New Employment Obligations for Federally Regulated Businesses

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On July 9, 2023, major amendments to the *Canada Labour Code* [1] (the "**Code**") came into force, and further amendments are set to come into force shortly. These amendments relate to Part III of the Code, which covers labour standards. They were provided for in the *Budget Implementation Act, 2018, No. 2* [2], which was assented to on December 13, 2018, but are only now coming into force.

They essentially provide for three new obligations for employers, namely that they must (1) reimburse employees for reasonable work-related expenses, (2) provide employees with a written employment statement containing information relating to their employment and (3) provide employees with information respecting employers' and employees' rights and obligations.

New provisions of the *Canada Labour Standards Regulations* [3] (the "**Regulations**") have also been adopted to clarify these new obligations.

REIMBURSEMENT OF REASONABLE WORK-RELATED EXPENSES

With this first amendment, the government sought to compensate for the fact that it can be difficult for an employee to be reimbursed for work-related expenses, such as work uniforms, equipment needed to perform their duties and travel or training expenses, given that these are not included in the definition of wages set out in Part III of the Code. It is also unlikely that employees would claim such expenses through legal action against their employer. The adoption of new provisions in this regard makes it easier for employees to have any reasonable work-related expenses they have incurred reimbursed.

Under the new section 238.1 of the Code, an employee working in a federally regulated business is entitled to be reimbursed by their employer for reasonable work-related expenses. To process a claim for payment, the employer must assess the reasonableness of the expense and whether it is work-related.

The new section 23.1 of the *Regulations* provides for a series of factors to consider in order to

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determine whether an expense is reasonable and work-related, particularly whether the expense is connected to the employee's performance of work, whether it is required by the employer as a condition of employment or continued employment, whether it is incurred for a legitimate business purpose and not for personal use or enjoyment, whether the employer authorized it in advance and whether it is incurred by the employee in good faith.

The employer must reimburse such expenses within 30 days of the day on which the employee submitted their claim for payment unless a written agreement or collective agreement specifies a different time limit.

EMPLOYMENT STATEMENT

Currently, federally regulated private sector employers are not required to provide documentation of employment status to their employees.

Under the new section 253.2 of the Code, employers must provide employees with a written employment statement within their first 30 days of employment. This obligation comes into force 90 days after July 9, 2023.

The new section 3.1 of the *Regulations* provides for 13 elements that must be included in an employment statement, including the employee's job title, a brief description of their duties and responsibilities, the address of their ordinary place of work, the term of the employment, the duration of the probationary period, if any, a description of the necessary qualifications and any required training for the position, the employee's hours of work and rules regarding overtime hours, and the employee's rate of wages or salary.

Employers must also provide employees with an updated version of the employment statement reflecting any change in the information it contains within 30 days of such change. Employers must retain a copy of these documents for 36 months following termination of employment.

INFORMATION RESPECTING EMPLOYERS' AND EMPLOYEES' RIGHTS AND OBLIGATIONS

Under the new section 253.1 of the Code, employers must, within the first 30 days of employment, provide each employee with "any materials that the Minister makes available and that contains information respecting employers' and employees' rights and obligations" as set out in Part III of the Code. Employers will also be required to provide employees with updated versions of these materials within 30 days of such versions becoming available.

This new provision also requires employers to post and "keep posted" the most recent version of these materials "in readily accessible places where it is likely to be seen by employees." Lastly, when an employer terminates an employee's employment, the employer must, "not later than the last day of the employee's employment," provide the employee with the above-mentioned materials "that relate to terminations of employment."

These obligations come into force 90 days after July 9, 2023.

ADMINISTRATIVE MONETARY PENALTIES

The *Administrative Monetary Penalties* (*Canada Labour Code*) Regulations designate and classify violations of the provisions of Parts II and III of the Code and its regulations for which an administrative monetary penalty can be issued.

Amendments have been made to these regulations to include the new obligations mentioned above, and to classify violations.

Failure to comply with these new obligations exposes the employer to penalties ranging from $200

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to $6,000, depending on the size of the business and the provision that has been violated.

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All federally regulated businesses must take note of these provisions to properly understand their new obligations. These provisions call for swift action on the part of concerned employers, especially to avoid monetary penalties.

Do not hesitate to contact our team members for more information or any advice regarding these changes.

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1. R.S.C. (1985), c. L-2.
2. S.C. 2018, c. 2.
3. C.R.C., c. 986.

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