

RADAR

November 9, 2023



Message From the Editor

- This week we would like to highlight two pension specific matters: the passage of British Columbia Bill 33, *Pension Benefits Standards Amendment Act, 2023*; and Ontario (FSRA) final guidance on *Information Technology (“IT”) risk management*.

GENERAL

Federal – Labour Law – Replacement Workers

On November 9, 2023, Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012* received first reading.

Among other matters, this bill purports to amend the *Canada Labour Code* to:

- amend the scope of the prohibition relating to replacement workers by removing the requirement of demonstrating a purpose of undermining a trade union’s representational capacity, by adding persons whose services must not be used during legal strikes and lockouts and by providing certain exceptions
- prohibit employers from using, during a legal strike or lockout intended to involve the cessation of work by all employees in a bargaining unit, the services of an employee in that unit, subject to certain exceptions

- make the contravention by employers of either of those prohibitions an offence punishable by a fine of up to \$100,000 per day
- authorize the Governor in Council to make regulations establishing an administrative monetary penalties scheme for the purpose of promoting compliance with those prohibitions; and
- amend the maintenance of activities process in order to, among other things, encourage employers and trade unions to reach an earlier agreement respecting activities to be maintained in the event of a legal strike or lockout, encourage faster decision making by the Canada Industrial Relations Board when parties are unable to agree and reduce the need for the Minister of Labour to make referrals to the Board.

Source: [Bill C 58, An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012](#)

[News Release](#)

[Backgrounder](#)

British Columbia – Employment Standards – Canadian Experience

On November 8, 2023, Bill 38, *International Credentials Recognition Act* received royal assent.

Among other matters, the bill will require 18 regulators overseeing 29 professions to streamline processes for internationally trained applicants. The professions include engineers, social workers, veterinarians, paramedics, early childhood educators, teachers, biologists, land surveyors, architects and more.

The effective date of the bill is subject to regulation of the Lieutenant Governor in Council, but is scheduled to come into effect in summer 2024.

Source: [Bill 38, International Credentials Recognition Act News Release](#)

Ontario – Employment Standards – Canadian Experience

On November 9, 2023, the Ontario government announced that it will introduce legislation to ban the use of Canadian work experience as a requirement in job postings or application forms. This change would help more qualified candidates progress in the interview process and follows legislation to prohibit regulated professions from requiring discriminatory Canadian work experience requirements in licensing for more than 30 occupations, which comes into effect December 2023.

The Ontario government is also proposing changes to improve oversight and accountability of how regulated professions like accountants, architects and geoscientists use third-party organizations to assess international qualifications to ensure assessments are done in a way that is fast, transparent and fair.

Source: [News Release](#)

Ontario – Employment Standards and Workers' Compensation

On November 8, 2023, the Ontario government announced that it would consult on a new job-protected leave for critical illnesses and that it will

introduce legislation to support injured workers and firefighters.

Employment Standards – Critical Illness Leave

To help workers dealing with a critical illness, the Ontario government will be launching consultations on a new, job-protected leave to match the length of federal Employment Insurance sickness benefits, which is 26 weeks.

Workers' Compensation

Among other matters, the Ontario government also indicated that it will introduce legislation to support injured workers by enabling “super indexing” increases to Workplace Safety and Insurance Board (WSIB) benefits above the annual rate of inflation. For an injured worker who earns \$70,000 a year, a two per cent increase could mean an additional \$900 annually on top of cost-of-living adjustments, which were 6.5 per cent in 2023.

Source: [News Release](#)

Ontario – Employment Standards - Transparency

On November 6, 2023, the Ontario government announced that it will introduce legislation to require employers to:

- include expected salary ranges in job postings
- disclose if artificial intelligence (AI) is used during their hiring process

The Ontario government also announced that it will be:

- conducting consultations and detailed analysis on ending the use of Non-Disclosure Agreements (NDAs) in the settlement of cases of workplace sexual harassment, misconduct or violence
- proposing changes to clarify vacation pay provisions to ensure employees are aware that their written agreement is required if vacation pay is paid in any way other than a lump sum before their vacation

- proposing changes to the *Digital Platform Workers' Rights Act, 2022* (DPWRA) to create a regulatory authority to provide greater flexibility on how pay based on minimum wage must be determined (to allow for greater alignment with the *Employment Standards Act, 2000*)

Source: [News Release](#)

PEI – Employment Standards – Sick Leave

On November 7, 2023, Bill 106, *An Act to Amend the Employment Standards Act* received first reading. On November 8, 2023, a similar bill, Bill 107, *An Act to Amend the Employment Standards Act (No. 2)* received first reading.

Among other matters, the bills purports to amend the *Employment Standards Act* to (some differences outlined below):

- require employers to include the amount of any paid sick leave to which employees are entitled in the employees' pay statements
- require employers to include the number of days of paid sick leave that employees have accumulated and used in the payroll records the employers are required to make and keep
- establish that
 - an employee may earn and take up to five days of paid sick leave in a calendar year
 - Carry Over
 - Bill 106 does not permit the carry over of unused paid sick days to the following calendar year
 - Bill 107 would permit the carry over of unused paid sick days to the following calendar year
 - Medical Certificate
 - Bill 106 allows an employer to require the employee to provide a certificate signed by a medical practitioner certifying that

the employee is or was unable to work due to illness or injury

- Bill 107 does not contain this express provision
- an employee is entitled to take paid days of leave before any unpaid leave
- the Minister of Workforce, Advanced Learning and Population may implement a financial support program to provide temporary financial support to be given to employers to help them adapt to any increased costs associated with paid sick leave

Please note that both of these bills are private members' bills and they may not have the support required to become law.

Source: [Bill 106, An Act to Amend the Employment Standards Act](#)
[Bill 107, An Act to Amend the Employment Standards Act \(No. 2\)](#)

Saskatchewan – Employment Standards

On November 8, 2023, Bill 613, *The Saskatchewan Employment (Fairer Workplaces, Better Jobs) Amendment Act, 2023* received first reading.

Among other matters, the bill purports to amend *The Saskatchewan Employment Act* to:

- provides that the minimum wage cannot be reduced below a specific amount and would set the minimum wage at \$15/hour
- provide for paid sick leave of not less than:
 - 10 days of paid leave in a 52-week period; or
 - 14 days of paid leave in a 52-week period when a state of emergency related to a communicable disease has been declared pursuant *The Emergency Planning Act*
- set out limitations around non-disclosure agreements (NDAs) imposed on complainants in harassment allegations or investigations
- sets out a framework for workplace harassment and violence prevention

Please note that this is a private member's bill and it may not have the support required to become law.

Source: [Bill 613, The Saskatchewan Employment \(Fairer Workplaces, Better Jobs\) Amendment Act, 2023](#)
[Explanatory Notes](#)

WEALTH SOLUTIONS

British Columbia – Miscellaneous

On November 8, 2023, Bill 33, *Pension Benefits Standards Amendment Act, 2023* received royal assent.

Among other matters, the bill amends the *Pension Benefits Standards Act* (PBSA) to provide for the following (the effective date of most of these provisions is subject to regulation of the Lieutenant Governor in Council, unless otherwise stated):

- **Annuity Discharge** – expand the annuity discharge provisions in an ongoing plan when an annuity has been purchased under certain conditions for:
 - the surviving spouse of a deceased member who is entitled to a benefit under the defined benefit provision and who is not receiving a pension under the defined benefit provision
 - an active member who is entitled to a benefit under the defined benefit provision and has ceased accruing benefits under the defined benefit provision

[Note: The PBSA currently provides for a discharge in an ongoing plan, when an annuity has been purchased with respect to a deferred vested member or a person receiving a pension under the plan.]

- **Pre-Retirement Death Benefits**
 - removes the ability of a plan text to force the surviving spouse of a deceased member to transfer their entitlement out of the plan (because they are the surviving spouse)

- (effective November 8, 2023) requires additional information to be included on spousal waiver forms, including but not limited to:
 - state that the spouse is aware of the spouse's entitlement
 - waive that entitlement, and
 - be signed by the spouse, before the member's death, in the presence of a witness and outside the presence of the member
- **Variable Life Benefits (VLBs)** – allow for the provision of VLBs under defined contribution (DC) plans (regulations will be developed in 2024 in consultation with Finance Canada and other pension regulators; British Columbia joins Saskatchewan, Quebec and the federal government in updating pension standards to allow VLBs to be offered from DC plans)
- **DC plan contributions** – allow DC plans to increase member contributions in accordance with a method set out in the plan text:
 - if the employee or member receives the prescribed notice, and
 - if the employee or member does not, opt out within the prescribed period after receiving that notice
- **Registered Retirement Income Funds (RRIFs)** – (effective March 31, 2024) allow for the transfer of lump sum payments to RRIFs

- **Collectively Bargained Multi-Employer Plan** – (effective November 8, 2023) allow collectively bargained multi-employer plan to set a specific membership condition

The bill also makes consequential amendments to the *Family Law Act* and the *Pooled Registered Pension Plans Act*.

Source: [Bill 33, Pension Benefits Standards Amendment Act, 2023](#)

Nova Scotia – Private Sector Participation in PSSP

On November 9, 2023, Bill 339, *Financial Measures (Fall 2023) Act* received royal assent.

Among other matters, this bill allows private sector employers to join the Public Service Superannuation Plan (PSSP) by amending the *Public Service Superannuation Act*. The bill also purports to create the *Private Sector Pension Plan Transfer Act (Act)*, to enable private sector pension plans to transfer into the Public Service Superannuation Plan.

These specific provisions will not come into effect until proclamation.

Source: [Bill 339, Financial Measures \(Fall 2023\) Act](#)

Ontario – Cyber

On November 8, 2023, the Financial Services Regulatory Authority (FSRA) published its final Guidance No. GR0016INT, *Information Technology (“IT”) risk management*.

The Guidance includes:

- seven practices for effective IT risk management
- a process to notify FSRA in the event of an IT risk incident
- sector-specific requirements for credit unions and caisses populaires, Ontario-incorporated insurance companies and reciprocals, and **pension plan administrators**

With respect to pension plan administrators, the Guidance sets out the following sector-specific requirements:

- in order to adequately protect plan members’ rights and benefits, and to effectively administer the pension plan, administrators must consider and mitigate IT risks (to comply with administrator’s obligations under the *Pension Benefits Act*)
- FSRA may take into account IT risks in its assessment of potential risks impacting pension plans
 - FSRA has issued ‘Pension Plan Administrator Roles and Responsibilities Guidance’, which details for pension plan administrators their roles and responsibilities
 - the Pension Plan Administrator roles and Responsibilities Guidance notes that administrators are responsible for implementing processes to ensure that plan risks are understood and addressed
- FSRA will assess whether pension plan administrators can demonstrate:
 - that they have familiarized themselves with industry accepted practices for plan governance, including the Canadian Association of Pension Supervisory Authorities (CAPSA) guideline on Pension Plan governance and other CAPSA guidelines as applicable
 - that they have considered the practices for effective IT risk management and their desired outcomes in this Guidance as supporting their consideration of risk management in their plan, in accordance to the size and nature of the plan and any other relevant factors
- following this Guidance (which includes the practices for effective IT risk management, the IT risk incident notification form and the protocol for IT risk incidents are consistent with the CAPSA guideline on cyber risk for Pension Plans) will satisfy the CAPSA guideline and in areas of inconsistency this Guidance will take priority

FSRA amended the final Guidance in response to consultations, including the following changes:

- the effective date of the Guidance has been changed from June 2023 to **April 1, 2024**
- the IT incident reporting timeframe has been updated to “as soon as feasible, which would normally fall within the 48 to 72 hours range”
- more flexibility to inform FSRA in the event of a material incident, including using a secure portal

Source: [News Release](#)

[Guidance No. GR0016INT, Information Technology \(“IT”\) risk management](#)

Contact Us

If you would like further information on any of these topics, please contact your Aon consultant at canada.retirement@aon.com.

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