Carswell Payroll Source Alert – November *2022 Issue*

CRA Revises Gift Policy for Gift Cards

The Canada Revenue Agency (CRA) has changed its administrative policy on gifts, awards and long-service awards to allow employers to provide certain types of gift cards to employees without a taxable benefit arising.

The policy change is retroactive to January 1, 2022.

A gift or an award that an employer gives to an employee is a taxable benefit, whether provided in cash, near-cash, or non-cash; however, the agency has an administrative policy that exempts non-cash gifts under certain circumstances. The CRA has long considered gift cards to be near-cash, making the gift of them always a taxable benefit to the employee.

However, in October, the CRA posted online changes to its administrative policy that state that the agency now considers gift cards that meet all of the following conditions to be non-cash:

- the card comes pre-loaded with money and the employee can only use the card at a specific retailer or at a group of retailers identified on the card;
- the card's terms and conditions make it clear that employees cannot convert amounts loaded on the card into cash; and
- the employer keeps a record of the following gift card information: the name of the employee who received the gift card; the date the employer provided it; the reason why the employer gave the employee the gift card; the type of gift card; the amount loaded on the card; and the name of the retailers where the employee can use the card.

The policy change also applies to gift certificates, chip cards, and electronic gift cards.

If a gift card does not satisfy all of these conditions, the CRA will continue to view it as near-cash and a taxable benefit will arise.

Under the CRA's administrative policy, a non-cash gift is not a taxable benefit if the gift is for a special occasion (e.g., birthday, wedding, birth of a child, religious holiday) or to recognize an employee's overall contributions to the workplace (but not an award for employee performance). There is no limit on the number of non-cash gifts or awards that an employer may give an employee; however, to avoid a taxable benefit, the total fair market value of all of the non-cash gifts must not exceed $500. The $500 limit does not include small items or items whose value is trivial (e.g., coffee, tea, mugs, t-shirt, plaques, trophies) or awards for long service. If the total is more than $500, the amount over $500 is a taxable benefit.

In conjunction with revising gift card rules, the CRA also updated its definition of near cash to include the following items:

- something that can be easily converted to cash (e.g., bonds, securities, precious metals/jewels);
- prepaid cards that financial institutions issue to certain card payment networks (e.g., MasterCard, Visa, American Express) that can be used to pay for purchases;
- digital currencies (e.g., cryptocurrencies not issued or governed by a government or central bank); and
- gift cards that do not meet all of the conditions for the CRA to consider the card to be non-cash.

The CRA defines cash as including currency or its equivalent and cheques that employees can deposit in any bank or spend in any store. It also includes reimbursements, where an employee chooses an item, buys it and submits a receipt to the employer, and receives cash in return.

CRA Revises Social Events Policy

The Canada Revenue Agency (CRA) has revised its administrative policy on social events to incorporate virtual employer-provided events.

Under the revised policy, if an employer provides a free in-person or combination in-person and virtual social event for employees, the event is not taxable if all of the following conditions apply:

- The event is open to all employees.
- The event costs no more than $150 per person. The $150 limit includes taxes. Persons include an employee's spouse or common-law partner. Additional costs for transportation home, taxi fare, or overnight accommodation are not part of the $150 amount.
- Gift cards for meals, drinks and delivery services provided to employees attending virtually must meet the CRA's conditions for a non-cash card.
- The event fits within an annual maximum of six employer-paid combination in-person and virtual social events.

If employers provide or reimburse their employees for virtual-only social events, the benefit is not taxable if it meets all of the following stipulations:

- The event is open to all employees.
- If the virtual social event includes meals, drinks, delivery services and entertainment, the total cost does not exceed $100 per employee. If it only includes meals, drinks and delivery services, the total cost is no more than $50 per employees. The maximum limits include taxes.
- Gift cards for meals, drinks and delivery services provided to employees attending virtually must meet the CRA's conditions for a non-cash card.
- The event fits within an annual maximum of six employer-paid combination in-person and virtual social events.
- Employees provide receipts if the employer reimburses expenses or provides an accountable allowance.

For the CRA to consider a gift card to be non-cash, the card must meet all of the following conditions for non-cash cards set out in the story "CRA Revises Gift Policy for Gift Cards" in this issue of the *Alert*.

Events that do not meet these conditions are taxable benefits. If the total cost of an in-person or combined in-person/virtual event, excluding ancillary costs (e.g., transportation home, taxi fare and overnight accommodation), exceeds the per-person limit, the full amount of the benefit is taxable. If the benefit is taxable, employers must include in the employee's income the ancillary costs and the cost of the employee's spouse's or common-law partner's attendance if they attended.

If the total cost of a virtual event exceeds the maximum dollar amount per employee, the full amount is a taxable benefit.

Government Announces 2023 CPP YMPE

The Canada Revenue Agency has announced that the maximum pensionable earnings for the Canada Pension Plan (CPP) will rise from $64,900 to $66,600 for 2023.

Effective January 1, 2023, the following rates and maximums will apply:

Maximum pensionable earnings: $66,600.00
Annual Basic exemption: $3,500.00
Maximum contributory earnings: $63,100.00
Contribution rate (employee and employer): 5.95%
Maximum employee contribution: $3,754.45
Maximum employer contribution: $3,754.45

On January 1, 2019, the federal government began implementing changes to the CPP that will gradually increase the plan's income replacement level for retirement benefits from one-quarter of eligible earnings to one third and raise post-retirement benefits and survivor and disability pensions. To fund the benefit improvements, between 2019 and 2023, the government is gradually increasing CPP contributions from 4.95% to 5.95% for earnings up to the yearly maximum pensionable earnings (YMPE).

Beginning in 2024, the government will implement a new second additional contribution rate of 4% each for employers and employees on pensionable earnings between the YMPE and a new upper earnings limit. In 2024, the new upper earnings limit will be 107% of the YMPE. In 2025, it will rise to 114% of the YMPE.

New CLC Paid Medical Leave Standards in Force Dec. 1

Effective December 1, 2022, the federal government will implement amendments to the *Canada Labour Code* and its regulations that allow for paid medical leave for employees in federally regulated private-sector workplaces.

Under the new provisions, federally regulated workplaces must comply with the following minimum standards for paid medical leave:

- Employees are entitled to three days of paid medical leave after they complete 30 days of continuous employment with their employer. After the 30-day period, the workers earn one day of paid medical leave at the beginning of each month, to a maximum of 10 days in a calendar year.
- Employees may take paid medical leave for a personal illness or injury, medical appointments during work hours, to donate an organ or tissue, or to quarantine.
- For each paid day of medical leave, employers must pay employees their regular wage rate for their normal work hours. For employees paid on a basis other than time (e.g., commissions), employers must use the same calculation that they utilize for statutory holiday pay and other paid leaves (i.e., regular rate of wages is the employee's average daily earnings, excluding overtime pay, for the 20 days the employee worked immediately before the first day of the paid medical leave, or an amount determined using another method that the employer and a trade union representing the employee agreed to under a collective agreement that is binding on the employer and the employee). The pay is considered wages under the Code.
- Any days employees do not take are carried forward to January 1 of the next calendar year; Each carried-over day will decrease by one the maximum number of days that the employee can earn in that calendar year.
- Employees do not have to take the days consecutively, but employers may require that each period of leave not be less than one day.
- For medical leaves of absence lasting five or more consecutive days, whether paid or unpaid, employers may require employees to provide a certificate issued by a health care practitioner certifying that the employee was unable to work during that time. Employers who want a certificate must put the request in writing no later than 15 days after the employee returns to work.
- For annual paid medical leave entitlements, employers may use a calendar year or the year that they use to calculate employees' annual vacation entitlement.
- In their records of earnings paid each payday, employers must include any amount paid for paid medical leave.
- Employers must keep the following records for each period of paid medical leave that an employee takes:
    - the start and end dates of the leave;
    - the year of employment for which the employee earned the leave;
    - the number of days of leave the employee carried over from a previous year;
    - a copy of any written request for a medical certificate that the employer made; and

    - a copy of any medical certificate the employee provided to the employer.
- Employers must include paid sick leave in an employee's hours worked during an averaging period.
- Unpaid student interns are not covered under the paid medical leave provisions, but are eligible to take unpaid medical leave.
- Employees in the longshoring sector who have multiple employers (i.e. casual daily dispatch workers on the West Coast, and bullpen workers on the East Coast) are considered to be continuously employed for determining eligibility for paid medical leave.

With the new provisions coming into force on December 1, 2022, as of December 31, 2022, employees who have been continuously employed for at least 30 days will be entitled to their first three days of paid medical leave. As of February 1, 2023, they will be entitled to a fourth day and will continue to accumulate one day of paid medical leave per month, to a maximum of 10 days a year.

As a result of the new paid medical leave provisions coming into force, the federal government will remove "Personal illness or injury" from the list of reasons for which an employee may take a personal leave under the Code, effective December 1, 2022.

The paid medical leave provisions were included in Bill C-19, the *Budget Implementation Act, 2022, No. 1*, which received royal assent on June 23, 2022. The bill amended previously passed legislation (Bill C-3) that originally added 10 days of paid medical leave to the *Canada Labour Code*, but did not provide specific implementation dates.

ESDC Proposes Regulatory CLS Amendments covering Employee Reimbursements, Employment Statements and Wage Rate Calculations

Proposed amendments to the Canada Labour Standards Regulations would require employers to reimburse employees for work-related expenses within 30 days of employees submitting a claim for payment.

They would also specify the information that employers must include in employment statements that they will be required to give to new employees.

The proposals, which Employment and Social Development Canada (ESDC) published in the October 1, 2022 issue of the *Canada Gazette Part I* (Vol. 156, No. 40), would support new provisions in the *Canada Labour Code* that Parliament passed several years ago, but have not yet come into effect.

Once in force, the provisions will require employers to reimburse employees for reasonable work-related expenses, give employees a written statement containing information about their employment status within the first 30 days of employment and provide employees with information on employers' and employees' rights and obligations under Part III of the Code within the first 30 days of their employment and within 30 days of any updates.

The provisions were included in the *Budget Implementation Act, 2018, No 2*, which received royal assent December 13, 2018.

The proposed regulatory amendments would specify that employers must reimburse employees for their work-related expenses within 30 days of an employee submitting a claim for payment in situations where there is no written agreement or collective agreement requiring a different time limit.

The proposals would also set out the factors to take into account when determining whether an expense was work related and reasonable. To determine if it was work related, the following factors would apply:

- whether the expense was connected to the employee's job;
- whether the employee incurred the expense to perform work;
- whether the employer required the employee to incur the expense as a condition of employment or continued employment;
- whether the employee incurred the expense to meet an occupational health or safety requirement; and
- whether the employee incurred the expense for a legitimate business purpose and not for personal use or enjoyment.

To determine whether the expense amount was reasonable, employers would have to consider the following factors:

- whether the expense is related to the employee's work;
- whether the employee incurred the expense for work purposes;
- whether the employer directed the employee to incur the expenses;
- whether the expense amount is reasonable and did not involve extra unnecessary expenses;
- whether the expense is one that employers in similar industries would normally reimburse;
- whether the employer approved the expense in advance;
- whether the employee incurred the expense in good faith; and
- whether the employee submitted receipts or invoices or other documentation when submitting the claim for payment.

The proposed amendments to the regulations would also specify that employers include the following information in the written employment statements that will be required under the Code:

- the names of the parties to the employment relationship;
- the employee's job title and brief description of the duties and responsibilities;
- the employment address;
- the date that the employee began employment;
- the term of employment;
- the probationary period, if there is one;
- the specific requirements of employment (e.g. driver's license, criminal records check);
- the required training;

- the employee's hours of work, including how the employer calculates them and overtime rules;
- the employee's rate of wages or salary, including overtime rates;
- the frequency of the paydays and any other payments;
- a list of any mandatory deductions; and
- the process for reimbursing the employee for work-related expenses.

In addition to these changes, ESDC is also proposing to amend the Canada Labour Standards Regulations to include a formula for calculating how to compensate employees for time spent appearing before a Canada Industrial Relations Board hearing. The proposed amendments would specify that employers calculate the employee's wage rate by dividing the wages the employee earned in the previous four-week period by the number of hours worked. Employers would then multiply the resulting wage rate by the number of hours the employee spent before the board to determine the amount of compensation. In doing the calculations, employers would exclude overtime pay, vacation pay, statutory holiday pay, personal leave pay, pay for leave for victims of family violence and bereavement leave pay.

For commission-based employees with at least 12 weeks of service, employers would use a 12-week period instead of four weeks to determine the wage rate. If a collective agreement specified a different formula or set out a regular wage rate, employers would have to use the formula or rate in the collective agreement.

In situations where an employee's calculated wage rate was less than the applicable minimum wage rate or an employer was not able to calculate the wage rate because it was not required to keep records of hours worked and could not determine the number of hours worked, the employer would have to use the minimum wage rate as the employee's regular rate of wages.

Other amendments would allow the Labour Program to serve employers documents such as payment orders and compliance orders by courier, fax or other electronic methods, in addition to using registered mail and personal service. For employers who are difficult to contact, the Labour Program would be authorized to use an approach called substitutional service, which allows it to serve the documents by leaving a copy of the notice or order at the employer's last known address or place of business.
ESDC would also make related amendments to the Administrative Monetary Penalties (*Canada Labour Code*) Regulations.

The government has not yet announced a date for implementing the amendments to the Code or the regulations.

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

For more information on the proposals, see https://gazette.gc.ca/rp-pr/p1/2022/2022-10-01/pdf/g1-15640.pdf.

Reminder: Upcoming Statutory Holidays

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

- Fri., Nov. 11: All jurisdictions except Manitoba, Nova Scotia, Ontario, and Quebec—Remembrance Day. In Manitoba and Nova Scotia, the 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.
- Sun. Dec. 25: All jurisdictions—Christmas
- Mon. Dec. 26: *Canada Labour Code* and Ontario—Boxing Day
- Sun. Jan. 1/23: All jurisdictions—New Year's Day
- Mon. Jan. 2/23: Quebec—bank holiday

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.

2023 Workers' Compensation Maximum Assessable/Insurable Earnings

The following workers' compensation bodies have announced their maximum assessable/insurable earnings for 2023:

British Columbia: $112,800 (2022: $108,400)
Manitoba: $153,380 (2022: $150,000)
New Brunswick: $74,800 (2022: $69,200)
Northwest Territories: $107,400 (2022: $102,200)
Nova Scotia: $69,800 (2022: $69,000)
Nunavut: $107,400 (2022: $102,200)
Ontario: $110,000 (2022: $100,422)
Prince Edward Island: $65,000 (2022: $58,300)
Quebec: $91,000 (2022: $88,000)
Yukon: $98,093 (2022: $94,320)

Bill Proposes French-language Rights for certain Employees in Federally Regulated Workplaces

A House of Commons committee is considering proposed legislation that would give employees working for federally regulated private-sector employers in Quebec the right to use French as their language of communication in the workplace.

The proposal is included in Bill C-13, *An Act for the Substantive Equality of Canada's Official Languages*, which the government tabled in March. Among other provisions, the bill would enact a *Use of French in Federally Regulated Private Businesses Act,* which would provide for employee rights and employer duties concerning the use of French in the workplace. The legislation would apply initially in Quebec and later to other regions of the country that have a "strong francophone presence."

The bill proposes to give employees who occupy or are assigned a position in Quebec (and later in other regions, as previously noted) the right to:

- do their work and be supervised in French;
- receive all communications and documents from their employer in French, including employment or promotion offers, termination notices, collective agreements and grievances (Employers could provide documents to employees in both French and English, as long as the use of French was at least equal to the use of English); and
- use regularly and widely used work instruments and computer systems in French.

Employers would have a duty to ensure employees could exercise these rights. They would also have to foster the use of French in workplace by notifying employees that they were subject to the legislation, informing employees to whom the act applies of their language-of-work rights and available remedies (including filing complaints with the commissioner of Official Languages), and establishing a committee to support their mandate to foster French in the workplace.

The requirements would not apply to all federally regulated private-sector employers. Employers with less than an as-yet-determined number of employees would be exempt (regulations would specify the number). Also excluded would be corporations incorporated to carry out functions on behalf of the federal government, corporations subject to the *Official Languages Act* under different legislation, and councils, governments, corporations or other entities authorized to act on behalf of certain Indigenous groups.

The bill would also allow federally regulated private-sector employers to opt to be subject to Quebec's provincial *Charter of the French Language* instead of this legislation.

For more information on the legislation, please see https://www.parl.ca/legisinfo/en/bill/44-1/c-13.

New B.C. Regulations will Impose Age Restrictions on Certain Jobs

Beginning January 1, 2023, the British Columbia government will implement legislative and regulatory amendments that set a minimum age for certain types of work considered too hazardous for young people.

In 2019, the provincial legislature passed amendments to the *Employment Standards Act* (Bill 8, *Employment Standards Amendment Act, 2019*) that restricted employment in hazardous industries or in hazardous work to workers who were at least 16 years old and, in some cases, older. The government delayed bringing the amendments into force until it revised the Employment Standards Regulation to identify hazardous industries and hazardous work and set a minimum age for working in them.

Once the amendments come into effect in January, employees will have to be at least 18 years of age to do the following types of work:

- tree falling and logging;
- operating a chainsaw;
- certain types of work in a processing facility that processes fish, poultry or other animals;
- drilling and well servicing in the oil and gas industry;
- powerline construction work or maintenance where there are possible electrical hazards;
- work in a production process at a paper, pulp, shake, shingle or saw mill;
- work in a production process at a foundry, metal processing or metal fabrication operation, refinery or smelter;
- work in a confined space or in underground workings;
- work that involves exposure to harmful levels of radiation;
- work in a silica process or where the employee could be exposed to silica dust;
- work where a worker could be exposed to possibly harmful levels of asbestos; and
- work where a worker is or might be exposed to hazardous levels of air contaminants.

Employees will have to be at least 16 years of age to do the following types of work:

- construction work;
- silviculture activities;
- forest fighting; and
- work that requires working from height that requires a fall protection system.

The new restrictions will not apply to trainees or apprentices that SkilledTradesBC oversees. The new age limits will also not apply to employees hired before January 1, 2023, if their position and duties stay the same after that date and if they will reach the applicable minimum age by April 1, 2023.

We will update 16.3, Minimum Age, to incorporate the changes in an upcoming release. For more information on the changes, please see https://www.bclaws.gov.bc.ca/civix/document/id/oic/oic_cur/0512_2022.

B.C. Government Consulting on Gig Work

During November, the British Columbia government is consulting with gig workers working for app-based ride-hailing and delivery services about their jobs and working conditions.

The Ministry of Labour said the government is carrying out the review to ensure that appropriate employment standards exist for gig workers. In a news release, the ministry said the review could include proposed amendments to the *Employment Standards Act* and its regulations.

As part of the review, the government will also consult with app-based companies, industry experts, labour organizations and academics, as well as First Nations and Indigenous groups.

The ministry said it also plans to examine the feasibility of providing benefit and pension plans for workers to who do not have coverage through their employer.
For more information on the gig-work consultations, please see Gig Worker Engagement - Province of British Columbia (gov.bc.ca).

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

Proposed B.C. WCA Amendments would Implement Re-employment Requirements

Proposed amendments to British Columbia's *Workers Compensation Act* would require employers to re-employ workers injured on the job.

The changes are contained in Bill 41, the *Workers Compensation Amendment Act (No. 2), 2022*, which Labour Minister Harry Bains tabled in the provincial legislature on October 31, 2022. The proposed amendments would implement the following re-employment requirements:

- Employers who regularly employ at least 20 workers would be required to re-employ workers injured on the job. The requirement would apply to employees who have worked for their employer on a continuous basis for at least 12 months before the date that they were injured. It would cover both part-time and full-time workers.
- Employers would be required to reinstate injured workers in their pre-injury job or offer them alternative employment that was comparable in kind and wages to their pre-injury job if the workers were deemed fit to perform the essential duties of their pre-injury job.
- If workers were not fit to perform the essential duties of their pre-injury job, but were fit to work, their employer would be required to offer them the first suitable work that became available.
- Employers and workers would have a duty to co-operate with each other and with WorkSafeBC on an employee's return to work.
- Employers would be required to make any changes necessary to the work or the workplace to accommodate the returning worker, up to the point of undue hardship for the employer.
- The obligation to re-employ a worker deemed fit to do the essential duties of the pre-injury job would apply until two years after the date the worker was injured if, by that date, the worker was performing suitable work. All of an employer's re-employment obligations would last until two years after the date of the injury in cases where a worker had not yet returned to work.
- Employers who terminate the employment of a worker within six months after the worker's return to work would be in violation of the provisions, unless they could prove that the termination was not related to the worker's injury.

- If an employer fails to comply with the duty to co-operate or with any of the return-to-work provisions, WorkSafeBC would be authorized to levy an administrative penalty on the employer. The amount of the penalty could not exceed the maximum assessable earnings amount.

The bill also includes the following proposed amendments:

- Employers and supervisors would be explicitly prohibited from discouraging workers and their dependants from filing workers' compensation claims or from punishing them if they did.
- A fair practices commissioner would be appointed to investigate employer and worker complaints of alleged unfairness in dealings with WorkSafeBC.
- Benefits for injured workers would be indexed to the full rate of annual percentage changes in the national consumer price index.

For more information on the proposals, please see Employers and workers would have a duty to co-operate with each other and with WorkSafeBC on the employee's return to work.

Manitoba Government Provides Minimum Wage Subsidy for Small Business

The Manitoba government has launched a wage subsidy program for small businesses in the province to help offset the effect of its recent minimum wage increase.

On October 1, 2022, the government raised the minimum wage rate from $11.95 an hour to $13.50. It was scheduled to increase the rate to $12.35; however, recent amendments to *The Employment Standards Code* authorized the provincial cabinet to raise the rate by an additional amount to compensate for high inflation.

The Small Business Minimum Wage Adjustment Program is open to eligible employers in the private, non-profit, and charitable sectors. They can apply to receive a prorated wage subsidy of up to 50 cents an hour for a six-month period running from October 1, 2022, to March 31, 2023 for each employee earning the new minimum wage of $13.50 per hour for up to 40 hours per week. The amount of the subsidy depends on the employee's hourly wage rate on September 30, 2022.

To be eligible, employers must meet all of the following requirements:

- have an active and valid Business Number, business bank account, and e-mail address;
- be registered, and in good standing with the Companies Office (exceptions apply for sole proprietors);
- have up to 20 employees that work and are located in Manitoba; and
- have an employee who was paid between $11.95 and $13.49 per hour as of September 30, 2022 and, as of October 1, 2022, is being paid $13.50 per hour.

Federal, provincial, and local government employers are not eligible for the program.

The government will pay the subsidy up to a maximum of 80 hours per employee per bi-

weekly pay period cycle. Overtime pay is not eligible.

To apply for the subsidy, employers have to submit an online form after each two-week pay period cycle for each employee. They must include the employee's pay advice to support their application. Once the government validates the claim and process the application, it will pay the subsidy by direct deposit to the employer. With the program running until March 31, 2023, the latest date for which employers may submit an application is April 14, 2023.

For more information on the program, please see https://gov.mb.ca/jec/busdev/financial/sbwa/index.html.

N.B. Government Proposes Income Tax Rate Reductions

The New Brunswick government is proposing to reduce personal income tax rates in the province next year.

On November 1, 2022, it tabled legislation that would lower rates for all but the first income bracket and reduce the number of income brackets from five to four. Bill 10, *An Act to Amend the New Brunswick Income Tax Act*, proposes to:

- reduce the tax rate for second income bracket ($47,715.01 - $95,431.00) from 14.82% to 14%;
- reduce the tax rate for third income bracket ($95,431.01 - $176,756.00) from 16.52% to 16%;
- eliminate the fourth income bracket, which currently has a tax rate of 17.84%; and
- reduce the highest income tax bracket ($176,756.01 and over) from 20.3% to 19.5%.

The tax rate for the first income bracket ($0.01 - $47,715.00) would remain 9.4%.

The new rates would apply for 2023 and later tax years. The new income brackets would be indexed and adjusted annually after 2023.

Proposed N.B. ESA Amendments would End Sub-minimum Wage Stipends

In November, the New Brunswick government tabled legislation that would prevent situations where people with disabilities were paid less than the minimum wage rate for doing work comparable to other workers.

Bill 12, *An Act to Amend the Employment Standards Act*, passed first reading in the provincial legislature on November 1, 2022.

The bill would amend the definition of "employer" in the *Employment Standards Act* to include any person who authorizes an employee to be in or about a place of employment to perform work, supply services, or receive training. It would also amend the definition of "employee" to include a person who performs work or supplies services, or who receives training, unless exempted by regulation, regardless of whether the person

receives accommodations to meet their needs.

In a news release, Minister of Post-Secondary Education, Training and Labour Trevor Holder said the amendments would ensure a clear employer/employee relationship when an employment agency is involved and remove ambiguity around paying stipends that are below minimum wage.

“The practice now in place of allowing for stipends that are less than minimum wage is archaic and needs to end,” Holder said in the news release.

NL Legislature Passes Pay Equity and Pay Transparency Bill

In October, the Newfoundland and Labrador House of Assembly passed legislation to implement pay equity requirements for public-sector employers and pay transparency rules for all employers in the province.

Bill 3, An *Act respecting Pay Equity for the Public Sector and Pay Transparency for the Public and Private Sectors*, passed third reading in the legislature on October 19, 2022.

Pam Parsons, the minister Responsible for Women and Gender Equality, said in a news release that the government would consult with employers and other stakeholders to determine next steps for implementing pay equity in the private sector.

Once in force, Bill 3 will implement the following requirements:

Pay Equity:

- Employers in the public sector with at least 10 employees will have to establish and maintain pay equity. They will be required to implement compensation practices based on skills, effort, and responsibility and on working conditions.
- Exceptions will apply to pay differences resulting from formal seniority or merit systems that do not discriminate based on gender, certain training and development assignments, “red circling” of pay rates above the maximum pay range for a position, and a skills shortage that causes a temporary increase in pay in order to recruit and retain employees.
- Employers will be prohibited from reducing, freezing or red circling an employee’s pay or putting an employee in a lower step of a pay range that an employer has adjusted upwards in order to establish and maintain pay equity.
- The government will appoint a Pay Equity Officer to oversee pay equity. Employers will be required to submit periodic reports on their pay equity progress to the Pay Equity Officer.

Pay Transparency

- All employers in the public and private sectors will be prohibited from requesting pay history information from job applicants; however, applicants may voluntarily disclose the information. Employers will be permitted to seek information about pay ranges or total pay for positions that are comparable to the one for which the applicant is applying. Employers may use that information to determine pay for

the job applicant. The prohibition will not apply to publicly available pay history information.
- Employers who publicly advertise a job will have to include information about the expected pay or pay range for the position in the posting.
- Certain employers, to be prescribed in regulations, will have to prepare pay transparency reports. In addition to submitting the reports to the government, the employer will have to post them online or in at least one conspicuous place in the workplace. The government will be authorized to publish the pay transparency reports.
- Employers or persons acting for them will be prohibited from intimidating, dismissing or otherwise penalizing employees or applicants, or threatening to do so, because they asked about their pay or their employer's pay policies; disclosed their pay to another employee or applicant; provided information to the director of Labour Standards about whether the employer was complying with the pay transparency rules; or asked the employer to comply with the pay transparency provisions.
- Individuals who allege that an employer has contravened the pay transparency requirements will be allowed to make a complaint to the Labour Standards director.

Anyone found guilty of wilfully contravening the Act or its regulations can be fined up to $1,000 for an individual or up to $25,000 for a corporation or a public body.

Most of the pay equity provisions in the bill will come into force on April 1, 2023. The government has not yet announced when the pay transparency rules would take effect. It said in a news release that it would hold consultations in the fall on timelines for implementation and what to include in regulations under the Act (e.g., reporting requirements).

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

N.S. LSC Amendments provide Leave for End of Pregnancy

Effective January 1, 2023, employees covered under Nova Scotia's *Labour Standards Act* will be entitled to take unpaid time off work if their pregnancy ends other than in a live birth.

The new standards were included in Bill 203, the *Labour Standards Code Act (amended)*, which passed third reading and received royal assent on November 9, 2022.

The bill includes the following amendments:
- Employees will be entitled to take up to five consecutive working days of leave without pay, at their option, if they experience an end of pregnancy. An end of pregnancy means a pregnancy that ends other than in a live birth.
- Employees will also be entitled to the five-day leave if their spouse experiences an end of pregnancy or their former spouse does, provided that they would have

been the biological parent of the child. The leave will also be available to employees who would have become a parent of a child born to another person under an adoption or surrogacy agreement if the person had not experienced an end of pregnancy.

- Employees will be entitled to take up to 16 weeks of unpaid leave if they experience an end of pregnancy after the 19th week of their pregnancy.
- An employee who was already on pregnancy leave when the loss occurred will be entitled to the remainder of their pregnancy leave or, if they had already taken more than 10 weeks of pregnancy leave, up to an extra six weeks, beginning of the day that the end of pregnancy occurred. It will be up to the employee to choose.
- Employees who take the five-day leave may also take the 16-week leave for the same end of pregnancy if they take the leaves consecutively. Any of the days taken under the five-day leave will be subtracted from the amount of leave available for the 16-week leave. Employees who take the 16-week leave first will not be permitted to then take the five-day leave for the same end of pregnancy.
- Employees will have to give their employer as much notice as reasonably practicable before taking the leave. If they cannot inform their employer before taking the leave, they will have to advise the employer as soon as practicable of the date the leave began and when they expect to return to work.
- Employers will be allowed to ask employees for proof of the need for the leave.
- Employees requesting a leave of absence because their spouse, former spouse or another person experienced an end of the pregnancy will not have the right to collect, use or disclose personal information about that person without their consent. They also cannot t compel that person to disclose personal information.

Sections in the Code covering provision of benefits, return to work, entitlement to other leaves, and confidentiality requirements for leaves will apply to these leaves.

PEI ESA Review Panel holding Public Consultations

A panel reviewing Prince Edward Island's *Employment Standards Act* is holding public consultations before preparing a final report with recommendations to the government on changes.

The government appointed the *Employment Standards Act* Comprehensive Review Panel in October 2021 to recommend ways to modernize the legislation. The committee is also reviewing regulations under the Act, as well as the *Youth Employment Act*. The last comprehensive review occurred in 2006.

To help guide the consultations, the panel released an interim report in October 2022 that identified issues that stakeholders, such as industry groups, unions, and employee and employer representatives, raised during an earlier round of consultations. The topics included many payroll-related aspects of employment standards, including hours of work and overtime, paying employees, statutory holidays, vacation pay, paid sick leave, and notice of termination.

During the consultation period, members of the public may submit written submissions online and/or attend in-person meetings. At the time of writing, the panel had not yet listed the meeting dates or posted a deadline for receiving written feedback.

For more information on the review, please see https://www.princeedwardisland.ca/en/information/economic-growth-tourism-and-culture/employment-standards-act-comprehensive-review.

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

2023 QPP Maximum Announced

The maximum pensionable earnings for the Quebec Pension Plan (QPP) will rise from $64,900 to $66,600 for 2023.

Effective January 1, 2023, the following rates and maximums will apply:

Maximum pensionable earnings: $66,600.00
Annual Basic exemption: $3,500.00
Maximum contributory earnings: $63,100.00
Contribution rate (employee and employer): 6.4%
Maximum employee contribution: $4,038.40
Maximum employer contribution: $4,038.40

On January 1, 2019, the Quebec government began implementing changes to the QPP that will gradually increase the plan's income replacement level for retirement benefits from one-quarter of eligible earnings to one third and raise post-retirement benefits and survivor and disability pensions. To fund the benefit improvements, between 2019 and 2023, the government is gradually increasing QPP contributions from 5.4% to 6.4% for earnings up to the yearly maximum pensionable earnings (YMPE).

Beginning in 2024, the government will implement a new second additional contribution rate of 4% each for employers and employees on pensionable earnings between the YMPE and a new upper earnings limit. In 2024, the new upper earnings limit will be 107% of the YMPE. In 2025, it will rise to 114% of the YMPE.

QPIP Maximum Insurable Earnings Increasing in 2023

The maximum insurable earnings amount for the Quebec Parental Insurance Plan (QPIP) will increase from $88,000 to $91,000 on January 1, 2023.

As previously announced, employee and employer QPIP premium rates will remain at their 2022 levels. As a result, the rate for employees will remain 0.494% in 2023, while the rate for employers will stay at 0.692%.

Effective January 1, 2023, the following rates and maximums will apply:

Maximum insurable earnings: $91,000
Employee premium rate: 0.494%
Employer premium rate: 0.692%
Yearly maximum employee premium payment: $449.54
Yearly maximum employer premium payment: $629.72

Yukon to make National Day for Truth and Reconciliation a Statutory Holiday

The Yukon government announced in October that it plans to make the National Day for Truth and Reconciliation a statutory holiday under the *Employment Standards Act*, beginning next year.

Minister of Community Services Richard Mostyn said in a news release that the government would table amendments to the Act in the spring to make September 30 a statutory holiday.

The federal government created a National Day for Truth and Reconciliation statutory holiday last year to implement one of the calls to action that the Truth and Reconciliation Commission put forward in its 2015 report on the history and legacy of residential schools in Canada on First Nations, Inuit and Métis people. The federal holiday, which applies to federal government employees and workers in federally regulated industries, is observed on September 30 every year. For the day to be a statutory holiday in the provinces and territories, each government must pass its own legislation.

In September, the Yukon government released the results of a survey showing that 66% of all respondents in the territory favoured making the day a statutory holiday, although there was stronger support from non-employers than employers.

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

Payroll Q & A

Question: Are employers required to give employees a pay statement with each pay?

Answer: The answer depends on the jurisdiction in which the employee works since pay statements are covered by provincial/territorial employment/labour standards laws and the *Canada Labour Code* for federally regulated private-sector workplaces:

Canada Labour Code: Employers must provide a written pay statement at the time they pay wages. The Minister of Labour may exempt an employer from any or all of the Code's pay statement provisions. Employers may provide the pay statement electronically if the employer provides the employee with private access to a computer and a printer so that the employee can read the pay statement and print it.

Alberta: Employers must provide employees with a written pay statement at the end of

each pay period. Employers may provide the statement electronically if the employees have confidential access to it and can view and print the pay statement.

British Columbia: Employers must provide a written pay statement on every payday unless the statement will be the same as the previous one. Employers are not required to provide another pay statement until there is a change to the statement. Employers may provide pay statements electronically if employees have confidential access to them and can print their statements through their place of work.

Manitoba: Employers must give employees written pay statements at the end of each pay period unless the amount of wages does not change over a period of time. If the wages are the same, the employer may, instead, at the beginning of the period, give the employee a statement setting out the wages to be paid, the wage rate, deductions and the net amount to be paid on each payday in the period. Employers may provide pay statements electronically.

New Brunswick: Employers must provide a written pay statement on each payday. Employers may provide the pay statement electronically at their workplace if they give employees confidential access to the statement and a way to make a paper copy of it.

Newfoundland and Labrador: Employers must provide employees with a written pay statement at the time they pay wages. The *Labour Standards Act* does not address electronic pay statements.

Northwest Territories: Employers must provide employees with a written pay statement when they pay wages. If an employee requests it, the employer must also provide the employee with a detailed pay statement that describes how the employer calculated their wages and any bonus or living allowance. Employers may provide pay statements electronically if they give the employees a way to securely and privately view and print the statements.

Nova Scotia: Employers must provide a written pay statement to employees when they pay wages. Employers may provide the statement electronically if, through the workplace, they give employees confidential access to the statement and a way of making a paper copy of it.

Nunavut: Employers must provide employees with a written pay statement when they pay wages. If an employee requests it, the employer must also provide the employee with a detailed pay statement that describes how the employer calculated their wages and any bonus or living allowance. The *Labour Standards Act* does not address electronic pay statements.

Ontario: Employers must provide employees with a written pay statement on or before their payday. Employees may request statements related to their vacation pay and employers must provide the information. For more information, please see 21.9.3, Vacation Records. Employers may provide pay statements electronically if employees have access to a means of making a paper copy of their statement.

Prince Edward Island: Employers must provide a written pay statement to employees when they pay them. Employers may provide the statement electronically if they give employees confidential access to the statement and a way of making a paper copy of it at work.

Quebec: Employers must provide employees with a written pay statement when they pay them. The provincial government can exempt employers from pay statement requirements. Employers may provide the statements electronically. The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) does not specify the form the statement must take, but it does say that employers must "remit" the pay statement to employees, not just make it available to them.

Saskatchewan: Employers must provide employees with a written pay statement on each payday and when making payments of wage adjustments. Employers may provide the statements electronically if they allow employees to print a copy of the statement.

Yukon: Employers must provide a pay statement to employees at least once a month. The *Employment Standards Act* does not address electronic pay statements.

For more information on pay statements, including what to include in them, please refer to the applicable jurisdiction in chapter 18, Pay Statements.