Amendments to Canada Labour Code expand employers' responsibilities in maintaining workplace health and safety

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On June 29, 2000, Bill C-12, an Act amending the health and safety provisions contained in Part II of the *Canada Labour Code*, received Royal Assent. The Bill is described by the federal government as creating a better balance between the role of government, employers and employees by expanding the responsibilities of the workplace parties in health and safety promotion. For employers in the federally regulated sector, this is likely to mean expanded obligations. Part II will apply to the public service of Canada, Crown corporations and international and interprovincial industries within federal jurisdiction.

Definition of "danger"

The definition of "danger" has been expanded to include *potential* hazards or conditions, and "any current or future activity" that could reasonably be expected to cause injury or illness, "whether or not the injury or illness occurs immediately after exposure to the hazard, condition or activity". Damage to the reproductive system is specifically included as a resulting disease, as is chronic illness.

Purpose Clause

The purpose clause, which states that the purpose of Part II is to prevent workplace accidents and injuries, has been augmented by a provision specifying that "[p]reventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials ...". This interpretive provision could have an impact on the determination of whether an employer has lived up to its responsibilities under the Code.

Internal complaint resolution

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The Bill establishes a new procedure for dealing with complaints that fall short of the criteria justifying a work refusal. The government states that this procedure will expand the role of health and safety committees and reduce the need for government intervention.

An employee who believes that there is likely to be an accident or injury to health must complain to his or her supervisor. If the complaint cannot be resolved, an employee and employer member of the workplace health and safety committee must jointly investigate. If they determine that the complaint is justified, the employer must resolve the matter. Where the employer does not resolve the matter, or disagrees with the results of the investigation, or where the two investigators cannot agree whether the complaint is justified, the complaint may be referred to a health and safety officer, who may direct that the contravention stop.

Refusal of dangerous work

Part II has been amended to specify that employees at work during a work stoppage resulting from a refusal of dangerous work are entitled to receive their wages and benefits up to the end of the stoppage or the shift, whichever is sooner. The same applies to employees who are due to work on a shift following the one interrupted by the work stoppage, unless the employer provides at least one hour's notice not to attend work.

Conflicting provisions in a collective agreement or other agreement will prevail over these provisions. Moreover, employers may assign reasonable alternative work to employees affected by a work stoppage. Lastly, where it can be shown that the employee who invoked the work stoppage knew that no stoppage was warranted, the employer may require the repayment of wages paid to the employees off work due to the stoppage.

As before, where the work refusal cannot be resolved in the workplace, the matter must be investigated by a health and safety officer. Now, however, employees who disagree with a decision that no danger exists must appeal to an appeals officer within ten days. The position of appeals officer is new. The Canada Industrial Relations Board will no longer hear appeals related to work

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refusals.

Pregnant and nursing employees

A new section enables a pregnant or nursing employee to stop work if she believes that the work poses a threat to her health or to the health of her foetus or child. The employee must obtain the opinion of a medical practitioner whether her work does pose such a risk. In the meantime, the employer may, "in consultation with the employee", reassign her to another position that does not pose the risk.

Policy Health and Safety Committees

Employers that normally employ 300 or more employees will now be required to establish Policy Health and Safety Committees. These committees are given broad ranging responsibilities to develop health and safety and accident prevention programs, monitor data on accidents and injuries, and conduct investigations and inspections. They play a more quasi-managerial function than the workplace health and safety committees, which must be established in all individual workplaces of 20 or more employees. Where there is no policy committee, some of these policy functions may be exercised by the workplace committees.

In Our View

It should be noted that the list of specific duties placed on employers has been increased by more than 20 new provisions. As well, the duties will now not only apply to the workplace, but also to "every work activity carried out by an employee" wherever the activity occurs, to the extent that the employer controls the activity. Employers to whom Part II of the Code applies should study these duties closely to determine the steps they must take to comply with the new obligations.

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