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EMPLOYEES REQUESTING TO RETURN TO WORK AFTER A DISABILITY LEAVE? EMPLOYERS, MAKE APPROPRIATE INQUIRIES!

By: Claire E. Ellett, associate with McMillan LLP. This article originally appeared in the McMillan LLP EMPLOYMENT AND LABOUR NEWSLETTER, *dated August 2011. © McMillan LLP. Reproduced with permission.*

The British Columbia Court of Appeal recently confirmed the legal test for *prima facie* discrimination in the context of an employee's request to return to work after being on disability leave. In a unanimous decision from the BC Court of Appeal, the Honourable Madam Justice Kirkpatrick, writing for the Court, held that there remains an obligation on an employer to make inquiries of an employee's condition before they can simply deny an employee's request to return to work from a disability leave.

In *Boehringer Ingelheim (Canada) Ltd./Ltée. v. Lynda Kerr* 2011 BCCA 266 [2011 CLLC ¶230-027], the Court dismissed the employer's appeal of a decision from the Supreme Court that had similarly dismissed the employer's judicial review of a decision from the British Columbia Human Rights Tribunal ("HRT"). The HRT held that the employer had discriminated against their employee, Lynda Kerr.

Ms. Kerr was hired by Boehringer Ingelheim (Canada) Ltd./Ltée ("BICL") in 1996 as a pharmaceutical sales representative. As part of her job, she was required to drive a vehicle and use a computer. In 1999, after being diagnosed with cataracts, she was informed by her doctors that she would likely lose her sight within two years. Ms. Kerr indicated to her employer that she would resign, however, BICL recommended that she apply for disability leave. Ms. Kerr did just that.

Fortunately for Ms. Kerr, the diagnosis she received from her doctors which predicted that she would completely lose her sight did not materialize.

Inside

In 2002, Ms. Kerr was informed by her insurer, Canada Life, that her long-term disability benefits would cease because pursuant to the policy, she was capable of working at some occupation. BICL became aware that Ms. Kerr wanted to go back to work and by as early as 2004, BICL was informed by Ms. Kerr's family doctor that she may be capable to return to work.

Despite this knowledge, BICL did not make further inquiries with Ms. Kerr or anyone else about their employee's capability to return to work. As a result, since she was not receiving disability benefits and was not working at BICL, Ms. Kerr was without income. In the meantime, she filed a complaint with the HRT alleging that she was discriminated against based on her disability and contrary to s. 13 of the *Human Rights Code*, R.S.B.C. 1996, c. 210, which provides in part:

> (1) a person must not
>
> refuse to employ or refuse to continue to employ a person, or
>
> discriminate against a person regarding employment or any term or condition of employment
>
> because of the … physical disability … of that person.

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In 2006, BICL gave Ms. Kerr a return-to-work plan (the "Plan"), however, the Plan was set to commence during her scheduled hearing before the Human Rights Tribunal, and as a result, Ms. Kerr refused to accept it.

After a lengthy hearing before the HRT, the Tribunal held that Ms. Kerr demonstrated on a balance of probabilities a *prima facie* case of discrimination as the employer's refusal to allow Ms. Kerr to return to work after she was on medical leave was discriminatory and contrary to Section 13 of the *Human Rights Code*. At paragraph 559, the Tribunal cited *McLellan v. MacTara Ltd. (No. 2)* (2004), 51 C.H.R.R. D/103 (N.S. Bd. Inq.) for authority that:

> an employer has an obligation to patiently and carefully assess a disabled employee's condition and to assess her ability, which necessarily involves a dialogue with the employee, including being aware of the dynamic nature of an employee's medical condition which may change.

The Tribunal ordered BICL to pay Ms. Kerr compensation for lost wages (subject to certain deductions), compensation for lost bonuses, compensation for loss to her pension, and $30,000 as compensation for injury to her dignity, feelings, and self-respect, plus applicable interest.

As a result, the employer sought a judicial review of the HRT decision on the basis, among other things, that the HRT applied the incorrect *prima facie* legal test for discrimination. Both the Supreme Court and the Court of Appeal held that the HRT had appropriately applied the proper three-part test for determining whether there is *prima facie* discrimination as enunciated in *Communications, Energy & Paperworkers' Union of Canada (CEP) v. Domtar Inc.*, 2009 BCCA 52 [2009 CLLC ¶230-012] at para. 36 which sets out that the complainant must prove that:

- he or she had (or was perceived to have) a disability;
- he or she received adverse treatment; and
- his or her disability was a factor in the adverse treatment.

In conclusion, employers must conduct their own thorough assessments of all employees requesting to return to work from a disability leave before simply denying a return to work. The current case law establishes that an employer is entitled to carefully evaluate an employee's capabilities before accommodating an employee, however, the onus falls on the employer to independently make their own inquiries.

MINIMUM WAGE REMINDERS FOR SEPTEMBER

As reported in previous issues of LABOUR NOTES, the minimum wage rate in the following jurisdictions will increase on September 1, 2011:

Alberta

- The general minimum wage rate will increase from $8.80 per hour to $9.40 per hour.
- A special rate of $9.05 per hour will come into force for workers who serve alcohol.
- The rate for salespersons and land agents will increase to $376 per week.
- The rate for domestic workers will increase to $1,791 per month.

New Brunswick

- A general minimum wage increase from $9.50 per hour to $10 per hour had been scheduled for September 1. However, the Government of New Brunswick has proposed to postpone this increase until April 1, 2012.

Saskatchewan

- The general minimum wage rate will increase from $9.25 per hour to $9.50 per hour.

DID YOU KNOW...

... that the Canadian Labour Law Reporter contains "Practice Tips" sections?

A **Practice Tips** section follows each of the Labour Relations, Employment Standards, and Human Rights commentary sections and contains practical information on various topics related to the commentary, such as collective bargaining, strikes and picketing, employment contracts, termination of employment, harassment in the workplace, and human rights accommodation.

The **Practice Tips** sections provide valuable and current practical suggestions for management, trade unions, human resources departments, and personnel officers. They can be found in the CANADIAN LABOUR LAW REPORTER beginning at paragraphs 1500 (Trade Unions), 4150 (Collective Bargaining), 6500 (Employment Standards), and 8100 (Human Rights).

Recent additions to the Human Rights **Practice Tips** section include:

- "The Duty to Facilitate: An Employee's Role in the Accommodation Process", at ¶8230;
- "Accommodating Religious and Cultural Diversity in the Workplace", at ¶8350;
- "Sample Sexual Harassment Policies", at ¶8150; and
- "Human Rights Complaint Investigation Checklist", at ¶8530.

Practical advice can also be found in the **What You Need to Know** Q & A sections, at the beginning of each topic in the employment standards and human rights commentary.

SMELLS LIKE A HUMAN RIGHTS COMPLAINT

Prepared by Naomi Horrox of Fraser Milner Casgrain LLP, Toronto office. This article originally appeared in FOCUS ON CANADIAN EMPLOYMENT AND EQUALITY RIGHTS*, Volume 9, Issue No. 18, dated June 2011.*

Mike bikes into work in the mornings, but doesn't take a shower afterwards before starting his day. Sarah loves air freshener – she sprays it everywhere; Tonya, who sits next to Sarah, has complained of headaches and dizziness as a result. Kevin, who is overweight and has taken a number of medical leaves, has a musty, body odour smell in his office.

All of these situations – whether related to body odour or scent sensitivity – are ones that human resources professionals know they have to deal with, but would probably rather not. Such situations could, however, all potentially result in human rights or other complaints if not handled with care. This Editorial outlines some of the legal risks associated with managing these delicate situations and some best practice tips to minimize the risks for employers.

Body Odour

Body odour is not a prohibited ground of discrimination in any jurisdiction in Canada and is not a disability in itself. This means that employees are not protected under human rights legislation from discrimination based on body odour relating to lack of hygiene. Hygiene-related body odour is an issue that will need to be addressed with the employee delicately and with tact, but which does not trigger a duty on an employer to accommodate.

Nonetheless, body odour may be caused by a disability. In such cases, if an employer disciplines or terminates the employment of an employee due to his or her body odour, the onus would be on the employee to show that his or her body odour is caused by a disability. If the employee could establish this connection, the employer would be required to accommodate the employee up to the point of undue hardship. Thus, where employees are disciplined or terminated in relation to their body odour, employers are at risk of receiving a human rights complaint.

In *Neumann v. Edmonton Public School Board*,[1] for example, an employee whose employment was terminated because of his objectionable body odour brought a human rights application against his former employer. In that case, the Commission dismissed the application, as did the Chief Commissioner who reviewed the decision, on the basis that there was no nexus between the complainant's childhood polio and his body odour. On judicial review, the Alberta lower court found that the Commission and Chief Commissioner's decisions were not unreasonable and dismissed the application. Nevertheless, had the applicant been able to establish the nexus, the analysis would have continued and there might have been a different result.

More recently, an employee brought a workers' compensation claim associated with "psychological stress related impairment" after being confronted by a supervisor twice about his body odour.[2] In this case, the worker was summoned into a meeting with the administrator and his supervisor who advised him that they had received a complaint about his body odour. No solutions or help were offered by management to the worker. The worker alleged that he was devastated by the complaint and became isolated in the workplace. After a second meeting with his supervisor about a further body odour complaint, the worker testified that he became paranoid about co-workers and believed that they were all plugging their noses while they were around him.

The Ontario Workplace Safety and Insurance Appeals Tribunal held that the worker was not entitled to the payments sought – a reasonable person would not have found the incidents in which the worker was confronted by administration about his body odour alone to be "traumatic".[3] The result in this case should provide employers with some comfort, but should also highlight that there are other venues, besides the human rights commissions or tribunals, where employees may attempt to bring claims related to the way in which they are approached by their employer about their body odour.

Tips for Employers

If you receive a complaint about an employee's body odour, the following steps should be taken:

- **Meet with the employee to address the issue directly and confidentially**. The employee should be informed, in private, that there have been complaints about his or her body odour. It should be clearly explained that his or her job is not at risk, but it is important to resolve the problem.

- **Recognize the legal implications of the problem**. Do not make assumptions or inquire about the cause of the odour. The body odour may be related to a medical condition which, as the employer, you have no right to ask about.

- **Offer appropriate help**. You may consider suggesting that the employee shower, bring a change of clothing to work, or, if the employee thinks it necessary, see a doctor. You should also indicate that if the body odour is related to a disability and the employee can provide medical documentation to support this, the employer will work with the employee on this issue and accommodate the employee in accordance with its legal obligations.

- **Protect the employee**. It is vital to ensure that other employees are not harassing or ostracizing the employee. If co-workers are doing so, the employees should be reprimanded and disciplined.

- **Accommodate the employee**. If the body odour is related to a disability, the employer has the duty to accommodate the employee up to the point of undue hardship. Depending on the workplace, such accommodation could take the form of allowing flexible restroom breaks, providing a private area for meeting hygiene needs, allowing a personal attendant in the workplace, or allowing work from home. When individuals with body odour are unable to reduce offensive body odour to an acceptable level, employers may consider providing a private office with an air purification system, using odour-absorbing products in the work environment, or allowing the employee to work from home.

Scent Sensitivity

Scents in the workplace may affect employees' well-being. This is most common with the scents of shampoos and conditioners, lotions, perfumes, colognes, aftershaves, hairsprays, air fresheners, and cleaning agents. Where an employee has sensitivity to scents, exposure to them may result in a number of different symptoms, including headaches, dizziness, light-headedness, weakness, loss of appetite, shortness of breath, skin irritation, nausea, or fatigue. These environmental and multiple chemical sensitivities are considered to be disabilities and, as a result, employees may require workplace accommodation.[4] Not surprisingly, human rights applications arising from scent sensitivity on the basis of disability have recently been advanced in Ontario[5] and other jurisdictions.

Tips for Employers

Employers should keep in mind the following best practices if they receive a complaint relating to an employee's environmental sensitivity:

- **Meet with the employee to address the problem**. Listen carefully to the employee's complaint. You may request additional information from the employee with respect to his or her restrictions with respect to scent in the workplace as well as medical documentation in support of these restrictions.

- **Consider requests for accommodation with dignity and respect, in good faith**. Even if the employee has not yet provided medical support for his or her restrictions, discuss the issue with the employee to determine what accommodation may be implemented in the interim.

- **Develop a scent-free workplace policy, if required, and post it in the workplace**.[6]

- **Educate employees about the scent-free workplace policy**. The goal is to inform all employees of the health concerns related to scents and why the policy is needed. Such training can take place by e-mail, newsletter, or presentation.

- **Address employee concerns openly and honestly**. Reinforce the fact that the policy is being introduced because of a medical condition – not because of a dislike for certain smells.

With tact and sensitivity, and by following the tips outlined above, most human rights complaints by employees with body odour issues or with sensitivity to certain odours can be avoided.

Notes:

[1] [2005] A.B.Q.B. 694 (QL). [2005 ABQB 694

[2] Decision No. 113/09, [2009] O.N.W.S.I.A.T. 243 (CanLII).

[3] *Ibid.* at para. 78.

[4] Canadian Human Rights Commission, "Policy on Environmental Sensitivities" available online at www.chrc-ccdp.ca/legislation_policies/policy_environ_politique-eng.aspx.

[5] Although these are only interim decisions on preliminary matters in the applications, see *Pinder v. Toronto District School Board*, [2009] H.R.T.O. 1354 (CanLII) and *Kovios v. Convergys CMG Canada*, [2010] H.R.T.O. 1996 (CanLII).

[6] For guidance on the development of such a policy, see the Canadian Centre for Occupational Health and Safety's article "Scent-Free Policy for the Workplace" available online at www.ccohs.ca/oshanswers/hsprograms/scent_free.html.

Recent Cases

NOTE: The full text of these cases can be found in the "New Matters" tab division of Volume 5 at the paragraph number indicated at the end of each summary.

Employee repudiated employment agreement

• • • **British Columbia** • • • Giza began working for Sechelt School Bus Service Ltd. ("SSBS") as a part-time bus driver when he was 56 years old. He worked a split shift with two hours of work in the morning and two hours in the afternoon. In addition, all bus drivers were laid off for the months of July and August. When SSBS was sold, the new owner met with Giza respecting a possible pay raise. Soon after the meeting, Giza began a new route, believing that his pay raise had been confirmed. Giza was concerned about the timing of the route and brought his concerns to the attention of the owner and the school vice-principal. SSBS decided to terminate Giza, and provided him with five weeks' working notice based on his former salary. Giza stopped work for the day and did not return. Giza brought a wrongful dismissal action, alleging bad faith and dishonesty in his dismissal.

The action was dismissed. SSBS made the mistaken assumption that the five weeks of notice required by the *Employment Standards Act* was sufficient to end the relationship. As a result, the SSBS did not repudiate the employment agreement. By leaving work immediately after receiving the termination notice, and not returning to work, Giza repudiated the employment agreement. While Giza honestly believed that his employer had agreed to a salary increase, he was mistaken, and his new route was not a fundamental change to his contract. Therefore, Giza was not entitled to wrongful dismissal damages. SSBS decided to dismiss Giza by giving working notice because it found Giza's personality difficult to manage. SSBS did not act unfairly or in bad faith in connection with the dismissal. In addition, Giza was not entitled to statutory holiday pay or punitive damages.

Giza v. Sechelt School Bus Service Ltd.,
2011 CLLC ¶210-036 (B.C.S.C.)

Arbitrator erred in awarding holiday pay to inactive employees

• • • **Ontario** • • • The union brought a policy grievance against the TTC for the payment of collective agreement benefits that employees were denied during the period between an application for *Workplace Safety Insurance Act* benefits and the eventual receipt of those benefits. As part of the award, the arbitrator found that employees who had been placed on "inactive status" after six months, and who were in receipt of WSIB payments, were entitled to statutory and designated holidays with pay. The TTC brought an application for judicial review with respect to this aspect of the award.

The application for judicial review was allowed. There was no provision in the collective agreement stipulating how statutory holiday pay was to be calculated. It was unclear from the decision whether the arbitrator intended to award statutory holiday pay on the basis of eight hours of wages. Under subsection 24(1) of the *Employment Standards Act*, employees who have not worked for at least four weeks before the workweek in which a holiday occurs are not entitled to statutory holiday pay. Therefore, there was no basis for an employee to be entitled to payment of money for statutory holidays where he or she had not worked the four weeks mentioned in subsection 24(1). The issue of relevant employees' entitlement to statutory holiday pay was referred to a new arbitrator.

Toronto Transit Commission v. The Amalgamated Transit Union, Local 113, 2011 CLLC ¶210-037 (Ont. S.C.J.)

Board's decision to order to union to submit grievance to arbitration was reasonable

• • • **Newfoundland and Labrador** • • • Locke's Electrical Limited ("Locke's Electrical") terminated nine union members due to a shortage of work on the construction site. The employees did not accept this reason, since all nine were replaced with other union members within two days of the terminations. The union refused to take any action on the terminated employees' behalf. The employees filed a complaint against the union with the Labour Relations Board. The Board concluded that the union's conduct amounted to a lack of good faith, and ordered that the union submit the grievance to arbitration. Locke's Electrical objected to the order of the Board. The Board dismissed the objection, and the applications judge dismissed the application for judicial review. Locke's Electrical appealed.

The appeal was dismissed. Section 92 of the *Labour Relations Act* provides a process for resolving employee–employer disputes where the union, as the bargaining agent, represents the interests of the employees. Individual employees have no standing to take action under that section. In the construction industry, resolving disputes without delay is important. Where a dispute cannot be settled the same day, the parties can submit the issue to arbitration. The Board's order to submit the issue to arbitration was consistent with its broad mandate to order the union to take appropriate steps in the circumstances. The Board's decision was reasonable.

Locke's Electrical Limited v. Newfoundland and Labrador Labour Relations Board, 2011 CLLC ¶220-041 (N.L.C.A.)

Arbitrator's decision was not justified, transparent, or intelligible

• • • **Manitoba** • • • Under Westfair's prescription drug benefit plan, employees were reimbursed for the full cost of allowable prescription drugs. The plan was subject to a $10,000 lifetime limit or cap, at which point an eligible employee would be subject to an annual limit of $1,000 from that time forward. The union only became aware of this policy when Westfair changed its group benefits carrier. After entering into a new collective agreement, four affected employees filed grievances, and the union filed a policy grievance. All grievances were dismissed. The union brought an application for judicial review.

The application for judicial review was allowed. The arbitrator examined the competing arguments of the union and the employer on a point by point basis. Then, he concluded that he preferred the employer's argument, although he provided no explanation or reason for his decision. While the arbitrator's result may have been in the range of acceptable outcomes, it was not justified, transparent, or intelligible regarding the findings and decision-making process. The grievances were remitted for a new hearing before a different arbitrator.

UFCW, Local No. 832 v. Westfair Foods Ltd., 2011 CLLC ¶220-040 (Man. Q.B.)

Tribunal correctly applied test for discrimination

• • • **British Columbia** • • • Kerr worked for Boehringer Ingelheim (Canada) Ltd. ("BICL") as a pharmaceutical sales representative, which required her to drive and use computers. When she was diagnosed with cataracts, she was informed that her vision would deteriorate and that she would lose her sight within two years. When Kerr informed BICL that she wanted to resign, BICL suggested that she apply for disability leave. Kerr did not lose her sight and was able to meet the demands of her job with minimal restrictions. Two years after going on disability leave, Kerr was informed that her disability benefits would terminate, since she was capable of working. She expressed interest in returning to work, but was not offered a position. Kerr brought a human rights complaint, and the Tribunal determined that BICL had discriminated against Kerr because of a physical disability. The application for judicial review was dismissed (see 2010 CLLC ¶230-018). BICL appealed.

The appeal was dismissed. The Tribunal correctly applied the test for determining discrimination on the ground of disability. Kerr had a vision-related disability, she was adversely treated when BICL refused to allow her to return to work, and her vision impairment was a factor in the refusal. The Tribunal also applied the correct legal test in finding a *prima facie* case of discrimination. BICL assumed that Kerr could not return to work because her disability kept her from performing her work. This assumption was made without any clarification of what she was actually capable of doing. Kerr was not required to establish a material change in circumstances when requesting a return to work in order to establish *prima facie* discrimination.

Boehringer Ingelheim v. Kerr, 2011 CLLC ¶230-027 (B.C.C.A.)

Requiring employee to take his medication was a *bona fide* occupational requirement

• • • **Newfoundland and Labrador** • • • Ryan, who suffered from bipolar disorder, worked for the City of St. John's (the "City") in a number of departments, doing seasonal or temporary work. Following a reinstatement, the City prohibited Ryan from driving city vehicles, as a result of safety concerns. The Human Rights Commission dismissed Ryan's complaint. On occasion, Ryan had alcoholic beverages, which required him to stop taking his medication. After a number of incidents, the City had a meeting with Ryan to discuss his work performance issues. Ryan was given conditions for continued employment to guarantee that he was continuing to take his medication. Ryan's behaviour subsequently became more erratic, and he was eventually hospitalized. An arbitration award reinstated Ryan, finding that the City did not truly accommodate him. The union brought a human rights complaint, and Ryan brought a personal complaint, alleging discrimination on the basis of mental disability in the conditions imposed on

his work and his termination. The Board of Inquiry found discrimination in the letter and termination against the City, although not against the union. It also found discrimination against the City and the union with respect to the back to work agreement. The City and the union appealed the findings with respect to the back to work agreement only.

The appeal was allowed. The Board of Inquiry determined that the memorandum of agreement by the City created a distinction between Ryan and other City workers; therefore, deferential treatment of Ryan occurred, based on his mental illness. However, the Court disagreed with the Board of Inquiry's decision that the memorandum of agreement did not constitute a *bona fide* occupational requirement. The memorandum of agreement was more accommodating of Ryan's disability than the earlier letter, which was found to be discriminatory. The City was required to take into account the safety of other City employees, as well as the public, in finding a way to ensure that Ryan remain on his medication while working.

St. John's (City) v. Human Rights Commission,
2011 CLLC ¶230-028 (N.L.T.D.(G.))

Employee's benefit period fell outside the time of entitlement for extended benefits

• • • **Canada** • • • Henderson applied for benefits on June 13, 2008. Both the Board of Referees and the Umpire found that Henderson's benefit period was established when he began to receive his benefits pay in May 2009. As a result, they found that he was entitled to extended benefits under the long-tenured worker provisions of the *Employment Insurance Act*. The Attorney General appealed.

The appeal was allowed. Extended benefits are only available to those whose benefit period was established during certain periods of time. Henderson applied for benefits on June 13, 2008. Therefore, his benefit period was established on June 8, 2008, which fell outside the periods of time set out for extended benefits.

Attorney General of Canada v. Henderson,
2011 CLLC ¶240-006 (F.C.A.)

Q & A

Is an employee with twins entitled to double the parental leave benefits?

A Federal Court judge has ruled that new parents are limited to receiving parental leave benefits for a single 35-week period regardless of the number of newborn or adopted children resulting from the pregnancy or placement.

Canada's Employment Insurance ("EI") system allows new parents to take up to almost one year off work with EI benefits to care for a new baby or child. This period consists of approximately 15 weeks for a birth mother and another 35 weeks that can be used by the birth mother, birth father, or adoptive parent, or that can be shared by both parents.

In 2009, federal government employee Paula Critchley ("Critchley") applied for maternity and parental leave benefits upon the birth of her twin girls. Critchley's claim was approved. Her husband, Christian Martin, who also worked for the federal government, applied for 35 weeks of parental leave benefits for their other daughter. His claim, however, was rejected on the basis that 35 weeks of parental leave benefits can only be provided once for each pregnancy or adoption, not once for each child born or adopted. On appeal, the parents argued that since parents of children born a year apart are entitled to two 35-week benefit periods, parents of twins should also receive the same benefit. An EI Board accepted this argument and granted double the usual parental leave benefits – 35 weeks to each of the mother and the father. Nevertheless, this decision was recently struck down by a Federal Court judge on appeal by the federal government.

The judge found that the EI parental leave rules applied to each pregnancy, not each birth. He also found caring for twins "did not prove historical disadvantage" that would lead to a finding of discrimination against parents of multiple births in the EI rules. We will likely be provided with further guidance on this topic as the case is being appealed to the Federal Court of Appeal by the parents.

THE ECONOMY

The statistics below provide a convenient overview of the latest Consumer Price Index (CPI) and other economic and labour indicators of interest. Do you need detailed CPI figures for all of Canada, individual provinces, regional cities, or specific goods and services (e.g., housing, food, and transportation)? If so, you can find the detailed CPI figures in the "Consumer Price Index" tab division of Volume 1 at ¶26 *et seq*.

Cost of Living – *Up*

The Consumer Price Index figure, on the 2002 = 100 time base, was **120.0** for July 2011, up 2.7% from the July 2010 figure of 116.8. On a monthly basis, the July 2011 figure was up 0.2% from June 2011. On the 1992 = 100 time base, the July 2011 All-items figure was **142.9**.

Industrial Production – *Up*

The preliminary, seasonally adjusted figure of industrial production for the month of May 2011, in chained 2002 dollars, was estimated at $249,477 million, up 0.7% from the revised May 2010 figure of $247,761 million.

Weekly Earnings – *Up*

The average weekly earnings (including overtime), seasonally adjusted at the industrial aggregate level in May 2011 were $875.64, up 3.3% from $847.82 in May 2010, according to a preliminary estimate based on a sample survey of reporting units.

Unemployment – *Down*

In July 2011, the seasonally-adjusted number of unemployed persons totalled 1,351,900, down 35,700 from June 2011, with the unemployment rate declining 0.2 percentage points to 7.2% of an active labour force of 18,696,100. The employment level in July was 17,344,200.

Strikes and Lockouts – *Up*

For major collective bargaining agreements (those with 500 or more employees), in June 2011, there were 467,110 person-days lost from 5 work stoppages, compared to 90,480 person-days lost from 12 work stoppages reported for June 2010.

For May 2011, there were 50,140 person-days lost from 3 work stoppages, compared to 66,320 person days lost from 2 work stoppages in May 2010.

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