

## **Labour and Employment Law Update Recent Legislative Changes – Fines, Leaves and Pensions**

### **Labour & Employment Group**

Eric Durnford, Q.C. - Partner  
Nancy F. Barteaux - Partner

Amy Bradbury  
Krista Smith  
Isabelle French

The Fall Sitting of the Legislature has resulted in a number of legislative changes which affect labour and employment law in Nova Scotia. Below is a brief summary:

### **1. Occupational Health and Safety Act**

There are two changes to *Occupational Health and Safety* legislation.

On January 15, 2010, new regulations came into effect which allow for the imposition of administrative penalties (*i.e.*, fines) for contraventions of the *Act*. The basic fines begin at \$100 for employees and go up to \$500 for employers with these amounts doubling if the contravention resulted in or had the potential to result in injury. An Administrator imposes the fines and s/he will also have the discretion to increase or decrease the fine based on a number of factors including whether the person derived economic benefit from the contravention and the harm caused by the contravention. The fine can also double if there has been a conviction within the previous three years. The maximum fine that can be imposed is \$500.00 for employees, \$1000.00 for supervisors and up to \$2000.00 for employers.

The fines can be imposed for each day the contravention continues. A Notice of Appeal can be filed with the Occupational Health and Safety Appeal Panel within 21 days of being served with a Notice of Administrative Penalty.

As a result of these changes, any contravention of the *Act* can now result in a monetary penalty for the employer.

A question and answer page has been posted on the Department of Labour and Workforce Development website at:

<http://www.gov.ns.ca/lwd/healthandsafety/docs/FAQSheetAdminPenalties.pdf>.

In addition, Bill No. 27 amends the appeal process for a discriminatory action complaint. When an employee believes s/he has been discriminated against as a result of making a complaint under the *Act*, s/he makes a complaint to a Safety Officer who makes an initial determination as to whether discriminatory action has occurred. This Bill removes the next level of appeal to the Director of Occupational Health and Safety and allows for an appeal of the Safety Officer's decision directly to Occupational Health and Safety Appeal Panel.

This Bill received third reading on October 30, 2009 and Royal Assent on November 5, 2009. It was proclaimed and became law on February 23, 2010.

### **2. Labour Standards Act**

Bill No. 40 became law on November 5, 2009 and provides for unpaid leave without loss of benefits or seniority for employees during an emergency. "Emergency" is defined in the Bill as a declared emergency under the provincial *Emergency Management Act* or the federal *Emergencies Act*; a public health emergency under the *Health Protection Act*; or a direction or order from a medical officer appointed under the *Health Protection Act* that prevents the employee from performing his/her duties. The leave provisions only apply if one of these events has occurred.

The emergency leave can be used by the employee personally or for a family member who is subject to a declaration, direction or order under the following circumstances: the family member requires care or

assistance, the employee is the only person who is reasonably able to provide the care or assistance, and the employee cannot perform his/her work duties while providing the care or assistance.

There is no specific limit to the length of the leave. The Bill only provides that the employee is “entitled to an unpaid leave of absence for such time as the employee cannot perform the duties of the employee’s position because of the emergency.” The employee is only required to give as “much notice as reasonably practicable” but the employee is required to provide “evidence that is reasonable in the circumstances that the employee is entitled to the leave.”

In addition, the employer must allow the employee to continue any benefit plans at the employee’s expense while on emergency leave and the employee must be returned to the same or comparable position with no loss of seniority or benefits.

The Department of Labour and Workforce Development has posted a Fact Sheet with respect to Emergency Leave on its website at:  
[http://www.gov.ns.ca/lwd/employmentrights/documents/EmergencyLeave\\_000.pdf](http://www.gov.ns.ca/lwd/employmentrights/documents/EmergencyLeave_000.pdf).

### **3. Pension Benefits Act**

Bill No. 48 amends the *Pension Benefits Act* and allows for a pension plan to provide for partial payments of pension benefits (up to 60% of the accrued pension) to plan members without the member retiring or reducing his/her working hours. In order to receive a phased-in retirement benefit, the employee must enter into a written agreement with the employer in which the employee consents to the partial payment and the agreement must be provided to the administrator of the pension plan. The employee also must meet certain requirements under the federal *Income Tax Regulations*. Under this legislation, the employee can continue to work and continue to ac-

crue pension benefits while receiving a partial pension payment.

It is important to note that these amendments allow employers to offer phased-in retirement but they do not require it. However, it allows employers to offer options to valued, older workers which it may wish to retain past the normal retirement date.

This Bill received third reading on November 2, 2009 and Royal Assent on November 5, 2009. However, these amendments have not been proclaimed and, therefore, are not yet law.

### **4. Trade Union Act**

Bill No. 7 amends the *Trade Union Act* to provide for a new mediation-arbitration option to help resolve grievances in a timely manner. The new provisions allow the parties to refer a grievance to a mediator-arbitrator at any time regardless of any grievance or arbitration provisions in the collective agreement. If the parties cannot agree on a mediator-arbitrator, the Minister can appoint one at the request of the parties.

The mediator-arbitrator assists the parties in resolving the grievance and, if that is not possible, will attempt to assist the parties to agree on the facts in dispute and then determine the grievance through an arbitration hearing. The mediator-arbitrator can limit the nature and extent of evidence and submissions at the arbitration hearing. The mediator-arbitrator must deliver a decision within 30 days of completion of the arbitration hearing.

This Bill received third reading on November 2, 2009 and Royal Assent on November 5, 2009. It was proclaimed and became law on January 19, 2010.

---

**This article is produced by Ritch Durnford to keep our clients and friends informed of current legal issues. It is intended for general information purposes only. If you have any questions or comments on the above, or if you would like to be added to our mailing list, please feel free to contact any member of our labour group at (902) 429-3400 or by email:**

**Eric Durnford -eric.durnford@ritchdurnford.com, Nancy F. Barteaux -nancy.barteaux@ritchdurnford.com, Amy Bradbury -amy.bradbury@ritchdurnford.com, Isabelle French - isabelle.french@ritchdurnford.com, Krista Smith - krista.smith@ritchdurnford.com**