FTR Now

Highlights From the Federal Government's 2023 Fall Economic Statement and Corresponding Bill

Date: December 4, 2023

On November 30, 2023, the federal government introduced Bill C-59, *Fall Economic Statement Implementation Act, 2023* (Bill C-59). Bill C-59 follows the tabling of a Notice of Ways and Means Motion, and would give effect to various initiatives set out in the 2023 Fall Economic Statement (Statement).

In this *FTR Now*, we highlight proposals contained in the Statement and Bill C-59 that will be of interest to employers, human resource professionals and pension plan administrators.

New Leaves of Absence and Employment Insurance (EI) Benefits

Adoption Leave and EI Benefits

Currently, when an employee adopts a child, they can access EI parental benefits but are not entitled to the 15 weeks of EI maternity benefits. The government has proposed amendments to the *Employment Insurance Act* (*EI Act*) that would provide up to 15 weeks of shareable EI adoption benefits to an employee where one (or more) child is placed with the employee for the purpose of adoption. An employee whose child (or children) is born via surrogate and arrives into their care would also be eligible for up to 15 weeks of shareable EI adoption benefits.

The EI adoption benefits would be payable during the period beginning five weeks before the week in which the placement or arrival of the child is expected or the week in which the placement or arrival actually occurs, whichever is earlier, and ending no later than 17 weeks after the week of the actual placement or arrival. Adoptive parents will continue to be eligible to access EI parental benefits after the period of EI adoption benefits.

For individuals who are on a parental benefit claim when the new EI adoption benefits come into force, there will be transition rules that will allow the EI parental benefits to be paused and EI adoption benefits to be accessed before the EI parental benefits commence to be paid again. Once the EI adoption benefits are in force, employers that provide top-up benefits during periods when EI maternity or parental benefits are paid will need to consider whether the top-up will be expanded to apply to EI adoption benefits.

In conjunction with the amendments to the *EI Act*, the government has proposed amendments to the *Canada Labour Code* (*CLC*) that would provide a shareable leave of absence of up to 16 weeks to a federally regulated employee where a child is placed into their actual care for the purpose of adoption or where a child arrives into their actual care where the child was born via surrogate (i.e., to correspond with the one-week waiting period for EI benefits and up to 15 weeks of EI benefits).

If Bill C-59 is passed, the leave for placement of a child may begin up to six weeks before the week of the estimated date of placement or arrival or the week of the actual placement or arrival, whichever is earlier, and must end no later than 17 weeks after the week of the actual date of the placement or arrival.

We are monitoring whether Ontario or any other provincial governments propose similar amendments to provincial employment standards legislation to provide a leave of absence that corresponds with the new EI adoption benefit period.

Pregnancy Loss Leave

The government has proposed amendments to the *CLC* to create a new leave for employees in federally regulated sectors who experience a pregnancy loss. An employee would be eligible for the leave if:

- their pregnancy does not result in a live birth
- the pregnancy of their spouse or common-law partner does not result in a live birth
- they intended to be the legal parent of the child who would have been born had their surrogate's pregnancy resulted in a live birth

An employee who is eligible for the leave would be entitled to a leave of absence of up to eight weeks if the pregnancy results in a stillbirth (as defined in the *CLC*) or three days in any other case. The leave would be permitted to be taken during the period beginning on the day the pregnancy does not result in a live birth and ending 26 weeks after that day.

If an employee has completed three consecutive months of continuous employment with their employer, the employee would be entitled to the first three days of leave with pay at their regular rate of wages for their normal hours of work. Such pay would be considered wages.

Employees would be allowed to take the pregnancy loss leave in one or two periods. Employers would be permitted to require that each period of leave be not less than one day in length.

Bereavement Leave

The government has proposed amendments to the *CLC* that would provide an unpaid leave of absence of up to 10 days to an employee in the event of the death of a member of their immediate family or a family member in respect of whom the employee is, at the time of death, on a compassionate care leave or a leave related to critical illness.

The leave of absence would be permitted to begin on the day on which the death occurs and end no later than six weeks after the latest of the days on which any funeral, burial or memorial service of that deceased person occurs.

Dental Care Initiatives and Reporting Requirements

Dental Care Benefits

The government affirmed that it is preparing to launch the Canadian Dental Care Plan (Dental Plan) and it expects to begin rolling out further information by the end of 2023. Once implemented, the Dental Plan will provide benefits to uninsured Canadians with an annual family net income of under $90,000, with no net co-pays for those with family incomes under $70,000. The government stated that Health Canada will provide further information on the Dental Plan.

The government has also proposed to amend the *Income Tax Act* (*ITA*) to permit the Canada Revenue Agency (CRA) to share taxpayer information with an official of Public Services and Procurement Canada for the purposes of the administration or enforcement of the Dental Plan. This would allow Employment and Social Development Canada to engage the services of Public Services and Procurement Canada in administering the Dental Plan.

Employer-Provided Dental Benefit Tax-Slip Reporting

In a separate but related news release, the government reminded employers that, starting with the 2023 tax year, employers must report on a T4 or T4A slip, as applicable, whether an employee, former employee or any of their family members (which would include the employee's or former employee's spouse or common law partner and children who are under 18) were eligible, on December 31 of that year, to access dental care insurance or coverage of any kind, including health spending and wellness accounts, due to their current or former employment.

As a result of this new reporting requirement, T4 slips have been amended to reflect a new Box 45, “Employer-offered Dental Benefits,” which must be completed. As well, Box 015, “Payer-offered Dental Benefits,” was added to the T4A slip, although completion of this box is mandatory only if an amount is reported in Box 016, “Pension or Superannuation.”

The following codes are to be used to describe the type of access to dental care benefits:

- Code 1 – Not eligible to access any dental care insurance, or coverage of dental services of any kind
- Code 2 – Payee only
- Code 3 – Payee, spouse and dependent children
- Code 4 – Payee and their spouse
- Code 5 – Payee and their dependent children

It should be noted that Health Canada has issued administrative policies on this new reporting requirement applicable to the 2023 calendar year. First, it is not mandatory to fill out the new box when only “Code 1” is applicable. As noted above, this code applies when the employee, former employee, or any of their family members are not eligible to access any dental care insurance or coverage of any kind. This administrative policy applies only if all reasonable efforts have been made to comply with the reporting requirements. Second, if an employer or payer files their T4 or T4A slips for the 2023 year electronically before January 2024, the employer or payer does not have to file amended T4 or T4A slips to report the applicable code.

We continue to monitor any additional guidance that the CRA may issue regarding the completion of this new reporting obligation.

Pension Initiatives

Pension Fund Investments

Currently, federally regulated pension plans are restricted from holding more than 30% of the voting shares of most corporations (the 30% Rule). The Statement indicates that the government will explore removing the 30% Rule from the federal investment regulations under the *Pension Benefits Standards Act, 1985* (*PBSA*). This change could also have implications for provincially regulated pension plans, as most provinces require Statements of Investment Policies and Procedures to comply with and assets to be invested in accordance with the federal investment rules under the *PBSA*.

Additionally, in the Statement, the government has proposed requiring large federally regulated pension plans to disclose the distribution of their investments, both by jurisdiction and asset-type per jurisdiction, to the Office of the Superintendent of Financial Institutions (OSFI). This information would be made publicly available. The government will also discuss similar disclosure requirements for large provincially regulated pension plans with the provinces.

Crypto-Assets

The government reiterated its commitment to require federally regulated pension plans to disclose crypto-asset exposures, and to work with provinces to implement similar requirements for large provincially regulated pension plans.

OSFI has begun consultations with federally regulated financial institutions on the implementation of public disclosure of crypto-asset exposures.

These initiatives, while discussed in the Statement, were not addressed in Bill C-59 and we continue to monitor for future developments.

Other Relevant Initiatives

Canadian Journalism Labour Tax Credit

The existing Canadian journalism labour tax credit provides a refundable 25% tax credit on the salary or wages paid to eligible newsroom employees of a “qualifying journalism organization.” Qualifying labour expenditures per eligible newsroom employee may not exceed $55,000 per tax year.

The government has proposed to increase the refundable tax credit from 25% to 35% for a period of four years. As well, the government has proposed increasing the cap on qualifying labour expenditures per eligible newsroom employee from $55,000 to $85,000.

In the Statement, the government indicates that these changes would apply to qualifying labour expenditures incurred on or after January 1, 2023. The credit rate would return to 25% for expenditures incurred on or after January 1, 2027.

Employee Ownership Trusts

Bill C-59 contains draft amendments to the *ITA* that would establish employee ownership trusts (EOTs), which were previously proposed by the federal government in its 2023 budget, “A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future,” tabled earlier this year.

At a high level, an EOT is a Canadian resident trust (excluding a deemed resident trust) that is exclusively for the benefit of employees of “qualifying businesses” controlled by the trust. An EOT must meet a number of specified conditions, including the condition that all or substantially all of an EOT’s assets are shares of qualifying businesses. A “qualifying business” is a Canadian-controlled private corporation controlled by a trust that meets other specified conditions. When making distributions to employee beneficiaries, an EOT could consider only the employee’s length of service, remuneration and hours worked.

EOTs would receive favourable tax treatment. Of note, the government has proposed to exempt the first $10 million in capital gains realized on the sale of a business to an EOT from taxation, subject to certain conditions. This incentive would be in effect for the 2024, 2025 and 2026 tax years.

EI for Seasonal Workers

In the Statement, the government noted that recent anomalies in regional unemployment rates have meant that many seasonal workers risk experiencing a longer income gap this year.

In response, the government has proposed up to four additional weeks of EI regular benefits to eligible seasonal workers in 13 economic regions. This temporarily enhanced support would be available for claims established between September 10, 2023 and September 7, 2024.

Should you have any questions about Bill C-59 or the Statement, please contact your regular Hicks Morley lawyer.