FTR Now

Federal Government Introduces Second Budget Implementation Bill

Date: October 26, 2012

On October 18th, the federal Government introduced Bill C-45, the *Jobs and Growth Act, 2012.* This is the second Budget Bill introduced in Parliament to enact measures announced in the federal Budget, which was tabled on March 29, 2012. In addition to enacting various Budget measures, Bill C-45 would also enact changes to the *Canada Labour Code,* which will be of interest to federally regulated employers. In this *FTR Now*, we discuss the proposed changes to the *Canada Labour Code,* and identify some Budget measures that would be enacted by Bill C-45, and which would be of interest to employers.

CANADA LABOUR CODE AMENDMENTS

Bill C-45 would make amendments to three aspects of the *Canada Labour Code* – vacation pay, general holidays and the complaints process.

With respect to vacation pay, Bill C-45 would amend the time frame during which any accrued vacation pay would need to be paid to an employee after the employee’s employment came to an end. Currently, accrued vacation is payable “forthwith”; Bill C-45 would amend the *Code* to provide that accrued vacation pay would need to be paid out within 30 days after the date on which the employment ceased.

With respect to general holidays, Bill C-45 would amend a number of provisions. While many of the changes focus on grammar and reorganization of existing provisions, there are several substantive amendments proposed:

- A new “holiday pay” calculation would be introduced. Holiday pay would now be calculated as one-twentieth (1/20) of the wages earned by the employee during the four weeks that preceded the week in which the general holiday occurred. For the purpose of this calculation, wages would not include overtime pay. This new formula is similar to that used in some provincial employment standards legislation, including the statutes in Ontario and Quebec.
- For employees paid on a commission basis, at least in part, and who have at least 12 weeks of continuous employment, the holiday pay calculation would be one-sixtieth (1/60) of the wages, excluding overtime pay, earned during the twelve weeks that precede the week of the holiday.
- Bill C-45 would eliminate the current requirement that employees work at least 15 days in

the previous 30 to be eligible for holiday pay. Instead, the new holiday pay formula would apply.

- Notwithstanding the elimination of the “15 in 30” eligibility criterion, holiday pay would not be owed to any employee for a holiday that fell within the first 30 days of his or her employment. However, if the employee actually worked on the holiday, he or she would be entitled to 1.5 times the regular rate for hours actually worked (or straight time if he or she worked in a continuous operation).
- Bill C-45 would clarify that the *Code*‘s sale of business provisions apply to the General Holidays division as well, ensuring that service for the purpose of holiday pay will be unbroken where a business is sold or otherwise transferred.

The other main group of amendments would relate to the process by which claims are made for unpaid wages or other alleged violations of the *Code.* Amongst other changes, Bill C-45 would introduce several time limits into the process that would apply to non-union employees:

- For complaints relating to unpaid wages or other amounts, employees would need to bring a complaint under the *Code* within six months of the last day that the wages were required to be paid. For all other complaints, the six-month time limit would begin to run from day on which the subject matter of the complaint arose.(Note that the six-month time limit would not apply to unjust dismissal claims, which would continue to be governed by the 90-day time limit set out in section 240 of the *Code*.)

- In addition to the new time limit for bringing a complaint, Bill C-45 would place restrictions on the time frame for which unpaid wages could be ordered by an inspector.
    - In the case of an employee complaint for unpaid wages, but where the employee had not been terminated, an officer could only issue an order for unpaid wages during the 12 months preceding the date of the complaint.
    - In the case of an employee termination, the 12-month period would run backward from the date of termination.
    - In the case of an inspection, the 12-month period would run backward from the date the inspection began.
- For vacation pay purposes, the 12-month time limit would be extended to 24 months.

Bill C-45 would also give inspectors greater control over the inspection process. For example, inspectors could require complainants to take specified measures before considering a complaint. In addition, the Bill would establish a wide range of conditions under which an inspector could dismiss a complaint, including, for example, a determination that the employee should pursue alternative means to resolve the complaint.

Bill C-45 would also make a number of changes to the review and appeal process that would apply following the issuance of an order or a decision to dismiss the complaint.

IMPLEMENTATION OF BUDGET MEASURES

The main purpose of Bill C-45 is to implement Budget measures from the federal Government's 2012 Budget. In our March 30, 2012 *FTR Now*, "Federal Budget 2012 – Highlights for Employers", members of our Pension & Benefits Practice Group provided a detailed review of the Budget's key provisions. Readers are referred to that publication for a more detailed discussion of the measures that Bill C-45 would implement, which include:

- Implementation of tax changes in respect of employer contributions made to group sickness or accident insurance plans, where benefits are payable on a non-periodic basis or where there is no loss of employment income. In certain circumstances, employees would be subject to tax on the employer contributions made in respect of these benefits.
- Implementation of changes to the regulation of Retirement Compensation Arrangements and Employees Profit Sharing Plans designed to counter perceived abuses of these savings vehicles. The Bill would also permit income received from a Retirement Compensation Arrangement to be eligible for pension income splitting in certain circumstances.
- Introduction of measures to accommodate Pooled Registered Pension Plans, though we remind readers that provincial governments still need to pass legislation to allow provincially regulated employers to participate in PRPPs.
- Amendment of the *Employment Insurance Act* to introduce a temporary measure to refund a portion of employer premiums for certain small businesses.
- Commencement of wide-ranging pension reforms for the federal public service.

CONCLUDING COMMENTS

The Bill C-45 does not address the Budget proposal to require long-term disability plans be insured, nor does it introduce any further reforms to the federal *Pension Benefits Standards Act.* However, when passed, it will enact changes that will impact a wide range of employers. For federally regulated employers, it is important that you review your vacation and holiday pay policies to determine the impact of the proposed amendments to the *Canada Labour Code.* For all employers, we recommend that you review our March 30, 2012 *FTR Now*, "Federal Budget 2012 – Highlights for Employers", to determine what impact the various other Budget measures might have on your business.

At the time of writing, Bill C-45 was being debated at Second Reading in Parliament. The Government has passed a "time allocation" motion limiting Second Reading debate to a further four days of debate, ensuring that the Bill will move more quickly through the legislative process. We will be monitoring the progress of Bill C-45 and will report key developments or any amendments on our blog, Human Resources Legislative Update.

If you have any questions about any Budget-related matters, please feel free to contact any member of the [Pension & Benefits Practice Group] or your [regular Hicks Morley lawyer.]