

Federal Post

Temporary Layoff Provisions Extended Again, Proposed Regulations Under *Pay Equity Act* Now Available for Consultation

Date: November 17, 2020

Two recent developments of note will impact federally regulated workplaces. First, the federal government has provided an additional extension of the temporary layoff provisions under the *Canada Labour Standards Regulations* in light of COVID-19. Second, it has published proposed regulations under the federal *Pay Equity Act* for consultation.

Additional Extension of Temporary Layoff Provisions under the *Canada Labour Code*

By Hicks Morley

On June 25, 2020, we [reported on the temporary measures](#) enacted to extend the periods for temporary layoffs under the [Canada Labour Standards Regulations](#) (Regulations) made under the *Canada Labour Code* in response to the COVID-19 pandemic.

On November 9, 2020, the federal government announced further extensions to the temporary layoff provisions under the Regulations to provide federally regulated employers more time to recall employees laid off due to COVID-19.

Temporary Layoffs Prior to the Amendments

Prior to the June amendments, employees could be laid off for up to 3 months pursuant to ss. 30(1)(c) of the Regulations, or up to 6 months subject to certain conditions set out in ss. 30(1)(d) and (e) including providing a recall date in a written notice at the time of the layoff (ss. 30(1)(d)(i)). After these time periods, the layoff was deemed to be a termination.

The June amendments extended the period under ss. 30(1)(c):

- by six months for employees laid off prior to March 31, 2020, or
- to December 30, 2020 for employees laid off between March 31, 2020 and September 30, 2020.

They also extended the period under ss. 30(1)(d):

- by six months or until December 30, 2020, whichever occurs first, for employees laid off prior to March 31, 2020, or
- to December 30, 2020 for employees laid off between the period of March 31, 2020 and September 30, 2020, unless a later recall date was provided in writing.

New Temporary Amendments to the Regulations

[Effective November 9, 2020](#), the temporary layoff period has been further extended to grant employers and employees more time before a layoff is deemed to be a termination.

The period under ss. 30(1)(c) of the Regulations is now extended:

- by 9 months after the day on which it would otherwise end (an employer would have up to 12 months to recall the employee before the lay-off is deemed to be a termination of employment), or
- to March 31, 2021 for employees laid off between March 31, 2020 and December 31, 2020.

The fixed date or fixed period in the written notice given under ss. 30(1)(d)(i) of the Regulations is now extended:

- by 9 months or to March 31, 2021, whichever occurs first, for employees laid off prior to March 31, 2020, or
- to March 31, 2021 for employees laid off between March 31, 2020 and December 31, 2020, unless a later recall date or fixed period was provided in a written notice.

(Editor's Note: The [Regulations giving effect to these changes](#) were published on November 25, 2020.)

These new amendments are temporary and:

- do not apply to layoffs occurring after December 31, 2020
- do not apply retroactively to employees whose employment was terminated prior to June 22, 2020, or prior to November 9, 2020 (because their employers did not apply the extension provided by the June amendments)
- do not apply, among others, to employees under a collective agreement that contains recall rights or a minimum work guarantee
- do not affect an employer's termination and severance pay obligations under the *Canada Labour Code*.

The duration of the employee's layoff will continue to count towards their employment and will factor into the calculations for termination and severance pay if their employment is eventually terminated.

Employers intending to use this temporary layoff should advise their employees by providing a new written notice with the new recall date.

Please contact your [regular Hicks Morley lawyer](#) should you require more information about these changes.

Mind the Gap! Federal Pay Equity Proposed Regulations Available for Consultation

By [Andrew Movrin](#)

On November 14, 2020, the [federal government published](#) proposed *Pay Equity Regulations* (Proposed Regulations) for consultation. The Proposed Regulations will support the implementation of the federal [Pay Equity Act](#) (Act), which enacts a new proactive pay equity regime and ensures that, on average, women and men in federally regulated public and private sector workplaces receive equal pay for work of equal value. We discussed the obligations of federally regulated employers under the Act in an [earlier Federal Post](#).

By way of background, the Act was introduced as part of Bill C-86, the *Budget Implementation Act, 2018, No. 2*. The Bill received Royal Assent in December 2018, but the Act is not yet in force. The [government states](#) that the Act is anticipated to be proclaimed into force later in 2021.

The Proposed Regulations would assist in the implementation of the pay equity regime by setting requirements concerning certain areas of the Act, including specific requirements addressing:

- the posting of documents (such as the pay equity plan and notices of adjustments owing) within the workplace
- time limits for filing applications and notices with the Pay Equity Commissioner
- mathematical methods for comparing compensation
- steps to follow when regression lines cross under the equal line method
- methods for developing a pay equity plan when there are no predominantly male job classes, such as "proxy" or

“typical job classes” methods, and

- a process for updating or maintaining pay equity plans, including the collection of data and subsequent pay equity analyses of workplace information.

The government is providing an extended consultation period of 60 days (until January 31, 2021) to ensure that all interested parties can review the Proposed Regulations. Following this consultation period, the Proposed Regulations will be finalized and published in the *Canada Gazette, Part II*.

As noted above, the government anticipates that the Act and accompanying regulations will come into force later in 2021. Once in force, all federally regulated public sector and private sector employers with 10 or more federally regulated employees will have three years to develop and implement their proactive pay equity plans.

Should you have any questions related to the Proposed Regulations or the Act, or require assistance making submissions in response to the consultation process, please contact [Carolyn Kay](#), [Lauri Reesor](#), [Stephanie Jeronimo](#), [Andrew Movrin](#) or your [regular Hicks Morley lawyer](#).