

FTR Now

Canada Labour Code Amendments (Bill C-45) to Come into Force April 1, 2014

Date: March 20, 2014

Effective April 1, 2014, much-anticipated amendments to the [Canada Labour Code](#) (“Code”) first outlined in Bill C-45, the *Jobs and Growth Act, 2012*, will come into force. The amendments will implement a statutory framework for complaints relating to unpaid wages and other alleged violations of the Code, its regulations or orders made under Part III. Significantly, this framework will impose new time limits on the making of complaints and limitation periods for the payment of vacation owing and for the recovery of unpaid wages through payment orders. The Bill C-45 amendments also change the process for challenging a payment order and the timeline for payment of vacation pay after termination of employment. No coming into force date has yet been announced for the Bill C-45 amendments to the holiday pay provisions.

In this *FTR Now*, we discuss how the amendments coming into force on April 1, 2014 will impact federally regulated employers going forward.

BILL C-45 AND PART III OF CANADA LABOUR CODE

Bill C-45, the *Jobs and Growth Act, 2012*, is omnibus legislation giving effect to initiatives found in the federal government’s Budget 2012, [Economic Action Plan 2012 – A Plan for Jobs, Growth and Long-term Prosperity](#). Among other things, Bill C-45, which received Royal Assent on December 14, 2012, will implement a number of amendments to Part III of the Code, which governs the minimum labour standards that apply to employees and employers in the federal sector, including hours of work, wages, vacations and holidays, and termination and severance pay.

The Code does not currently contain a formal process for employees to file complaints relating to unpaid wages or other violations of Part III of the Code, other than the process set out in Division XIV relating to allegations of unjust dismissal. Although the Department of Employment and Social Development Canada (formerly Human Resources and Skills Development Canada or “HRSDC”) developed and currently administers a complaints handling process for wage recovery issues under Part III of the Code, no statutory limitation periods are in place, and case law has suggested that federal employers’ liability is quite open-ended under the current Code.

The Bill C-45 amendments create a comprehensive framework that will apply to unpaid wages and any other minimum labour standards complaints, excluding unjust dismissal complaints, which remain subject to the existing Division XIV process.

THE NEW REGIME (COMPLAINTS OTHER THAN UNJUST DISMISSAL)

Under the process that comes into effect April 1, 2014, any employee may make a complaint in writing to an Employment and Social Development Canada – Labour Program (Labour Program) inspector if he or she believes that the employer has contravened the *Code*, its regulations or an order made under Part III. Subject to extension in prescribed circumstances, the following prescribed time limits will apply to the making of such complaints, and for the recovery of unpaid wages through payment orders:

- a six-month time limit on complaints of non-payment of wages or other amounts to which an employee is entitled under Part III (i.e. from the last day on which the employer was required to pay those wages or other amounts under this Part); and
- a six-month time limit on any other complaint (i.e. six months from the day on which the subject-matter of the complaint arose).

TIME LIMIT ON PAYMENT ORDERS

Currently, the power of inspectors to issue written payment orders for payment of an employee's unpaid wages or other amounts owing is not subject to a time limit. Accordingly, payment orders could apply to a period spanning years, creating costly administrative delays and uncertainty for employers.

The amendments specifically address and clarify this issue by establishing a time limit of 12 months (24 months for vacation pay) on the period that may be covered by a payment order. The time period is calculated from the date on which the complaint is made or on the date employment was terminated, as the case may be. In any other case (such as proactive inspection), the time period is calculated from the date on which an inspection began.

UNFOUNDED COMPLAINTS, MEDIATION AND REJECTION OF COMPLAINTS

Where the inspector concludes that the employer has paid all wages and other amounts to which the employee is entitled within the six months preceding the complaint, or any extended period for filing a complaint, the inspector must notify the employee in writing that his or her complaint is "unfounded."

In addition, inspectors will have broad powers to facilitate and expedite the process through the mediation of complaints. The inspector may also reject a complaint if the inspector is satisfied that, among other things:

- the complaint is not within the inspector's jurisdiction;

- the complaint is frivolous, vexatious or not made in good faith;
- the complaint has been settled;
- other means are available to the employee to resolve the subject-matter of the complaint that should be pursued;
- the subject-matter of the complaint has been adequately dealt with through recourse obtained before a court, tribunal, arbitrator or adjudicator;
- there is insufficient evidence to substantiate the complaint (in respect of a complaint other than a complaint of non-payment of wages or other amounts); or
- the collective agreement governing the employee covers the subject-matter of the complaint and provides a third party dispute resolution process.

NEW, TIME-LIMITED INTERNAL REVIEW PROCESS

If a complaint is rejected, the inspector must notify the employee in writing, and provide reasons for the decision. An employee may make a written request for review of that decision within 15 days. Upon review, the decision may be confirmed, rescinded, varied or directed to an inspector. The review decision may be appealed on a question of law or jurisdiction only.

TRANSITIONAL PROVISIONS

Specific transitional provisions provide that the *Code*, in its current form, will apply to complaints filed before April 1, 2014, as well as to notices of unfounded complaint and to payment orders issued relating to such complaints.

VACATION PAY FOLLOWING TERMINATION

Currently under the *Code*, an employer is obligated to pay accrued vacation pay to a terminated employee “forthwith.” From April 1, 2014 onwards, employers will be required to pay unpaid vacation pay within 30 days of the date on which an employee ceases to be employed.

IMPACT ON FEDERALLY REGULATED EMPLOYERS

The most significant aspect of the Bill C-45 amendments coming into force on April 1, 2014 is the imposition of express time limits on the process for making complaints under Part III of the *Code* and on the potential period of retroactive liability under a payment order. These types of amendments to the *Code* have been under discussion for more than a decade and pre-date Commissioner Harry Arthurs’ 2006 report, *Fairness at Work: Federal Labour Standards for the 21st Century*, which recommended that limitation periods be introduced into the *Code*. The limitation periods aspects of the Bill C-45 amendments will create administrative efficiencies, provide employers with a greater degree of certainty and reduce the costs associated with the current system.

If you have any questions about the Bill C-45 amendments, please contact your [regular Hicks Morley lawyer](#).

The articles in this Client Update provide general information and should not be relied on as legal advice or opinion. This publication is copyrighted by Hicks Morley Hamilton Stewart Storie LLP and may not be photocopied or reproduced in any form, in whole or in part, without the express permission of Hicks Morley Hamilton Stewart Storie LLP. ©