



What's New in HR Law

Noteworthy Changes to the *Canada Labour Code* and the Impact on Federally Regulated Employers

September 11, 2017

BOTTOM LINE

Significant changes will be made to the *Canada Labour Code* (the “Code”) as a result of two Acts that received Royal Assent in June 2017. Bill C-44, the *Budget Implementation Act, 2017, No. 1*, is omnibus legislation that expands access to unpaid leaves of absence. It also expands the authority of the Canadian Industrial Relations Board (“CIRB” or the “Board”).

Bill C-4, *An Act to amend the Canada Labour Code, the Parliamentary Employment and Staff Relations Act, the Public Service Labour Relations Act and the Income Tax Act*, implements changes to the certification and decertification process for unions. In this update, we provide an overview of the most significant changes to impact employers in the federal sector.

Note that apart from the changes to the certification/decertification discussed under Bill C-4 below, these amendments will not come into force until a date is fixed by order of the Governor in Council.

Bill C-44

(a) Leaves of Absence

Bill C-44 will modify the *Code's* maternity, parental and caregiving leave provisions so they are consistent with the correlative changes made to the *Employment Insurance Act* (the "*EIA*"). Specifically, federally regulated workers will now have the right to take up to sixty-three (63) weeks of unpaid absence for the care of a biological or adopted child. This is an increase of twenty-six (26) weeks from the previous maximum period of thirty-seven (37) weeks.

While the total amount of maternity leave will remain at seventeen (17) weeks, women will be able to commence their unpaid leave of absence up to thirteen (13) weeks prior to the child's due date.

The cap on the cumulative amount of maternity and parental leave that two employees may take with respect to the same birth or adoption cannot exceed seventy-eight (78) weeks, which is an increase from fifty-two (52) weeks.

In accordance with changes made to the *EIA*, leaves of absence for the care of people with critical illnesses will be more widely available. Leaves to care for a critically ill child, currently only available to parents, will now be permitted for family members of a critically ill child. Federally regulated employees with adult family members who are critically ill will now be eligible to take unpaid leaves of absence, capped at seventeen (17) weeks.

(b) Canada Industrial Relations Board

Amendments to the *Code* will give the CIRB greater authority. The CIRB will have the ability to appoint an external adjudicator to rule on any matter before the Board regarding Parts II, III, or IV of the *Code*, which relate to Occupational Health and Safety, Standard Hours, Wages, Vacations and Holidays, and Administrative Monetary Penalties. There are no guidelines regarding the appointment of, or the qualifications required for external, adjudicators.

Appeals from decisions of the Minister under Part II of the *Code* (Occupational Health and Safety) will now be referred to the CIRB. The Board also will have full jurisdiction to adjudicate on complaints of unjust dismissal under Part III of the *Code*.

(c) Ministry-Ordered Internal Audits

The Minister will soon be able to order employers to undertake an internal audit to verify compliance or non-compliance with Part III of the *Code* (Standard Hours, Wages, Vacations and Holidays). An employer's practices, payrolls, books and other records will all be subject to the audit. Orders will specify the following information: the industrial establishment and class of employees to which it applies, the period of time covered by the internal audit, under which provisions of the *Code* it was ordered, what form the report must take, and any other information the Minister may deem appropriate.

Should the employer uncover any instance of non-compliance, the report will describe the non-compliance and detail the procedure that the employer has undertaken or will undertake to comply. If the employer determines that an employee is owed anything under Part III of the *Code*, it will have to include the following information in the report: the employee's name,

amount owed during the audit time frame, the means by which the debt was determined as well as whether the employer subsequently paid the amount owing to the employee.

(d) Authority of Inspectors

Inspectors have expanded authority as a result of the amendments to the *Code*. Where inspectors deem an employer to have contravened Part III of the *Code*, they will be able to issue a written compliance order. The compliance order may require the employer to terminate the contravention within a specific time frame, and inspectors can specify which steps the employer must take to avoid future contraventions. It should be noted that inspectors may issue orders for the recovery of wages for up to two (2) years before the date on which a complaint was made.

(e) Public Orders

The Minister will now be able to publicize the name of an employer convicted under Part III of the *Code*, subject to regulations. The nature of the offence and punishment imposed, among other prescribed information, also may be made public.

(f) Appeal of Orders

Requests for review of an inspector's order are permitted under the amendments to the *Code*. Requests can be made within fifteen (15) days of an inspector's decision. Associated administrative fees are the greater of fifteen percent (15%) of the payment order and two-hundred dollars (\$200.00).

Should an employer appeal the review decision, it can direct its appeal to the CIRB. However, the employer will have to first pay the Minister the amount specified in the decision.

The CIRB has the authority to order a party that it has deemed to have unduly delayed the determination of the appeal to pay an amount up to the total expenses incurred over the course of the appeal.

(g) Administrative Monetary Penalties

Bill-C44 creates Part IV of the *Code*, which is a penalty framework designed to encourage compliance with Parts II and III of the *Code*.

Regulations will designate the violations, the means by which penalty amounts will be established, and the ways in which a penalty can be reduced. The penalty will be capped at \$250,000. Violations are subject to a two (2) year limitation period, after which notices of violation cannot be issued.

Liability for violations may extend to any officer, director, agent, senior official, or any person who exercises a managerial or supervisory role within a corporation if any such person directed, authorized, assented to, acquiesced or participated in a violation under the *Code*.

This amendment specifies that violations are absolute liability offences, meaning that the employer cannot rely on the defence of due diligence or reasonable belief in a mistaken set of facts.

Individuals charged with a violation may request a review within thirty (30) days of receiving the notice. The decision of the Minister may be appealed to the CIRB within fifteen (15) days.

Bill C-4

Bill C-4 changes the procedures for certification and de-certification of bargaining agents in federally-regulated businesses by repealing Bill C-525. The changes to the certification and decertification process came into force on June 22, 2017.

Under the new procedures, if a union can show membership evidence of more than fifty percent (50%) of the employees within a potential bargaining unit, the union will automatically become the certified bargaining agent. Workers are no longer guaranteed secret-ballot voting for union certification. However, certification votes will be required in instances where the union can only demonstrate support ranging between thirty-five and fifty percent (35-50%) of the employees within a proposed bargaining unit.

Decertification votes can now be held only where fifty percent plus one (50%+1) of the employees represented by the union no longer wish to be represented by the union. Prior to this, the threshold was forty percent (40%).

Need More Information?

Should you have any questions about the ramifications of these *Code* amendments, do not hesitate to contact Lindsay Doyle at 905-972-6874 or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca