

## **Budget Bill Receives Royal Assent**

Legislation to implement payroll-related proposals put forward in this year's budget and other previously announced measures received royal assent on June 29, 2021.

Bill C-30, the *Budget Implementation Act, 2021, No. 1*, contains amendments to the *Income Tax Act*, *Employment Insurance Act*, and *Canada Labour Code*, among other laws. Highlights of measures proposed in the bill include the following provisions:

### *Income Tax Act:*

- stock options: introducing a cap on certain employee stock option deductions;
- automobile taxable benefits: allowing employees with an employer-provided automobile to use their 2019 automobile usage to determine if they are eligible for a reduced standby charge for the 2020 and 2021 tax years;
- CEWS: adjusting the eligibility criteria and the level at which employers are subsidized for the Canada Emergency Wage Subsidy (CEWS); extending CEWS to September 25, 2021 and providing authority to allow the government to further extend it to November 30, 2021; and ensuring that the level of CEWS benefits for furloughed employees continues to align with Employment Insurance (EI) benefits until August 28, 2021; and
- Canada Recovery Hiring Program: creating a new Canada Recovery Hiring Program to help businesses with the costs of hiring new workers.

### *Employment Insurance Act:*

- sickness benefits: increasing EI sickness benefits from 15 weeks to 26 weeks, and
- applying for benefits: making it easier for applicants to receive EI benefits for a period of one year by: implementing a national threshold of 420 hours of insurable employment to qualify for unemployment benefits; having Service Canada only consider a claimant's most recent separation from employment when determining eligibility for unemployment benefits; and ensuring that earnings paid or payable to a person because of a layoff or separation from employment would not be considered earnings for determining if there has been an interruption of earnings.

### *Canada Labour Code:*

- minimum wage: establishing a \$15-per-hour federal minimum wage rate; the rate would be indexed to inflation; if a provincial/territorial minimum wage rate was higher than the federal rate, the provincial/territorial rate would prevail;
- leave related to death or disappearance of a child: increasing the number of weeks of leave that employees could take if their child disappeared due to a probable crime from 52 weeks to 104 weeks; extending eligibility for the leave to include children between 18 and 24 years old; and allowing employees to take the leave even if their child was a party to the probable crime, as long as the child is under 14 years old;
- leave related to COVID-19: increasing the maximum number of weeks of leave for COVID-19 related caregiving responsibilities from 38 to 42; and
- medical leave: increasing the number of weeks of medical leave from 17 to 27; repealing

a 16-week leave for quarantine; and adding quarantine as a reason for which employees may take medical leave.

We have updated the bill's status in the Status of Legislation. We will incorporate amendments passed in the bill in upcoming releases.

### **Third Quarter Prescribed Interest Rates Set**

The prescribed rate for taxable benefits to employees and shareholders from interest-free and low-interest loans is 1% from July 1, 2021 to September 30, 2021. The rate is unchanged from the previous quarter.

The interest rate for unpaid source deductions, overdue taxes and insufficient instalments is 5% for the third quarter.

### **New National Day for Truth and Reconciliation Holiday to be Observed Sept. 30**

The federal government has created a new statutory holiday, called National Day for Truth and Reconciliation, to be observed on September 30 every year, beginning this year.

Employees who work in federally regulated workplaces that are governed by the *Canada Labour Code* will be entitled to take the day off as a paid general holiday. .

The new holiday was enacted through Bill C-5, *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation)*. It received royal assent on June 3, 2021 and came into force on August 3, 2021.

Canadian Heritage Minister Steven Guilbeault said the holiday is an important step in implementing one of the calls to action by the Truth and Reconciliation Commission. The Commission, which was set up to examine the history and legacy of residential schools in Canada and to find a process for reconciliation, recommended a statutory holiday in its 2015 final report.

Guilbeault said the government chose September 30 for the holiday because the date is already used as a day to remember the legacy of residential schools through Orange Shirt Day. The holiday will not be observed as a statutory holiday in other jurisdictions unless the provinces and territories amend their employment/labour standards laws to include it.

### **House of Commons Report makes Recommendations to Modernize EI**

A new report on improving Canada's Employment Insurance (EI) program recommends that the federal government consider adopting a tripartite financing arrangement that would see the federal government playing a role in funding EI, along with employers and employees.

The report, by the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, was tabled in the House of

Commons on June 17, 2021. Titled *Modernizing the Employment Insurance Program*, the report makes 20 recommendations to reform the EI program in order to make it more agile and to better meet the needs of workers and employers.

The recommendations cover EI financing, regular and special EI benefits, training and labour market programming, technological infrastructure, and program administration. Among the suggestions put forward in the report were the following proposals:

- The Canadian government should direct Employment and Social Development Canada (ESDC) to work with the federal Department of Finance to examine the costs and benefits of returning to a funding model for EI that includes employers, employees, and the government. The program is currently funded solely through employer and employee premiums. It has been decades since the federal government paid a portion of the premium costs.
- ESDC should review the list of valid reasons for a separation of employment to qualify for regular EI benefits to determine how it affects vulnerable workers and reflects current labour market realities. The review should ensure that program requirements do not deter EI claimants from accepting job offers.
- ESDC should consider raising the EI income replacement rate, maximum insurable earnings, and minimum weekly benefit, and decreasing benefit clawbacks.
- ESDC should decrease the number of hours of insurable employment needed to qualify for all types of EI benefits.
- ESDC should consider permanently removing a one-week waiting period for all EI claimants. The federal government has temporarily waived the waiting period during the COVID-19 pandemic.
- ESDC should explore ways to make EI parental benefits and Working While on Claim provisions more flexible (e.g., for parental leave, allow for taking the benefits in multiple, short periods)
- ESDC should consider increasing the maximum length of EI sickness benefits to 50 weeks. The federal government has proposed extending the length of the benefits from 15 weeks to 26 weeks.
- ESDC should consult with employee and employer groups to determine whether special benefit (e.g., for illness, pregnancy, parental benefits, etc.) should be part of the EI program or be administered separately.
- ESDC should consult with stakeholders on ways to give self-employed individuals access to regular EI benefits.
- ESDC should keep the committee up to date on the progress of a departmental initiative to modernize the way it delivers EI benefits, including updating outdated information technology systems.

The federal government has not indicated whether it will adopt the recommendations. We will continue to monitor this story and will report on further developments in upcoming releases.

For more information on the report, please see

[https://www.ourcommons.ca/DocumentViewer/en/43-2/HUMA/report-6/page-48#\\_ftn35](https://www.ourcommons.ca/DocumentViewer/en/43-2/HUMA/report-6/page-48#_ftn35).

## **Federal Minimum Wage Rate to Apply as of Dec. 29**

Beginning December 29, 2021, the Canadian government will implement a federal minimum wage rate, set at \$15 an hour.

The rate will apply to employees in federally regulated private-sector organizations.

The government proposed a federal minimum wage rate in its 2021 budget. Amendments to the *Canada Labour Code* to establish it were included in Bill C-30, *the Budget Implementation Act, 2021, No. 1*, which received royal assent on June 29, 2021.

Since 1996, the minimum wage rate for employees in federally regulated private-sector workplaces has been aligned with the general adult minimum wage rate that applies in each province/territory. While the new federal rate will start at \$15, it will be indexed to inflation, with any adjustments occurring on April 1 each year. In cases where a provincial/territorial minimum wage rate is higher than the federal rate, the provincial/territorial rate will prevail.

We will update Table 17.1, Minimum Wages, to include a note about the new wage rate in an upcoming release.

## **CLC Amendments Expand Bereavement Leave**

Recently passed amendments to the *Canada Labour Code* will, once they are in force, increase the number of days of bereavement leave for employees in federally regulated industries from five to 10.

The changes were contained in Bill C-220, *An Act to amend the Canada Labour Code (bereavement leave)*, which received royal assent on June 29, 2021. The legislation was a private member's bill, sponsored by Conservative MP Matt Jeneroux. It is not common for private member's bills to pass all stages of the legislative process and become law. The amendments will come into effect on September 29, 2021.

Employers will not be required to pay employees for the five additional days of bereavement leave.

The legislation will also extend eligibility for bereavement leave beyond immediate family to include employees who are on compassionate care leave or leave related to critical illness for a family member when the family member dies.

We will update 15.4.3, Bereavement Leave, to incorporate the changes in an upcoming release.

## **Proposed Labour Standards Amendments include New Record-keeping Requirements**

Employment and Social Development Canada (ESDC) is proposing to amend the Canada Labour

Standards Regulations to add new record-keeping requirements for employers.

The proposed amendments, which were published in the June 26, 2021 *Canada Gazette Part I* (Vol. 155, No. 26), would affect federally regulated private-sector employers and federal Crown corporations (excluding the public service). They include the following proposals:

- Employers would have to keep records on situations where an unforeseeable workplace emergency that an employee had to deal with resulted in the employer: requiring the employee to work additional hours, which led to the employee having a rest period of fewer than eight hours; not being able to provide the employee with 24 hours' notice of a shift/work period change; or postponing or cancelling the employee's 30-minute break. The *Canada Labour Code* allows for exceptions to its requirements that employers give employees a minimum eight-hour rest period, provide at least 24 hours' notice of work period or shift changes, and allow for a minimum 30-minute break during every period of five consecutive hours of work if an employee has to deal with a situation that the employer could not have reasonably foreseen and that poses, or could reasonably be expected to pose, a threat to a person's life, health, or safety, a threat of damage to or loss of property; or seriously interfere with an employer's operations.
- Employers would have to retain a copy of any certificate from a health care practitioner in regard to an employee's or student intern's medical breaks, as well as any employer request for the certificate.
- Employers would have to keep a record of all work schedules, and changes to them, provided to their student interns. They would also have to keep records of a student intern's refusal to work because the employer did not provide at least 96 hours' written notice of the work schedule.

The proposed amendments would also extend deadlines for employees to file labour standards complaints if the employee needed more time to correct an error made in his or her original complaint, as long as the employee had filed the original complaint on time.

In a statement about the proposed amendments, ESDC said the changes would align the regulations with amendments to the *Canada Labour Code* that came into force on September 1, 2019. Those amendments included requiring employers to provide employees with at least 96 hours' written notice of work schedules, 24 hours' written notice of changes to work schedules, 30-minute breaks every five consecutive hours of work, and eight-hour rest periods between shifts or work periods,

For more information on the proposals, see <https://canadagazette.gc.ca/rp-pr/p1/2021/2021-06-26/pdf/g1-15526.pdf>.

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

### **Federal Pay Equity Act in Force Aug. 31**

Effective August 31, 2021, the federal government's new *Pay Equity Act* and regulations come

into force.

The Act requires federally regulated employers with 10 or more employees to take proactive steps to ensure that they provide equal pay for work of equal value.

Legislation to create the Act passed in 2018 as part of Bill C-86, the *Budget Implementation Act, 2018, No. 2*, which received royal assent on December 13, 2018.

The government has said that the aim of the legislation is to “ensure that pay equity is achieved and maintained, to help address systemic gender discrimination in compensation practices and pay systems, and to contribute to reducing the gender wage gap by addressing the portion of the gap due to the undervaluation of work done by women.”

While a right to equal pay for work of equal value has been part of the *Canadian Human Rights Act* (CHRA) since 1977, it requires employees to file complaints if they believe that their employer is not paying them equitably. The new *Pay Equity Act* takes the onus off employees and, instead, requires employers to proactively implement measures to ensure equal pay for work of equal value. Employers with fewer than 10 employees remain covered by the CHRA’s complaint-based system.

The legislation will require employers to create a pay equity plan within three years of becoming subject to the Act. The purpose of the plan is to examine differences in compensation between positions of equal value that are mostly held by women versus those that men mostly hold. Employers will then be required to eliminate the differences within three to five years, depending on the employer’s size and the total amount of wage adjustments due.

Employers will also have to revise and update the plan at least every five years.

Employers with at least 100 employees and smaller employers with unionized employees will be required to set up a pay equity committee to develop and maintain the pay equity plan. The committee must include employer and employee representatives. Employers not required to establish committees may opt to do so.

Regulations under the Act set out specific details on the pay equity process, including posting documents in the workplace; the mathematical factors to use for comparing compensation; methods for developing a plan when there are no predominantly male job classes; and a process for updating pay equity plans.

For more information on pay equity for federal workplaces, see <https://www.canada.ca/en/services/jobs/workplace/human-rights/overview-pay-equity-act.html>.

### **Reminder: Upcoming Statutory Holidays**

Just a reminder... The following statutory holidays are upcoming:

- Mon. Jun. 21: Northwest Territories and Yukon—National Aboriginal Day

- Thurs. Jun. 24: Quebec—National Holiday
- Thurs. Jul. 1: All jurisdictions—Canada Day (Memorial Day in Newfoundland and Labrador)
- Fri. Jul. 9: Nunavut—Nunavut Day
- Mon. Aug. 2: British Columbia, New Brunswick, Northwest Territories, Nunavut, and Saskatchewan (The day is also a holiday, although not a statutory holiday, in Alberta. Municipalities in some Canadian jurisdictions may also designate the day as a holiday.)
- Mon. Aug. 16: Yukon—Discovery Day
- Mon. Sept. 6: All jurisdictions—Labour Day

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

### **Reminder: B.C. Minimum Wages Rising June 1**

Just a reminder...Effective June 1, 2021, the British Columbia government will raise the general minimum wage rate from \$14.60 an hour to \$15.20 and eliminate a separate minimum wage rate for liquor servers.

The increase in the general minimum wage is the final step in the province's multi-year plan to raise the rate to at least \$15 an hour.

Once the liquor server rate is eliminated, employers will have to pay these employees at least the general minimum wage rate. The liquor server minimum wage rate is currently \$13.95 an hour.

Other minimum wage rates will also go up June 1, 2021:

- Live-in camp leaders: \$121.65/day or partial day worked (currently \$116.86)
- Resident caretakers working in apartment buildings with nine to 60 suites: \$912.28/month plus \$35.56/suite (currently \$876.35/month plus \$35.12/suite )
- Resident caretakers working in apartment buildings with more than 60 suites: \$3,107.42 (currently \$2,985.04)

### **Reminder: N.B. Government to Reduce Tax Rate for First Income Tax Bracket**

Just a reminder...The provincial legislature has passed legislation that reduces the tax rate on the first income tax bracket from 9.68% to 9.4%, beginning in the 2021 tax year.

Bill 48, *An Act to Amend the New Brunswick Income Tax Act*, received royal assent on June 11, 2021. The tax change is retroactive to January 1, 2021, although for payroll deduction purposes, it will be implemented on July 1, 2021.

The first tax bracket applies to annual taxable income up to \$43,835.00.

Since the tax change is being implemented mid-year, the Canada Revenue Agency has announced that the tax rate would be 9.12% from July 1, 2021 to December 31, 2021. The agency has updated its payroll deductions tables and formulas to incorporate the change.

### **Newfoundland and Labrador Legislature Passes Bill to Raise Income Tax Rates**

The Newfoundland and Labrador General Assembly has passed legislation that will raise personal income tax rates for higher income individuals, beginning next year.

The changes were included in Bill 14, *An Act to Amend the Income Tax Act, 2000*, which passed third reading on June 16, 2021. The provincial government proposed the tax increases in this year's provincial budget.

The amendments will establish new personal income tax brackets and tax rates for individuals with a taxable annual income greater than \$135,973.00, beginning January 1, 2022. For more information, please see the budget roundup below.

### **New N.W.T. ESA Emergency Leave Provisions in Force Jul.1**

Effective July 1 2021, amendments to the Northwest Territories *Employment Standards Act* allowing employees to take an unpaid leave if they cannot carry out their job duties because of an emergency, such as the COVID-19 pandemic, came into force.

Amendments waiving the time periods employers must meet for providing notice of a group termination to the territory's Employment Standards Officer and any trade union representing employees under certain circumstances also came into force that day.

The amendments were included in Bill 20, *An Act to Amend the Employment Standards Act*, which received royal assent on March 31, 2021.

The new emergency leave standards include the following provisions:

- In an emergency, all employees covered by the Act are entitled to take a leave without pay during any period when they are not able to perform their job duties because of the emergency.
- An emergency includes the following situations: a state of emergency declared under the territorial *Emergency Management Act* or the federal *Emergencies Act*; a public health emergency declared under the *Public Health Act*; a direction or order made under the *Public Health Act* or by a health officer or the Chief or Deputy Chief Public Health Officer; a quarantine order under the federal *Quarantine Act*; and situations prescribed in regulations under the Act. It also includes situations where one of the previously listed circumstances applied to a member of the employee's family if the family member needed care, child care, or assistance and the employee was the person most reasonably able to provide it, which prevented the employee from being able to work.

- In the case of an emergency due to an epidemic or a pandemic of a reportable disease, employees are entitled to the leave if they cannot work for the following reasons:
  - o they are under individual medical investigation, supervision, or treatment for the reportable disease;
  - o they are in isolation or quarantine or are subject to a control measure, including self-isolation, based on directions or recommendations from a health care professional, a health officer, or the territorial or federal government;
  - o their employer has directed them not to work out of concern that they may expose other individuals in the workplace to the disease;
  - o they are providing care or child care to a family member because of a situation related to the reportable disease, including a school or day care closure; and
  - o they are directly affected by travel restrictions related to the emergency and, under the circumstances, cannot reasonably be expected to travel to their workplace.
- New regulations under the *Employment Standards Act* specify that employees are entitled to the leave in order to be vaccinated against COVID-19. The regulations also state that employees can take the leave if, in the opinion of a health care professional, public health or the government, they have an underlying condition, are undergoing treatment, or have another sickness that increases their risk of contracting COVID-19 or getting severely ill from it.
- There is no maximum period of leave, allowing employees to be off for as long as the emergency continues and prevents them from working.
- Employees taking the leave must advise their employer in advance where possible. Employees must provide reasonable proof that they need to take the leave if their employer requests it. During an epidemic or a pandemic of a reportable disease, employers are prohibited from requiring employees to provide a medical certificate in order to take the leave.
- Employers must maintain confidentiality around the employee's leave and not disclose information about it to anyone unless the employee consents to it, the disclosure is made to an individual who needs the information to do their job, or the disclosure is authorized or required by law.
- Employers are required to reinstate the employee in their job or in a comparable position after they return from the leave.

Although the amendments came into force on July 1, 2021, employees' entitlement to the leave in relation to the COVID-19 pandemic is retroactive to March 18, 2020. The government advises that employees who were terminated from their employment because they could not work as a result of COVID-19 may have grounds to file a complaint with the Employment Standards Office. Individuals must submit complaints for terminations due to COVID-19 that occurred between March 18, 2020 and June 30, 2021 to the Employment Standards Office by January 2, 2022.

The amendments also specify that employees who take an emergency leave not exceeding 14 days are entitled to be paid statutory holiday pay for statutory holidays that occur while they are on the leave.

In addition, the amendments waive an employer's obligation to provide notice of a group termination within specific timeframes (depending on the number of employees affected) to the Employment Standards Officer or a union representing the employees if the terminations are required because of an unforeseen event or circumstance beyond the employer's control, the employer has exercised due diligence to foresee and avoid the cause of the termination, and the cause of the termination prevents the employer from providing the required amount of notice. The employer must provide the notice as soon as possible.

Unforeseen events and circumstances include the destruction or breakdown of machinery or equipment, climatic or economic conditions, a state of emergency under territorial or federal law, including a public health emergency, and a direction or order from a public health official.

The Employment Standards Officer will determine whether a waiver of the notice requirement is valid and will notify the employer and the trade union of its decision and post the decision on the Employment Standards website. Employers will be required to post a copy of the notice at the worksite. If this is not possible, they must give each of the affected employees a copy of the notice.

Amendments to the Act's regulations also allow employees who have been temporarily laid off to apply to the Employment Standards Officer for a vacation waiver if their employer refuses to apply. If accepted, the Employment Standards Officer would issue the waiver and order the employer to pay the employee vacation pay for the vacation, or portion of it, waived.

We have updated the bill in the Status of Legislation. We have added new section 15.10.11, Emergency Leave. We have also updated 19.7.1, Entitlement; 20.7.2, Required Notice -- Group Termination; and 21.7.3, Special Considerations, to incorporate the amendments.

### **Ontario Government White Paper Proposes Possible Privacy Legislation**

A recently released white paper on possible right-to-privacy legislation in Ontario sets out proposed ground rules for when private-sector employers may collect, use, or disclose employees' personal information without their consent.

The Ministry of Government and Consumer Services released the paper, titled *Modernizing Privacy in Ontario*, in mid-June, asking for public feedback by August 3, 2021.

The ministry said the paper addresses ways to strengthen the province's privacy protections and create up-to-date rules to protect privacy rights, increase confidence in digital services, and support innovation. The paper includes proposals affecting employment relationships. Unlike Alberta and British Columbia, Ontario does not have a privacy law that applies to private-sector employees.

Private-sector employers in Ontario are covered under the federal *Personal Information Protection and Electronics Documents Act* (PIPEDA) for the collection, use or disclosure of individuals' personal information in the course a commercial activity, but the legislation does not apply to employee privacy rights, except in federally regulated organizations.

The white paper puts forward proposals around the following themes: a rights-based approach to privacy; the safe use of automated decision making; thoughtful consent and lawful uses of personal data; data transparency; protecting children and youth; a fair, proportionate and supportive regulatory regime; and support for Ontario businesses and innovators.

In terms of employment relationships, the paper suggests that employers be allowed to collect, use, or disclose employees' personal information without employees' consent if they are doing so solely for the purposes of establishing, managing or terminating an employment or volunteer-work relationship or managing a post-employment or post-volunteer-work relationship between an organization and an individual.

"Employers have legal obligations to collect, use and disclose personal information regarding employees, including for tax purposes. Therefore, requiring consent for the collection, use and disclosure of employee personal information when it relates to the establishment and management of an employer and employee relationship is not feasible," the paper said.

However, there would be limits on what employers would be allowed to do. "As is the case under existing Canadian privacy laws, Ontario could provide that the collection of employee personal information must be necessary for the employment relationship, and that employees must be notified when the collection takes place. Any collection of personal information beyond what is necessary to establish or manage the employer and employee relationship would therefore not be permitted by this lawful authority. For example, if an employer wanted to collect socio-economic information on employees for diversity and inclusion planning purposes, the employer would need to obtain consent from the affected employee," said the paper.

Lisa Thompson, minister of Government and Consumer Services, said the government has not yet decided whether it will go ahead with privacy legislation, but if it does, she said businesses would have at least two years to comply with any new requirements.

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

For more information on the white paper, see <https://www.ontariocanada.com/registry/view.do?postingId=37468&language=en>.

## **Ontario Court Rules that Severance Pay Threshold must Include Global Payroll**

Employers in Ontario must include their global payroll when determining whether severance pay is required under the province's *Employment Standards Act, 2000* (ESA), according to a recent decision of the Ontario Superior Court of Justice (Divisional Court).

In the case, *Hawkes v. Max Aicher (North America) Limited, 2021 ONSC 4290*, the court set aside an earlier ruling by the Ontario Labour Relations Board (OLRB) that found that Doug Hawkes' former employer, Max Aicher, was not required to pay him severance pay because its Ontario payroll was below the legislated threshold of \$2.5 million, even though its affiliated

company had a global payroll that exceeded it.

Section 64 of the ESA requires employers to pay severance pay when they terminate the employment of an employee with at least five years of service if they have a payroll of \$2.5 million or more.

Hawkes worked for Aicher for 38 years until it terminated his employment in 2015. The steel company operates in Ontario, but is a subsidiary of a corporation in Germany. After his termination, Hawkes filed a complaint with the province's Labour Ministry, alleging that Aicher owed him termination pay, vacation pay, and severance pay. An employment standards officer determined that he was entitled to termination pay and vacation pay, but not severance pay, since Aicher's Ontario payroll did not meet the \$2.5-million threshold.

Hawkes took the matter to the OLRB. It ruled against him, determining that for calculating severance pay requirements, an employer's payroll was restricted to its Ontario payroll. It based the decision on previous court rulings and on s.3 of the Act, which limits the legislation's application to an employee's work performed in Ontario or, if an employee performs work both inside and outside of Ontario, the work done outside of the province is a continuation of the Ontario work.

In its decision, the OLRB disregarded, as "factually different," a previous Superior Court of Justice ruling in 2014 (*Paquette v. Quadraspec Inc.*) that found that an employer's national payroll must be considered when determining severance pay obligations.

Hawkes then went to the Divisional Court and asked for a judicial review of the ruling. On June 15, 2021, the court ruled in his favour and sent the matter back to the board to determine his severance pay entitlement, with the understanding that the employer's payroll would not be limited to either its Ontario or its Canadian payroll.

In the ruling, Justice Dambrot called the Labour Board's view illogical and flawed, writing that while it makes sense that the legislature, in writing the legislation, would limit the right to severance pay to employees who work in Ontario, it does not follow that it meant to restrict the size of an employer's payroll only to Ontario.

"The calculation of payroll under [s. 64](#) of the [ESA](#) is not restricted to Ontario employment; employment outside of Ontario, including employment outside of Canada, must be included," Justice Dambrot wrote in the decision.

We will continue to monitor this story and will report on any further developments.

For more information on the case, see

<https://www.canlii.org/en/on/onscdc/doc/2021/2021onsc4290/2021onsc4290.html?autocompleteStr=hawkes%20v.%20max%20aicher&autocompletePos=1>).

## **2022 QPIP Rates to remain at 2021 Levels**

Premium rates for the Quebec Parental Insurance Plan (QPIP) will remain unchanged for 2022.

The Minister of Labour, Employment and Social Solidarity, Jean Boulet, announced in June that the premium rates in place for 2021 would continue into 2022. As a result, the rate for employees will remain 0.494% in 2022, while the rate for employers will stay at 0.692%.

The government has not yet announced the QPIP maximum insurable earnings for 2022.

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

### **Finance Ministry to Harmonize Quebec's Tax Rules with some Recent Federal Initiatives**

The Quebec Ministry of Finance has announced plans to harmonize the province's tax legislation and regulations with some recent payroll-related federal tax changes.

In a June 30, 2021 *Information Bulletin* (#2021-5), the ministry said harmonization would occur in the following areas:

- A new stock option deduction limit: Effective July 1, 2021, the federal government implemented a \$200,000 cap on the amount of employee stock options that qualify for a 50 percent stock option deduction. The new requirements do not apply to Canadian controlled private corporations (CCPCs) or non-CCPCs whose annual gross revenue does not exceed \$500 million. The new rules also allow for employers to deduct the amount of stock option benefits that exceed the \$200,000 limit, subject to certain conditions.
- Extension of relief measures for DSLPs and RPPs: The federal government has amended its Income Tax Regulations to extend previously announced relief measures for deferred salary leave plans (DSLPs) and registered pension plans (RPPs) by one year to assist employers and employees affected by the COVID-19 pandemic. The extension keeps "stock-the-clock" rules for DSLPs in place until April 30, 2022. The rules help ensure that the DSLPs are not disqualified because, due to the pandemic, employees had to return from leave before completing a required leave period of at least six months or were not able to begin their leave within a required six-year timeframe. The RPP amendments allow for catch-up contributions by April 30, 2022 and temporarily remove restrictions prohibiting borrowing.
- Correction of pension plan contribution errors: In this year's federal budget, the government announced that it would give administrators of defined contribution pension plans more flexibility to correct under- and over-contribution errors that occur in a five-year period. T4 slips for previous years would not have to be amended as part of the correction. Instead, administrators would file a prescribed form for each employee. The change would apply to additional contributions made, and amounts of over-contributions refunded, in 2021 and later tax years.
- Northern Residents Deductions: The federal budget proposes to expand access to the travel part of the Northern Residents Deduction. The change would allow individuals without employer-provided travel benefits to claim up to \$1,200 in eligible travel expenses. Eligible family members for whom an individual could claim the deduction would include the individual's spouse or common-law partner; the individual's (or the spouse's or common-law partner's) child under age 18; and a dependent relative of the

individual (or the individual's spouse or common-law partner) who met certain criteria. The change would apply as of the 2021 tax year.

The ministry said it would announce at a later date whether it would harmonize Quebec tax rules with federal proposals regarding the electronic filing and certification of tax and information returns. For more information on the federal proposals, see the 2021 Federal Budget Bulletin.

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

### **Saskatchewan Minimum Wage Rising Oct. 1**

On October 1, 2021, the province's minimum wage rate will rise from \$11.45 an hour to \$11.81.

The Saskatchewan government adjusts the minimum wage rate each year on October 1 using an indexation formula based on percentage changes to both Saskatchewan's consumer price index and average hourly wage for the previous year.

### **Yukon Implements ESA Amendments allowing for Domestic or Sexualized Violence Leave**

Effective July 8, 2021, amendments to the Yukon *Employment Standards Act* allowing for domestic or sexualized violence leave came into force.

The new leave was included in Bill 10, an *Act to Amend the Employment Standards Act (2020)*, which received royal assent on November 9, 2020.

Under the new leave standards, employees with at least three months of continuous service may take a leave of up to 10 days, as well as one of up to 15 weeks each year for certain reasons if they, their child, or a person for whom they provide care or support are a victim of domestic or sexualized violence, as defined in the Act. Employers will have to pay employees for five of the 10 days off. The 15-week leave would be unpaid. Employees with fewer than three months of service would be entitled to take up to five days' leave without pay each calendar year.

Highlights of the new leave include the following provisions:

- Employees may 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 or other social services; to obtain psychological or other professional counselling; to temporarily or permanently relocate; and to seek legal or law enforcement help.
- Employees may take the days off in periods of one or more days or in one continuous period. For the 15-week leave, employees must take the time off in one continuous period unless their employer agrees to let them take it in units of one or more days.

- For the paid days off, employees are entitled to the wages that they would have earned had they worked their regular hours on the days of leave. If employees work irregular hours or their wages for regular work hours vary, their employer must pay them at least five percent of their total wages, excluding overtime, for the four-week period right before the day they begin their leave.
- Employees must give their employer as much notice as is reasonably practicable before taking the leave.
- Employees are not eligible for the leave if they are the perpetrator of the violence.
- Employers must keep all matters related to the leave confidential and are prohibited from disclosing information related to the leave unless the employee consents, an employee or an agent of the employer needs the information to do their job, or the disclosure is required by law.

### **Provincial/Territorial Budget Round-up**

**Alberta:** No payroll-related changes proposed.

**British Columbia:** No new payroll-related tax changes proposed. The budget did reiterate that the government has created a refundable tax credit, called the Increased Employment Credit, to encourage employers to create new jobs or raise the pay of existing low- and middle-income employees.

**Manitoba:** The budget proposes to raise the thresholds that apply to the province's Health and Post-Secondary Education Tax Levy next year. The tax applies to employers who have a permanent establishment in the province.

Beginning January 1, 2022, the threshold for registering for the levy would rise from \$1.5 million of annual remuneration to \$1.75 million.

The government also proposes to raise the thresholds that determine which tax rate employers pay. Beginning January 1, 2022, employers with an annual payroll between \$1.75 million and \$3.5 million would pay the tax at a rate of 4.3% of accumulated payroll exceeding \$1.75 million. Currently, this rate applies to employers with an annual payroll between \$1.5 million and \$3 million.

Employers with an annual payroll of more than \$3.5 million would pay the tax at a rate of 2.15% of monthly payroll. Currently, the 2.15% rate applies to employers whose annual payroll is more than \$3 million.

The budget reiterated that the government would continue to index the province's personal income tax brackets and the basic personal amount that employees claim on a TD1MB, *Manitoba Personal Tax Credits Return*. For 2022, the basic personal amount is forecasted to be \$10,075.

**New Brunswick:** No payroll-related changes proposed.

**Newfoundland and Labrador:** The budget proposes to establish new personal income tax brackets and tax rates for individuals with a taxable annual income greater than \$135,973.00. Effective January 1, 2022, the following income brackets and rates would apply:

<b>Taxable Income</b>	<b>Current Tax Rate (%)</b>	<b>Proposed Tax Rate (%)</b>
\$0.01 -- \$38,081.00	8.7	8.7 (unchanged)
\$38,081.01 -- \$76,161.00	14.5	14.5 (unchanged)
\$76,161.01 -- \$135,973.00	15.8	15.8 (unchanged)
\$135,973.01 -- \$190,363.00	17.3	17.8
\$190,363.01 -- \$250,000.00	18.3	19.8
\$250,000.01 -- \$500,000.00	18.3	20.8
\$500,000.01 -- \$1,000,000.00	18.3	21.3
More than \$1,000,000.00	18.3	21.8

The taxable income brackets are indexed and are adjusted annually.

**Northwest Territories:** No payroll-related changes proposed.

**Nova Scotia:** No payroll-related changes proposed.

**Nunavut:** No payroll-related changes proposed.

**Ontario:** No payroll-related changes proposed.

**P.E.I.:** The budget proposes to increase the basic personal amount that employees claim on a P.E.I. *Personal Tax Credits Return* (TD1PE) from \$10,500 to \$11,250, effective January 1, 2022.

**Quebec:** The budget proposes to extend a tax credit on employer contributions to the HSF for employees on paid leave to June 5, 2021. The tax credit applies to employers who are eligible for the Canada Emergency Wage Subsidy (CEWS). The CEWS provides qualifying employers with a wage subsidy to encourage them to keep employees on payroll during the Coronavirus disease 2019 (COVID-19) pandemic. The provincial government implemented the tax credit last year and has regularly extended it in line with federal extensions to the CEWS. With the proposed extension, Quebec would add the following three new qualifying periods for the tax credit: March 14, 2021 - April 10, 2021, April 11, 2021 - May 8, 2021, and May 9, 2021 - June 5, 2021. The budget also proposed changes affecting a compensation tax on financial institutions and a tax holiday on large investment projects.

**Saskatchewan:** No payroll-related changes proposed.

**Yukon:** No payroll-related changes proposed.

## **Payroll Q & A**

Question: When calculating vacation pay, do we have to include amounts paid to an employee for a bonus or for statutory holiday pay?

Answer: Each province and territory, under their employment/labour standards laws, determines the types of payments that are to be included when calculating vacation pay. For federally-regulated employers and employees, the requirements are set out in the *Canada Labour Code*. In all jurisdictions, employers must include the amount of bonus payments paid to employees when calculating vacation pay if the bonuses are work-related. Discretionary bonuses (i.e., those that having nothing to do with work) do not have to be included.

Most jurisdictions require that employers include statutory holiday pay in employees' earnings when calculating the amount of vacation pay owing. Only Alberta and New Brunswick exclude it.

For more information on the amount of vacation pay required and the types of payments to include, please refer to Chapter 21, Vacations.