



EMOND HARDEN



# Significant Changes Looming to Workplace Laws for Federal Employers

Labour Standards Amendments to the *Canada Labour  
Code* and a Proactive *Pay Equity Act*

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June 14, 2019



As a boutique labour and employment law firm, Emond Harnden has represented the interests of management in both official languages for over 30 years.

Originally rooted in the Ottawa community, we have grown to represent employers in all territories and provinces of Canada.





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## ABOUT

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Raquel Chisholm advises employers at both the Ontario and Federal jurisdictions in all areas of labour and employment law, with a particular focus on human rights, disability management and pay equity. Raquel articulated with Emond Harnden in 2003, joined the firm as an associate in 2004 and became a partner in 2014. She received a Bachelor of Arts degree from Bishop's University in 1992 and an LL.B from the University of Ottawa's Common Law Program in June 2003.

Raquel provides a wide variety of services including drafting employment contracts, management training, legal opinions, collective bargaining and policy writing. She represents clients at labour arbitrations, as well as human rights hearings before the Human Rights Tribunal of Ontario ("HRTTO"). Raquel's experience before the HRTTO has led to her appointment on the HRTTO's Practice Advisory Committee. Raquel also advises clients during investigations by the Canadian Human Rights Commission. Raquel has in-depth knowledge of the pay equity area. With considerable experience in both the provincial and federal sectors, she has aided clients with pay equity audits, conducted seminars for employers, negotiated pay equity plans, responded to and settled pay equity complaints, and assisted clients with addressing and managing their pay equity obligations both in achieving and maintaining pay equity.

Before embarking on her legal career, Raquel worked for The War Amputations of Canada for seven years and developed an expertise in many areas of charity and not-for-profit management. During that time, Raquel became a member of the Canadian Society of Association Executives ("CSAE") and earned her Certified Association Executive ("CAE") designation through its Association Management Education Program. Raquel uses this experience to advise her charity and not-for-profit clients on corporate governance matters such as corporate law compliance, by-law revisions and conflict of interest.

As a lawyer, Raquel is a business member of the CSAE. Raquel is also a member of the Ottawa Human Resources Professionals Association, the Ontario Bar Association, the Canadian Bar Association and the Canadian Association of Counsel to Employers.





## Steven P. Williams



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## ABOUT

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Steve is a partner of Emond Harnden, having joined the firm in 1994. He has a considerable depth of experience in the areas of employee and labour relations as well as privacy and access to information compliance matters. Steve has the pleasure of working with a diverse private and public sector clientele across Canada, with a particular focus on meeting the needs of Canada's aviation community. Secondments to two national aviation organizations gave Steve an insider's perspective on the importance of providing his clients with timely, cost effective solutions. Steve also represents a number of global firms with operations in Canada. Whether litigating, negotiating or drafting for his clients, he always brings a pragmatic business-focused approach to the matter at hand.

Taking a proactive approach, Steven works in partnership with his clients to achieve their employee and labour relations objectives in employment litigation, rights and interest arbitration, human rights litigation, restructuring, collective bargaining and Canada Industrial Relations Board proceedings in a cost effective manner.

Steven has substantial experience offering strategic advice to public sector organizations in relation to privacy and access to information issues, particularly in the context of the union-management relationship.

Steve is past President of the Ottawa chapter of the Human Resources Professionals Association. He is past chair of the Human Resources Committee of the Board of Governors of Ashbury College and is a proud member of the Ottawa Boys and Girls Club. As a member of the Board of Directors of the Helicopter Association of Canada (HAC), the Northern Air Transport Association (NATA) and the Air Transport Association of Canada (ATAC), Steve is heavily involved in advancing the interests of Canada's aviation industry.



# Overview

- New proactive *Pay Equity Act*
  - Establishment of a pay equity plan
  - Increases to compensation for the purpose of achieving pay equity
  - Start preparing now
- *Canada Labour Code* (“Code”) amendments to labour standards
  - Scheduling
  - Leaves
  - Termination
  - Other amendments





# ***New Pay Equity Act***

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# The *Pay Equity Act*

- New proactive pay equity legislation for federally regulated private and public sector employers with 10 or more employees
- Aimed at ensuring that men and women who perform work of equal value are paid equally
- Employers will have 3 years from the *Act's* coming into force date to complete a plan and post it
- Wage increases payable on the day after 3<sup>rd</sup> anniversary of coming into force, with some exceptions
- Consultations on pay equity regulations May 29-June 28, 2019
- Expected to come into force in 2020



# Definition of Employer

- Her Majesty in right of Canada as represented by Treasury Board in respect of:
  - The federal public service
  - The Canadian Forces
  - The Royal Canadian Mounted Police
- A person who employs employees in connection with a federal work, undertaking or business
  - Other than a work, undertaking or business of local or private nature in Yukon, the Northwest Territories, or Nunavut
- Corporation established to perform duty or function on behalf of Government of Canada
- An employer of a dependent contractor, as defined in the *Code*
- The governments of Yukon, the Northwest Territories, and Nunavut



# Pay Equity Obligations

Number of Employees	Pay Equity Committee	Pay Equity Plan	Compensation Increases
100+	Required	Required	Required
10-99, some unionized	Required	Required	Required
10-99, none unionized	Voluntary	Required	Required

- Legislation presumes one plan for whole organization
- Employer may apply to Pay Equity Commissioner (“PEC”) to establish more than 1 pay equity plan



# Pay Equity Plan Process

1. Establish pay equity committee, as required
  - At least 3 members
  - Requirements regarding composition such as  $\frac{2}{3}$  employee representation,  $\frac{1}{2}$  female membership
  - PEC can authorize certain departures from requirements
2. Identify job classes
3. Determine which job classes are predominantly female and which are predominantly male
  - 60% of class are the applicable gender (currently or historically); or
  - Job class commonly associated with applicable gender because of gender-based occupational stereotyping



# Pay Equity Plan Process

4. Determine the value of work in the job classes
  - Employer can determine that the value of work has already been determined through a method that complies with requirements of *Act*
5. Calculate compensation associated with each job class (\$/hr), including:
  - Salaries, commissions, vacation pay, severance pay and bonuses
  - Payments in kind
  - Employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans
  - Any other advantage received directly or indirectly from employer



# Pay Equity Plan Process

6. Compare the compensation of predominantly female and predominantly male job classes
  - 2 methods of comparison in the *Act*
7. Post draft plan
  - 60-day comment period
8. Post final version of plan
  - PEC can authorize extension of time



# Pay Equity Plan Process

## 9. Make required increases to compensation

- If pay equity plan shows difference in compensation between predominantly female and predominantly male job classes, employer must increase compensation to employees in predominantly female job classes
- Cannot reduce compensation to employees to achieve pay equity
- Employer may choose to phase in compensation increase, if required increase is more than 1% of employer's payroll from previous year

## 10. Post updated plan at least every 5 years

- Identify new differences in compensation



# Administration and Enforcement

- Employer must provide annual statements to the PEC
- PEC has investigation and audit powers
- Maximum penalties for violations:
  - \$30,000 for employer with 10-99 employees or bargaining agent representing some or all of those employees
  - \$50,000 for employer with 100+ employees or bargaining representing some or all of those employees
- Complaints can be made to PEC regarding contraventions of the *Act* or reprisals



# Start to Prepare

- Consider who is responsible for pay equity duties
- Consult labour relations, legal, audit, other groups as required
- Consider number of plans you may want
- Review job evaluations and job evaluation processes
- Gather data and documentation on jobs, employees, policies
- Prepare job class lists
- Obtain data regarding historical and current gender in the job classes
- Obtain data regarding compensation of employees in the job classes
- Consider required steps for communication with employees



# How We Can Help

- We can provide strategic advice
- We can provide a referral to trusted pay equity consultants for job evaluations
- We can work with employers to determine what has been done, and what they will need to do
- We will be providing a detailed pay equity seminar this fall





# ***Canada Labour Code Amendments***

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# Code Amendments

- Flexible work arrangements
- Notice of shift changes and notice of schedule
- Right to refuse overtime because of family responsibilities
- Equal treatment based on employment status
- Enhanced vacation and new and enhanced statutory leaves
- Enhanced notice of termination requirements
- New protections under the health and safety provisions regarding workplace harassment and violence



# Context of Code Changes

- Government outlined intention to address changing way that people work
- Commitments included amendment of the *Code*
- Consultations took place May 2017-March 2018
  - Released a report entitled *What We Heard: Modernizing Federal Labour Standards*
- Sweeping amendments to the *Code* made in a number of pieces of legislation



# Practical Considerations

- Review your policies and collective agreements to ensure compliance with new and amended standards
- Train staff on the new requirements and how they will be implemented
- Be cautious regarding new wording in policies, contracts and collective agreements in case there is a rollback of amendments
  - Example of repeal by Ford government of amendments to the *Employment Standards Act, 2000* enacted by the Wynne government
  - May be advisable to incorporate new standards **by reference rather than specific language**



# Flexible Work Arrangements ("FWAs")

- Employees can make written requests for FWAs after 6 consecutive months of continuous employment
- Can request changes to:
  - Hours of work
  - Work schedule
  - Work location
- Decision with written reasons within 30 days
- Employers only permitted to deny requests on certain specific grounds



# Notice of Schedule

- Must provide written schedules to employees at least 96 hours before start of first shift in schedule
- Exceptions for certain unforeseen, serious and imminent circumstances
- Employee may refuse work if required notice not provided
- Does not apply to employees with collective agreement if it specifies:
  - A different time frame for providing a schedule; or
  - That this section does not apply



# Notice of Shift Change

- Must provide employee with written notice of shift change at least 24 hours in advance
- Exception where shift change is to deal with certain unforeseen, serious and imminent circumstances
- Does not apply to change resulting from request under the flexible work arrangement provisions



# Unpaid Breaks and Rest Period

- Rest period of at least 8 consecutive hours between work periods or shifts
- Unpaid 30-minute break during every period of 5 consecutive hours of work
  - Paid if employee required to be at employer's disposal
- Exceptions for certain unforeseen, serious and imminent circumstances
- Employees entitled to unpaid breaks necessary for medical reasons
  - Employee must provide certificate from health care practitioner if requested
- Employees are entitled to unpaid breaks necessary to nurse or express breast milk



# Overtime

- New right to refuse overtime for family responsibilities
  - Health or care of family members; or
  - Education of family members under 18
- Employees must show reasonable efforts taken to carry out family responsibilities by other means before refusing
- Time off in lieu now explicitly permitted by the *Code*
  - Typically must be taken within 3 months
  - Can be extended by agreement



# Practical Considerations

- Prepare schedules well in advance
- Documentation is key
  - Employee breaks, rest periods
  - Employee receipt of schedules and notices of shift changes
  - Documentation related to emergency circumstances negating need for notice
  - Documentation related to reasons for denying FWAs
  - Medical documentation supporting medical breaks
- Approach requests in fair, balanced manner
- Be mindful of duty to accommodate situations and seek advice about other potential obligations



# Equal Treatment Based on Employment Status

- Employees cannot be paid less than another employee because of a difference in employment status if:
  - They work in the same industrial establishment;
  - They perform substantially the same kind of work;
  - The performance of that work requires substantially the same skill, effort and responsibility; and
  - Their work is performed under similar working conditions
- Exceptions for seniority, merit, quantity or quality-based systems
- Employers cannot reduce wages in order to comply
- Employees can request a review



# Practical Considerations

- Conduct a full review of positions, pay rates, pay scales
- Review whether reasons for difference in pay rates are permitted by the *Code*
- Documentation is key
  - Reasons for differences in pay rates
  - Increases in compensation resulting from review
  - Reasons for providing or denying increases in the event of an employee request



# Annual Vacation

Completed Consecutive Service	Vacation Leave Entitlement	Vacation Pay
1 year	2 weeks	4%
5 years	3 weeks	6%
10 years	4 weeks	8%

- Employees can take vacation in more than 1 period if employer approves written request
- Vacation can be interrupted for employee to take other statutory leaves



# 6-Month Continuous Employment Requirement for Leaves Removed

- Eligibility requirement for 6 months' continuous employment removed for:
  - Maternity leave
  - Parental leave
  - Leave related to critical illness
  - Leave related to death or disappearance
- Eligibility for leave of absence for members of the reserve forced reduced from 6 consecutive months of continuous employment to 3



# Personal Leave

- New leave of absence of up to 5 days in every calendar year
- If employee has completed 3 consecutive months of continuous employment, first 3 days will be **with pay**
- Purposes:
  - Treating employee's illness or injury
  - Carrying out responsibilities related to the health or care of family members
  - Carrying out responsibilities related to education of family members under 18
  - Addressing urgent matter concerning themselves or their family members
  - Attending citizenship ceremony under the *Citizenship Act*



# Medical Leave

- Up to 17 weeks of leave for:
  - Personal illness or injury
  - Organ or tissue donation
  - Medical appointments during working hours
- 3 days or more: employer may require health care practitioner certificate
- Employer can assign employee to different position upon return from leave if employee unable to perform the work they performed prior to absence
- Pension, health and disability benefits, and seniority accrue during medical leave of absence



# Maternity and Parental Leave

- Maternity leave remains at 17 weeks
- Maternity leave can commence 13 weeks prior to expected date of delivery
- Length of parental leave increased to maximum of 63 weeks

	Maximum Aggregate Leave (More than One Employee)	Maximum Leave (One Employee)
Parental Leave	71 weeks	63 weeks
Maternity and Parental Leave	86 weeks	78 weeks

# Other Leaves

Type of Leave	Duration	Nature of Leave
Critical illness leave – critically ill child	Up to 37 weeks	<ul style="list-style-type: none"><li>• For care and support of critically ill child</li><li>• Requires certification from health care practitioner</li></ul>
Critical illness leave – critically ill adult	Up to 17 weeks	<ul style="list-style-type: none"><li>• For care and support of critically ill adult family member</li><li>• Requires certification from health care practitioner</li></ul>
Leave for victims of family violence	Up to 10 days	<ul style="list-style-type: none"><li>• For employee who is victim of family violence, or is parent of child who is victim of family violence</li></ul>
Leave for traditional Aboriginal practices	Up to 5 days in every calendar year	<ul style="list-style-type: none"><li>• For employee who is Indian, Inuit or Métis to engage in traditional Aboriginal practices like hunting, fishing, harvesting</li><li>• Eligibility: 3 consecutive months of continuous employment</li></ul>
Bereavement leave	Up to 5 days	<ul style="list-style-type: none"><li>• For death of member of immediate family</li><li>• Eligibility for first 3 days of leave to be paid: 3 consecutive months of continuous employment</li></ul>



# Other Leaves

Type of Leave	Duration	Nature of Leave
Compassionate care leave	28 weeks within 52-week period	<ul style="list-style-type: none"><li>• For care and support of family member with serious medical condition with significant risk of death within 26 weeks</li></ul>
Leave for court or jury duty	None specified	<ul style="list-style-type: none"><li>• For attendance at court to:<ul style="list-style-type: none"><li>• Act as a witness in a proceeding</li><li>• Act as a juror in a proceeding</li><li>• Participate in a jury selection process</li></ul></li></ul>
Leave related to death or disappearance	104 weeks for child who has died 52 weeks for child who has disappeared	<ul style="list-style-type: none"><li>• For parent of a child who has died or disappeared and it is probable that the death or disappearance was the result of a crime</li></ul>
Reservist leave	No more than aggregate of 24 months in 60-month period, except for national emergency	<ul style="list-style-type: none"><li>• For purposes of an operation in Canada or abroad, annual training, training required by law, or activity described in regulations</li><li>• Eligibility: 3 consecutive months of continuous employment</li></ul>



# Practical Considerations

- Review scheduling practices and staffing levels for ability to comply with new requirements
- Provide clear and consistent practices for leave requests, including when to seek documentation and what is appropriate to request
- Be mindful of duty to accommodate situations and seek advice about other potential obligations



# Individual Termination

Length of Service (Consecutive Continuous Employment)	Notice Entitlement
3 months	2 weeks
3 years	3 weeks
4 years	4 weeks
5 years	5 weeks
6 years	6 weeks
7 years	7 weeks
8 years	8 weeks

- Employer can provide written notice, wages in lieu of notice, or a combination of the two
- Must give statement of benefits and pay



# Harassment and Violence

- Specific sexual harassment provisions folded into general workplace violence and harassment provisions
- Expanded harassment and violence obligations, including:
  - Investigation of occurrences
  - Offering support to employees
  - Providing training
  - Ensuring person receiving complaints has knowledge, training and experience in harassment and violence issues
- Proposed regulations released on April 26, 2019
- Anticipated coming into force of legislation and regulations in 2020





# Questions?

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AN INTEGRAL  
PART OF  
YOUR TEAM

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PARTIE  
INTÉGRANTE  
DE VOTRE  
ÉQUIPE



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