

UPDATE FOR FEDERAL EMPLOYERS: CHANGES TO THE CANADA LABOUR CODE AND REGULATIONS

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While federally regulated employers' attention has, understandably, been focused on the upcoming obligation to provide employees with ten annual paid medical leave days, there are other changes of which employers in the federal realm should be aware.

Consultations have recently been completed for several regulations proposed under the *Canada Labour Code*, RSC, 1985, c L-2 ("**Code**"), affecting federally regulated employers. These include changes related to the:

1. Requirement to supply menstrual products;
2. Service of documents and regular rate of wages; and
3. Reimbursement of reasonable work-related expenses.

Requirement to Supply Menstrual Products

The proposed [Regulations Amending Certain Regulations Made Under the Canada Labour Code \(Menstrual Products\)](#) ("**Menstrual Products Regulations**") would amend the sanitation provisions in the *Occupational Health and Safety Regulations* ("**OHS Regulations**"), which currently require employers to provide sanitation products such as toilet paper and soap, to add the requirement that employers provide menstrual products for use by menstruating employees.

The Menstrual Products Regulations would require employers to provide menstrual products, including clean and hygienic tampons and menstrual pads, in each toilet room regardless of their marked gender, as well as a covered container for the disposal of menstrual products in each toilet compartment. If it is not feasible to provide menstrual products in each toilet room due to the nature of the workplace (such as non-traditional, mobile, or remote), then employers should provide the menstrual products in another location that is accessible to all employees and offers a reasonable amount of privacy. For example, an office supply cabinet in an employee resting room or in a menstrual product kit that can be easily carried.

Service of Documents and Regular Rate of Wages

The proposed [Regulations Amending Certain Regulations Made Under the Canada Labour Code \(Service of](#)

Documents and Regular Rate of Wages) ("**Service Regulations**") would amend Part III of the Code to harmonize the service of documents rules with Part IV of the Code, permitting electronic and substituted service of legal documents such as payment orders, compliance orders, and notices to furnish information.

Additionally, the Service Regulations provide for substitutional service, which may be used as a method of last resort in cases of hard to reach employers. In these cases, documents may be left at the last known address or place of business or, in the case of an individual, at the individual's usual place of residence or workplace.

The Service Regulations also provide formulas for calculating an employee's compensation for time spent at a Canada Industrial Relations Board (CIRB) hearing, which is particularly relevant for employers who compensate employees by a method other than an hourly rate (e.g. piece rates, haulage, commission).

Reimbursement of Work-Related Expenses

The proposed *Regulations Amending Certain Regulations Made Under the Canada Labour Code (Reimbursement of Reasonable Work-Related Expenses)* ("**Expenses Regulations**") would prescribe factors to determine whether a work-related expense is eligible for reimbursement.

Currently, the definition of 'wages' under Part III of the Code does not include work-related expenses (e.g. uniforms, equipment, travel and accommodations, training, fuel), leaving employees with limited options to recover these expenses where an employer refuses compensation. The Expenses Regulations are intended to address that gap by requiring employers to provide their employees with reimbursement for expenses that are 1) work-related and 2) reasonable.

In accordance with the regulations, employers should consider the following factors to determine whether an expense is work-related:

- a. whether the expense is connected with the employee's performance of work;
- b. whether the expense was incurred to enable an employee to perform work;
- c. whether the incurred expense is a requirement of continued employment;
- d. whether the expense was incurred to satisfy a requirement for the employee's work imposed by an occupational health or safety standard; and
- e. whether the expense was incurred for a legitimate business purpose, rather than for personal use or enjoyment.

Additionally, employers should consider the following factors to determine whether an expense is reasonable:

- a. whether the expense is connected to the employee's performance of work;
- b. whether the expense was incurred to enable an employee to perform work;

- c. whether the expense was incurred at the direction of the employer;
- d. whether the amount of expense is reasonable and does not incur additional unnecessary expense;
- e. whether the expense is one that is normally reimbursed by employers in similar industries;
- f. whether the expense was authorized by the employer in advance;
- g. whether the expense was incurred by the employee in good faith; and
- h. whether the claim for the expense includes documentation, such as a receipt or invoice.

Employers would be required to reimburse employees for eligible expenses within 30 days of an employee submitting a claim for payment, unless there is a written agreement setting out an alternative time period.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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