FTR Now

Federal Government Consults on Changes to Labour Standards

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The Federal Government has launched a consultation process to determine whether changes should be made to federal labour standards legislation, which is found in Part III of the *Canada Labour Code* (the "*Code*") and the *Canada Labour Standards Regulations*. The consultations cover a wide range of subjects, and, if acted upon, would have a significant impact on federally-regulated employers.

In addition to federally-regulated employers, temporary help agencies could be impacted by the consultation, which also addresses the use by federally-regulated employers of employees supplied by temporary help agencies (even where the agencies fall under provincial regulation). This issue is discussed further below.

BACKGROUND: THE ARTHURS REPORT

Several years ago, the Federal Government commissioned Professor Harry Arthurs to conduct a review of federal labour standards, with a view to his making recommendations to update and modernize the statutory scheme. In October 2006, Professor Arthurs issued a 300-page report, *Fairness at Work: Federal Labour Standards for the 21st Century*. In his report, Professor Arthurs made many, many far-reaching recommendations, including the following:

- a recommendation that Part III be amended to have proper definitions of key terms, such as "employee", "independent contractor" and "autonomous worker" (a new category, akin to a dependent contractor);
- a recommendation that all workers (whether employees, autonomous workers or independent contractors) be provided with written notice of their status, written notice of the terms of their employment contract and written notice of their rights under Part III;
- a recommendation that psychological harassment (bullying) be addressed in Part II of the *Code*;
- recommendations to expand the harassment protections of Part III to cover all forms of harassment under the *Canadian Human Rights Act* and to require the establishment of workplace human rights committees;
- numerous recommendations that address work-life balance issues, including a limited right to refuse overtime where it would conflict with family responsibilities or educational commitments, as well as a right to ask for individual accommodation of location and hours of work;
- also related to work-life balance, recommendations for changes to (and, in some cases, the creation of new) unpaid leaves to enable workers to deal with family responsibilities (ten days per year), medical issues, bereavement (up to seven consecutive days), education or court attendance, and for more flexibility for existing leaves such as maternity and parental leave (e.g. allowing both parents to take parental leave, and allowing the parental leave to be split into two parts);
- recommendations to increase vacation entitlements for longer service employees (three weeks after five years of service, and four weeks after ten), as well as permitting employees with less than five years of service to take a third, unpaid week of vacation;
- recommendations to increase severance pay amounts, and to improve the unjust dismissal procedure;
- numerous recommendations relating to "vulnerable workers", with a focus on part-time and temporary workers, including equal wages as between temporary, part-time and full-time workers where the same work is being performed, and accrual of service during broken periods of employment; and
- recommendations to address the use by federally-regulated employers of employees supplied by temporary help agencies (which generally fall under provincial regulation), including a recommendation that employers be jointly and severally liable for unpaid wages of persons supplied by temporary placement agencies, and a recommendation that the Federal Government work with the placement industry to adopt a code of conduct (i.e. establish stronger self-

regulation).

THE CONSULTATION

In response to the Arthurs Report, the Federal Government has now launched a formal consultation process in which it is examining which of the recommendations it should implement, and in which form. The consultation is almost as wide-ranging as the original report, and it appears that the government is seeking input on most of Professor Arthurs' substantive recommendations, including all of those listed above. As you can imagine, the potential impact on federally-regulated workplaces is significant.

As part of the consultation process, Human Resources and Skills Development Canada ("HRSDC") has released a 120-page discussion paper, entitled *Discussion Paper on the Review of Labour Standards in the Canada Labour Code*. The *Discussion Paper* contains a detailed discussion of the recommendations that the government is considering, and the type of feedback that the government is seeking. The *Discussion Paper* may be found at:

http://www.hrsdc.gc.ca/eng/labour/employment_standards/fls/discussion_paper/page00.shtml

Interested parties have until **May 15, 2009** to make submissions to HRSDC on the recommendations. If you have any questions about the consultation process and the potential impact it could have on your workplace, please contact your regular Hicks Morley lawyer.

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