FTR Now

Federal Budget 2017

Date: March 24, 2017

On March 22, 2017, the federal government tabled its 2017 Budget, *Building A Strong Middle Class (#Budget2017)*. The Budget provides an economic and fiscal overview and introduces a series of programs, reforms and spending initiatives which focus on innovation, lifelong learning, infrastructure investments (including a new national housing strategy), tax fairness for the middle class and providing greater support for veterans and their families, safety, security and healthcare initiatives. For the first time, a federal budget includes a Budget Gender Statement which analyzes how public policies impact women and men differently. The reforms that are of particular interest to employers and human resources professionals, which are highlighted in this *FTR Now*, include:

- Employment insurance (EI) reforms, including more flexible maternity and parental benefits
- Changes to federally regulated employment standards under the *Canada Labour Code,* including flexible work arrangements, leave of absence provisions and unpaid internships, and
- Employment-related tax reforms.

Employment Insurance (EI) Reform

The federal government will change the EI system by establishing a new 15 week caregiving EI benefit and making EI parental and maternity benefits more flexible. The effective date of these changes to the EI program are not included in the 2017 Budget or Budget documents but there is an indication that they will take effect in 2017 or 2018. As part of the Budget's lifelong learning initiatives, the government also proposes amendments to the regular EI benefit program to facilitate self-funded worker re-training while in receipt of regular EI benefits. Finally, the Budget announced an increase to employee and employer EI premiums effective January 1, 2018 and earmarks funding for measures to improve EI services through modernization of benefit delivery aimed at improving access and speeding up the EI benefits application process.

New EI Caregiving Benefits & Enhanced Flexibility for Critical Illness and Injury EI Benefits

The government plans to implement a new caregiving benefit of up to 15 weeks. This benefit applies to individuals providing significant care to an adult family member in need of support to recover from a critical illness or injury. This benefit is available in addition to the current 26 week compassionate care leave applicable to individuals who care for gravely ill adults who have a significant risk of dying within a 26 week period. The caregiving benefit would apply to critical illness or injury where a full or partial recovery is expected.

The Budget also includes a proposal to allow family members other than parents to share the existing 35 week benefit period related to caring for a critically ill or injured child.

Making EI Maternity & Parental Benefits More Flexible

Currently, parents may take a maximum of 15 weeks of maternity EI benefits and 35 weeks of parental EI benefits for a total of 50 weeks of maternity and parental EI benefits. Both maternity and parental EI benefits are paid at the rate of 55 percent of average weekly earnings. Pregnant women are entitled to EI maternity benefits commencing up to eight weeks prior to their due date. Parental benefits begin no earlier than the birth or adoption of the child and generally must be paid within 12 months of the date the child comes into the care of the parent.

The Budget proposes to permit women to claim EI maternity benefits earlier – up to 12 weeks before their due date. The length of the EI maternity benefit period is not expected to change but the commencement date would become more flexible. In addition, the Budget would give parents the option to choose to receive EI parental benefits at the lower benefit rate of 33 percent of average weekly earnings extended over an 18 month time period or to receive parental EI benefits at the current rate of 55 percent of average weekly earnings over the current maximum 12 month period.

For employers offering supplemental unemployment benefit plans or pregnancy and parental top-up plans, these changes could have a significant impact on the cost and design of the plan. The Budget does not explain whether the amended parental leave provisions will apply to individuals on leaves of absence when the measures come into effect. Once amendments to the *Employment Insurance Act* (EI Act) giving effect to these measures are introduced, further analysis to determine their potential impact on your workplace will be necessary.

As explained below, the Budget also contemplates amendments to the *Canada Labour Code* (*Code*) to provide job protection for employees in federally regulated sectors who choose to take advantage of the more flexible EI benefits regime.

Facilitating Training While Receiving Regular EI Benefits

Under the EI Act, EI recipients must be available to work and be actively seeking appropriate work in order to be eligible for regular EI benefits. Although there are some exceptions for certain training programs during which an EI recipient is deemed to qualify for continued EI benefits, many unemployed individuals find themselves in a “Catch-22” situation: they cannot find new suitable work without pursuing training but they also cannot pursue such training without foregoing the EI benefits they require to support themselves and their family.

The Budget promises that unemployed workers receiving regular EI benefits will be able to return to school on their own initiative to receive self-funded training without risking losing their EI benefit entitlements. This measure is expected to come into effect in 2018 or 2019.

EI Premium Increases

EI Premiums are expected to increase from $1.63 to $1.68 per $100 of insurable earnings commencing on January 1, 2018. This is the maximum allowable annual increase permitted under the EI Act.

Canada Labour Code Reform

In addition to the initiatives summarized above, the Budget outlines proposals for targeted amendments to the *Code* that would enhance protections for workers and interns in the federal sector. We describe these below.

Unpaid Leaves of Absence for Federally Regulated Employees

As noted above, the government proposes to amend the *Code* to enhance job protection of federally regulated employees receiving benefits, including the more flexible maternity leave and the new, extended 18 month parental leave. While no details are provided in the Budget, we expect the government to propose *Code* amendments to support the EI Act reforms described above.

Further amendments to the *Code* would provide federally regulated employees with the following new unpaid leaves of absence related to:

- family responsibilities
- participation in Indigenous practices
- seeking care for victims of family violence.

In addition, the government will introduce amendments to enhance the flexibility of bereavement leave.

Employee Requests for Flexible Work Arrangements

In its [2016 Budget], the government announced that it would explore ways to ensure federally regulated employees could better manage the demands of paid work and their personal and family responsibilities outside of work. Building upon this initiative – and with a particular view to supporting women's participation in the labour market – the 2017 Budget proposes to amend the *Code* to provide employees with the right to request flexible work arrangements from their employer, including flexible start and finish times and the ability to work from home.

Protections for Unpaid Federal Interns

Unpaid federal internships in sectors where the internship is not part of a formal educational program will be eliminated. Labour standards protections – including maximum hours of work, weekly rest days and general holidays – will be extended to unpaid federal interns whose internships are part of a formal educational program.

Enhanced Compliance & Enforcement

To strengthen current compliance and enforcement mechanisms under the *Code*, the Budget provides for an investment of $13 million over 5 years starting in 2017-2018, with further ongoing annual investments of $2.5 million.

The reforms outlined above will have a significant impact on federally regulated employers. However, it is important to note that the Budget does not provide a timeframe for the introduction of new legislation to implement these changes or indicate what specific legislative amendments to the *Code* will be proposed. Once amendments are introduced in Bill form, the proposed changes will have to progress through the normal legislative process. We will continue to monitor and report on developments in this area.

Employment-Related Income Tax Reforms

Electronic Delivery of T4s and Other Information Returns

Budget 2017 proposed amendments to the *Income Tax Act* (ITA) which will allow employers to issue T4s electronically, rather than in paper form, without the need for employees to provide their express consent. Employers will be required to adopt certain privacy safeguards to ensure that T4 information remains confidential. In addition, electronic delivery will not be permitted if an employees requests a paper T4, and for former employees and employees on leaves of absence at the time the T4 is issued. As more information becomes available on the privacy standards that employers will be required to meet in order to use electronic delivery, we will publish a further update. This change will apply starting with T4s issued for the 2017 calendar year.

Employee Home Relocation Loans

In certain circumstances, an employer may provide a home relocation loan to an employee. Generally, home relocation loans are designed to help employees cover the cost associated with acquiring a new residence that is at least 40 kilometres closer to the new work location. Interest-free and low-interest home relocation loans result in a taxable benefit being included in the employee's income. Since 1985 however, the ITA has provided for a tax deduction the effect of which was to offset the taxable benefit associated with the first $25,000 of a home relocation loan for up to five years. The Budget proposes to eliminate that deduction with the result that home relocation loans would become a less tax-effective employee benefit starting in 2018.

Eligibility of Fertility Treatments for Medical Expense Tax Credit

The medical expense tax credit (METC) provides tax relief to individuals who incur significant medical expenses for themselves or eligible dependants. In addition to its impact on employees' personal income taxes, METC eligibility of a particular expense can impact employer-sponsored private health services plans (PHSP), such as group health plans and health spending accounts (HSA).

Group benefit plans that qualify as a PHSP enjoy favourable tax treatment. Employer-paid premiums are not taxable to the employee, nor are the reimbursements for medical expenses received by an employee. The Canada Revenue Agency's administrative position is that, in order for a plan to qualify as a PHSP, all or substantially all of the premiums paid under the plan must relate to METC-eligible medical expenses.

The Budget proposes to clarify the availability of the METC for individuals who require medical intervention in order to conceive a child (including single Canadians and same-sex couples). The proposed ITA amendments ensure that individuals who incur expenses associated with fertility treatments are subject to the same rules, whether or not the reason for the intervention is on account of medical infertility.

While not every PHSP covers prescription fertility drugs, in-vitro fertilization and associated expenses, certain plans do provide this coverage and will be affected by the change. Certainly, HSAs are likely to be impacted. To address potential human rights considerations, employers who maintain a PHSP should ensure that their plan is administered in a manner consistent with this clarification. For METC purposes, this measure will take effect for 2017 and subsequent tax years and there are special ITA provisions to allow for fertility treatment expenses incurred in the last 10 years to be claimed on a retroactive basis.

Non-Accountable Expense Allowances for MLAs and Municipal Office-holders

Currently, the ITA permits elected members of a provincial or territorial legislative assemblies (e.g. Ontario MPPs), officers of municipal corporations, elected officers of municipal corporations and boards and members of school boards to receive a portion of their earnings as a non-taxable expense allowance. The recipient is not required to account for any expenses incurred in connection with their official duties. A portion of such an allowance qualifies as a non-taxable benefit. The Budget proposes to eliminate this tax exemption on the basis that it confers an advantage not enjoyed by other Canadians. The exemption will remain in place for 2017 and 2018 to allow time for compensation practices to be adjusted.

Registered Plan Reforms

The Budget does not propose any changes to the taxation of registered pension plans, registered retirement savings plans, registered retirement income funds or tax-free savings accounts. However, the Budget does propose to extend certain anti-avoidance rules that currently apply to certain registered plans to registered disability savings plans and registered education savings plans.

Temporary Foreign Workers Program

The Temporary Foreign Worker Program is a federal program that allows Canadian employers to hire foreign nationals to fill temporary labour and skill shortages when qualified Canadian citizens or permanent residents are not available. Following a review done late in 2016, the government announced plans to improve the program in a number of ways. The Budget affirms the government's commitment to make improvements to the program, as well as the International Mobility Program, as the two programs that govern the entry of foreign nationals into Canada. One of the key changes will be to eliminate the four-year cumulative duration rule, which limited the engagement of foreign workers to four years and was unpopular with employers and foreign workers who found it to create hardship and instability. Other changes that were announced include: introducing recruitment requirements for low-wage employers to be directed at Canadian workers; extending the cap on the number of low-wage temporary foreign workers employed in seasonal industries this year; and further analysis on access to permanent residency by temporary foreign workers.

Accessibility Legislation to be Introduced

The Budget announced that the government will develop federal accessibility legislation in areas of federal jurisdiction to promote equality of opportunity and increase the inclusion and participation of Canadians with disabilities.

Prescription Medication and Health Innovation

The Budget announced an investment of $140.3 million over 5 years going to Health Canada, the Patented Medicine Prices Review Board and the Canadian Agency for Drugs and Technologies in Health with a view to improving access to prescription medication, lowering drug prices and supporting appropriate prescribing. While details regarding specific measures were not provided, initiatives to lower drug costs will be welcome news for employers who have been facing increased costs under group benefit plans.

Conclusion

We will continue to monitor these Budget initiatives and will keep you informed of any details as they emerge. Should you have any questions or require further information about the Budget, please contact your regular Hicks Morley lawyer.
