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Labour & Employment Law Bulletin

Minimum Wage Increase in British Columbia

Effective May 1, 2011, B.C.'s minimum wage will increase and it will continue to increase over the following year:

- As of May 1, 2011, the general minimum wage will increase from $8.00 to $8.75 per hour
- As of November 1, 2011, the general minimum wage will increase to $9.50
- As of May 1, 2012, the general minimum wage will increase to $10.25

As of May 1, 2011, there will no longer be a separate "training wage" for employees with 500 or fewer hours of cumulative paid employment experience.

As of May 1, 2011, there will be a separate minimum wage for employees who serve liquor directly to customers or guests in licensed premises as a regular part of their work. The "liquor server minimum wage" will increase as follows:

- As of May 1, 2011, the liquor server minimum wage will be $8.50
- As of November 1, 2011, the liquor server minimum wage will increase to $8.75
- As of May 1, 2012, the liquor server minimum wage will increase to $9.00

The government has announced that piece work rates and other alternative arrangements will also increase.

Important Changes to Temporary Foreign Worker Regulations come into Force on April 1, 2011

On April 1, 2011, amendments to the *Immigration and Refugee Protection Regulations* will come into force. These amendments will significantly affect employers who employ temporary foreign workers. Employers should review their existing temporary foreign worker arrangements to ensure they will not be denied the opportunity to employ temporary foreign workers in the future. It is particularly important to ensure that the terms of employment that were proposed in previous work permit applications have not been substantially altered without obtaining a new work permit. Three key regulatory changes are outlined below.

1. Four Year "Cap"

There will be a four year "cap" on many temporary foreign worker arrangements. Generally, a new work permit will not be issued to a foreign national who has already worked in Canada for a total of four years. Temporary foreign workers who have reached the four year limit will be required to wait four years until they can obtain a new temporary foreign worker permit.

Importantly, the time spent by a temporary foreign worker in Canada prior to April 1, 2011 will not be considered in calculating whether a worker has reached the four year cap. Accordingly, a temporary foreign worker who has been working in Canada prior to April 1, 2011 will not reach the four year limit until April 1, 2015. Nevertheless, employers should recognize that legislators are now more interested in ensuring temporary work permits are indeed temporary. Even before April 1, 2015, officers who issue labour market opinions and work permits may exercise their discretion on other grounds to further this legislative objective.

Some foreign worker arrangements are not affected by the cap. For example, the cap does not apply to workers who "perform work pursuant to an international agreement" such as NAFTA. Officers will also have the discretion to issue a new work permit to a worker who has reached the four year limit if the worker "intends to perform work that would create or maintain significant social, cultural or economic benefits or opportunities for Canadians".

2. "Genuineness" Assessments

Presently, officers are required to determine whether a proposed foreign worker has received a "genuine" offer of employment in certain work permit applications. Under the new regulations, this requirement is much more substantial. As of April 1, 2011, officers considering temporary foreign worker permit applications will be directed to consider the following factors in determining whether there is a genuine offer of employment:

(1) whether the employer is engaged in the type of business it claims to be engaged in;

(2) whether the offer is consistent with the reasonable needs of an employer;

(3) whether the employer can fulfill the terms of the employment offer; and

(4) whether the employer or the employer's foreign national recruiter has complied with the federal or provincial laws that regulate employment and recruitment (the "general compliance requirement").

Item (4) in the above list is particularly important. Although it is not clear how the general compliance requirement will be interpreted, it would appear that officers considering labour market opinion applications and work permit applications will be authorized to consider whether the employer and the employer's recruiter have a history of complying with employment and employment immigration laws.

3. Enforcement

Canada's temporary foreign worker program will include greater enforcement mechanisms to ensure employers comply with their obligations. Employers who do not provide their foreign workers with "wages, working conditions, or employment in an occupation that are substantially the same as those offered" will not be able to participate in the foreign worker program for a period of two years. During this two year period, new temporary foreign worker applications will not be approved and existing temporary foreign worker arrangements will not be renewed.

Non-compliant employers will also be listed publically on the HRSDC website. According to the new regulations, this website will list the names and addresses of employers who failed to provide wages, working conditions, or employment that are substantially the same as those which were originally offered to a foreign national. The website will also state the date upon which it was determined that the employer was non-compliant.

The new enforcement measures are not unconditional. Under some circumstances, an employer's failure to maintain the working conditions that were originally offered may be justified. For example, working conditions may change due to a change in employment laws or a change in the provisions of a collective agreement. Changes in working conditions may also be justified by a "dramatic change in economic conditions". In such cases, the change in circumstances may justify the change in working conditions and the employer may not be subjected to the new enforcement measures.

How to Prepare for April 1, 2011

To prepare for the amendments, employers must be aware that temporary foreign worker applications will be assessed differently after April 1, 2011. Officers considering labour market opinion applications and work permit applications will consider more information, and this will likely increase processing times.

As of April 1, 2015, foreign workers who have worked in Canada for a total of four years will have to wait four years to obtain a new work permit. As an irreplaceable employee approaches the four year limit, employers might consider sponsoring their employee in an application for permanent residency. Applications for permanent residency can take years to process.

Most importantly, employers should review current foreign worker arrangements to ensure they continue to provide the working conditions that were initially offered to each foreign worker. If a temporary foreign worker is promoted or assigned to a new position, a new work permit must be obtained. Employers who fail to maintain working conditions may be denied access to temporary foreign workers for two years.

For more information please contact a member of our Labour & Employment Group.

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