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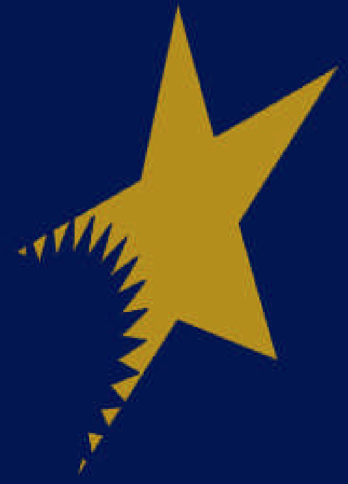

Employment Notes

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INTRODUCTION OF COMPASSIONATE CARE BENEFITS

Maria Kotsopoulos

As of January 4, 2004, Canadian employees and individuals who are unemployed and collecting employment insurance are eligible to receive up to a maximum of six (6) weeks of compassionate care benefits in order to care for or support a gravely ill family member with a significant risk of death within twenty-six (26) weeks.

For the purposes of this benefit, a "family member" includes a child or the child of a spouse or common law partner; wife, husband or common law partner; father or mother; father's wife or mother's husband; and the common law partner of a father or mother. The benefit can be used to support a family member living in or outside Canada.

Recent amendments to the Employment Insurance Regulations have clarified that "care or support" means "directly providing or participating in the care of a family member"; "providing psychological or emotional support to the family member"; or, "arranging for the care of a family member by a third party care provider".

To be eligible for the benefit an employee must apply and show that his or her regular weekly earnings from work have decreased by more than forty (40) per cent and that he or she has accumulated six hundred (600) insured hours during the qualifying period.

A medical certificate must be completed and signed by a medical doctor or other medical practitioner authorized to treat the individual.

The benefit can be shared amongst family members, each of whom must also apply and be eligible for the benefit.

Generally, there is a two (2) week waiting period prior to the commencement of the benefit. However, where the benefit is shared, only one person in the family serves the waiting period.

At this time, only federally regulated employers and employers in Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Nunavut and the Yukon are obligated to give their employees unpaid time off for the duration of the benefit period. In Ontario, there is no obligation on the part of the employer to provide unpaid time off for the duration of this period beyond an employee's right to take ten (10) days' emergency leave, in certain circumstances.

However, on March 2, 2004, the Ontario government announced that it was preparing legislation for this spring that would provide up to eight weeks of unpaid job-protected time off work for those taking care of seriously ill family members. That legislation had not been introduced at the time of printing.

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"A new Limitations Act was proclaimed into force and became effective in Ontario January 1, 2004."

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Subject to the employer's policy, employees must request their Record of Employment and apply for benefits with the requisite documentation within four (4) weeks of their last day of work in order to avoid loss of benefits.

If the employee continues to work while on compassionate care benefits, the employee can earn a portion of their weekly benefits. Any amount earned above that portion will be deducted dollar for dollar from the benefits.

The benefit ends upon the expiry of the six (6) weeks, the death of the gravely ill family member, the finding that the family member no longer requires care or support, or the expiry of the twenty-six (26) week period set out in the medical certificate.

If you have any questions about this new benefit, please contact us. ■

NEW LIMITATIONS ACT

Kevin Robinson

A new *Limitations Act* was proclaimed into force and became effective in Ontario on January 1, 2004.

It has been stated that the purpose of the Act is to create a more consistent approach to the application of limitations periods in Ontario.

The new *Limitations Act* creates a basic limitation period which provides that, "a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered." The Act presumes that a person with a claim will have discovered the claim on the day the act or omission on which the claim is based took place, unless the contrary is proved.

In employment cases, most claims which could arise are likely to be "discovered" on the date the event occurs. For example, a wrongful dismissal claim will arise on the date of termination. Therefore, according to the new Act, an employee who alleges that he or she has been wrongfully terminated will have two years from the date of termination to commence any action. It is possible, however, to imagine cases of alleged constructive dismissal or an alleged denial of benefits that may not be discovered until after the event actually occurs.

For an employee who alleges that he or she was wrongfully terminated on or before December 31, 2003, the former limitation period of six years applies. Complaints made pursuant to the Ontario Human Rights Code or *Employment Standards Act* or grievances under a collective agreement will remain subject to the time limits provided in each of these instruments.

If you have any specific questions regarding the application of this new Act or wish to obtain a copy of it, please contact us. ■

CRIMINAL SANCTIONS FOR HEALTH AND SAFETY VIOLATIONS

Natalia Krayzman

If employers have not been given enough reason to ensure they are taking all reasonable measures to make their workplaces safe, Bill C-45 should do the trick. Bill C-45 greatly expands the scope of criminal liability for

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"Bill C-45 greatly expands the scope of criminal liability for violations of health and safety standards in the workplace."

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violations of health and safety standards in the workplace. It provides for hefty fines and/or imprisonment for serious health and safety violations in addition to any liability already in place under provincial health and safety legislation. It also imposes a new duty on organizations (and those who direct work in those organizations) to take reasonable steps to prevent bodily harm to both their workers and the public that arises from its work.The Bill has been passed and is in force as of March 31, 2004.

Under the *Occupational Health and Safety Act* ("*OHSA*"), employers and supervisors are required to take every reasonable precaution to protect their workers from workplace-related illness, injury and death. Enforcement under the *OHSA* can include inspections, orders to comply and, in serious cases, a mechanism to initiate quasi-criminal proceedings in provincial court. Fines for supervisors and officers can be as high as $25,000 and 12 months in jail. Corporations can face fines of up to $500,000 per conviction.

Now, under Bill C-45, the *Criminal Code* will be amended to provide for full criminal sanctions against organizations and their directing minds for health and safety violations caused intentionally or negligently. Penalties may include fines of up to $100,000 per offence for organizations (organizations include corporations, partnerships, firms and trade unions) as well as fines and potential imprisonment of up to 25 years for anyone in the organization who directs that work be done in violation of health and safety standards. Again, these sanctions are in addition to whatever sanctions these organizations and individuals face under the OHSA.

In assessing sentences, courts will look at a variety of factors including,

• any advantage realized by the organization as a result of the offence;

• the impact the sentence would have on the economic viability of the organization and the continued employment of its employees;

• any penalty imposed by the organization on a representative for their role in the commission of the offence;

• any restitution the organization makes or is ordered to make to victims of the offence; and,

• any measures the organization has taken to reduce the likelihood of it committing a subsequent offence.

Given the penalties employers potentially face under these amendments, it is a good idea to revisit your health and safety practices and policies and ensure that they are a collective priority among both employees and management. Employers should refresh themselves and their employees on their workplace health and safety responsibilities under the law. If necessary, policies and procedures should be updated and appropriate training provided to employees and management.

If you require assistance or have questions about this new legislation, please contact us. ■

EMPLOYMENT NOTES

"On January 19, 2004, the new Ontario Liberal government made an announcement regarding its election promise to end the 60-hour work week."

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ENDING THE 60-HOUR WORK WEEK

Christopher J. Ellis

On January 19, 2004, the new Ontario Liberal government made an announcement regarding its election promise to end the 60-hour work week. In passing the *Employment Standards Act*, 2000, the previous government introduced controversial changes to lengthen the maximum work week from 48 hours to 60 hours. This drew fire from unions and the opposition parties alike, and promises of its repeal upon a change of government.

The current Minister of Labour, Chris Bentley, announced the beginning of a consultation period with interested stakeholders. To launch the debate, the government has prepared a discussion paper which sets out two models for returning to the 48-hour work week. Both models would allow an extension of maximum weekly hours with the permission of the Ministry of Labour, subject to written agreements with individual employees (or unions for organized employees) revocable by the employee upon two weeks' notice to the employer.

The key differences between the two models are in the types of permits to be issued by the Ministry. One possibility is a "block permit" for 120, 240 or 360 extra hours per year. The other option involves customized permits based on specific individual agreements. Further, "special industry permits" would allow increases of more than 360 hours per year or, by regulation, employers in certain industries may be allowed to increase the work week beyond 48 hours before a permit is required.

The government's discussion paper on ending the 60-hour work week is available online at the Ministry of Labour's website. ■

INCREASE IN MINIMUM WAGE

Kevin Robinson

The new Ontario Liberal government has proposed a number of changes to the *Employment Standards Act*. One of those changes was made effective February 1, 2004. As of that date, there was an increase in the general minimum wage for Ontario workers. The general minimum wage has been increased from $6.85 to $7.15 per hour.

The Minister of Labour has also stated that the government is committed to continuing to increase the minimum wage every year until it reaches $8.00 per hour by February 1, 2007. ■

Employment Notes is a publication of the Labour and Employment Law Group of Blaney McMurtry LLP. The information contained in this newsletter is intended to provide information and comment, in a general fashion, about recent cases and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific advice, please contact us.

We welcome your comments. Address changes, mailing instructions or requests for additional copies should be directed to Chris Jones at 416 593.7221 ext. 3030 or by email to cjones@blaney.com. Legal questions should be addressed to the specified author.

EXPECT THE BEST

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