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PaySource®

March 2009
Number 165

2009 BUDGET SEASON

Budget season is upon us once again. To date, the federal government, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Ontario, Quebec, Saskatchewan, the Northwest Territories, and the Yukon have issued their 2009 Budgets. Highlights of the Budgets relating to payroll are reproduced below. As the other provinces/territories issue their Budgets, they will be added to the list.

Federal

The 2009 federal Budget was presented January 27, 2009, and is reproduced in the "Budgets & New Developments" section at ¶180,166.

British Columbia

The 2009 British Columbia Budget was presented February 17, 2009 and is reproduced in the "Budgets & New Developments" section at ¶180,168.

Manitoba

The 2009 Manitoba Budget of March 25, 2009, presented by Finance Minister Greg Selinger, contained the following measures related to payroll.

Personal Tax Rates

The Budget keeps an earlier commitment to lower income taxes in 2009 by increasing the basic personal exemption, the spousal and eligible dependant amounts by $100, decreasing the lowest tax rate to 10.8% and increasing the income levels for the first and second tax brackets to $31,000 and $67,000 respectively. Manitoba's new Primary Caregiver Tax Credit also began this year, saving caregivers up to $1,020 annually.

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Corporate Tax Rates

Budget 2009 continues to cut business taxes and eases access to capital by:

- eliminating the small business income tax rate to zero before the end of 2010, down from eight% in 1999;
- lowering the general corporate income tax rate to 12% in July 2009;
- continuing with the phase-out of the general Corporation Capital Tax, on track for elimination by the end of 2010;
- reducing the mining tax to 10%, 15% and 17%, depending on taxable income;
- paralleling business tax reductions announced in the 2009 federal Budget including increased depreciation rates for manufacturing machinery and equipment, and computer systems;
- providing additional funding for innovation through the Manitoba Research and Innovation Fund; and
- reducing tax rates for the mining sector to stimulate investment and extending the Manitoba Mineral Exploration Tax Credit for three more years, doubling the tax credit in 2009 and tripling it in 2010.

PAYSOURCE

Published monthly as the newsletter complement to PaySource, by CCH Canadian Limited. For subscription information, see your CCH Account Manager or call 1-800-268-4522 or (416) 224-2248 (Toronto).

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TORONTO ON M5W 1A1
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New Brunswick

The 2009 New Brunswick Budget of March 17, 2009, presented by Finance Minister Victor Boudreau, contained the following measures related to payroll.

The Plan For Lower Taxes

The Plan for Lower Taxes will allow the Government of New Brunswick to put tax reductions in place between 2009 and 2012 in a fiscally responsible manner. Key elements of the plan are as follows:

- Lowering personal income taxes and simplifying the personal income tax structure by replacing the current four-rate system with two tax rates of 9% and 12%;
- Creating a growth-oriented business tax environment by reducing the general corporate income tax rate from the current 13% to 8%;
- Introducing a series of tax measures designed to provide lower taxes to individuals as well as to small, medium and large businesses in an effort to promote investment in the New Brunswick economy; and
- Introducing an accountability mechanism that will help prevent provincial and municipal property taxes from automatically escalating when assessments rise.

Personal Income Taxes

The Budget replaces the existing four-rate, four-bracket structure with two rates and two brackets. Taxes at all income levels will be reduced, allowing New Brunswickers to keep more of their hard-earned money. The rate reductions will be phased in over four years.

By 2012, the existing four-rate personal income tax structure will be replaced with two rates of 9% and 12%. This two-rate system will be phased in over time and will be fully in place for 2012.

The personal income tax rates and brackets for 2009 are set out below. The benefits of these lower taxes will begin to be seen on July 1, 2009, when source deductions will begin to reflect the tax savings. At that time, the savings from the rate reduction will be double, with taxpayers receiving the full year's benefit of the annual savings entirely during the last half of the year.

- Bracket 1: $0 to $35,707; Rate: 9.65%
- Bracket 2: $35,707 to $71,415; Rate: 14.50%
- Bracket 3: $71,415 to $116,105; Rate: 16.00%
- Bracket 4: Above $116,105; Rate: 17.00%

For 2009, the personal and spousal tax credits are as follows:Basic Personal Amount: $8,605; Spousal Amount $7,307.

Below are the charts for the expected tax brackets, rates and credits for 2010, 2011 and 2012.Note that indexation is assumed at 2% from 2010 to 2012.

Personal Income Tax Structure: 2010

- Bracket 1: $0 to less than $36,421; Rate: 9.30%
- Bracket 2: $36,421 to less than $72,843; Rate: 12.50%
- Bracket 3: $72,843 to less than $118,427; Rate: 13.30%
- Bracket 4: Over $118,427; Rate: 14.30%
- Basic Personal Amount: $8,777
- Spousal Amount: $7,453

Personal Income Tax Structure: 2011

- Bracket 1: $0 to less than $37,150; Rate: 9.10%
- Bracket 2: $37,150 to less than $74,300; Rate: 12.10%
- Bracket 3: $74,300 to less than $120,796; Rate: 12.40%
- Bracket 4: Over $120,796; Rate: 12.70%
- Basic Personal Amount: $8,953
- Spousal Amount: $7,602

Personal Income Tax Structure: 2012

- Bracket 1: $0 to less than $37,893; Rate: 9.00%
- Bracket 2: Over $37,893; Rate: 12.00%
- Basic Personal Amount: $9,132
- Spousal Amount: $7,754

Corporate Taxes

Effective January 1, 2009, the small business limit will be increased to $500,000 from $400,000. With this increase, New Brunswick will be tied for the highest small business income limit in Canada. It's estimated that this measure will return $1 million to small businesses throughout the province.

Effective July 1, in each of the following years, the general corporate taxes will be reduced as follows: Effective July 1, 2009, 12%; July 1, 2010, 11%; July 1, 2011, 10%; and July 1, 2012, 8%.

Newfoundland and Labrador

The 2009 Newfoundland and Labrador Budget of March 26, 2009, presented by Finance Minister Jerome Kennedy, contained the following measures related to payroll.

Ensuring Competitive Taxation

As a result of measures introduced in last year's budget, Newfoundland and Labrador has the lowest personal income tax rates in Atlantic Canada. The government will continue in Budget 2009 to build on historic tax cuts by supporting low-income earners and continue to make Newfoundland and Labrador's tax regime competitive for small business to prosper.

The government will invest $11.5 million this year to introduce new tax reductions which puts more money back in people's pockets and helps support the provincial economy. These measures bring the cumulative tax relief implemented over three years, beginning in 2007, to approximately $776 million.

Small business is the economic engine that leads to job creation. In order to improve the competitiveness and viability of small business, the government will increase the small business threshold under the Corporate Income Tax from $400,000 to $500,000. Approximately 4,400 companies will benefit from this measure.

The Dividend Tax Credit rate on eligible dividends will be increased from 6.65% to 9.75% in order to bring the tax treatment of these dividends more in line with other provinces. This will result in a tax savings of $1.3 million.

A key challenge to new and emerging innovative businesses is obtaining access to capital. In 2004, the government implemented the Labour-Sponsored Venture Capital Tax Credit Program, and subsequently registered GrowthWorks Atlantic as a venture capital corporation. Under this program, the purchasers of new shares in GrowthWorks up to $5,000 annually were eligible for a 15% provincial tax credit and a matching 15% federal tax credit. These shares are also RRSP eligible. Effective for the 2009 tax year, the provincial tax credit will be increased to 20%. In addition, the eligible investment will be increased to $10,000.

Poverty Reduction Strategy

The government implemented a comprehensive and long-term Poverty Reduction Strategy beginning in 2006 after extensive consultation, with a goal of transforming Newfoundland and Labrador from the province with the highest rate of poverty to one with the least, over a 10 year period.

The first focus is to continue to enable self reliance and remove the financial barriers to working. Major strides have already been made by providing benefits such as prescription drug coverage to individuals and families working for low wages and increasing the minimum wage incrementally from $6.00 an hour in 2005 to $8.50 an hour today, with the rate set to rise to $10.00 an hour by July of 2010.

Budget 2009, builds upon these initiatives by reducing taxes for low-income earners. Effective for the 2009 taxation year, the Low-Income Tax Reduction program will be enhanced. The income threshold will be increased from $13,511 to $15,911 for individuals and from $21,825 to $26,625 for families, resulting in a number of individuals and families paying a reduced amount of provincial tax, and individuals with income less than the new threshold levels paying no provincial income tax. Approximately 47,000 individuals will benefit from this change. Individuals with low income will save up to $544 through this change, while families with low income will save upwards of $800 annually.

Ontario

The 2009 Ontario Budget of March 26, 2009, presented by Finance Minister Dwight Duncan, contained the following measures related to payroll.

Personal Income Tax

Effective January 1, 2010, the first (lowest) tax rate will be cut by one percentage point, from 6.05% to 5.05%. As a result, Ontarians would benefit from the lowest provincial tax rate in Canada on the first $36,848 of taxable income; 93 per cent of Ontario taxpayers would pay less personal income tax.

Ontario surtax thresholds will be adjusted as a result of the reduction in the lowest personal income tax rate. Effective for 2010, the surtax will be applied at the following rates and thresholds:

- 20% on basic Ontario tax over $3,978; and
- 36% on basic Ontario tax over $5,091.

See Commentary at ¶25,212.

Adoption Of Harmonized Sales Tax

The Budget contained the much anticipated announcement of the adoption of Harmonized Sales Tax (HST) in Ontario, to replace the existing Ontario Retail Sales Tax (ORST) regime, effective July 1, 2010. The HST rate in Ontario will be 13%, consisting of an 8% provincial tax rate (the same as the current ORST rate) combined with a 5% federal GST rate. This combined sales tax will be administered by the Canada Revenue Agency.

The adoption of the HST system in Ontario will generally follow the same rules and tax base as the federal GST (with certain exceptions as noted below), reducing overall compliance costs for business. Businesses will generally be eligible to claim input tax credits for sales tax paid in the course of carrying out commercial activities, reducing the cost of supplies where they are taxable under the current RST system. Small supplier rules under the federal GST system will also be paralleled, so that businesses with total taxable revenues below $30,000 annually ($50,000 for public service bodies) will not be required to register for HST purposes.

As a first step towards execution of the adoption, the Budget announced the signing of a Memorandum of Agreement Concerning a Canada-Ontario Comprehensive Integrated Tax Co-ordination Agreement between the federal and Ontario Finance Ministers. Under the Memorandum, Ontario will receive $4.3 billion in transfer payments to support the transition. Both the Memorandum and Budget contained a few high-level details of specific Ontario exemptions and provisions which will be adopted with the implementation of HST, as outlined below. Further details as to transitional and technical rules, however, are to be released at a later date. It was also noted that an implementation panel will be established to assist with the transition to the new tax system.

A single sales tax would also reduce paperwork costs for business by more than $500 million a year.

"Made-in-Ontario" Components

The government is proposing a number of made-in-Ontario components to meet the province's unique requirements:

- Books, children's clothing and footwear, diapers, children's car seats and car booster seats, and feminine hygiene products would be exempt from the eight per cent provincial portion of the tax
- Purchasers of newly constructed homes under $400,000 would not be subject to an additional tax burden. Buyers of new homes valued between $400,000 and $500,000 could also claim a proportional rebate. The proposed provincial rebate rate would be twice as generous as the GST housing rebate rate
- To help small businesses make the transition to a single sales tax, the government would provide up to $400 million in one-time sales tax credits to help make changes to point-of-sale and accounting systems
- Under the single sales tax, the provincial portion of the tax rate on transient accommodation, such as hotel

rooms, would rise from five per cent to eight per cent. Approximately $40 million a year would be allocated to support destination marketing in Ontario tourism regions once these are established.

Tax on Insurance Premiums

Insurance premiums which are currently taxable under the ORST system (such as for group insurance), will continue to be taxable at the 8% provincial rate.

Small Business Transition Credit

To support small business in making necessary changes to point-of-sale and accounting systems as a result of the HST adoption, a Small Business Transition Credit will be introduced, providing a one-time credit of up to $1,000 for eligible businesses. The credit will be available to businesses, other than financial institutions, with annual revenues from taxable sales of less than $2 million. Credit amounts will be based on businesses' total taxable revenues in the first full fiscal quarter commencing after June 30, 2010, as follows:

- businesses with taxable revenues up to $15,000 will be eligible to receive a $300 credit;
- businesses with taxable revenues over $15,000 and up to $50,000 will be eligible to receive a credit amount based on 2% of taxable revenues for the quarter;
- businesses with taxable revenues over $50,000 and up to $500,000 will be eligible to receive a credit of $1,000.

Sales Tax Transition Benefit

As part of the proposed sales tax reform, $4 billion in cash payments would be provided to Ontarians to support the transition to the new sales tax system.

Benefits would be delivered to eligible Ontario tax filers aged 18 and over in each of June 2010, December 2010 and June 2011. The McGuinty government would provide eligible families with an income of less than $160,000 with three payments totalling $1,000 ($330 in June 2010, $335 in December 2010 and $335 in June 2011) to help them adjust to the new single sales tax. The benefit will be phased out for families earning between $160,000 and $166,600 ($166,700 for the December 2010 and January 2011 payments).

Eligible individuals who earn less than $80,000 would get three payments totalling $300 – $100 on each of the dates noted above.The benefit will be phased out for individuals earning between $80,000 and $82,000.

To qualify for the two benefits in 2010, a 2009 tax return would have to be filed, and a 2010 tax return would have to be filed for the June 2011 benefit amount.

Sales Tax Relief – Ontario Sales Tax Credit

The government is proposing to increase the amount of ongoing sales tax and property tax relief for individuals and families with low to middle incomes by more than $1 billion a year. The current combined sales and property tax credit would be replaced with two new credits.

The new Ontario Sales Tax Credit would provide timely annual tax relief of up to $260 for each adult and child in low and middle-income families. It would be reduced by 4% of adjusted family net income over $20,000 for single people and over $25,000 for families. The sales tax credit would be refundable and paid quarterly, starting July 2010.

See Commentary at ¶20,112.

Strengthening Ontario's Pension System

Following the report put forward by the Expert Commission on Pensions, the government is moving forward with pension reforms to address current economic challenges, strengthen the pension system and increase Ontario's competitiveness. The government is:

1. Addressing the short-term economic challenges by:
   - Allowing plan sponsors to spread their solvency payments over a longer period to free resources for operations
   - Ensuring that workers and retirees are provided with clear information regarding the financial health of their pension plans.
2. Moving forward with long-term pension reform, including:
   - Simplifying and clarifying pension rules related to marriage breakdown
   - Permitting plans to offer phased retirement
   - Establishing a Pension Reform Advisory Council
   - Considering establishing an independent and sustainable Pension Benefits Guarantee Fund agency as recommended by the Ontario Expert Commission on Pensions
   - Planning to introduce further reforms in the fall of 2009.

See Commentary at ¶60,900.

Corporate Taxes

The Budget is proposing $4.5 billion of business tax relief over three years that would lower business costs, enhance Ontario's competitiveness and support growing small businesses. These measures would support the government's five-point economic plan and build on the tax relief already in place, such as the elimination of Capital Tax in 2010. Starting July 1, 2010, the government would:

- Cut the general Corporate Income Tax (CIT) rate from 14% to 12% and reduce the rate to 10% by 2013
- Cut the CIT rate for small businesses from 5.5% to 4.5%
- Cut the CIT rate for manufacturing and processing – helping businesses including farming, fishing, mining and logging – by 16.7%, from 12% to 10%
- Eliminate the CIT small business deduction surtax, making Ontario the only Canadian jurisdiction that would eliminate this barrier to growing small businesses
- Exempt more small and medium-sized businesses from the Corporate Minimum Tax and cut the CMT rate from four per cent to 2.7%.

Quebec

The 2009 Quebec Budget of March 19, 2009, presented by Finance Minister, Monique Jérôme-Forget contained the following measures related to payroll.

A Vigorous Plan To Restore Budget Balance

The 2009-2010 Budget, tabled today, provides for a plan to restore budget balance within five years in order to ensure that Quebec's public finances remain sound. "This plan will be implemented once the recovery is well under way. First, we will exercise tight control over public spending. Second, we will implement measures to increase revenues. We will implement this plan to restore budget balance without raising taxes and while continuing to make payments to the Generations Fund", the Minister of Finance said.

Collecting enough revenue to fund public services

Substantial effort will be required with regard to government revenue as of 2011, when the economy has picked up. The government announced that it will do three things to that end: ensure everyone pays their fair share of income tax, index user fees to the rate of inflation and raise the Quebec sales tax by one percentage point.

Increase in the Sales Tax on January 1, 2011

As of January 1, 2011, the Quebec sales tax (QST) rate will be increased by one percentage point, from 7.5% to 8.5%.

New Initiatives To Fight Tax Evasion

The government intends to continue to put substantial effort into ensuring that all taxpayers assume their fair share of the funding of public services. Fighting tax evasion is a necessity driven first by a concern for fairness and justice. It is also a major preoccupation when strong pressures are being exerted on the government's financial framework. Accordingly, to collect the revenue owing to the government, additional funds will be devoted to stepping up tax recovery efforts at Revenu Québec (increased audits), clamping down on economic crime and combating the illicit tobacco trade.

Measures Relating to the January 27, 2009 Federal Budget

(Note: The references between parentheses correspond to the number of the Budget resolution of the Notice of Ways and Means Motion to amend the *Income Tax Act* tabled on January 27 2009).

Measures Relating to The Income Tax Act – Measures Retained

Quebec's tax legislation and regulations will be amended to incorporate, with adaptations based on their general principles, the measures relating to:

1. the deduction for loss of value of investments in a registered retirement savings plan or a registered retirement income fund after death (BR 7);
2. the increase in the small business limit (BR 9 to BR 11), subject to the clarifications made below;
3. the time at which the acquisition of control of a corporation takes place to determine whether it is a small business corporation or a Canadian-controlled private corporation (CCPC) (BR 18);
4. the amendments pertaining to capital cost allowance applicable to certain assets;
5. the withdrawal of the restrictions applicable to the deductibility of certain interest (BR 23 and BR 24). It is appropriate to note that the ministère des Finances du Québec has already announced that Quebec's tax legislation would be amended to incorporate, with adaptations on the basis of its general principles, the federal measure relating to

the increase in the maximum withdrawal limit under the Home Buyers Plan to $25 000 (BR 5).

Measures Not Retained

Some measures have not been retained because they do not correspond to features of Quebec's tax system or because Quebec's tax system has no corresponding provisions. Such is the case of the measures relating to the increase in the reduction thresholds of the Child Tax Benefit and the National Child Benefit Supplement, the improvement to the Working Income Tax Benefit, the First-Time Home Buyer's Tax Credit (BR 6), the extension of the mineral exploration tax credit (BR 8), the correlative adjustments to the change to the amount of the expenditure limit concerning the investment tax credit (BR 12 to BR 15) and the adjustments concerning the instalment payments of small corporations (BR 16 and BR 17).

Other measures have not been retained because Quebec's tax system is satisfactory in their regard. These measures concern:

1. the increase to the basic personal amount, the amount for a spouse or *de facto* partner and the amount for an eligible dependant (BR 1);
2. the increase in the upper limit of the first two brackets of the personal income tax table (BR 2);
3. the increase in the age tax credit (BR 3);
4. the introduction of the Home Renovation Tax Credit (BR 4)

Clarifications Concerning the Measure Relating to the Increase in the Small Business Limit

The increase in the small business limit from $400 000 to $500 000 will apply as of the day following the day of the Budget Speech. However, where the taxation year of a corporation includes the day of the Budget Speech, the increase in the small business limit applies in proportion to the number of days of such taxation year that follow that day.

Announcement at a Later Date

The ministère des Finances du Québec will announce its position concerning the measures relating to mandatory filing of returns by electronic transmission and the penalties for not filing a corporate tax return in the correct format and for late filing of information returns or not filing such returns in the correct format (BR 19 to BR 22) at a later date.

Saskatchewan

The 2009 Saskatchewan Budget of March 18, 2009, presented by Finance Minister Rod Gantefoer, contained no new tax increases/decreases affecting payroll.

Northwest Territories

The 2009 Northwest Territories Budget was presented February 4, 2009, and is reproduced in the "Budgets & New Developments" section at ¶180,168.

Yukon

The 2009 Yukon Budget of March 19, 2009, presented by Finance Minister Dennis Fentie, contained no new tax increases/decreases affecting payroll.

Hot News Items

Ontario Introduces Organ Donor Leave

Ontario has introduced legislation to provide unpaid job-protected leave for employees who donate certain organs to another individual.

The new leave builds on the $4 million announced in 2007 to implement an Organ Donation Strategy. The strategy includes the establishment of the Program for Reimbursing Expenses of Living Organ Donors, a fund that will reimburse living organ donors for reasonable, out-of-pocket expenses and lost income associated with their organ donation. Living donation has many advantages such as reduced wait times and patient suffering, increased transplant success, and reduced health costs.

Organ donor leave will be available to employees who are donating all or part of the following organs: kidney, liver, lung, pancreas and small bowel. Other organ and tissue donations may be added by regulation.

In order to qualify for the leave, an employee must be employed by his or her employer for at least 13 weeks. All employees covered by the *Employment Standards Act, 2000* are eligible for the leave, regardless of the size of their employer. Employees must give their employer at least two weeks' written notice before starting the leave or, if such notice is not possible in the circumstances, provide notice as soon as possible. Where an employer so requests, an employee must provide a medical certificate confirming that the employee has undergone or will undergo surgery for the purpose of organ donation.

Organ donor leave begins on the day that the surgery to donate the organ takes place. If needed, a donor may begin the leave at an earlier time as specified in a medical

certificate. (The length of the leave to which a donor would be entitled would remain the same regardless of when it began.) The employee would be entitled to extend the leave for an additional period of up to 13 weeks (i.e., the total length of leave could be up to 26 weeks) if a medical certificate confirmed that the employee is not yet able to perform their duties.

The employee may end his or her organ donor leave early by giving the employer at least two weeks' written notice.

An employee's seniority and length of service credits continue to accumulate during the leave and the employer must continue to make its contributions to any applicable benefit plans unless the employee gives the employer written notice that he or she does not intend to pay his or her contributions, if any.

At the end of the organ donor leave, the employer is required to reinstate the employee in the position he or she occupied when the leave started, or to provide alternative work of a comparable nature at not less than the earnings and other benefits that had accrued to the employee when the leave started.

The new organ donor leave is provided for in Bill 154, the *Employment Standards Amendment Act (Organ Donor Leave), 2009*, which received first reading March 2, 2009 and second reading March 12, 2009. Subscribers will be notified of the progress of the Bill.

Yukon Introduces Reservists' Leave

The Yukon is currently one of only four jurisdictions not to provide job protection for employees who take a leave of absence from their regular employment to serve in the Canadian Forces. Alberta, the Northwest Territories, and Nunavut are the other three jurisdictions. Note that Alberta has recently introduced reservists' leave (See below under Need to Know).

The Yukon has recently introduced legislation to provide an employee who is a member of the reserve force of the Canadian Forces with an entitlement to an unpaid leave of absence to participate in military training, operations, or activities in Canada or abroad.

In order to qualify for the leave, the reservist must have completed six months of continuous employment with his or her employer, or a shorter period if it is prescribed for the class of employees to which the reservist belongs. Unless there is a valid reason for not doing so, the reservist must give his or her employer at least four weeks' written notice before the day on which the leave is to begin and inform the employer of the length of the leave. Similarly, unless there is a valid reason not to do so, the reservist must give the employer at last four weeks' written notice of any change in the length of the leave. The employer may request proof of the leave, and the employee shall provide it within three weeks after the day on which the leave begins.

A reservist is not entitled to reservists' leave if, in the opinion of the Minister, it would adversely affect public health or safety or would cause undue hardship to the employer if the reservist, as an individual or as a member of a class of employees, were to take the leave.

The reservist may postpone his or her annual vacation until after the day on which the reservists' leave ends. Seniority continues to accumulate during the period of leave, while employment is deemed continuous for the purpose of calculating benefit entitlement.

At the end of a leave of absence, the employer is required to reinstate the employee in the position that the employee occupied on the day before the leave begins. Where that is not possible the employer must reinstate the employee in a comparable position with the same wages and benefits and in the same location. Where the returning employee is not able to perform the duties of his or her former position, the employer may assign him or her to a position with different terms or conditions of employment.

The amendments are contained in Bill 67, the *Act to Amend the Employment Standards Act* which received first reading March 23, 2009. Subscribers will be notified of the progress of the Bill.

Northwest Territories Employment Standards Changes

Effective April 1, 2009, the Northwest Territories has expanded hours of work and overtime exemptions and extended the definition of family member.

The hours of work and overtime provisions (standard hours of work, maximum hours of work, overtime pay, increasing maximum hours, and averaging hours of work) do not apply to an employee or to the employee's employer where, in the course of employment, the employee is acting as:

- a licensee as defined in the *Dental Profession Act* or a person registered in the Student Register under that Act;
- a professional engineer or professional geoscientist as defined in the *Engineering and Geoscience Professions Act*;
- a member or a student-at-law as defined in the *Legal Profession Act*;
- a licensed practical nurse as defined in the *Licensed Practical Nurses Act*;

- a medical practitioner as defined in the *Medical Profession Act* or a person registered in the Education Register under that Act;
- a registered midwife as defined in the *Midwifery Profession Act*; or
- a registered nurse or nurse practitioner or a temporary certificate holder as defined in the *Nursing Profession Act*.

These new exemptions are in addition to the general exemption of domestic workers, students, and managerial employees from the application of the entire Act, and the specific exemption of certain drivers from section 8 (maximum hours of work) of the Act.

As well, the definition of family member for the purposes of compassionate care and bereavement leave has been extended to add the following individuals:

- a brother or sister of the employee or the employee's spouse;
- a grandparent of the employee or the employee's spouse;
- a grandchild of the employee or the employee's spouse; and
- any relative who resides with the employee.

The amendments are contained in Regulation R-014-2009 which was included in the March edition of the *Northwest Territories Gazette*.

Need To Know

CRA Announces Second Quarter Interest Rates

The second quarter interest rates were recently confirmed by the Canada Revenue Agency (CRA). Effective April 1, 2009 through June 30, 2009, the rates will be:

- 5% 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;
- 3% for interest payable on income tax refunds and overpayments; and
- 1% for deemed interest when computing the taxable benefits on employee or shareholder loan provisions.

The second 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.

Alberta Reservists' Leave Progresses

Alberta recently introduced legislation to provide for reservists leave and the following is a summary of the proposed leave.

The new reservists' leave is provided for in Bill 1, the *Employment Standards (Reservist Leave) Amendment Act, 2009* which was previously summarized in the February issue of PaySource, No. 164.

Bill 1 has been reported back from committee and approved on March 19, 2009. It now awaits third reading and passage. However, the Alberta Legislature has adjourned until April 6, 2009. Subscribers will be notified of the progress of the Bill.

Ontario Temporary Help Agency Workers Protection Legislation Progresses.

The Ontario government has introduced legislation that would ensure that temporary help agency employees are being treated fairly. This legislation would amend the *Employment Standards Act, 2000* (ESA) to change a number of provisions affecting temporary help agency employees.

These changes to the ESA are a component of the government's Poverty Reduction Strategy, which is about creating more opportunity and building a stronger economy.

The following is a summary of the proposed changes regarding agencies.

- temporary help agencies will be prohibited from imposing barriers that would prevent or discourage clients of agencies from hiring "assignment employees".
- agencies will be prohibited from charging fees to their employees
- agencies must provide their employees with the agencies name and contact information and the client's name and contact information.

Protecting Employment Standards Rights

Under current legislation, a temporary help agency is generally considered to be the employer of a person it sends to work for a client business. The client business is

not the employer. The agency is responsible for making sure that a worker's employment standards rights are met.

However, the proposed legislation would prohibit clients of agencies from engaging in reprisals against assignment employees for asserting their employment standards rights. The agency, as the employer, would continue to be prohibited from reprisals against its employees, under current provisions of the ESA.

If a temporary help agency owes an assignment employee wages, and if a client owes the agency money, the proposed legislation would allow the Director of Employment Standards to make a demand on the client to pay those monies to the Director in trust, for dispersal to the employee.

Revoking "Elect To Work" Exemptions

Currently, the ESA contains special rules for certain employees. Employees who "may elect to work or not when requested to do so" were exempt from the ESA requirements regarding public holidays and notice of termination and severance pay.

The government issued an earlier regulation removing the "elect to work" exemptions regarding public holidays, effective January 2, 2009, ensuring that temporary help agency employees have the same rights to public holiday entitlements as other employees in Ontario.

If the proposed legislation should pass, the government intends to enact another regulation removing the "elect to work" exemptions regarding termination and severance.

The amendments are contained in Bill 139, *Employment Standards Amendment Act (Temporary Help Agencies), 2008*. which was previously summarized in the December issue of PaySource, No. 162, received second reading March 2, 2009. Subscribers will be notified of the progress of the Bill.

Minimum Wage Changes: New Minimum Wage for Alta. and P.E.I.; Reminders for N.B., N.S., Ont. and Yukon

The new minimum wage rates are located in the "Employment Standards" section of PaySource at ¶5710, ¶5731, ¶5761, ¶5781, ¶5791, and ¶5851.

Alberta

Effective April 1, 2009, minimum wage and permissible deductions for meals and lodging will increase as follows:

- General Minimum Wage – $8.80 per hour
- Specified Sales Persons – $352 per week
- Live-in Domestic Workers – $1,677 per month
- Deductions for Meals – $2.89 per meal
- Deductions for Lodging – $3.82 per day

New Brunswick

The current minimum wage rate in New Brunswick is $7.75 per hour. The minimum wage rate will increase twice in 2009 as follows:

- Effective April 15, 2009, the hourly minimum wage will increase by 25 cents to $8 per hour; and
- Effective September 1, 2009, the hourly minimum wage will increase by another 25 cents to $8.25 per hour.

The current overtime rate is $11.38 per hour. The overtime rate will also increase twice in 2009 as follows:

- Effective April 15, 2009, the minimum wage payable for time worked in excess of 44 hours per week will increase to $12 per hour; and
- Effective September 1, 2009, the minimum wage payable for time worked in excess of 44 hours per week will increase to $12.38 per hour.

The current rate for employees whose hours of work per week are unverifiable and who are not strictly employed on a commission basis is $341 per week. This rate will also increase twice in 2009 as follows:

- Effective April 15, 2009, the minimum wage payable per week will increase to $352; and
- Effective September 1, 2009, the minimum wage payable per week will increase to $363.

Nova Scotia

On April 1, 2009, the minimum wage will increase to $8.60 per hour, up from the current level of $8.10 per hour.

Ontario

On March 31, 2009, the minimum wage will increase to $9.50 per hour, up from the current level of $8.75 per hour.

Prince Edward Island

The current minimum wage is $8.00 per hour. The minimum wage rate will increase twice in 2009 as follows:

- Effective June 1, 2009, the hourly minimum wage will increase by 20 cents to $8.20 per hour; and
- Effective October 1, 2009, the hourly minimum wage will increase by another 20 cents to $8.40 per hour.

Yukon

On April 1, 2009, the minimum wage will increase to $8.89 per hour, up from the current level of $8.58 per hour.

Recent Cases and Rulings

Employee who changed positions within company no longer bound by original contract when terminated

• • • **Alberta** • • • The companies operated together as a group in the house building industry, with UBG Builders as the top corporation in the group. On June 1, 2004, Ling entered into a contract with Today's Communities for the position of General Manager, where he was given an annual salary and a bonus set at five per cent of the company's net income. The agreement contained a termination provision as well, which provided for termination at any time with two months' notice. Eventually, Ling's bonus was changed to 10 per cent, and then on July 31, 2005, Ling also became General Manager of Today's Homes, although no written agreement was entered into to reflect these changes. On November 1, 2005, he became General Manager of Elite Homes, once again without a written agreement, which meant that he now received bonuses of 10 per cent from each of the three companies. Finally, on November 30, 2005, Ling's title was changed to President of the three companies. He was given a salary increase, and he began to be paid by UBG Management, rather than Today's Communities. Ling asked for a new contract of employment, but was never given one by the company. Ling was terminated without cause on May 10, 2006, after less than two years, and he was given three months' salary. Ling brought a wrongful dismissal action.

The action was allowed. Ling's employer at the time of his termination was not bound by the employment contract that he entered into initially, so the termination provisions of the contract did not apply and the termination was governed by common law. When Ling began his employment, it was clearly intended that the legal employment relationship and privity of contract would only exist between him and Today's Communities, not any of the other corporations. The written contract ceased to govern when the changes resulted in the group of companies becoming Ling's real employer. Ling was entitled to four months' reasonable notice.

Ling v. Unity Builders Inc., (Alta. Q.B.), 2009 CLLC ¶210-012.

Unsubstantiated allegation of theft and one mistake did not constitute just cause for dismissal

• • • **Ontario** • • • Link was hired to work at Direct Steel to perform inside sales co-ordination. In 1996, he left to help set up Venture Steel. Because the company did very well, a Shareholders Agreement was entered into in 2004, and Link received shares, along with nine per cent of the company. Link was fired for just cause by Venture on February 21, 2005, at which point he was Vice-President of Sales. Among the reasons given for just cause for dismissal, Venture alleged that Link had stolen a carpet and had caused Venture to substitute a shipment of the wrong quality of steel to a customer. Link brought an action claiming he was wrongfully dismissed.

The action was allowed. With respect to the theft of the carpet, Link paid cash when the carpet was installed, and believed that he had paid the full amount for the installation. As a result, he was not a party to any improper transaction, nor did he allow the carpet to be installed and paid for by the company. With respect to the allegation that Link allowed the wrong type of steel to be shipped to a customer, there was insufficient evidence that Link knowingly caused steel of an improper grade to be shipped. Therefore, Link was dismissed without cause. The Court awarded reasonable notice of 12 months, along with benefits and money for his common shareholdings.

Link v. Venture Steel Inc. and Rivas, (Ont. S.C.J.), 2009 CLLC ¶210-013.

Employer-Paid Social Events

The CRA was asked whether an employee will be considered to have received a taxable benefit pursuant to s. 6(1)(a) where the employer pays for the employee to travel from an out-of-town location to the employer's main place of business in order to attend the employer's social event. The CRA stated that despite the decision in Dunlap v. The Queen, 1998 DTC 2053 (T.C.C.) (where it was held that where the employee and the employee's guest attended a Christmas party paid for by the employer, the employee received a taxable benefit because it was "an additional way in which this employer chose to recognize and remunerate his employees for their loyal services"), it will generally not assess a taxable benefit to an employee for attending an employer provided social event where the particular social event is "generally available to all employees" and the cost per employee is reasonable in the circumstances.

The CRA stated that "generally available to all employees" is broad enough to mean employees of a particular branch or division of a business, and that "reasonable in the circumstances" will generally include anything that costs the employer $100 per person or less. Social events that cost more than $100 per person may result in a taxable benefit, depending on the facts and circumstances. Additional costs associated with transportation will most certainly increase the cost to over $100 for out-of-town employees, but the CRA stated that "we would anticipate that in making such a trip, the employee would take the opportunity to combine work-related matters with attending the social function" and that in such a case such additional costs will not result in a taxable benefit. Furthermore, such additional costs cannot be treated as a tax-free gift or award under the CRA's administrative policy for non-cash gifts and awards.

Income Tax Rulings Directorate, January 14, 2009, Document No. 2008-0294521E5.

Reasonableness of Travel Allowance – Depreciation of Automobile

The issue the CRA was asked to comment on involved an employee of the "Fédération de la santé et des services sociaux du Québec" who, in the course of her employment, had to travel to visit patients in City A. For such travel, she was paid an allowance of $0.43 per kilometre for the use of her automobile in accordance with a guideline issued by the Quebec Government Treasury Board. The CRA was asked if the allowance was reasonable and if its determination had to take into account the depreciation of the automobile. The CRA confirmed that, to be considered reasonable, the allowance had to cover all the costs related to the use of the automobile and compensate the employee for expenses like depreciation, insurance, financing, and fuel. If the allowance did not cover all such costs, it would not be considered reasonable and would be treated as follows for tax purposes: (1) the employee could not exclude the allowance from her income under s. 6(1)(b)(vii.1) of the Act; and (2) she could claim additional deductions from her income under ss. 8(1)(h), 8(1)(h.1), and 8(1)(j) but would be subject to some limitations described in ss. 13(7)(g), 67.2, and 67.3. On the other hand, if all the costs were covered by the allowance, it would be considered reasonable unless: (1) the calculation of the allowance was not based exclusively on the number of kilometres driven in the course of employment (as per s. 6(1)(b)(x) of the Act); or (2) the employee received an allowance and a reimbursement in respect of the same automobile expenses (as per s. 6(1)(b)(xi)). A reasonable allowance would be excluded from the employee's income under s. 6(1)(b)(vii.1) of the Act but would also prevent her from claiming the additional deductions described in ss. 8(1)(h), 8(1)(h.1), and 8(1)(j). The CRA confirmed in Technical Interpretation No. 2007-0228521I7 that allowances paid in accordance with the above guidelines were considered reasonable and were therefore not taxable. See Window on Canadian Tax at paragraph 9112.

Technical Interpretation, Business and Partnerships Division, January 26, 2009, Document No. 2008-0303901I7.

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