FTR Now

New Federal Holiday Pay Formula Effective March 16, 2015

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Effective March 16, 2015, significant reforms to the general holiday provisions of Part III of the *Canada Labour Code* will come into force. The amendments include the introduction of a new "holiday pay" formula and the elimination of certain qualifying requirements. In this *FTR Now,* we highlight key aspects of these pending changes and the impact they will have on federally regulated employers.

BILL C-45 AND PART III OF *CANADA LABOUR CODE*

Bill C-45, the *Jobs and Growth Act, 2012*, was omnibus legislation that gave effect to initiatives found in the federal government's 2012 Budget, *Economic Action Plan 2012 – A Plan for Jobs, Growth and Long-term Prosperity*. Bill C-45, which received Royal Assent on December 14, 2012, has and will implement a number of amendments to Part III of the *Canada Labour Code*, which governs the minimum labour standards that apply to employees and employers in the federal sector, including hours of work, wages, vacations, general holidays, notice of termination and severance pay.

In April 2014, the government proclaimed into force Bill C-45 provisions that amended the claims process under the *Code*. These changes were summarized in our March 20, 2014 *FTR Now*, "*Canada Labour Code* Amendments (Bill C-45) to come into Force April 1, 2014."

The government has recently announced that certain Bill C-45 amendments related to general holidays will come into force on March 16, 2015. Under the current framework, the *Code* employs a variety of different formulas by which "holiday pay" is calculated, which depend on how the employee is paid (e.g. weekly or monthly, daily or hourly, or on some other basis such as mileage), and whether or not the employee has variable hours of work. In addition, the current framework requires employees to have worked a minimum of 15 of the 30 days preceding the general holiday to qualify for any payment of holiday pay.

NEW HOLIDAY PAY GENERAL FORMULA

The Bill C-45 amendments to the *Code* – along with some accompanying amendments to the *Canada Labour Standards Regulations* – introduce a new "holiday pay" formula that will apply to federally regulated employees. Under the new formula, holiday pay is to be calculated as one-twentieth (1/20) of the wages, excluding overtime pay, earned by the employee during the four

weeks that preceded the week in which the general holiday occurred. This new formula is similar to that used in some provincial employment standards legislation, including that in Ontario and Quebec.

For employees paid, at least in part, on a commission basis, and who have at least 12 weeks of continuous employment, the holiday pay calculation will be one-sixtieth (1/60) of the wages, excluding overtime pay, earned during the 12 weeks that precede the week of the holiday. This longer calculation period is intended to address and smooth out income fluctuation that is often experienced by commission-paid employees.

ELIMINATION OF THE “15 IN 30” ELIGIBILITY CRITERION

The amendments will also 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 will apply to all employees who have been employed for at least 30 days. (Employees who have been employed for less than 30 days are not entitled to holiday pay, though must generally be paid 1.5 times their regular rate for hours actually worked on a holiday, subject to limited exceptions.)

MISCELLANEOUS CHANGES

In addition, the Bill C-45 amendments clarify the holiday pay entitlements of employees who work in continuous operations and for employees who work in “multi-employer units” (typically found in the longshoring industry).

The amendments also clarify that the *Code*‘s sale of business provisions apply to general holidays as well, ensuring that service for the purpose of holiday pay will be unbroken where a business is sold or otherwise transferred.

IMPACT ON EMPLOYERS

The new approach to calculating holiday pay should make it easier for federally regulated employers to develop a consistent approach to the payment of holiday pay, and may help to create some administrative efficiencies.

For full-time employees, the impact of the new formula will depend on a variety of factors. For employees who work a regular 5-day work week, there should be little impact on the amount of holiday pay owing. For employees who work other schedules, the averaging formula can have a more noticeable impact. For example, if an employee works a 4-day week, at 10 hours per day, the formula will yield a holiday pay calculation of 8 hours’ pay only. Conversely, employees who regularly work 6 days per week would see an increase in holiday pay owing under the formula.

For part-time employees, the changes will be two-fold. First, with the elimination of the “15 in 30”

rule, more part-time employees will be eligible for holiday pay for the first time. Second, for those part-time employees who have been able to satisfy the "15 in 30" rule, there is likely to be a reduction in holiday pay owing due to the application of the new formula.

For employers who are unionized, the general holidays provisions of the *Code* (found in Division V of Part III) do not apply to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by the statute (and provided that there is an appropriate third party settlement process in effect, which will be the case with most, if not all, collective agreements).

Amendments to the Regulations suggest that the new holiday pay formula will become the new baseline against which the terms of a collective agreement are to be assessed, at least with respect to employees who do not work on the holiday. Unionized employers will want to review their collective agreements to ensure continued compliance with the revised *Code* and Regulations.

If you have any questions about how these changes will impact your workplace, please contact your regular Hicks Morley lawyer.

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