

## Member's Quarterly

Fall 2022 Edition

### Feature

## Legal Updates from Atlantic Canada

*Legislative changes in Employment and Labour Law*

**W**hile extensive focus has been on COVID-19, lawmakers have introduced and passed legislation impacting workplaces. Here are some legislative changes impacting Atlantic Canada employers.

In PEI, a major change comes in the form of Bill No. 118, Non-disclosure Agreements Act, which regulates the content and use of non-disclosure agreements. The Act prohibits a party who committed, or who is alleged to have committed harassment or discrimination from entering into non-disclosure agreements with the complainant where the agreement has the purpose or effect of concealing the details relating to a complaint of harassment and discrimination, unless the agreement is expressed with and preference of the complainant. The Act also places limits on the enforceability of the agreement, such that the agreement will only be enforceable where the complainant has a reasonable opportunity to receive independent legal advice; there have been no undue attempts to influence the complainant regarding the decision to include a requirement not to disclose any material information; the agreement doesn't adversely affect the health or safety of the third party or public interest; the agreement includes an opportunity for the complainant to decide to waive their own confidentiality in the future and a process for doing so; and the agreement is of a limited duration. Agreements must be written in plain language and all the requirements of the Act also apply to non-disparagement agreements that have the purpose or effect of concealing details relating to an allegation or incident of harassment or discrimination. The Act makes it an offence to enter into agreements which do not comply with the Act and imposes fines of between \$2,000 and \$10,000 per offence. The Act came into force on May 17, 2022.

Changes in employment standards legislation in PEI are focused on pay. Bill No. 119, An Act to Amend the Employment Standards Act, related to pay transparency and prohibits employers from seeking pay history information about an applicant. However, voluntary disclosure is permitted and employers can seek information about ranges of pay for comparable positions. Employers are required to include the expected pay or the range of expected pay for a position in a public job posting. The bill also includes anti-reprisal provisions for pay transparency-related conduct by employees and allows employees to make a complaint for failure to comply. The bill came into force on June 1, 2022.

Additionally, Bill No. 101, An Act to Amend the Employment Standards Act, would provide employees with three days paid and seven days unpaid mental illness leave to allow employees to care for a spouse or child who is experiencing a mental illness. The bill was given first reading on March 3, 2021.

In Nova Scotia, some private members bills were introduced proposing changes to labour standards and workers' compensation legislation, as well as attempting to legislate the use of non-disclosure agreements.

On April 7, 2022, private members' bill, Bill No. 144, Non-disclosure Agreements Act, was given first reading. The content of Bill No. 144 is nearly identical to Prince Edward Island's Non-disclosure Agreements Act,



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prohibiting parties from entering into agreements, except in certain circumstances; limiting the enforceability of the agreements; and imposing fines for non-compliance.

Bill No. 75, An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, Respecting Sick Leave, is a private member's bill which, if passed, would prohibit employers from disciplining employees for asking the employer to comply with the Labour Standards Code or regulations, as well as provide employees with up to ten days of paid leave per year for personal illness, injury or medical emergency for themselves or personal injury, medical emergency or death of a family member. Employers would be prohibited from requiring the production of a note from a physician to substantiate the leave. Bill No. 75 was given first reading on November 2, 2021.

In addition to the proposed paid sick leave, Bill No. 152, An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, to Provide Paid Leave for Events of Domestic Violence and Other Emergencies, was introduced and would provide employees with ten (10) days of leave for emergencies, including emergencies related to domestic violence, with five (5) of the ten (10) days paid. Bill No. 153, An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, Respecting Organ and Tissue Donation Leave was also introduced and would provide up to thirteen (13) weeks, one week paid and remainder unpaid, of leave for organ or tissue donation. Employees would be required to provide a medical certificate upon the request of the employer. Both private members' bills were given first reading on April 8, 2022.

Another private members bill, Bill No. 76, An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code, to Stimulate the Economy and Reduce Income Inequality, would see minimum wage increased to \$15.00 per hour; eliminate a special wage rate for inexperienced workers; add a definition of "living wage"; require the development of a plan to have all employers pay a living wage to their employees; require the Province and employers who contract with the Province to pay employees a living wage; and deem a discontinuation or reduction in a benefit, service or privilege to be a reduction in wages. Bill No. 76 was given first reading on November 2, 2021.

With respect to workers' compensation legislation, three (3) private members bills were introduced in October 2021, expanding the types of cancers presumed to be work-related for firefighters; expanding the definition of "front-line or emergency-response worker" for provisions respecting presumptive benefits for workers diagnosed with post-traumatic stress disorder; and providing earnings-replacement benefits for former workers of the Cape Breton Development Corporation's underground coal mine beyond the age of 65.

Legislators in New Brunswick and Newfoundland & Labrador have been relatively quiet on the labour and employment front. As the year progresses, employers should continue to monitor these bills, as well as any new legislation to see if they make their way into law.

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