

FTR Now

Federal Budget 2018

Date: March 1, 2018

On February 27, 2018 the federal government tabled its 2018 Budget, [Equality & Growth: A Strong Middle Class](#) (Budget).

The Budget contains several key initiatives, including a new Employment Insurance parental sharing benefit, the permanent extension and expansion of the Employment Insurance Working While on Claim pilot project, programs to address gender equality such as the introduction of federal pay equity legislation, the creation of an advisory council on the implementation of a national pharmacare program, cyber security initiatives and more.

In this *FTR Now*, we highlight the reforms that are of particular interest to employers, benefits plan administrators, and human resources professionals.

Employment Insurance (EI) Changes

The Budget proposes to change the EI system by establishing an additional Parental Sharing Benefit with the goal of encouraging parents to share EI benefits and allow parents, particularly mothers, additional flexibility to plan their return to work. The Budget indicates that these additional benefits are expected to be available in June 2019.

Further, as part of the overall aim to make EI benefits more responsive to the needs of employees facing major life events, the government is also committing to make the Working While on Claim pilot project permanent and providing additional supports to seasonal workers who rely on the EI system during the off-season. Finally, the Budget earmarks funding for measures to enhance EI services through improving access to EI information and speeding up the EI benefits application process.

Parental Sharing Benefit

Effective December 3, 2017, eligible parents gained the ability to choose to receive EI parental benefits at a lower benefit rate of 33% of average weekly earnings extended over a 61-week period (Extended Parental Benefits) or to receive EI parental benefits at the regular rate of 55% of average weekly earnings over a 35-week period (Regular Parental Benefits).

The Budget introduces additional Regular Parental Benefits of up to 5 weeks (or up to 8 weeks of

Extended Parental Benefits) to be used by two-parent families, including same-sex and adoptive parents, where the second parent agrees to share the parental leave (subject to certain minimums).

The additional weeks of EI parental benefits will be available if both parents of a newly born or adopted child (or children) choose to take a parental leave and share the available EI benefits, as follows:

- **Regular Parental Benefits:** 40 weeks of EI benefits available to share.
- **Extended Parental Benefits:** 69 weeks of EI benefits available to share.

Parents will be able to choose to share the 40 or 69 weeks of EI parental benefits in various combinations but each parent is limited to 35 weeks of Regular Parental Benefits or 61 weeks of Extended Parental Benefits.

While the EI Parental Sharing Benefit does not increase the amount of the weekly EI benefit available to each individual parent, it encourages the sharing of leaves in two-parent families by making additional weeks of EI benefits available where sharing of EI benefits occurs. The government proposes to provide \$1.2 billion over the next five years and \$344.7 million per year thereafter to introduce the new EI Parental Sharing Benefit.

In connection with this initiative, the Budget proposes to amend the *Canada Labour Code* to provide job protection for employees in federally regulated sectors who choose to take advantage of the additional EI Parental Sharing Benefit.

For employers, particularly those offering supplemental unemployment benefit plans (i.e. pregnancy and parental top-up plans), the new EI Parental Sharing Benefit could have a significant impact on employee leaves and on the cost and design of supplemental unemployment benefit plans (particularly when factored together with Extended Parental Benefits).

Working While on Claim

Individuals who are in receipt of EI benefits and who receive income from employment will normally have EI weekly benefits reduced, dollar for dollar, by the employment income amounts that are over \$50 per week or 25% of the weekly EI benefit amount, whichever is higher.

Since August 7, 2016, the Working While on Claim pilot project has been in place and allows individuals who are in receipt of EI benefits to keep some of their weekly EI benefit if they receive income from employment based on either the Default Rule or the Optional Rule, as described below:

- **Default Rule:** An individual keeps 50 cents of EI benefits for every dollar the individual

earns in wages, up to a maximum of 90% of the weekly insurable earnings used to determine the EI benefit.

- **Optional Rule:** An individual can elect to keep the equivalent of up to one day's work (defined as \$75 or 40% of the individual's EI benefit rate, whichever is greater) without any deduction from weekly EI benefits.

Above these limits, earnings are deducted dollar for dollar from the EI benefit.

The Working While on Claim pilot project was slated to end on August 11, 2018. The Budget proposes to amend the EI Act to make the Default Rule permanent. The EI Act will also be amended to allow claimants to continue electing the Optional Rule until August 2021. In addition, the Working While on Claim project provisions will be extended to individuals in receipt of EI sickness benefits and maternity benefits who are currently excluded from the pilot project.

Income Support and Training for Seasonal Workers

The Budget seeks to address the effect that fluctuations to EI benefits can have on temporary and seasonal workers. EI benefits vary annually and depend on regional unemployment rates. For seasonal employees who cannot find employment until a new season begins, the variation in EI benefits can cause significant hardships. The Budget proposes to invest \$80 million in 2018-2019 and \$150 million in 2019-2020 through federal-provincial Labour Market Development Agreements to develop local solutions that can be tested to support workforce development. In addition, Employment and Social Development Canada will reallocate \$10 million from existing resources to provide immediate income support and training to affected seasonal workers. The Budget commits to making legislative amendments, as required, to meet these goals.

EI Service Delivery and Access to Information

The Budget commits to minimizing the administrative burden of the EI program on employers and notes that Employment and Social Development Canada is working with stakeholders to develop methods to streamline the reporting requirements of employers.

The Budget is also committing \$90 million over the next three years to improve EI claims process and service delivery. This funding will be linked to the volume of EI claims. In addition, \$127.7 million over the same period will be made available to improve accessibility to EI benefits information from EI Call Centres.

Registered Pension Plans

The Budget does not specifically propose any new changes to the federal pension legislation governing registered pension plans. However, it announced two public consultations that could eventually lead to legislative reforms:

- **Security of Benefits:** Highly publicized insolvency cases have spurred renewed calls for enhanced priority for pension plan beneficiaries' claims in insolvencies. In response to those calls, the federal government has committed to obtain feedback from interested stakeholder groups (workers, pensioners, companies) on a balanced approach to addressing retirement plan security in insolvency cases.
- **Unclaimed Pension Amounts:** Many pension plans have unclaimed amounts in respect of missing beneficiaries and there are no means to pay such amounts out of the pension plans. As a result, plan administrators continue to have a fiduciary duty to administer the unclaimed amount. The Budget announced that the federal government will hold public consultations regarding the potential establishment of a regime to address unclaimed pension balances.

Wage Earner Protection Program

The Wage Earner Protection Program (Program) provides for payment of certain wages owing to workers whose employer has gone bankrupt or become subject to receivership, subject to a maximum payment equal to four weeks' maximum insurable earnings under EI. The Budget proposes to provide enhanced support for workers whose employers file for bankruptcy or enter into receivership, and who are owed wages and certain other amounts by increasing the maximum payment under the Program, from four weeks' to seven weeks' maximum insurable earnings under EI, and to make changes to the Program's eligibility criteria.

Changes Affecting Trusts

Health and Welfare Trusts

Health and Welfare Trusts (HWT) have long existed as vehicles for providing health and welfare benefits to employees on a tax-effective basis. However, HWTs have no express legislative framework or authority under the *Income Tax Act (Canada)* (ITA). Instead, their rules, including rules respecting contributions and the computation of taxable income, have been set by the Canada Revenue Agency (CRA) as a matter of administrative policy.

In 2010, the ITA was amended to establish a framework for Employee Life and Health Trusts (ELHT), which provide benefits for employees in the nature of group sickness or accident insurance, private health services and group term life insurance. The ELHT rules are similar to the HWT administrative policies, but there are some differences (such as the treatment of surplus).

The Budget announced the government's intention for only one set of rules to apply – specifically, the ELHT rules. The HWT administrative rules will no longer be applied by the CRA after the end of 2020 and the HWT rules will not apply to any trusts established after February 27, 2018.

The ITA will be amended to provide transition rules that will address the conversion of HWTs to

ELHTs. The government is inviting stakeholders, by June 29, 2018, to provide comments on issues relating to the transition of HWTs to ELHTs (such as whether a new trust must be established, whether and how assets may rollover and the tax implications for HWTs that do not convert). Following the consultation, the government intends to release draft legislative provisions and administrative guidance. Sponsors and administrators of HWTs should consider providing comments respecting these transitional measures.

Heightened Reporting Requirements for Certain Trusts

Currently, trusts are only required to file T3 returns when there is taxable income or disbursements are made to beneficiaries. The T3 form does not currently require trusts to provide information regarding the beneficiaries. The government proposes to address this by requiring additional reporting, commencing with returns required to be filed for 2021 and subsequent tax years, as follows:

- annual reporting will be required regardless of whether there is taxable income or disbursements are made to beneficiaries;
- the annual reporting obligation will apply to express trusts that are resident in Canada and non-resident trusts that are already required to file T3 returns; and
- the returns must identify the names of all trustees, beneficiaries and settlors of the trust as well as the identity of each person who may exert control over trustee decisions regarding the appointment of income or capital of the trust.

New penalties will be introduced relating to the failure to file a T3 return, ranging from a minimum penalty of \$100 to a maximum penalty of \$2,500. An additional penalty (equal to 5% of the fair market value of the trust's property) will be applicable if a failure to file is made knowingly or due to gross negligence.

Significantly, the enhanced reporting will not apply to certain trusts (including, for example, mutual fund trusts and trusts governed by registered plans). However, there are other types of trusts that arise in the employment context that have not been expressly identified as exempt (such as retirement compensation arrangements and benefits plan related trusts). Proposed legislation will be introduced to implement the enhanced reporting, and further consideration will be required as to the extent to which the new reporting requirements will apply to trusts that are not expressly exempt.

National Pharmacare

In response to concerns over prescription drug affordability, the Budget announced the creation of an Advisory Council on the Implementation of National Pharmacare (Advisory Council). The Advisory Council will make recommendations on the issue, assessing different drug coverage models. This follows Ontario's establishment in 2018 of a prescription drug coverage program for

those under age 25, announced in the [2017 Ontario budget](#).

The creation of national pharmacare program (if any) could still be a long way off, but such a program would likely have important ramifications for employer-provided and other group benefits plans, possibly providing some relief from rising costs, particularly if the federal government is made “first payer” for eligible prescription drug expenses.

Gender Issues

Equal Pay for Equal Work

The Budget contains several initiatives relating to gender equity. The federal government will introduce pay equity legislation to ensure that women and men in federally regulated workplaces receive the same pay for work of equal value. Among other things, the legislation would:

- apply to federal employers with 10 or more employees, with pay equity compliance built into existing federal compliance regimes where possible
- establish a pay equity process for employers with fewer than 100 employees
- include seasonal, temporary, part-time and full-time positions
- require that wages and benefits be determined in a gender neutral manner
- provide for maintenance reviews and independent oversight
- apply to the Federal Contractors Program for contracts valued at \$1 million or more.

Pay Transparency

The government intends to provide more pay transparency regarding federal employers’ practices, including converting pay information filed under the *Employment Equity Act* into user-friendly online content. Among other things, this will serve to show existing wage gaps and hold accountable those employers which have wage gaps affecting women, Indigenous Peoples, persons with disabilities and visible minorities.

Gender-Based Violence and Harassment

Additional funding will be committed to the federal Strategy to Address Gender-Based Violence. There will also be targeted measures to combat violence and harassment at home and in the workplace, including funding to support Bill C-65, *An Act to amend the Canada Labour Code (harassment and violence)*, the *Parliamentary Employment and Staff Relations Act* and the *Budget Implementation Act, 2017, No. 1*, in keeping federally regulated workplaces free from harassment and violence.

Funding of \$50.4 million over 5 years will be invested to deal with sexual harassment in the workplace, a portion of which will be dedicated to increasing legal aid funding across Canada for

victims of workplace sexual harassment. The other portion will be invested in an outreach program which will educate workers, particularly vulnerable workers, of their rights in the workplace and how to access assistance if they are harassed.

Supporting Women in Business

Among other things, the Budget creates a Women Entrepreneurship Strategy which will provide assistance to women entrepreneurs to grow their businesses, increase their access to capital and provide other support mechanisms, such as equal opportunity to participate in federal procurements.

The government will also publicly recognize corporations that are committed to promoting women to boards of directors and senior management positions through the creation of an annual award for those showing leadership in this area.

Other Initiatives

The government has also proposed the following:

- **Temporary Foreign Workers:** funding for a compliance regime geared to the protection of the rights of temporary foreign workers, including unannounced inspections under the Temporary Foreign Worker Program, and the creation, on a pilot basis, of a network of support organizations for temporary foreign workers who are confronted with potential abuse by their employers.
- **Entering and Succeeding in the Trades:** the introduction of,
 - grants to permit women in male-dominated “Red Seal Trades” (the standard for excellence in Canadian trades) to support apprentice training
 - a pre-apprenticeship program to encourage underrepresented groups to explore careers in the skilled trades
 - a Women in Construction Fund to provide, among other things, mentoring, coaching and tailored supports to help women find and retain employment in the trades
 - a Union Training and Innovation Program, to support women entering and succeeding in the trades.
- **Cyber-Security Initiatives:** development of,
 - a new National Cyber Security Strategy to focus on ensuring secure systems, building an innovative and adaptive “cyber ecosystem” and supporting leadership and collaboration between the governments in Canada and global partners
 - a Canadian Centre for Cyber Security which would, among other things, provide advice to businesses and individuals on cyber security issues
 - a National Cybercrime Coordination Unit to investigate cybercrime and, among other things, to receive reports of incidents of cybercrime from businesses and individuals.

- **Research Initiatives:** significant investments to support Canadian researchers through research institutes and granting councils and to provide additional funding to the Canada Research Chairs Program, as well as initiatives aimed at strengthening equity and diversity in Canada's research environment by:
 - collecting better data on underrepresented groups to promote stronger representation of those groups in granting council programs
 - providing support to research institutions to advance equality and diversity
 - allowing research institutions to compete for grants to deal with issues related to underrepresentation and career advancement by women, Indigenous Peoples, members of visible minorities, people with disabilities and LGBTQ2 individuals
 - engaging Indigenous communities to identify strategies regarding conducting research and partnering with the broader research community.
- **Canada Workers Benefit (CWB):** expanding the Working Income Tax Benefit, a refundable tax credit that supplements low-income workers' earnings, by making benefits more generous and more accessible, and renaming it the Canada Workers Benefit.
- **Medical Expense Tax Credit (METC):** expanding the METC to recognize costs for psychiatric service dogs.
- **Registered Disability Savings Plans (RDSP):** extending a temporary measure that allows a qualifying family member of an individual adult whose capacity to enter into a contract is in doubt and who lacks a legal representative under provincial or territorial law, to be the plan holder of the individual's RDSP.
- **Canada Pension Plan (CPP):** introducing legislation to implement the previously announced agreement in principle reached in December 2017 by federal and provincial Ministers respecting enhancements to CPP (Agreement). The Agreement provides for, beginning in 2019, increased retirement benefits for parents who take time off work to care for young children and persons with disabilities, increased survivor's pensions for certain individuals, a top-up disability benefit for certain persons, and an increase to the death benefit for all eligible contributors.
- **Quebec Pension Plan (QPP):** proposed amendments to the ITA to provide a tax deduction for employee contributions to the enhanced portion of the QPP (similar to changes made for the CPP).
- **Multicultural Program:** increased funding for the Multicultural Program to support consultations on a new national anti-racism approach and to find ways to combat discrimination, as well as increased funds to address racism and discrimination targeted against Indigenous Peoples, women and girls.
- **Office of the Information Commissioner:** enhanced capacity for the Office of the Information Commissioner to resolve complaints regarding the handling of public access to information requests.
- **Business Innovation Programs:** reform of business innovation programs to benefit workers, entrepreneurs, small business owners and Canadians employed by large companies, with details to follow.
- **Indigenous Skills and Employment Training Program:** the establishment of a new

Indigenous Skills and Employment Training Program to help close the employment and earnings gap between Indigenous and non-Indigenous Peoples.

Conclusion

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

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