Federal Post

Government of Canada Announces Changes to Federal Employment Standards Coming Into Force

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The *Budget Implementation Act, 2018, No. 2* (Bill C-86) amended the *Canada Labour Code* (*CLC*) by enacting a new Division XII.1 "Reimbursement of Work-related Expenses," which will require federally regulated employers to reimburse employees for reasonable work-related expenses, subject to prescribed exceptions. Bill C-86 also enacted a new section titled "Information Related to Employment," which will require employers to provide employees with a written statement containing information relating to their employment, within specified time frames.

On April 21, 2023, the federal government issued an Order in Council (OIC) proclaiming that these amendments to the *CLC* will come into force on the 60th day following the OIC's publication in the *Canada Gazette*. On May 10, 2023, this OIC was published in the *Canada Gazette* along with accompanying regulations. Thus, the new sections and regulations will come into force on **July 9, 2023**.

We reviewed the accompanying regulations in detail when they were released in draft form for consultation in our October 3, 2022 publication, *Federal Government Publishes Proposed Canada Labour Code Regulations Regarding Reimbursement of Work-Related Expenses, and More*. We understand that there were no substantive changes to the regulations following those consultations. Readers are encouraged to read our prior publication for details.

Reimbursement of Work-Related Expenses and Statement of Employment Conditions

Under the new s. 238.1 of the *CLC*, employers will be required to reimburse an employee for "reasonable work-related expenses" subject to prescribed exemptions. This amendment will apply only to expenses incurred on or after the day the amendments come into force.

Coming into force at the same time as these amendments are additions to the *Canada Labour Standards Regulations* (the *Regulations*) which stipulate factors to be considered in determining whether an expense is "work related" and "reasonable." These factors include whether the expense is connected to the employee's performance of work and whether the expense enabled the employee to perform work. The *Regulations* also provide that employers will have 30 days from the date an employee submits a claim to pay any amounts payable. Breaches of s. 238.1 are subject to penalty amounts ranging from $500 to $6,000, depending on the size of the business.

Under the new ss. 253.1 and 253.2 of the *CLC*, federally regulated employers will be required to provide employees with information respecting the rights of employers and employees under Part III of the *CLC* as well as a written employment statement.

Section 253.1 of the *CLC* will require employers to provide employees with copies of any materials made available by the Minister of Labour regarding employers' and employees' rights and obligations under Part III of the *CLC*. The materials must be provided to employees within 90 days of the latter of July 9, 2023 and the day on which the Minister of Labour first makes the materials available. Subsequent new employees must be provided with a copy of these materials within 30 days of the commencement of their employment. Employers will also have to post the materials in a readily accessible place and ensure that employees have copies of the most recent materials made available by the Minister. Furthermore, employers will have to provide any terminated employees with the current materials published by the Minister that relate to termination.

Section 253.2 of the *CLC* will require employers to provide employees with a written employment statement. The *Regulations* outline what information must be contained in an employment statement, which includes information regarding the term of employment, hours of work and renumeration. Employers must provide written employment statements to employees within 90 days of July 9, 2023. Subsequently, employers must provide a written employment statement to any new employees within the first 30 days of employment. Employers must also provide employees with updated employment statements within 30 days of any changes to the information contained within the statement, and must also retain a copy of any employment statement for 36 months after an employee's employment ends.

Breaches of ss. 253.1 and 253.2 are subject to penalty amounts ranging from $200 to $2,000, depending on the size of the business.

Regulations Requiring Federally Regulated Employers to Provide Menstrual Products to Come into Force on December 15, 2023

In a follow-up to our earlier post, the federal government has also proclaimed that Regulations Amending Certain Regulations Made Under the *Canada Labour Code* (Menstrual Products) will come into force on December 15, 2023.

Federally regulated employers will be required to provide menstrual products, including clean and hygienic tampons and menstrual pads, in each toilet room at the workplace regardless of marked gender. Employers will also be required to ensure that a covered container for the disposal of menstrual products is provided in each toilet compartment.

If it is not feasible to do so due to the nature of the workplace, federally regulated employers may provide the menstrual products in a different workplace location, so long as the location is accessible to employees at all times and offers a reasonable amount of privacy. For example, employers with less accessible workplaces (e.g. remote work sites or rail, air, and road transportation work sites) may consider providing menstrual products in office supply cabinets in employees' designated resting rooms or in a menstrual product kit that can be easily carried.

Employers may be subject to financial penalties should they be found in breach of the new regulations.

Takeaways

Federally regulated employers will want to carefully consider how to implement these new requirements in light of their existing employment practices. For example, there is likely to be significant overlap between the new written employment statements and employment agreements and offer letters, and this could lead to concerns about consistency and enforceability. Similarly, once materials are made available by the Minister, employers will need to consider how to ensure that the appropriate materials are provided to all of their employees, including remote workers who may not report to an employer's workplace.

Should you have any questions about these amendments, please contact your regular Hicks Morley Lawyer.