

Draft Regulations Propose New Penalties for CLC Violations

Employment and Social Development Canada (ESDC) has released draft regulations that provide more detail on new penalties for federally regulated employers who violate *Canada Labour Code* rules.

In 2017, Parliament passed legislation that would allow the federal minister of Labour to levy administrative monetary penalties (AMPs) against employers who violate provisions in Parts II (health and safety) and III (labour standards) of the Code and to publicly identify them. The new enforcement tools are included in a new Part IV of the Code, which the government has not yet implemented. The new rules are expected to come into force in 2020 once the draft regulations have been finalized.

The draft regulations specify which provisions in Parts II and III would be enforced through AMPs (most of them) and how much employers would be penalized through them. The size of the baseline penalty would depend on two factors: the type of violation and who carried it out.

Violations would be grouped into five categories of increasing severity under each part. The categories would be labelled ‘A’ through ‘E’, with violations under ‘A’ being less serious than those under ‘E’. For Part III, type ‘A’ violations would apply to non-compliance with administrative and technical provisions (e.g., failing to post notices as required). Type ‘B’ violations would cover provisions related to calculating and paying wages (e.g., failing to comply with rules for overtime pay, vacation pay, etc.). Type ‘C’ would apply for violations related to leaves of absence or other requirements that could affect an employee’s or a group of employees’ financial security or health and safety (e.g., failing to allow an employee to take compassionate care leave). Type ‘D’ would cover violations related to the employment of workers under 17 years of age (e.g., failing to follow the rules for employing workers under 17). For Part III, there would be no Type ‘E’ violations.

The regulations would also group violators into three categories: individuals, small businesses (i.e., those with fewer than 100 employees or less than \$5 million in annual gross revenues), and large businesses or government departments.

Using this structure, the regulations propose the following baseline penalty amounts for violations of Part III:

Type ‘A’ Violation:

Individual: \$200

Small Business: \$500

Large Business/Department: \$2,000

Type ‘B’ Violation:

Individual: \$500

Small Business: \$1,500

Large Business/Department: \$6,000

Type 'C' Violation:

Individual: \$1,000

Small Business: \$3,000

Large Business/Department: \$12,000

Type 'D' Violation:

Individual: \$2,000

Small Business: \$7,000

Large Business/Department: \$25,000

Type 'E' Violation: Not applicable for Part III violations.

The regulations also propose that the baseline penalty increase by a factor of 200% if a violator has been subject to an enforcement action in the previous five years. In addition, the regulations would allow for the baseline penalty for type 'A', 'B' or 'C' violations to be reduced by half if the violator paid the penalty within 15 days of the day the notice is served.

The draft regulations also provide more detail on the information that the labour minister can make public when identifying employers guilty of violating Parts II or III of the Code. In addition to posting the employer's name, the nature of the violation, and the amount of the penalty, the regulations propose that the minister also provide information on whether the employer has complied with the rules and paid the penalty, and, if the employer has asked for the AMP to be reviewed or appealed, the date of the review or appeal decision.

We will continue to monitor this story and will report on further developments in upcoming releases.

Fourth Quarter Prescribed Interest Rates Set

The prescribed rate for taxable benefits to employees and shareholders from interest-free and low-interest loans is 2% from October 1, 2019 to December 31, 2019. The rate is unchanged the previous quarter. The interest rate for unpaid source deductions, overdue taxes and insufficient instalments is 6% for the third quarter.

Reminder: Remembrance Day is a Statutory Holiday in most Jurisdictions

Just a reminder... Monday, November 11, 2019, Remembrance Day, is a statutory holiday under employment/labour standards laws in the following jurisdictions: Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nunavut, Prince Edward Island, Saskatchewan, and Yukon, as well as under the *Canada Labour Code*.

In Manitoba and Nova Scotia, Remembrance Day is a holiday under each jurisdiction's *Remembrance Day Act*. As a result, the holiday is treated in a different way than holidays under employment/labour standards laws. In both jurisdictions, employers are not required to pay

employees who do not work on Remembrance Day.

In Manitoba, if employees work on Remembrance Day, their employer must pay them 1.5 times their regular rate for at least half of their normal work hours. In addition, employers must pay them a regular day's pay for working on Remembrance Day. If employees work more than their normal hours, their employer must pay them 1.5 times their regular rate for all hours worked that day plus pay them a regular day's pay.

In Nova Scotia, if employees work on Remembrance Day, their employer must pay them their regular wages for the hours worked. If the employees are entitled to receive wages for at least 15 of the 30 calendar days right before Remembrance Day and they work on November 11, the employer must also give them another day off with pay on the working day immediately following their next annual vacation or on a mutually agreed upon date.

For information on entitlement to the holiday and how to compensate employees for it, please refer to the applicable jurisdiction in chapter 19, Statutory Holidays.

2020 Maximum Assessable/Insurable Earnings

The following workers' compensation bodies have announced their maximum assessable/insurable earnings for 2020:

British Columbia: \$87,100 (2019: \$84,800)

Manitoba: \$127,000 (2019: \$127,000)

New Brunswick: \$66,200 (2019: 64,800)

Nova Scotia: \$62,000 (2019: \$60,900)

Ontario: \$95,400 (2019: \$92,600)

PEI: \$55,300 (2019: \$55,000)

Quebec: \$78,500* (2019: \$76,500)

*Proposed.

Alberta WCB Asking for Feedback on Policy Proposals

The Alberta Workers' Compensation Board (WCB) is asking for feedback on policy changes it is planning to make to its employer accounts and premiums policies.

One of the changes would see dividends included as earnings when verifying personal coverage amounts. Under the proposal, the board would consider dividends to be earnings for individuals with personal coverage when the dividends are paid in lieu of salary for work performed in the company. The WCB said dividends would not be classified as earnings "when they are a general allocation of the company's undistributed profits to shareholders."

Another change would see the board implement a "business test" to determine whether an individual was a worker or a business owner for workers' compensation coverage. The test would involve adding a number of criteria that the WCB would consider, such as: direction, control, and independence; who owns or provides materials, tools, and equipment; ability to hire workers or subcontractors; financial risk; responsibility for investment; and responsibility for

business infrastructure (e.g., legal incorporation, website, marketing, permits, etc.), as well as any other information that the board deemed relevant. The WCB said one or a combination of the criteria may be enough for it to determine whether someone is a worker or a business owner.

Another proposed change would include allowing individuals with personal coverage to extend it across multiple operations under one account. In addition, the draft policy changes would clarify that businesses that provide support services to an industry (e.g., marketing, management, administration, etc.) would be classified in the industry that they support. To illustrate how the classification would work, the WCB gave the example of a fast food franchisor that provides only administration services. The board would classify it in the restaurant industry.

Employers and others interested in commenting on the draft policies may do so until December 2, 2019. For more information, please see the board's website at www.wcb.ab.ca/forms/policy-feedback2.asp.

Reminder: Some Minimum Wage Rates Rose Oct. 1st

Just a reminder... Effective October 1, 2019, minimum wage rates in Manitoba and Saskatchewan increased to the following amounts:

Manitoba: \$11.65/hour (previously \$11.35)

Saskatchewan: \$11.32/hour (previously \$11.06)

The jurisdictions adjust their rates annually to reflect changes in their province's consumer price index. For Saskatchewan, the adjustment is also based on the province's average hourly wage for the previous year.

NL Government to Appoint Independent Committee to Review Minimum Wage

The Newfoundland and Labrador government plans to appoint an independent committee to review the province's minimum wage, Minister of Advanced Education, Skills and Labour Bernard Davis recently announced.

The committee will include an independent chair and representatives from business and labour. Davis said its purpose would be to solicit input from "targeted" stakeholders and report to him with observations, findings, and recommendations on the province's current process for setting the minimum wage and the wage rate.

Last year, the government changed the minimum wage rules to tie minimum wage rate adjustments to changes to the national consumer price index.

"By establishing an independent review committee, we are demonstrating our commitment to examine and review our labour standards legislation to ensure it remains relevant, responsive, and comparable to other jurisdictions across the country," said Davis.

He said the government would provide more details on the committee once it forms it and finalizes its terms of reference.

P.E.I. to Implement New Domestic Violence Leave Rules on Nov. 1st

Just a reminder...Effective November 1, 2019, eligible employees in Prince Edward Island will be allowed to take time off work for domestic violence leave.

The right to take the leave stems from Bill 116, *An Act to Amend the Employment Standards Act (No. 3)*, which received royal assent on June 12, 2018. The new leave provisions will allow employees with at least three months of continuous employment with their employer to take up to three paid days and up to seven unpaid days off in a 12-calendar-month period if they, their minor child, or a person for whom they are a caregiver (regardless of whether they live with that person) is a victim of domestic, intimate partner, or sexual violence. The person for whom the employee is a caregiver could also be someone for whom they become a caregiver because of the violence.

Employees will be allowed to take the leave intermittently or in one continuous period. If employees' wages vary from day to day, their pay for the days of leave will have to be at least equal to their average daily earnings, excluding overtime pay, for the days they worked in the 30 calendar days right before taking the leave.

Employees will be allowed to take the leave for the following purposes:

- to seek medical attention for physical or psychological injuries or disabilities caused by the violence;
- to obtain victim services from a victim services organization;
- to obtain psychological or other professional counselling for a matter related to the violence;
- to temporarily or permanently relocate for a reason related to or arising from the violence;
- to seek legal or law enforcement help (this includes preparing for or taking part in civil or criminal proceedings related to or resulting from the violence);
- to comply with child protection interventions and take part in child protection case planning and related activities; and
- for any other purpose relating to or resulting from the violence that the employee must attend during his or her regularly scheduled work day.

Employers will have to keep all matters related to the leave confidential and not disclose information to anyone except employees or agents who need the information to do their job, with the employee's consent, or unless the disclosure is required by law.

Payroll Q & A

Question: When calculating the amount that we have to pay for workers' compensation coverage, do we include retiring allowances in our assessable/insurable payroll?

Answer: While each workers' compensation body across Canada sets its own requirements for the types of earnings that are included and excluded in assessable/insurable payroll, all of them exclude retiring allowances from assessable earnings. In Ontario, the Workplace Safety and

Insurance Board specifies that retiring allowances are excluded if they are paid over a series of months after employment has ended.

For a listing of other types of payments that are included or excluded, please refer to Table 22.2, Assessable/Insurable Earnings.