June 7, 2017

Upcoming changes in federal labour law

Employees and employers regulated under the federal labour relations regime should keep their eyes open: a bill presently under consideration could bring about significant changes regarding parental leaves and creating new protection measures for employees.

Let us examine certain provisions of Bill C-44, introduced by the federal government following the budget presented to Parliament on March 22, 2017, amending the Canada Labour Code [Code], among other laws.

For the employees: increased leave

The Bill would amend Part III of the *Code* to increase parental leave from 37 to 63 weeks, allowing employees to take such leave within a period of 78 weeks following the birth, instead of within 52 weeks as was the case previously. The changes allow as well for maternity leave to begin 13 weeks prior to the birth or due date, instead of 11 weeks as is the case presently. The Bill also provides for a new leave for an employee who is obliged to provide care to a gravely ill adult.

Enhanced jurisdiction of the Canada Industrial Relations Board

The Canada Industrial Relations Board [CIRB] was already competent regarding the provisions of Part I, on labour relations. It would now inherit the responsibilities previously given over to "appeals officers" provided for in Part II, in matters of health and safety. The CIRB would now also have jurisdiction regarding Part III, on labour standards: it would hear complaints for alleged unjust dismissal filed pursuant to section 240, replacing outside arbitrators named by the Minister.

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New monetary sanctions

A new and fundamental change introduced by this Bill is the creation of a regime of administrative fines for infractions of Parts II and III. It would now be the CIRB that would hear appeals from penalties imposed by the Ministerial order. Alleged violations of Parts II and III would no longer be treated by the common law courts: this would differ from the Quebec regime, for sections 236 and 237 of the *Act Respecting Occupational Health and Safety* among others. This may be the harbinger of a more efficient system of redress than recourse to penal complaints, that have not been frequently used in the past.

No to reprisals

Another substantive modification to the *Code* is a new section dealing with claims for "reprisal" — the equivalent of what Quebec practitioners know as complaints for illegal practices pursuant to sections 122 and the following of the *Labour Standards Act*. One of the key differences between that Act and the *Code* was the absence, in the federal regime, of a thorough framework on prohibited practices and reprisals related to sick leaves or other causes of absence.

Both regimes will differ, however, on one important point: the Bill, as tabled, prohibits the joinder of a claim of reprisal with a complaint for unjust dismissal pursuant to section 240 of the *Code* whereas this joinder is allowed under the equivalent provisions of the Quebec *Labour Standards Act*.

Greater powers to inspectors

Another substantive change to the *Code* deals with sections 251 and following, on the recovery of sums allegedly due by an employer to an employee pursuant to Part III. The powers of inspectors are enlarged substantially because they now can decide whether or not a discharge has in fact taken place so as to bring into play sections 230 and 235, that deal with notice of termination and severance. These same inspectors can order the end to practices that they deem violations of Part III, all this in addition to issuance of Ministerial (administrative) orders for investigation to assure compliance with the law.

It is clear that the federal government's intent is to reduce the number of violations of Part III, and to more effectively prosecute and penalize those who fail to respect the law, bearing in mind that these are minimum labour standards for employees falling under federal jurisdiction.

Conclusion

Bill C-44 is a complex and substantial piece of legislation, filling over 300 pages and dealing with numerous aspects of the federal government's operations. As these lines are written, we cannot say when its various provisions will come into force.

While the bill does not revolutionize federal labour and employment law, it could still bring about significant changes. Employers, beware!