

Member's Quarterly

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Feature

Federally-Regulated Employers Now Obligated to Supply Menstrual Products to Employees

Employers comply or pay the penalties

Lorelle Binnion
J.D.
Senior Associate,
Borden Ladner Gervais
LLP

Federally-regulated employers in Canada are required to provide menstrual products, including clean and hygienic tampons and menstrual pads, to employees at no cost with the amendments to the *Canada Labour Code* regulations in December 2023.

Workplaces are currently required by legislation to provide toilet and washing facilities as well as necessities such as toilet paper and soap. For the approximately 35% of the federally-regulated employees who menstruate, including cisgender women, non-binary individuals, transgender men and intersex people, menstrual products are equally necessary to their participation in the workforce. The requirement for employers to provide such products aims to make life more affordable and workplaces more equitable for those who menstruate.

These regulations are also expected to improve the mental health, performance and productivity issues at the workplace that can occur when employees do not have access to menstrual products at work due to an unexpected start to a menstrual period, financial barriers or other reasons.

What is required by employers?

These new Regulations apply to both public and private federally-regulated employers in Canada who are subject to the jurisdiction of the *Canada Labour Code*. Federally-regulated employers are those who work in industries under federal jurisdiction, including but not limited to interprovincial and international transportation such as airports, railways, trucking, maritime and pipelines, telecommunications and broadcasting, banks, postal services, feed, flour, seed and grain, First Nation Band Councils and Indigenous Self-Governments, and federal Crown corporations.

Federally-regulated employers must ensure menstrual products are placed in each toilet room at the workplace, regardless of marked gender. The requirement applies to all workplaces, including office, mobile and remote workplaces. If it is not feasible to provide menstrual products in a toilet room, the employer must provide them in another location that is controlled by the employer, accessible by employees at all times and offers a reasonable amount of privacy.

In addition, employers will be required to provide a covered container for the disposal of menstrual products in each of the toilet room compartments, regardless of gender. Currently, containers for the disposal of menstrual products are only required in toilet rooms provided for use of female employees. These changes will ensure that all people who menstruate will have equal access to and use of menstrual products regardless of their gender identity.

Employers may decide what brand of products to provide and are not required to consult employees on their preferences. Employers also have a significant amount of flexibility under the Regulations to decide how specifically the menstrual products will be stored and accessed by employees, in a way that makes sense for each individual worksite. While not specifically required, this may include the installation of menstrual product dispensers in workplace bathrooms.

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The precise cost of this program to employers is difficult to estimate because it is hard to know what the uptake rate will be in any particular workplace. Some employees may prefer to use their own reusable or environmentally friendly products, whereas others may prefer to use a particular brand. Particularly if employers opt to provide cheaper and arguably inferior menstrual products, it may be that employees use them only as a last resort.

Risks of Non-Compliance

Employees may make an internal complaint to their employer that the rules regarding provision of menstrual supplies are not be adhered to. If the employer does not adequately resolve the complaint, the employee may then submit a complaint to a health and safety officer at the Labour Program who may take a variety of enforcement measures depending on the circumstances, ranging from seeking an assurance of voluntary compliance from the employer, issuance of a Direction to the employer, or in the case of more serious or repeated violations, levy of an administrative monetary penalty against the employer.

What might be next in menstrual health policy in Canada?

The new federal regulations requiring provision of menstrual products at the workplace are the latest in a number of menstrual health initiatives in Canada and internationally. For instance, multiple US states as well as British Columbia, Nova Scotia, PEI, and some Ontario school boards, now require menstrual products to be provided in schools, and New Brunswick provides them in public libraries. Scotland now provides free and universal access to menstrual products to anyone who needs them. In Spain, a law has been recently passed allowing those with painful periods to take paid "menstrual leave" from work and requiring provision of free menstrual products in educational institutions and prisons.

These new Regulations are, however, among the first requiring the provision of free menstrual products by an employer. It remains to be seen whether the provinces will enact similar requirements for provincially-regulated employers.

Lorelle Binnion is a Senior Associate with Borden Ladner Gervais LLP in Calgary and can be reached via email at LBinnion@blg.com.