

Federal Post

Federal Post – Fifth Edition

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Dear Friends,

We are pleased to bring you our next edition of the *Federal Post*.

In this edition, we highlight some key proposals of the recent federal budget and the corresponding Budget Bill which federally regulated employers need to know about. We also discuss other legislative initiatives currently underway that may have an impact on your workplace.

In a few weeks, we will be sending a case law update your way. In the meantime, we hope you find this edition interesting. As always, please send us any comments or suggestions for topics you would like to see in our future editions.

Regards,

George G. Vuicic
Editor

Federal Budget 2017

On March 22, 2017, the federal government tabled its 2017 Budget, *Building A Strong Middle Class* (Budget). The implementation legislation, Bill C-44, the *Budget Implementation Act, 2017, No. 1*, was introduced on April 11, 2017. On May 9, 2017, it received second reading in the House of Commons and was referred to the Standing Committee on Finance where it is currently being considered.

Some changes introduced by Bill C-44 are of particular interest to federally regulated employers, including the proposed reforms to the *Canada Labour Code* (Code). These are targeted amendments that would enhance protections for workers and interns in the federal sector.

1. Proposed Changes to the *Employment Insurance Act*

(a) Maternity and Parental Benefits

The Budget includes reforms to the *Employment Insurance Act* (EI Act), such as more flexible EI maternity and parental benefits. 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% of average weekly earnings. 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.

Bill C-44 would amend the EI Act to give parents the option to choose to receive EI parental benefits at the lower benefit rate of 33% of average weekly earnings extended over 18 months or to receive parental EI benefits at the current rate of 55% of average weekly earnings over the current maximum 12 month period. Women would be able to claim EI maternity benefits up to 12 weeks before their due date (as opposed to the current eight weeks).

(b) Compassionate Care Benefits

Compassionate care benefits are currently available under the *EI Act* up to a maximum of 26 weeks for an employee who takes a leave in order to provide care and support to a family member who is gravely ill and who has a significant risk of death within 26 weeks, or up to 35 weeks to care for a child where the child is critically ill or injured.

Bill C-44 provides for an increase in the flexibility of existing EI benefits for parents of critically ill children by allowing parents to share the 35 weeks of benefits with additional family members.

(c) Caregiving Benefit

Bill C-44 would provide an EI caregiving benefit of up to 15 weeks to designated family members in order to provide care or support to a critically ill adult.

2. Amendments to the Code

If passed, Bill C-44 would make significant amendments to the Code. Set out below is a general discussion of the proposed amendments. Once the legislation receives Royal Assent, we will be providing a more detailed analysis of some of these amendments in a future *Federal Post*.

(a) Unpaid Leaves of Absence

Bill C-44 would amend the Code to provide federally regulated workers with an unpaid leave of absence of up to 63 weeks to care for a new-born child of the worker or a child who is adopted by the worker, reflecting the new benefits provided for in the EI Act.

In addition, the Code would be amended to permit women to begin their unpaid leave of absence up to 13 weeks prior to the due date.

Further amendments to the Code would provide federally regulated employees with an unpaid leave of absence to provide care or support to a designated family member.

The Budget states that unpaid leaves of absence will also be extended to employees to participate in Indigenous practices or to seek care for victims of family violence. Amendments to enhance the flexibility of bereavement leave will also be introduced.

(b) Employee Requests for Flexible Work Arrangements

In its 2016 Budget, the federal 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 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.

(c) Protections for Unpaid Federal Interns

Unpaid federal internships will be eliminated in sectors where the internship is not part of a formal educational program. The Budget states that 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.

(d) The following list highlights amendments that, if passed, will introduce new provisions to the Code:

- (i) The Canada Industrial Relations Board will have the authority to appoint an external adjudicator to

determine any matter which comes before the Board under Part II, III or IV (new) of the Code.

(ii) Division XIV.1 “Complaints Relating to Reprisals” would be added to Part III (Standard Hours, Wages, Vacations and Holidays) of the Code, and allow employees to complain in writing to the Board where they believe their employer’s actions constitute a reprisal. Such actions would include, among other things, suspending or terminating an employee because they made a complaint under Part III (with the exception of unjust dismissal complaints) or sought to exercise any right conferred on an employee under this Part.

The complaint itself will be considered evidence that the reprisal occurred; the burden of proof to establish that the reprisal had not taken place will be on the party complained of, e.g. the employer.

(iii) The Minister, subject to the regulations, would be able to order an employer to conduct an internal audit for the purpose of verifying compliance or non-compliance with Part III of the Code. The order must specify to whom it applies, the period of time covered, the provisions of Part III with respect to which it was ordered, the date the report is due and the form of the report. The order may also specify any other required information which the Minister considers appropriate.

(iv) An inspector who is of the view that an employer is not in compliance with any provision of Part III would be able to issue a written compliance order requiring the employer to terminate the contravention and to take any necessary steps to ensure the contravention does not continue or reoccur.

(v) Subject to the regulations, the Minister may publicize the name of an employer convicted under Part III, and include the nature of the offence, the punishment imposed and such other information as prescribed.

(vi) The amendments to the Code would permit requests for review and appeal of inspectors’ orders. Among other things, a person affected by a payment order, a notice of unfounded complaint or a notice of voluntary compliance may ask the Minister to review the inspector’s decision with 15 days. Where the Minister treats the request as an appeal, any person affected must be informed of the review.

(vii) A new Part IV (Administrative Monetary Penalties) would be added as a compliance measure to the Code, the purpose of which would be “to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient penalty system to promote compliance with Parts II and III” of the Code. Regulations would designate the violations, which would include among other things, a contravention under Parts II and III or any applicable regulation. The penalty for a violation would be capped at \$250,000.

Of particular note, certain defences would be explicitly excluded and therefore would not be available to the person or department named in a notice of violation. Namely, the person or department cannot defend on the basis that due diligence to prevent the violation was exercised or on the basis there was a reasonable and honest belief in the existence of facts that, if true, would exonerate them.

3. Accessibility

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 or functional limitations by increasing accessibility and removing barriers.

Other Legislative Updates of Notes

1. Reduction of the EI Waiting Period

On January 1, 2017, the EI waiting period was reduced from two weeks to one week. The change towards the one-week

waiting period was provided for in the 2016 Budget implementation legislation and applies to all types of EI benefits – i.e. regular, special and fishing. The most commonly used special EI benefits include maternity benefits, parental benefits and sickness benefits. The total number of weeks of EI benefits payable has not changed.

For a detailed discussion on the reduced EI waiting period and its impact on your Supplemental Unemployment Benefit (SUB) plan, see our *FTR Now* of December 2, 2016, [The Reduced EI Waiting Period: What Employers Need to Know](#).

2. Federal Certification and Decertification Processes

Bill C-4, *An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act* will amend the Code with respect to the federal certification and decertification processes, restoring the previous “card check” system for union certification and restore the previous, higher threshold of evidence required to trigger a secret ballot union decertification vote of 50% +1 majority. Bill C-4 was passed by the Senate with amendments, including an amendment to keep the secret ballot representation vote, on April 12, 2017. The House will now consider the Senate amendments.

3. Federal Human Rights

(a) Gender Identity and Gender Expression

Bill C-16, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, proposes adding gender identity and gender expression to the list of prohibited grounds of discrimination in the *Canadian Human Rights Act* (CHRA). Bill C-16 would protect transgender and gender-diverse persons from discrimination in employment, and with respect to the denial of goods, services, premises, facilities or accommodation in the federal sphere. The proposed legislation would amend the *Criminal Code* to extend the protection against hate propaganda to any section of the public that is distinguished by gender identity or expression. It would also require a court imposing a sentence to consider evidence that an offence was motivated by bias, prejudice or hate based on gender identity or expression as an aggravating circumstance. After Second Reading in the Senate, on March 2, 2017 it was referred to the Standing Committee on Justice and Human Rights. The Committee report was presented without amendment in the Senate on May 18, 2017.

(b) Genetic Discrimination

Bill S-201, *An Act to prohibit and prevent genetic discrimination*, received Royal Assent and came into force on May 4, 2017. Now the *Genetic Non-Discrimination Act*, the Act amends both the Code and the CHRA. It makes it a criminal offence for any person to require an individual to undergo a genetic test, or to disclose the results of such a test, as a condition of providing goods or services; of entering into or continuing a contract or any part of an agreement; or of offering or continuing to offer specific terms and conditions in a contract or agreement with that individual. Exceptions are made for healthcare practitioners and researchers in using genetic test information. The Act amends the Code to provide protection to employees of federally regulated employers from being required by their employer to undergo genetic tests or to disclose genetic test results.

We will continue to monitor the progress of any relevant legislative or regulatory measures undertaken and will advise of any notable developments

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