



LAPOINTE ROSENSTEIN
MARCHAND MELANÇON
L.L.P. Attorneys

Newsletter

Labour Law

Volume 2, Number 1

June 2014

Editor's Remark

Lapointe Rosenstein Marchand Melançon is proud to provide you with the second issue of our labour law newsletter. Our goal is to bring interesting legal questions to our client's attention in labour law.

We would appreciate your comments and suggestions with respect to subjects of interest for future newsletters. Do not hesitate to contact us should you have any question.

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The new Voluntary Retirement Savings Plans Act

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The new Voluntary Retirement Savings Plans Act (the "Act") comes into force on July 1, 2014. Introduced as an incentive to promote retirement savings for workers, the Act provides for the creation of voluntary retirement savings plans (VRSP) by employers with a certain number of employees who do not have any group retirement savings as part of their employment. The VRSP is characterized by the voluntary nature of contributions. The Act, however, imposes certain obligations on the employer which are outlined hereinafter below.

Duty to establish a VSRP

An employer who, on the 31st of December of a given year, employs five or more eligible employees must, in the year that follows, subscribe to a voluntary retirement savings plan and automatically enroll its employees in the plan. For the purposes of the Act, an "eligible employee" is an employee as defined by the *Act respecting labour standards* and who is credited with one year of uninterrupted service, who is at least 18 years of age and who does not already participate in a registered retirement savings plan (RRSP) or a tax-free savings account (TSFA) in the enterprise of the employer for which payroll deductions may be made or in a registered pension plan (RPP) to which that employer is a party.

Deadlines for the creation of a VRSP

As soon as the Act comes into force on July 1, 2014, employers may elect to offer a VRSP on a voluntary basis. However, the Act provides a deadline for the creation of the savings plan, based on the number of eligible employees. Employers with 20 or more eligible employees must offer a VRSP by December 31, 2016, while those with 10 to 19 eligible employees have until December 31, 2017. Lastly, for employers with 5 to 9 eligible employees, the deadline is December 31, 2018.

Administration of a VRSP

A VRSP and any amendments must be registered with the *Régie des rentes du Québec*. The Act provides that an employer must confer the administration of its VRSP to an administrator that holds a valid authorization granted by the *Autorité des marchés financiers*. While the employer retains the right to choose the administrator, the Act forbids both parties from offering any inducement to one another to enter into contract, subject to regulations. Once an administrator is chosen, the employer must notify each eligible employee in writing at least thirty (30) days prior to registering them for the VRSP and must provide the administrator with relevant information concerning the eligible employees. It is then up to the employee to decide if he or she will contribute or not and if so, at what rate and percentage of his or her salary. The employee may change his or her contribution at any given time and under certain conditions to be determined by regulation, set that contribution to 0%. In the absence of a response from the employee, a default contribution rate that will be determined by regulation will apply. An employer may, at any time, change the plan or the

administrator, but must pay the resulting costs, notably for the transfer of the employee accounts.

Although it is not obliged to do so, the employer may elect to contribute to a VRSP. It must however withhold and remit the employee's contributions to the VRSP. In the event the employer decides to contribute to an employee's plan, it may subsequently lower or even stop such contributions but must respect a notice period of thirty (30) days. In both cases, all amounts retained are deemed to be held in trust until the contribution is remitted to the VRSP, which is required to be done on or before the last day of the month that follows the day on which they are collected. If the remittance to the VRSP is late, the employer must pay interest on the contributions due, in addition to being susceptible to the penal sanctions set out in the Act.

Sanctions

The Act stipulates that an employer is not liable for acts or omissions committed by the plan administrator. However, the employer must provide the plan administrator with certain information, and must advise it within thirty (30) days of the termination of an employee who is a member of the plan. The employer must also cooperate with the *Régie des rentes du Québec* during an inspection and provide any employee upon request any document linking the latter to the administrator.

It is worth mentioning that the Act contains numerous penal provisions to enforce the law. Employers who do not respect the Act are subject to fines that range from \$500 to \$200,000, and twice that amount in cases of repetitive infractions. Such provisions apply to any employer that fails or refuses to offer a VRSP when required to do so under the Act or that creates a VRSP that is not properly registered under the Act.

Powers and Oversight

The Act provides that three government agencies will oversee the VRSP. The *Régie des rentes du Québec* will ensure that the savings plans are administrated and operated in conformity with the Act. The *Autorité des marchés financiers* is responsible for granting authorizations to act as an administrator and the *Commission des normes du travail* will supervise employer's compliance with the obligation to offer the VRSP to all employees who fall under the application of the law.

For further information regarding this new regime and its legal framework, please communicate with us. You may also consult the *Régie des rentes du Québec*'s website at:

<http://www.rrq.gouv.qc.ca/en/%20retraite/rver/Pages/rver.aspx>

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

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