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LEAVES OF ABSENCE CONTINUE TO EXPAND

By: Theo Anne Opie, LL.B. © CCH Canadian Limited.

The July 2006 issue of *PaySource*, newsletter No. 133, contained an article entitled, "Compassionate Care Leave and EI Benefits Revisited", which highlighted developments up to that time. Since then, not only has compassionate care leave expanded, but an entirely new unpaid leave of absence has arisen.

For payroll practitioners and human resources professionals, these developments keep compassionate care leave and EI benefits specifically and leaves of absence in general, in the spotlight, and as such, they deserve to be revisited.

Compassionate Care Leave Developments

Effective June 15, 2006, the federal government amended the Employment Insurance Regulations to expand the definition of family member used for the purpose of qualifying for EI compassionate care benefits.

Since that time, British Columbia, Manitoba, Ontario, and just this month, Newfoundland and Labrador (see below), have amended Employment Standards legislation to match the expanded federal definition of family member. What this means is that in the case of employees in these four provinces, entitlement to a leave of absence and qualifying for EI compassionate care benefits match.

Inside

In Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Nunavut and the Yukon, the definition of family member for leave under Employment Standards legislation differs from the definition used to qualify for EI compassionate care benefits. Employers need to be aware of the definition of qualifying family member that entitles an employee to an unpaid leave of absence under employment/labour standards legislation and the definition of family member that qualifies an employee to receive EI benefits. In some situations, the family member who is ill and in need of care may qualify the employee to receive EI benefits but not be included in the qualifying list that entitles him or her to an unpaid leave of absence from his or her employment. The employee will need to be told whether or not he or she is entitled to the leave and why.

Finally, neither Alberta nor the Northwest Territories currently provide for compassionate care leave in their Employment Standards legislation. This means that while employees in that province and territory may qualify for EI compassionate care benefits, their actual ability to take leave to care for an ill family member is not regulated, but remains up to individual employers. However, this may change over the next year as the Northwest Territories has introduced Bill 14, the *Employment Standards Act*, (highlighted in *PaySource*, newsletter No. 143) which will replace its current *Labour Standards Act* and Alberta has reviewed its *Employment Standards Act* and is expected to introduce amending legislation either this fall or next spring.

Commentary on compassionate care leave is located in the Employment Standards section of PAYSOURCE at ¶5900 *et seq.* and further developments will be noted in future Reports.

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Canadian Forces Reservists Leave

Recently, Manitoba, Nova Scotia and Saskatchewan amended their Employment Standards legislation to permit employees to take unpaid leave for service in the Canadian Forces Reserves. This is a new form of leave and would appear to have developed in response to Canada's expanded and continued commitment of troops to various international crises. The following is a summary of the new leave in each of the three provinces noted and commentary on reservists leave is located in the Employment Standards section of PAYSOURCE at ¶5926, ¶5932 and ¶5944. Further developments will be noted in future Reports.

Manitoba

Reservists who have been employed with the same employer in civilian employment for at least seven consecutive months have the right, upon providing reasonable written notice to their employers, to an unpaid leave to either participate in training or in active duty in the Reserves. Subject to the regulations, the period of leave for the purpose of service is the period necessary to accommodate the period of service. The employer may require the employee to provide reasonable verification of the necessity of the leave, including a certificate from an official with the Reserves stating that the employee is a member of the Reserves and is required for service; and if possible, the expected start and end dates for the period of service. An employee on leave under these provisions would also be required to provide his or her employer with written notice of the expected date of return to work. The employer would have the ability to defer the employee's return to work by up to two weeks or one pay period, whichever is longer, after receiving the notice.

Nova Scotia

An employee who has been employed by an employer for at least one year and is required to be absent from employment for the purpose of service, is entitled, upon providing notice, to an unpaid leave of absence for a period of service not longer than 18 months in a three-year period.

An employee who intends to take a leave of absence for service must provide the employer with reasonable notice of his or her intention before taking the leave and, before the employee returns to work after the unpaid leave, he or she must give reasonable notice to the employer of his or her intention to return to work. The employer may request that notice be in writing. "Reasonable notice" means at least 90 days' notice except in an emergency situation, in which case reasonable notice is as much notice as is reasonably practical.

The employee's notice of intention to take an unpaid leave of absence must include the date that the leave will begin and the anticipated date of return to work. The employer is entitled to request a certificate from an official with the Reserves that states that the employee is a member of the Reserves and is required for service, and, if possible, specifies the anticipated dates for the period of service. The start date for a period of service must be at least one year after the date that the employee returned to work from a leave for a previous period of service, and an employee must return to work no later than four weeks after the date his or her period of service expires.

Saskatchewan

An employee who has volunteered for service and, as a result, is required to be absent from his or her employment, would be entitled, upon providing notice, to an unpaid leave of absence for the relevant period of service. Upon completion of the leave and receipt of the proper notice, the employer must allow the employee to continue employment without loss of any privilege connected with seniority, seniority being determined at the date the unpaid leave began. Employers convicted of contravening these provisions could be compelled to either reinstate the employee under his or her former terms and conditions of employment, or pay the employee the wages he or she would have earned had his or her employment continued after the expiration of the leave of absence.

Hot News Items

New Child Amount – Canadian Payroll Association (CPA) and Canada Revenue Agency (CRA) Update

In the last issue of the PaySource newsletter No. 143, we discussed how to handle the new Child Tax Credit introduced in the Federal Budget of March 19, 2007 and reproduced a series of questions and answers developed by the CRA. In this issue of PaySource, we provide the following update.

The new credit has been renamed the "Child Amount". The CPA has worked with the CRA to develop an electronic Child Amount Notice that employees can e-mail to their payroll department to claim the credit instead of completing a new TD1. Since completing a revised TD1 for all employees eligible for this new credit would cause a significant amount of administrative burden for employers and employees, the CPA has worked with the CRA to develop an electronic Child Amount Notice that employees can e-mail to their payroll department to claim the credit in a more efficient manner. This e-mail notice can be used to add the Child Amount to the personal tax credits on the employee's existing TD1 on file. (The facts are, completing a TD1 is onerous for most employees, time consuming for employers to explain, the TD1 can not be currently completed electronically, and over 90% of employers are doing only the basic exemption).

The CRA has now issued an Employer Notice which contains an interactive form which, for the child amount ONLY, can be filled out by an employee and sent either electronically or as a printout, to his or her employer. The form can be used by employees who wish to claim the new child amount through a decrease in the amount of tax deducted at source from salary, wages, commissions, pensions, etc. instead of at the end of year through the personal income tax T1 filing process. This new form can be used instead of the employee submitting a revised TD1.

Editorial Note: As the form is electronic and interactive, i.e., allowing the employer to e-mail it to employees and the employee to fill it out and submit it electronically, the form is only reproduced in the online and CD versions of PaySource. The new form is located in the Forms section.

The Canadian Payroll Association (CPA) has also prepared a series of Questions and Answers that address how employers can administer this new credit in their day-to-day payroll operations. The Q and A's are reproduced below.

Can employers reduce the administration associated with having employees complete a revised TD1 and still enable them to benefit from the Child Amount tax reduction using the payroll system?

The CPA worked with the CRA to develop the attached Child Amount Notice as an e-mail that can be sent to employees for them to complete and return to the payroll department, thereby eliminating the need to complete a revised TD1.

The amount claimed on the completed Child Amount Notice will be used to adjust the employee's credit amount(s) in the payroll system and will also be attached to the existing TD1 on file as supporting documentation.

For example, if an employee sent the Notice to their payroll department indicating that they have two children born in 1990 or later for a Child Amount of $4,000, payroll would reflect a personal tax credit amount in the payroll system of $12,929 (the basic credit of $8,929, assuming that is the amount on the employee's TD1 on file, plus the Child Amount credit of $4,000).

Does the amount indicated on the Child Amount Notice replace the personal credit amount on file?

No, the Child Amount credit is added to any existing credit amount(s) already in the TD1 file. Employees who have credit amount(s) in addition to the basic personal amount, should complete a revised TD1, because there were other changes in the March 2007 Budget that affected the TD1 credit amounts, such as the spouse or common-law partner credit amount. The federal TD1 has been revised effective July 1, 2007 to incorporate the new Child Amount and the other changes. The Child Amount will be indexed annually, therefore employers using computer systems should input this amount in a manner which allows for annual indexing, similar the basic personal amount or spouse or common-law partner amount.

What if there is no TD1 on file?

The *Income Tax Act* provides that employees must have a TD1 on file. Therefore, if there is not one on file the employee must complete a revised TD-1 (July 2007) and submit it to payroll. The revised TD1 can be obtained by linking to the following URL: www.cra.gc.ca/forms.

If employees want to continue to receive the Child Amount, and are eligible to do so, do they have to advise payroll in January 2008 or complete another TD1?

The new Child Amount and other revised personal amounts have been annualized by the CRA for the period July to December 2007 to eliminate the need for the employee to notify payroll or re-file the TD1 in January 2008. In other words, the Child Amount is expected to remain at $2,000 for the 2008 taxation year. However, if there is a change to the employee's personal situation they would need to complete a new TD1.

If the employee does not notify payroll of their intentions regarding the Child Amount will they still be eligible for the credit?

Yes, employees still have the option of claiming the Child Amount when they file their personal income tax return (T1) for 2007 if they choose not to claim it as a deduction at source through payroll.

What if our employees do not have access to e-mail?

Employees without access to e-mail who wish to claim the Child Amount should complete a TD1 available from their payroll department. The payroll department should have an adequate supply of paper TD1s to fulfill such requests.

2007 Budget Season Reopens

The 2007 Budget season has now entered its second phase. Following the tabling of their 2007 Budgets, Manitoba, Prince Edward Island and Quebec each held Provincial Elections. As a result of the elections, the following Budgets were affected as indicated.

Manitoba

The May 22, 2007 provincial election returned the NDP majority government. Therefore, the April 4, 2007 Manitoba Budget remains unchanged and is located in the Budgets & New Developments section of PAYSOURCE at ¶180,158.

Prince Edward Island

The May 28, 2007 provincial election returned a new Liberal majority government. The new Liberal government has indicated that as it is the half-year mark, the first truly Liberal budget will be delivered next year. Therefore, the April 10, 2007 Prince Edward Island Budget is likely to remain intact for 2007. The Budget is located in the Budgets & New Developments section of PAYSOURCEat ¶180,158.

Quebec

The March 26, 2007 provincial election returned a Liberal minority government. On Thursday May 24, 2007, the government issued a new Budget which, after negotiations between the Quebec parties, was passed on June 1, 2007. The new Budget of May 24 2007, presented by Finance Minister Monique Jérôme-Forget, contained the following measures related to payroll and is also located in the Budgets & New Developments section of PAYSOURCE at ¶180,158.

Measures Announced in the February 20, 2007 Budget Speech

As part of the presentation of the February 20, 2007 Budget Speech, the document entitled "Additional Information on the Budgetary Measures" was tabled before the National Assembly. Section A of this document, reproduced as an appendix to this section, details the various revenue measures to be incorporated in Quebec's legislation following this Budget Speech.

Because of the general election held in Quebec on March 26, 2007, the government's economic, fiscal, budgetary and financial orientations for fiscal year 2007-2008, laid out in the February 20, 2007 Budget Speech, could not be approved by the National Assembly prior to its dissolution.

While these orientations were not approved by the National Assembly, many of the measures announced on February 20, 2007 were given practical application the following day. Accordingly, the new government is confirming, in this Budget Speech, all of these measures.

For greater clarity, except for the measure concerning the $250 million personal income tax reduction; which is replaced by the $950 million personal income tax reduction in this Budget Speech; and measure on the extension of and improvement to the capital tax credit - which will cease producing effects earlier because of the elimination of the tax on capital on January 1, 2011 in this Budget Speech - all the other revenue measures announced on February 20, 2007 and described in the document entitled "Additional Information on the Budgetary Measures", tabled the same day are renewed and apply in accordance with the same terms and conditions and on the same dates as those stipulated at that time.

Personal Income Tax Rates and Credits

In the February 20, 2007 Budget Speech, it was announced that, in keeping with the government's goal of lowering the tax burden of Quebecers to bring it more in line with the Canadian average, a personal income tax reduction of $250 million would be granted as of January 1, 2008.

Briefly, this reduction was to consist of a 7% adjustment to the taxable income thresholds to which apply the rates of the tax table used in calculating the tax payable by an individual on his taxable income.

To achieve its objective as quickly as possible while reducing the tax burden of all Quebecers, the government will allocate an additional $700 million to the reduction in personal income tax stipulated for January 1, 2008.

The reduction in personal income tax effective January 1, 2008, totalling $950 million, will consist, first, of an increase in the thresholds and ceilings used to determine the taxable income brackets used to calculate the tax payable by an individual on his taxable income and, second, of an increase in the amount used to calculate the basic tax credit granted to all individuals.

Increase in Tax Table Thresholds and Ceilings

Currently, the table used to calculate the income tax payable by individuals on their taxable income provides for three tax rates that gradually rise with the table's taxable income brackets. The table provides for a tax rate of 16% for individuals whose taxable income is equal to or less than $29,290 for the 2007 taxation year. The rate is 20% for the taxable income bracket over $29,290, without exceeding $58,595, and 24% for the bracket over $58,595.

As of January 1, 2008, the first bracket of the tax table will cover the first $37,500 of taxable income, with the second bracket consisting of the portion of taxable income over $37,500, but not exceeding $75,000, and the third bracket corresponding to taxable income over $75,000.

As of January 1, 2009, the thresholds and ceilings establishing the taxable income brackets of the tax table will again be automatically indexed each year.

Increase in the Basic Tax Credit

To improve the fairness of the tax system by ensuring that no tax is payable by individuals before they attain a certain level of income, all individuals are allowed a non-refundable basic tax credit.

The tax reduction, for a given taxation year, resulting from this tax credit can reach 20% of the basic amount specified for the year, which consists of an amount of recognized essential needs to which a complementary amount has been added since taxation year 2005.

Briefly, the complementary amount allowed for a given taxation year is equal to the minimum amount applicable for the year or, if greater, the total payroll contributions to public plans designed to partially replace work income, the recognized portion of contributions by self-employed workers to such plans and the contribution of 1% to the Health Services Fund (HSF) payable by individuals. For taxation year 2007, the basic amount specified for the purposes of calculating the basic tax credit is, for 99% of taxable taxpayers, equal to $9,745, i.e., the aggregate of the amount of recognized essential needs ($6,650) and the minimum complementary amount ($3,095).

To reduce the tax burden of all Quebecers and to further simplify the personal income tax system, the amount of recognized essential needs and the complementary amount forming the basic amount used to calculate the basic tax credit will be replaced, as of taxation year 2008, by a single amount of $10,215.

The new basic amount of $10,215 will be automatically indexed annually as of January 1, 2009.

Increase in Certain Amounts Used To Calculate Tax Withheld at Source

A person who pays, at any time during a taxation year, remuneration, a retirement benefit, an Employment Insurance benefit or other similar payment, must withhold an amount on account of tax payable by the recipient for the year.

As a general rule, the amount the payer must withhold regarding such payment is equal to the amount established according to a mathematical formula authorized by the Minister of Revenue or in accordance with the tables he has prepared, taking into account, in particular, the amount of the recipient's personal tax credits attributable to a given pay period.

To reflect the increase in the basic tax credit in the calculation of tax withholdings at source, amendments will be made, as of taxation year 2008, to the tax legislation and regulations.

More specifically, for the purposes of establishing, first, the amount of the personal tax credits of an individual who files, with a given payer, a Source Deductions Return and, second, the tax withholding at source applicable to the remuneration paid to an individual who has never filed, with a given payer, such a return, the basic amount will be equal to the basic amount used for the purposes of calculating the basic tax credit for the year.

An amount equivalent to the basic amount will also be used to calculate the amount for spouse for the purpose of determining the amount of the personal tax credits of an individual who files a Source Deductions Return with a given payer.

See Commentary at ¶25,122 and ¶25,124.

Need To Know

CRA Announces Third Quarter Interest Rates

The third quarter interest rates were recently confirmed by the Canada Revenue Agency (CRA). Effective July 1, 2007 through September 30, 2007, the rates will be:

- 9% for interest on unremitted employee income tax source deductions, unremitted CPP and EI contributions, unpaid penalties, overdue personal income tax payments and insufficient income tax instalment payments;
- 7% for interest payable on income tax refunds and overpayments; and
- 5% for deemed interest when computing the taxable benefits on employee or shareholder loan provisions.

The third quarter interest rates have been incorporated into PAYSOURCE in the Employee Benefits section at ¶20,155 and ¶20,600, the Statutory Deductions – Employer Remittances section at ¶24,304, the Statutory Deductions – Tax section at ¶27,020, and the Year-End Reporting section at ¶65,686.

Newfoundland and Labrador Expand Definition of Family Member for Compassionate Care Leave

The Labour Standards Regulations were recently amended to enhance provincial job protection for workers who wish to access the federal compassionate care benefit to provide care for terminally ill family members.

In 2004 the provincial government amended the *Labour Standards Act* to provide job protection for workers who needed to access the compassionate care benefit to care for an immediate family member.

In June 2006, the federal government broadened its definition of family member for which workers can access the benefit so that they are able to provide critical care, not just for immediate family, but for extended family and close relations.

The amendment to the Labour Standards Regulations mirrors this change in federal Employment Insurance Regulations.

Saskatchewan Eliminates the Northern Overtime Exemption

Labour Minister David Forbes recently announced that the province will eliminate the Northern Overtime Exemption, a labour standards regulation that has been on the books for more than 50 years.

"This government is committed to helping people in the North build better futures, and precluding our northerners from collecting overtime in the same way people in the south do, runs counter to that spirit", Forbes said. "The review of the Northern Overtime Exemption this past summer clearly indicated this regulation has outlived its utility."

The exemption will be repealed effective September 1, 2007, to allow northern employers time to become familiar with the administration of overtime and alternate ways to accommodate flexible hours under Saskatchewan's *Labour Standards Act*.

"There are other labour standards mechanisms in place, such as averaging of hours permits, that have proven sufficient for businesses to prosper in the southern part of the province, including rural and remote areas", Forbes said. "We see no reason to keep the northern exemption in place when there are so clearly other alternatives."

The province will also treat fishers and trappers as primary producers (like the traditional family farm) under *The Labour Standards Act*, so overtime provisions will not apply to these producers. The province will also grant a regulatory exemption to sections 6 and 12 of *The Labour Standards Act* to outfitters across the province and those working in mineral exploration north of Township 62. The unique work situations in these occupations make these overtime regulations impractical.

Removing the exemption was a recommendation included in Ron Harper's final report on The Northern Exemption Review. Regina Northeast MLA Ron Harper was appointed by Premier Lorne Calvert to hold consultations on this issue across the North last summer.

"I met with many northerners to hear what they had to say on this issue", Harper said. "Their message came through loud and clear – northerners want to see the exemption removed, and I am pleased that we will do so."

The current Northern Overtime Exemption is a labour standards regulation that exempts some employers operating north of Township 62 from the hours of work and overtime provisions of *The Labour Standards Act, 1995*. It does not apply to Uranium City, or workers within 10 km of (or inside) La Ronge and Creighton.

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Minimum Wage Increases

Alberta

Alberta's minimum wage will increase from $7 to $8 per hour on September 1, 2007, to reflect the latest economic indicators.

New Brunswick

On July 1, 2007, the minimum wage will increase to $7.25 per hour, up from the current level of $7.00 per hour.

The new minimum wage rates have been incorporated into the Employment Standards section of PAYSOURCE at ¶5505, ¶5522 and ¶5528.

Recent Cases and Rulings

Termination pay not considered unpaid wages

• • • **British Columbia** • • • Colak was employed by UV Systems from September 1997 until early spring 2002, when he was terminated. In mid-2001, Colak was not paid certain expenses, wages, and commissions he was entitled to under the contract of employment, so he was constructively dismissed. Colak filed a complaint with the Employment Standards Branch, resulting in a determination that UV Systems, and Service Systems International Ltd., an associated company, owed him $32,572 for unpaid wages, unpaid commissions and vacation pay. In addition, two directors of UV Systems were found personally liable for the unpaid wages portion of the award. In September 2005, Colak brought an action for damages for breach of his employment contract, claiming that he was owed money under the termination provisions of his contract. The claim was dismissed (see 2006 CLLC ¶210-036). The Court determined that termination pay was included in the definition of wages, and therefore the claim was barred by section 82 of the *Employment Standards Act*, which states that an employee may not commence another proceeding to recover wages after a determination is made regarding the payment of wages. Colak appealed.

The appeal was allowed. According to the Court of Appeal, the definition of wages did not include contractual termination payments, so Colak was not statute-barred from claiming termination pay under his contract. The Court then went on to determine that Colak was entitled to 24 months' pay under the termination provision in the employment agreement, and that Creative Eateries Corporation was not jointly and severally liability for the damages for the breach of Colak's employment contract.

Colak v. UV Systems Technology Inc. and Creative Eateries Corporation, (British Columbia Court of Appeal) (2007 CLLC ¶210-020).

Withdrawal of overtime claim as condition of return to work was constructive dismissal

• • • **Alberta** • • • Hummel worked for the Treaty 7 Urban Indian Housing Authority as a Financial Controller. Hummel was initially seen as a dedicated and valued employee and had a positive relationship with her supervisor, Crow. But their relationship deteriorated following a meeting on December 1, 2004 where Crow and Hummel discussed overtime hours to be used as time off "in lieu". Contrary to official policy, management tended to use the honour system for recording accumulated overtime hours, and time off "in lieu" was allowed on a one and a half hours per hour overtime worked basis. In order to schedule "in lieu" time off, Leave Request Forms were filled out and left with the manager, and unless the manager advised otherwise, it was assumed that the request was approved. Hummel had submitted time off requests which she assumed were approved, but at the meeting with Crow she learned that they were not, as there was some question about the amount of overtime she had worked.

Following the meeting, Hummel gave Crow a letter of complaint, which was referred to the Board. Following written correspondence between the parties, Hummel took a leave of absence due to illness, and on February 28, 2005, she was informed that her overtime claim was denied. At this point, Hummel filed a claim for disputed overtime hours and unpaid wages. When she was ready to return to work following her leave of absence, she was told that she could either return to work and forego her right to claim compensation for overtime hours worked, or she could continue the claim and not return to work. As a result, Hummel brought a further claim alleging wrongful dismissal.

The wrongful dismissal claim was allowed. The Housing Authority denied Hummel the right to take time off in lieu of overtime, or to be paid for the overtime hours she had already worked, and had not suggested any new overtime policy. As a result, the Housing Authority was unilaterally attempting to change Hummel's remuneration with respect to worked overtime. The agreed upon overtime policy was that Hummel would work as needed, and then request leave at the rate of one and a half hours per hour of overtime worked. The Housing Authority wanted to negate this term of the contract, both for past time in lieu already earned, and for all future overtime hours worked. Since Hummel was given the choice of accepting the changes to her employment contract, or terminating the agreement, Hummel was constructively dismissed. She was awarded three months' pay as damages, but no damages were awarded for bad faith. Hummel was also entitled to claim all of her unpaid overtime.

Hummel v. Treaty 7 Urban Indian Housing Authority, (Alberta Provincial Court), (2007 CLLC ¶210-022).

Employee constructively dismissed when full-time work turned to part-time

• • • **Alberta** • • • Therrien, a chartered accountant, worked for years in a partnership with other chartered accountants. Therrien sold his stake in the accounting partnership and accepted an offer to work full-time for a group of companies owned by Gagnon, which had represented one-third of his work when he was with the partnership. During the discussions before accepting the position, Therrien and Gagnon discussed retirement plans, as Therrien planned to retire in eight to ten years, and agreed on a monthly salary for Therrien of $12,000 per month with six weeks vacation. Therrien worked under the direction of Gagnon, where he kept regular office hours. While two employees reported to Therrien with respect to accounting issues, they were otherwise under the direction of Gagnon. Therrien did hire one additional staff member to work with him, but otherwise he had no hiring or firing power. As a result of a continuing cash crisis, Gagnon told Therrien that his salary would be reduced, and that he might have to work on a part-time, as needed basis, instead of full-time for the company. Therrien took this to be a constructive dismissal, left the Gagnon companies, and sued for wrongful dismissal.

The action was allowed. First, the Court addressed the claim of the Gagnon companies that Therrien was not an employee, but an independent contractor. The Court noted that Gagnon had the control and direction of Therrien in respect of what work was to be done and when it would be done, including allocation of hours and fees when invoicing companies. Therrien had no power or authority to hire or fire employees or to delegate his work, and the Gagnon companies were his sole source of income. Therefore, there was an employment relationship between the parties. Next, the Court determined that Gagnon's statements to Therrien that his work in the future would only be part-time and that he would have to look for other work constituted constructive dismissal. Given that Therrien was induced to leave a long-term successful partnership, that he was 57 years old when he was dismissed, that he believed he would be working at the company until his retirement, and that his dismissal substantially affected his health, the Court awarded 12 months' notice. The Court did not award bad faith damages.

Therrien v. True North Properties Ltd.,(Alberta Court of Queen's Bench), 2007 CLLC ¶210-023.

Unremitted source deductions: taxpayers' due diligence allegations not supported

The Minister assessed the taxpayers vicariously for unremitted source deductions owing by a group of corporations of which they were directors (the "St-Romain Group"). On their appeal to the Tax Court of Canada, the taxpayers raised a due diligence defence. They alleged that they had done everything possible to prevent the St-Romain Group's source deduction arrears from accruing, but were thwarted in their efforts because they lost control of the group's operations to the National Bank, which was one of its creditors.

The taxpayers' appeals were dismissed. An analysis of the jurisprudence of section 227.1 shows that, in general, courts apply the vicarious liability provisions to directors acting in good faith to maintain their corporation's solvency by paying the corporation's creditors instead of remitting source deductions to the Minister. In this case, the evidence did not indicate that the National Bank had taken control of the St-Romain Group's operations, or that it alone was legally entitled to determine which of the St-Romain Group's creditors should be paid. The taxpayers failed to show that they had effectively lost control of the St-Romain Group's operations. Also, in a letter dated July 12, 2002, the National Bank indicated that it was to approve all of the St-Romain Group's cheques prior to their issuance, and that there would be no policy under which any particular creditor or creditors would be given preferential treatment. Therefore, the evidence failed to support the taxpayer's due diligence allegations. The Minister's assessments were affirmed accordingly.

Fortin et al., (Tax Court of Canada), 2007 DTC 507.

Lump sum paid to taxpayer was "retiring allowance"

In December 2003, the taxpayer entered into a written agreement (the "Release Agreement") with his employer. Under the terms of the Release Agreement, the taxpayer received $152,968.75 from his employer. As consideration for that payment, he tendered his resignation and terminated legal proceedings against his employer for damages for psychological harassment (the "Proceedings"). In assessing the taxpayer for 2003, the Minister included the $152,968.75 in his income as a "retiring allowance" under subparagraph 56(1)(*a*)(ii) of the Act. The taxpayer appealed to the Tax Court of Canada.

The taxpayer's appeal was dismissed. The $152,968.75 could not be classified as a "retiring allowance" if the taxpayer could show that it was not connected with his dismissal from employment, and was related solely to the termination of the Proceedings. However, the language in the Release Agreement clearly indicated that at least some portion of the $152,968.75, if not all of it, was paid to the taxpayer as compensation for his dismissal. Therefore, the $152,968.75 was properly included in his income.

Forest, (Tax court of Canada), 2007 DTC 632.

Standby Charge: more than one driver or automobile

Where employees have access to more than one vehicle provided by their employer, Interpretation Bulletin IT-63R5 provides for an averaging method, which may be used as a basis for determining the employees' standby charge. Another situation that may arise is where a number of employees have access to the same vehicle. In a situation considered by the CRA:

> One automobile is available to employees A, B, and C on a first-come first-serve basis. A uses the automobile 30 percent of the days available, B uses it 20 percent of the days available, and C uses it 10 percent of the days available. The car is unused 30 percent of the year and not available 10 percent of the year because of maintenance.

The total standby charge for the vehicle is $2,500.

The standby charge under paragraph 6(1)(*e*)applies where an automobile is available to the taxpayer, or to a person related to the taxpayer, in the year. The CRA "would not consider an automobile to be available to an employee during the time it was used by another person for an entire day provided actual use could be substantiated by documentation such as a mileage log, and all the employees are in agreement with the amounts reported". Also, the days where the vehicle is not used by any employees in the pool must be allocated on some reasonable basis. Based on the example, a reasonable allocation of the standby charge, which allocates the idle time equally among the employees would be:

	Usage	Idle Time Not Available	Allocation of (unused) (10%) Standby charge
Employee A	30%	10% × 1/2 = 5%	45%
Employee B	20%	10% × 1/3 = 3.3%	33.3%
Employee C	10%	10% = 1/6 = 2.7%	22.7%
			101%

It would also be acceptable to allocate "idle time based on the weighted-average of the actual use of the automobile so that the idle time would be allocated among Employees A, B and C in the ratios of 1/2, 1/3 and 1/6 respectively".

Technical Interpretation, Legislative Policy and Regulatory Affairs Branch, February 21, 2007, Document No. 2006-0214581C6.

Clergy Residence Deduction

For an individual that meets the status and functions tests in paragraph 8(1)(c), the clergy residence deduction is limited by income from the individual's qualifying employment. The CRA was asked to comment on whether the deduction would be available to an individual who continues to be paid by the employer while on "parental leave". During the parental leave period, no clergy duties will be performed by the individual.

It is the CRA's view "that even if the function test was considered to be met during the leave period. . .the income received from an income maintenance insurance plan is not remuneration from a qualifying office or employment".

Technical Interpretation, Financial Sector and Exempt Entities Division, March 20, 2007, Document No. 2007-0219881E5.