employers are expressly not

required to continue any pension or benefit plan contributions for the duration of the reservist leave. However, if the reservist's reinstatement is postponed as outlined above, the employer is obligated to resume all payments during the postponement period.

CONCLUDING COMMENTS

The Government has implemented changes to the ESA that may have an immediate impact in Ontario workplaces. Unionized and non-unionized employers should review existing employment policies, practices and collective agreement language – including benefits and pension plans – to ensure compliance with the Bill 2 amendments outlined above. To view the amended ESA, go to the e-laws website:

www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm

The amendments implementing the reservist leave have been incorporated into sections 1, 50.2, 51 and 53 of the ESA.

If you have any questions regarding this new legislation or its potential impact in your workplace, please contact your Hicks Morley lawyer.

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