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Newsletter

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Changes to the *Act Respecting Labour Standards*: what you need to know for 2019



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On June 12, 2018, the *National Assembly enacted the Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance* (the “**Act**”) for the purpose of modernizing the *Act respecting labour standards* (the “**ARLS**”). Accordingly, the ARLS will now be better suited to address modern-day workplace issues given that it will include the notion of “sexual harassment” and other provisions providing employees with greater flexibility in maintaining a work-like balance, particularly by allowing employees to better manage their time.

Several of these changes came into effect as soon as the Act was enacted. For example, it is now possible for an employee to be absent from work in order to assist any “relative” or a person for whom the employee acts as a “caregiver”, the period of leave granted to employees to aid “relatives” or “caregivers” if they are suffering from a serious and potentially mortal illness, or are the victim of a serious accident has been extended, it is now possible for victims of domestic violence or sexual violence to take time off from work, the staggering of work hours has been facilitated, an employee may now file a complaint with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the “**CNESST**”) within 2 years of the last incidence of psychological harassment, etc.

However, several important changes to the ARLS have yet to come into force, which changes are the subject of this newsletter. These changes will come into force on January 1, 2019, except for new provisions on personnel placement agencies and the recruitment of temporary

foreign workers, which will only come into force when a regulation is adopted. A specific date for the coming into force of this regulation has yet to be determined.

Personnel placement agencies and temporary foreign workers

Although these changes will be implemented on a date that has yet to be determined, they are of great interest to personnel placement agencies, which were not subject to any specific legislative provisions prior to the enactment of the Act. Such agencies may no longer remunerate an employee at a lower wage rate than that granted to the employees of the client enterprise who perform the same tasks in the same establishment solely based on the employee's employment status, particularly because the employee is remunerated by such an agency or usually works fewer hours per week. Additionally, a personnel placement agency and a client enterprise will be held solidarily liable under a contract for the pecuniary obligations arising from the application of the ARLS.

Recruitment agencies for temporary foreign workers will be required to inform the CNESST of the date of arrival of a temporary foreign worker and the term of the worker's contract. The CNESST may launch an investigation on behalf of these workers, even if no complaint has been filed. We invite you to consult the additional provisions that have been adopted governing the relationship between an employer and a temporary foreign worker.

Moreover, as of January 1, 2019, it will be necessary to hold a licence issued by the CNESST in order to operate a personnel placement agency or an agency for the recruitment of temporary foreign workers. Following the issuance of such licences, the CNESST will make available a list of all agencies holding a valid licence.

Sexual harassment prevention policy and processing of complaints

Although prior to the enactment of the Act, employers were already required to take reasonable steps in order to prevent psychological harassment and to put an end to any such conduct brought to their attention, employers are now required to adopt and make available to their employees a policy for (i) preventing psychological harassment; and (ii) processing complaints related to psychological harassment.

It is important to note that the definition of psychological harassment now refers specifically to the notion of sexual harassment.

Absenteeism

– Absence with pay

Whereas prior to the coming into force of the Act, an employee could only be absent from work owing to an illness without remuneration, as of January 1, 2019, an employee credited with three months of uninterrupted service will have the right to two sick days with pay per year.

An employee will also be entitled to two paid sick days if the employee's absence is due to an accident, or to domestic violence or sexual violence of which the employee was a victim.

Furthermore, an employee no longer needs to be credited with sixty days of uninterrupted service to be absent for five days, two of which days are paid, upon the birth or for the adoption of the employee's child.

– Death of a family member

Whereas an employee had the right to be absent for five days by reason of the death of a family member, of which only one day was paid, as of January 1, 2019, the employee will be entitled to two paid days of leave in such circumstances.

Annual leave

An employee credited with three years of uninterrupted service with the same employer following a reference year will now be entitled to an annual leave of three weeks. Prior to the enactment of the Act, only an

employee credited with five years of service was entitled to such leave.

Right of an employee to refuse to work

Any employee is now entitled to refuse to work for more than two hours beyond his regular daily work shift. As such, an employee who is asked by his employer to remain at work for more than two hours after his regular shift has ended may refuse to work, without being penalized.

Salary based on employment status

While the ARLS already prohibited an employer from remunerating an employee at a lower wage rate than that granted to other employees performing the same tasks in the same establishment for the sole reason that said employee usually worked less hours per week, following the coming into force of these provisions of the Act, an employer will be precluded from paying a lower wage to an employee or reducing the duration of the employee's annual leave (or its related indemnity) solely based on the employee's employment status.

This provision now applies to all employees, regardless of the salaries they earn.

Considering the upcoming changes to the ARLS, all employers will be forced to modify their existing policies and implement new policies addressing psychological harassment, which must be made available to their employees in order to comply with the law. Moreover, it seems that personnel placement agencies will have to redefine themselves in order to remain competitive in light of the implementation of these new standards.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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