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PUBLICATION

Employment Update: Important Changes to the Canada Labour Code

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Employment standards have been evolving at an unprecedented rate in recent years. For federally-regulated employers, there are several recent amendments to the *Canada Labour Code* (the "*Code*"), which have either taken effect or will be taking effect in the near future. We highlight five of these changes, in order of their effective dates, in this month's Employment Update.

I. Reimbursement of Work-Related Expenses

As of July 9, 2023, employers are required to reimburse employees for reasonable work-related expenses. The following factors are to be considered when determining whether an expense is "work-related":

(a) whether the expense is connected to the employee's performance of work

(b) whether the expense enables an employee to perform work

(c) whether incurring the expense is required by the employer as a condition of employment or continued employment

(d) whether the expense satisfies a requirement for the employee's work imposed by an occupational health or safety standard

(e) whether the expense is incurred for a legitimate business purpose and not for personal use or enjoyment.

The expense must also be "reasonable," which is to be determined using the following prescribed factors:

(a) whether the expense is connected to the employee's performance of work

(b) whether the expense is incurred to enable an employee to perform work

(c) whether the expense is incurred at the request of the employer

(d) whether any amount of expense is incurred beyond the amount necessary to enable the performance of the work

(e) whether the expense is one that is normally reimbursed by employers in similar industries

(f) whether the employer authorized the expense in advance

(g) whether the expense is incurred by the employee in good faith

(h) whether the claim includes documentation, such as a receipt or invoice

Expenses that meet the above criteria must be reimbursed within 30 days of the date that the employee submits the expense claim, absent a written agreement specifying a different time frame.

Despite this new requirement, certain expenses may not be eligible for reimbursement, including where they are specifically excluded by way of: (1) a collective agreement or other written agreement between an employer and its trade union, or (2) a written contract between an employer and employee.

II. Access to Ministry of Labour Materials

As of July 9, 2023, employers are also required to provide employees with all materials made available by the Ministry of Labour with respect to rights and obligations in the workplace. These materials must be posted in a readily accessible location, and be provided to employees no later than the later of: (1) October 7, 2023, (2) 30 days after an employee's first day of work, or (3) the day on which the Ministry makes any such materials available.

In addition, employers must provide terminated employees with the materials made available by the Ministry in relation to termination of employment by no later than their last day of work.

III. Employment Statements

Employers have until October 7, 2023, to provide employment statements to those employees who were employed as of July 9, 2023. For any new employees, employment statements must be provided within 30 days of their first day of work. Additionally, any changes to existing employment statements must be updated and provided within 30 days of the change.

These employment statements must be in written form, and may be included in an offer letter, employment contract, policy manual or collective agreement. The Government of Canada has also provided the following template.

Employment statements must contain the following information, as prescribed in the regulations:

(a) the names of the parties to the employment relationship

(b) the job title of the employee and a brief description of their duties and responsibilities

(c) the address of the ordinary place of work

(d) the date on which the employment commences

(e) the term of the employment

(f) the duration of the probationary period, if any

(g) a description of the necessary qualifications for the position

(h) a description of any required training for the position

(i) the hours of work for the employee, including information on the calculation of those hours and rules regarding overtime hours

(j) the rate of wages or salary and the rate of overtime pay

(k) the frequency of pay days and the frequency of payment of any other remuneration

(l) any mandatory deductions from wages

(m) how the employee can claim reimbursement for reasonable work-related expenses

Employment statements must also be retained for at least 36 months after the end of an employee's employment.

IV. Access to Menstrual Products

Effective December 15, 2023, the *Canada Occupational Health and Safety Regulations* will be amended to require employers to provide menstrual products, including clean and hygienic tampons and menstrual pads, in each toilet room. If this is not feasible, they shall be provided in another location in the same workplace that is accessible to employees and offers a reasonable amount of privacy.

V. Changes to Statutory Notice Periods

The most significant of these recent amendments to the *Code* is the change to the statutory notice periods for termination of employment.

Currently, employers must provide two (2) weeks' notice, or pay in lieu of notice, to terminated employees.

Starting February 1, 2024, statutory notice periods under the *Code* will be determined by a sliding scale, similar to most provinces based on years of service. For employees who have completed at least three (3) months of continuous employment, the notice period remains unchanged at two (2) weeks. However, once an employee has completed three (3) years of continuous employment, the notice period will increase to three (3) weeks. Each year thereafter, the notice period increases at a rate of one (1) week per year of continuous service to a maximum of eight (8) weeks. This amendment will also allow employers to combine working notice periods with pay in lieu of notice.

Please note that the statutory severance pay provisions under the *Code* have not been amended and remain the same.

Employers will be obligated to give employees who receive notice of termination a statement of benefits in writing that sets out their vacation benefits, wages, severance pay and any other benefits and pay arising from their employment within the prescribed time frames.

Failure to Comply

Failure to adhere to any of these new amendments may result in administrative monetary penalties. In addition, each day that a violation is not remedied may be deemed a separate violation, thereby multiplying an employer's liability.

Key Takeaways for Federally-Regulated Employers:

1. Employers are well advised to update their employment contracts before February 1, 2024, to ensure they are compliant with the new statutory notice periods under the *Code*. Employment contracts that provide for less than the statutory minimum standards will be considered legally unenforceable and void.

2. Employers should also carefully review their employment practices to ensure that employees are being provided with copies of their written employment statements, any work expense reimbursement policies, and all applicable materials prepared by the Ministry of Labour.

If you have any questions about these amendments, or for specifically tailored advice, please reach out to a member of the Blaneys' Labour and Employment Group.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.