FTR Now

Legislative Update – A New ESA Leave and Potential Changes to the Regulation Of the HR Profession

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Two new pieces of legislation have recently been introduced in the Ontario Legislature that will be of interest to employers in Ontario. The first is a government Bill that would establish a new leave under the *Employment Standards Act, 2000* ("*ESA, 2000?*). The second is a Private Member's Bill that would amend the regulatory framework that governs the human resources profession and more firmly establish the Human Resources Professionals' Association as a self-governing body.

This *FTR Now* provides an overview of both Bills.

A NEW *ESA* LEAVE

On December 8, 2011, the Ontario government introduced Bill 30, the *Family Caregiver Leave Act* (*Employment Standards Amendment*), *2011*. If passed, Bill 30 would create a new category of leave under the ESA, 2000 – **family caregiver leave.** The new leave would come into effect on July 1, 2012.

The purpose of family caregiver leave is to permit employees to take up to eight (8) weeks' unpaid leave in each calendar year to care for a relative who is suffering from a "serious medical condition." Eligible relatives include:

- a spouse;
- the parent, step-parent, or foster parent of the employee or the employee's spouse;
- a child, step-child, or foster child of the employee or the employee's spouse;
- a grandparent, step-grandparent, grandchild, or step-grand-child of the employee or the employee's spouse;
- the spouse of a child of the employee;
- the employee's brother or sister; or
- a relative of the employee who is dependent on the employee for care or assistance.

The new leave would be in addition to other leaves under the *ESA, 2000* that can be utilized by employees for the care of relatives, such as family medical leave (which is available where eligible relatives are terminally ill) or personal emergency leave. In order to qualify for the leave, the employee would be required to have a medical certificate from a qualified health practitioner stating that the employee's family member has a "serious medical condition," and would have to produce the medical certificate if requested by his or her employer.

Should Bill 30 pass, the Ontario government has indicated its intention to press the federal government for an extension of Employment Insurance benefits to those employees who qualify for the leave.

REGULATION OF THE HR PROFESSION

On December 7, 2011, three members of the Legislature introduced Bill 28, the *Registered Human Resources Professionals Act, 2011*, as a Private Member's Bill. If passed, Bill 28 would create a more comprehensive legislative framework for the regulation of the human resources profession, and would provide the Human Resources Professionals' Association (the "HRPA") with broad powers of self-regulation. Bill 28 is essentially identical to Bill 138, which was introduced in the previous session of the Legislature, but which was not passed prior to the autumn election.

The HRPA is a professional association of human resources practitioners, created under the *Human Resources Professionals Association of Ontario Act, 1990* (the "*Act*"). Among other things, the *Act* provides for the establishment of by-laws, including by-laws that relate to academic requirements and experience for registration, member conduct and standards of practice. The *Act* also empowers the HRPA to address professional misconduct, incapacity or incompetence issues, and creates a single designation – the Certified Human Resources Professional ("C.H.R.P.") – for members who have satisfied the criteria set out in the by-laws.

Bill 28 would expand and update the regulatory structure governing the HRPA. Some of the notable features of the Bill include:

- The Bill would continue to permit persons to practise in the field of human resources without being a member of the HRPA.
- The Bill would establish several professional designations signifying membership in the HRPA, member status and qualifications. Misuse of these designations would be an offence for which persons could be subject to a $25,000 fine.
- The Bill would establish a complaints, discipline and appeal process, which could include the awarding of costs against a member.
- The HRPA would be given broad powers in respect of members found to have engaged in professional misconduct.
- The Bill would provide for investigations and "practice inspections" and empower investigators and inspectors to enter business premises, question individuals and require the production of documents or things believed to be relevant to the investigation. The Bill would make obstruction of an investigator or inspector an offence, with liability of up to $25,000 upon conviction.
- The Bill would also give the HRPA wide powers to determine whether a member has the capacity to engage in a human resources practice.
- Moreover, the Bill would permit for custodianship of a member's practice, including certain property related to that practice, in a variety of situations, including termination of membership, death and incapacity.

Historically, very few Private Member's Bills are passed by the Legislature into law. However, in this case, Bill 28 has three co-sponsors, one from each party in the Legislature, and it is difficult to predict the impact of the minority status of the government. We will continue to monitor the Bill's progress over the coming months.

If you have any questions about either of these legislative developments, please contact your regular Hicks Morley lawyer.

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