

## ***Federal employers are the latest to be hit with employment standards changes***

Continuing the recent trend previously reported by e2r®, employers who are federally regulated for employment purposes are also facing upcoming changes to employment standards legislation. On June 22, 2017, Royal Assent was granted to Bill C-44, the *Budget Implementation Act, 2017, No. 1*, making significant changes to the *Canada Labour Code* (“Code”).

While the legislation contains numerous amendments, we have highlighted a few below which are expected to make the biggest impact on federally regulated employers:

### **Unpaid Leaves of Absence**

**Parental Leave:** Unpaid parental leave has been increased from thirty-seven (37) weeks to sixty-three (63) weeks.

**Maternity Leave:** An employee may commence maternity leave thirteen (13) weeks prior to the estimated date of birth. The length of maternity leave remains the same; however, the aggregate amount of maternity and parental leave that may be taken cannot exceed seventy-eight (78) weeks.

**Critically Ill Child:** Those eligible to take a leave of absence to care for a critically ill child has been expanded beyond a parent to a family member of the child.

**Critically Ill Adult:** The Code now provides for an unpaid leave of absence of up to seventeen (17) week to care or support a critically ill adult family member.

### **Reprisals**

An employee may now make a complaint to the Canadian Industrial Relations Board (“CIRB”) in the event they believe their employer has engaged in a reprisal action when an employee raises a complaint relating to Part III of the Code (employment standards). Previously reprisal actions under the Code were limited to where an employee raises a concerns relating to Part II of the Code (occupational health and safety).

Reprisal actions may include but are not limited to the following: disciplining, dismissing, suspending, laying off, or demoting the employee.

The CIRB has broad powers if it finds there has been a reprisal, including the power to order reinstatement or compensation.

## Internal Audit

The Ministry has the power to order an employer to conduct an internal audit of its practices, books, payrolls, and other records to determine whether the employer is in compliance with Part III of the Code.

## Administrative Monetary Penalties

Part IV has been added to the Code which established a penalty system to promote compliance with Parts II and III of the Code.

Of note, if a corporation or department commits a violation, liability for the penalty will apply to any officer, director, agent, senior official in the department, or any other person who exercises managerial or supervisory functions in the department, if they directed, authorized, assented to, acquiesced or participated in the commission of the violation. No defense is available even if the person believes he/she exercised due diligence to prevent the violation.

Specifics regarding contraventions and penalties remain to be identified by the regulation; however, the size of the penalty may not exceed \$250,000.00.

While we believe the above amendments are the most significant, other amendments include the following:

- The authority of inspectors under the Code has been expanded.
- Employers requesting a review of a payment order will now have to pay an administrative fee.
- The powers, duties, and functions of appeals officers have been transferred to the CIRB.
- The Chair of the CIRB may now appoint an external adjudicator to determine any matter that comes before the CIRB.
- Unjust dismissal complaints that are not settled will be referred to the CIRB.
- The Minister may make public the name of an employer convicted of an offence under Part III of the Code, as well as the nature of the offence, the punishment imposed, and any other information prescribed by the regulation.

These amendments, which will apply to federally regulated employees only, will come into force on a date to be fixed by order of the Governor in Council. Therefore, we will be sure to keep you apprised of any updates. In the

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