

Federal Post

Modernizing Federal Labour Standards, and More

Date: February 5, 2020

In this *Federal Post*, we look at the recently released study on modernizing labour standards in the federally regulated private sector, the second such study in the last few years.

We also discuss a recent decision of the Federal Court of Appeal that affirms a release signed upon termination of employment is not a bar to a later unjust dismissal claim.

Further Study on Modernizing Federal Labour Standards Released

In late 2019, the government of Canada released the [Report of the Expert Panel on Modern Federal Labour Standards](#) (Report) which contains recommendations to the Minister of Employment, Workforce Development and Labour (Minister) on issues relating to the changing nature of work in the federally regulated private sector.

The Expert Panel of the Report specifically considered five key issues: federal minimum wage, labour standards protections for non-standard workers, disconnecting from work-related e-communications outside work hours, benefits: access and portability and a collective voice for non-unionized workers. These issues were identified in an earlier report ([What We Heard: Modernizing Federal Labour Standards](#)) as warranting further study. Many of the recommendations in *What We Heard* have been adopted by the federal government and have resulted in numerous amendments to the *Canada Labour Code* (Code), for example with respect to personal leave, scheduling, eligibility, changes to the provisions of termination of employment, and more.

The Report makes 39 recommendations to the federal government, including (among others) the following:

Minimum Wage

- adopt a freestanding federal minimum wage, to be adjusted annually
- minimum wage to be based on two options: (a) a common federal minimum wage in all provinces, benchmarked at 60% of the median hourly wage of full-time workers in Canada; and (b) a minimum wage set at 60% of the median wage in each province.

Labour Standards Protections for Non-Standard Workers

- amend Part III of the Code to:
 - include a definition of “employee” (which includes “dependent contractors”)
 - include a definition of “continuous employment” that includes periods of layoff or uninterrupted service
 - add a “joint and several liability” provision
- review regulations under Part III dealing with exemptions, exceptions and special rules
- clarify section 168 of Part III with respect to reliance on a greater benefit regarding one standard to offset a lesser benefit regarding another.

Right to Disconnect

- a statutory right to disconnect not recommended at this time
- employers subject to Part III should consult with their employees and develop policies regarding disconnecting
- amend Part III of the Code to include a “deemed work” provision so employees can access labour standards protections “when providing services required or permitted by the employer” regardless of whether those services happen outside of the workplace or worksite
- Part III should provide a right to compensation / time off in lieu for employees required to remain available for potential employer demands
- further research should be done to evaluate the impacts of intensified work as a result of, for example, e-communications.

Benefits: Access and Portability.

- the federal government should explore the potential development of a portable benefits model for those working in the federally regulated private sector
- the federal government, led by the Canada Revenue Agency, should review what it can do to help those working in the federally regulated private sector, more broadly with respect to lost pensions

Collective Voice for Non-Unionized Workers.

- protection for concerted activities should be inserted into Part III of the Code
- the federal government should research and aim to remove the barriers to effective performance on health and safety representatives in non-unionized settings and assess the effectiveness of the mechanisms surrounding the joint workplace committees including how the representatives are chosen
- further study should be undertaken on graduated models of legislated collective representation.

In addition, recommendations are made with respect to improving compliance, enforcement and

operations.

It remains to be seen how the federal government will respond to these recommendations. Stay tuned.

Federal Court of Appeal Affirms Release Not a Bar to Unjust Dismissal Complaint

The Federal Court of Appeal has upheld the decision of an adjudicator made under the *Canada Labour Code* (Code) that an agreement and release signed by an employee whose employment with a bank was terminated did not act as a bar to her unjust dismissal application.

The employee had received a lump sum payment upon termination and released her employer from any future actions/proceedings in relation to her employment. The employee then filed an unjust dismissal application pursuant to the Code and the employer argued that the adjudicator lacked jurisdiction.

In [Bank of Montreal v. Li](#), the Federal Court of Appeal rejected the policy considerations advanced by the employer as a reason to depart from the decision in [National Bank of Canada v. Canada \(Minister of Labour\)](#), which held that the parties may not contract out of the Code in respect of Part III, which includes unjust dismissal applications. The decision affirms the various decisions following *Wilson v. Atomic Energy* and is an important consideration for federally regulated employers who seek to resolve all issues related to the end of employment within the 90-day period following termination, the window to commence unjust dismissal proceedings pursuant to the Code.

As a result of recent changes to the Code, any such claims will now be brought before the Canadian Industrial Relations Board (CIRB), and not adjudicators. Like adjudicators, however, the CIRB will be bound by the finding in *National Bank* and termination agreements and/or releases will not form an automatic bar to unjust dismissal proceedings when they are commenced within the 90-day window following the date of termination.