

Policy Analysis: Upcoming Changes to Workplace Violence & Harassment, Maternity & Parental Leave



TABLE OF CONTENTS

1. Introduction1

2. Workplace Violence and Harassment 2

3. Maternity and Parental Leave. 4

4. Conclusion 7

1. INTRODUCTION

The Government of Canada introduced two major legislative changes in November 2017. These changes—one regarding workplace violence and harassment and the other regarding maternity and parental leave—signal major workplace trends that are crucial to the health and happiness of Canada’s workforce. The legislation only covers federally regulated workplaces, but provincial employers will have to review their practices to keep up with these two major workplace issues. This paper will discuss how both announcements have been received by analysts and employers and will make recommendations for stakeholders.

2. WORKPLACE VIOLENCE AND HARASSMENT

On November 7, 2017, the Government of Canada announced Bill C-65, a measure to amend existing federal workplace safety laws to include provisions for harassment and violence. Employment and Social Development Minister Patty Hajdu said the bill will cover “the full range of unacceptable behaviours, from teasing and bullying all the way to sexual harassment and physical and sexual violence.” According to the press release, the strategy rests on three pillars: to prevent harassment and violence from occurring; to respond effectively when these incidents do occur; and to support victims, survivors, and employers throughout the process. The government intends to amend the existing “patchwork” of laws and policies with “one comprehensive approach that takes the full spectrum of harassment and violence into consideration, and [expands] these policies to cover parliamentary workplaces.” Overall this move has been positively received, but analysts have also identified a few areas for improvement.

Support for Changes

Between June 2016 and April 2017, Employment and Social Development Canada conducted several rounds of consultation on harassment and violence in the workplace. It appears that many of the key stakeholder concerns have been addressed in the proposed legislative amendments. For example, one of the major concerns raised was a lack of clarity when it comes to what constitutes violence or harassment. In the public consultation, of the people who mentioned having experienced sexual harassment without reporting it to their employers, most cited the reason as fear that the incident was too minor. In her announcement of Bill C-65, Hajdu claimed that the bill will cover “the full range of unacceptable behaviours, from teasing and bullying all the way to sexual harassment and physical and sexual violence.” Additionally, stakeholders repeatedly expressed that lack of privacy and confidentiality were deterrent to the complaints and investigations process. This is addressed in several areas of the bill. Specifically, employers will not be able to share any identifying information about any person involved in an alleged incident of violence or harassment with a health and safety representative or workplace committee unless

they have the consent of the persons involved. When employees can trust in confidentiality, they may be more likely to come forward when experiencing harassment or violence.

Another strength of the bill is that for the first time, it brings many parliamentary employees under the same violence and harassment protections as other federal employees. For political staffers and interns, this is a huge step in challenging a status quo where harassment is commonplace both inside and outside the workplace. According to social activist and harassment trainer Julie Lalonde, these young people learn quickly that the best way to make connections is after-hours at events or local bars. These are “settings that can be easily exploited, or where harassing behaviour can be excused as part of the political social scene.” Lalonde is not alone in recognizing the need for governance over out-of-office harassment. Minister Hajdu has stated, “The legislation will address the kinds of bullying and harassment that we know doesn’t necessarily happen in a 9-to-5 regime in the office. Oftentimes, harassment and bullying take place in other spaces and we want to make sure that people are protected in the workplace. So sometimes incidents happen after work. That doesn’t mean it’s still not workplace harassment.”

Criticism

In spite of Bill C-65’s steps toward mitigating violence and harassment, there are several signs that it is not capable of tackling these issues on its own. First, the bill only covers federal employees, who make up about eight per cent of the Canadian workforce. Many groups of workers such as provincially regulated employees, uniformed members of the Canadian forces, and Members of Parliament are not covered by these regulations. It will be up to the bodies that govern these workplaces to respond in kind. Second, because the bill does not go as far as to outline sanctions for perpetrators of violence or harassment, analysts question whether results of investigations will be consistent across workplaces. Some even suggest that investigation and discipline should be taken out of the hands of employers and turned over to regulators.

One obvious limitation in Bill C-65 is that it only covers federal employees. What about the remaining 92 per cent of the Canadian workforce? Currently, the only

provinces and territories with specific health and safety legislation regarding violence and harassment are British Columbia, Manitoba, Northwest Territories, Nunavut, Ontario, and Saskatchewan. Alberta is currently in the process of attempting to amend their Occupational Health and Safety Act to address violence and harassment. While a private member bill to this effect stalled at the end of 2016, a spokesperson for Alberta Labour Minister Christina Gray announced recently that similar changes will be introduced in the 2017-2018 legislative session. If the push for prevention and effective resolution of workplace violence and harassment is going to reach all Canadian workplaces, individual provinces and territories will need to update their occupational health and safety legislation as well. In the meantime, employers should review their violence and harassment policies to assess how well they are protecting their employees. If no provincial guidance exists, they may use the proposed federal guidelines as a blueprint for their policies.

Another criticism that has been raised against the proposed legislation is that without prescribed sanctions for offenders, workplace investigations may continue to produce inconsistent results. In the public consultation survey, respondents who had experienced violence or harassment and reported it to their employers were asked “What was the outcome of your most recent incident?” Nearly half replied that there was “no outcome.” Additionally, 65 per cent of respondents indicated they were not satisfied with the outcome of the process, and 44 per cent said they were still experiencing negative outcomes. While the new regulations will require employers to conduct investigations (where previously they were only required to have a policy in place), employees are skeptical that consequences will be carried out. Only 51 per cent of public survey respondents believed that their employer would take corrective action against an offender in the event of an incident. Without designated consequences, some worry that employers will continue to trivialize incidents of harassment and violence. Minister Hajdu has stated that this new legislation will ‘compel those employers that are not taking it as seriously and not putting forward the protections that every person has the right to in the workplace.’ Will employers step up to the challenge?

Finally, some analysts are concerned that employers are by nature incapable of conducting impartial investigations. Under Bill C-65 employees dissatisfied with the resolution of their complaints will have the ability to request a review by a “competent person” who is both trained in dealing with harassment and violence and is considered by all parties to be neutral. This sounds like a win for employees whose complaints are currently not being sufficiently resolved, but it must be noted that the “competent person” does not have to be from outside the organization. Employment lawyer Muneeza Sheikh argues that it is nearly impossible for a member of the same organization to review the employer’s conduct in an investigation with absolute objectivity. Rather than keep employers at the front lines of complaint resolution, she says, “Employees would be far better served with the tightening of human rights and occupational health and safety legislation, and by creating a more efficient route to have complaints heard by regulatory bodies (meaning getting to hearings and mediations without having to wait more than a year in most cases). Encouraging internal resolutions and employer intervention will only further compound the problems many employees face at work. If employees cannot be guaranteed reasonable access to an impartial investigation, the proposed legislative changes may have little effect on the workplace.

Recommendations

Recommendation 1: Employers should ensure their policies are in line with provincial standards on workplace violence and harassment, or where provincial standards do not exist, align their policies with the new federal standards.

Recommendation 2: Employers may have to go above and beyond legislated measures to be sure the people processing violence or harassment complaints have sufficient training.

3. MATERNITY AND PARENTAL LEAVE

On November 9, 2017, the Government of Canada announced new changes to the Canada Labour Code and Employment Insurance Act. The proposed amendments will extend the payment period for EI parental benefits, provide earlier access to EI maternity benefits, and introduce new EI family caregiver benefits. New parents in Canada will have the option to access maternity benefits at 12 weeks before the child's expected delivery date (the current limit is 8 weeks), and they will also be able to extend their EI parental leave payments over eighteen months rather than the standard twelve months. These changes exclude the province of Quebec, which has its own parental leave program. For some Canadian parents, this is a welcome change to leave provisions. For others, the lack of additional benefits may make the extended leave too expensive to pursue. This section of the paper will review the support for the changes as well as some of the challenges it poses.

Support for Changes

Supporters of the newly extended parental leave program say it will provide a solution to problems with day care supply for children under 18 months. Access to childcare for infants is a widely cited issue for new parents in Canada. For example, a report from the Institute for Research on Public Policy (IRPP) indicates that 3 per cent of all regulated spaces in Ontario and 4.5 per cent in Quebec are designated for children younger than 18 months. With so few spots available, many parents must turn to alternatives such as making arrangements with unregulated childcare providers, relying on family members for care, or leaving the workforce to care for children themselves. When parents are able to care for their own children from 12-18 months, they have more time to find quality childcare options. Alisa Flushtinsky, founder of an online motherhood group comprised of over 14,000 members, explains, "Since we have such a big problem with day care supply especially for kids under 18 months of age, it gives parents the ability to have more options, more flexibility. It gives them the ability to have some extra time to search for that daycare. And since we have so much more availability after 18 months, we're also hoping that gives them the option of not dropping off from the workforce, especially for women."

Another potential benefit of extended leave is that childcare for children 18 months and older may become more affordable. Assistant Professor Jennifer Robson of Carleton University explains, "If demand for infant care is reduced, then childcare providers may be able to reorient program spaces to serve children above 18 months of age [...] Reducing demand for infant care should, theoretically, reduce average child care fees as providers (more than three-quarters of which are nonprofit organizations) substitute toward the lower-cost spaces for older children." This result is not guaranteed, but it could make a difference for parents struggling to pay for childcare.

Finally, proponents of the extended leave suggest that it will motivate partners to split the time, which will encourage more fathers to participate in childcare. While parental leave has long been available to be shared between partners, only 27 per cent of families outside of Quebec report fathers taking time off for parental leave, and only 4.4 per cent of families report splitting EI benefits between both parents. Flushtinsky says, "We need more fathers to kind of lean in with the work that has to do with the child upbringing. That half a year, research shows us that gives a lot of bonding time for fathers with kids." This statement should be broadened to include families with two mothers, two fathers, or any combination of partners raising a child. When partners split the leave, there is potentially a lower impact on parents' individual careers, and both parents are able to experience important developmental periods with their children.

Criticism

While more time with children seems to be universally valued, critics of the federal government's new parental leave measures note a number of issues with the existing system that are not addressed in the upcoming changes. They argue that extended leave is a surface-level solution to much more deep-rooted problems in supporting families with young children.

The challenges critics identify are:

- Existing EI benefit amounts are already insufficient for many families.
- Many Canadian workers are excluded from benefits despite paying EI premiums.

- Job protections for extended leave are not available at the provincial level.
- Longer leaves put strain on employers in small businesses.

When the details of the government's plan to extend parental leave were released with the budget in March 2017, many stakeholders voiced concern over the lack of additional benefits. Queen's University law professor Katherine Lahey puts it plainly: "the only people who will genuinely benefit from this type of choice are the ones who have incomes high enough to be able to afford to sit back and decide just which option would advance their lifestyle." As it stands, many parents already have trouble making ends meet at the EI rate of 55% for 12 months. In her IRPP report, Robson breaks down how many families supplement EI benefits with other forms of income. She says that new parents have as many as six major elements of the "policy puzzle" to consider in figuring out how to cover their expenses and provide care for a newborn or adopted child. These elements are: legislated job protections; employer top-ups to EI benefits; other private financial resources; federal and provincial child benefits; means-tested social assistance; and childcare services. Despite the various resources provided by the government, most families must also rely on private resources such as spousal earnings, savings, or financial help from family and friends. Robson's study also shows that mothers are most likely to report spousal earnings as the primary source of income while they are on parental leave for the birth or adoption of a child. Employer top-ups are a very helpful benefit to have, but there is no statutory requirement for employers to offer them. Many stakeholders believe that an increase in EI benefits is crucial to the success of the extended leave plan. In an open letter to the Prime Minister and the Minister of Families, Children & Social Development in November 2016, a group of twenty-five community and labour organizations proposed that the government provide a benefit rate of 70% and a minimum EI benefit for low wage earners. At the end of the day, it will likely take a combined effort by governments and employers to minimize the financial hardships associated with taking maternity or parental leave.

This leads us to another problem with the current EI program for parental leave—there are populations of workers who are paying EI premiums but do not qualify to receive EI benefits. Robson indicates that workers

under the age of 25 and female workers in general are less likely to have enough working hours to meet the eligibility requirements. In the previously mentioned letter to Justin Trudeau and Jean-Yves Duclos, the group of organizations stated, "There is little point to improving parental and other EI special benefits if there are still women and men who can't qualify because they can't meet EI's 600 hour minimum. We propose all EI special benefits require the lesser of 300 hours (pre-1996 minimum) or \$2,000 income (Quebec minimum for parental benefits)." Additionally, the rise of the "gig economy" has led to larger numbers of Canadians earning income through non-insurable forms of work. Self-employed workers are able to opt-in to EI by planning ahead and paying a minimum amount of premiums, but the take-up on this option is very low, comprising just 0.1 per cent of special benefit claims in 2014-2015. There is little to suggest that the take-up will grow when the benefits will be spread even more thinly.

While the Government of Canada's extended leave provisions will make it an option for all workers to stretch their EI benefits over 18 months, employees who are not federally-regulated are not guaranteed job protection for the extra six months. Provincial legislatures will have to decide whether or not to implement the extended job protections, and with the extended leave coming into effect in early December, there is not much time to take action. So far Ontario is the only province that has made moves to adjust their job protections. On November 27, 2017, the Fair Workplaces, Better Jobs Act (Bill 148) received Royal Assent. The province had announced in August 2017 that they would amend the proposed legislation to include provisions for an additional 26 weeks of parental leave to coincide with the federal government's changes. Constance Robinson, PEI's labour relations director, has gone as far as to warn parents about this job protection issue. She says, "If people are expecting to be off for 18 months, and want to be assured their job will still be in place, they need to check with their employer in advance to be sure the employer can grant them the 18-month protection." Without quick legislative updates, employers will have full discretion on whether or not to hold a parent's job for all eighteen months of leave.

For some employers, particularly small businesses, the 12-month leave is already a hardship. The Globe and Mail interviewed one such employer,

Michelle Epstein, who owns a women's gym with only two full-time employees. She explains that the hardest part of employee leaves is going through the work to train a replacement, only to have to let them go at the end of the leave. "It's hard because I have to hold on to the spot for the person who's leaving," she says, "and because of the nature of my very small business, I can't handle the second person when one on mat leave wants to come back." For many businesses, however, adding six months to the leave shouldn't be much more costly or labour-intensive than dealing with a 12-month leave. Robson explains that, "in the short run, longer job-protected and paid leave reduces employee turnover, but it also lowers training costs and improves productivity over the long run."

The bigger issue for employers is that once their regulating body (whether federal or provincial) passes legislation allowing an 18-month leave, they will have to review and update leave-related policies. Of particular concern, says Rachel De Grâce of the Canadian Payroll Association, are top-up policies that do not specify the period of time. If "it simply says 'You are entitled to a top-up of up to 100 per cent of your pre-leave salary'" she explains, then "the legal interpretation of that might hold the employer responsible for topping up at the higher rate for a longer period of time." Regardless of what the policy says currently, employers will have to decide for how long they will provide the top-up payments and at what rate. For example, they could maintain current policies by providing the same top-up percentage for twelve months only, redistribute the equivalent benefit amount over eighteen months, or increase their benefits costs by providing the existing top-up percentage for eighteen months. They will also have to review any policies related to health or retirement benefits during leave. This process may be even more complicated for unionized workplaces where multiple stakeholders must approve changes in collective agreements. De Grâce's major criticism of the new extended leave is that, "although the government doesn't get involved with the employer-employee negotiations around benefits, here they are coming in and changing the ground upon which these benefits were negotiated." De Grâce is not the only one with this sentiment. Dan Kelly, president of the Canadian Federation of Independent Business, has also stated, "What we've always asked is that government gives some thought as to how these things are going to affect

employers and to date I think there has even been a notion of that factored in."

Finally, there is some suggestion that the government is using extended leave as a simple short-term fix to the much more complex issue of childcare access in Canada. Pierre Laliberté of the Canadian Employment Insurance Commission says that extended leave is "no gift to parents. It's basically just reshuffling what they already have. Can someone who wants to go back to work after maternity or parental leave find decent, affordable childcare? This is a very weak answer to that problem." It is true that extending leave without added financial benefits is a very cost-effective strategy. Staff from Employment and Social Development Canada have confirmed that the cost to the government will be about \$400,000 and will be spent on training. Whether or not the extended parental leave is beneficial, the Government of Canada will eventually have to address the childcare issue. Katherine Lahey says, "I wouldn't say that it doesn't help some women but the underlying problem clearly is that Canada has for far too long dragged its feet in putting adequate childcare facilities in the place available to all women who need it."

Recommendations

Recommendation 3: Federal and provincial governments should take steps to improve access to affordable childcare, particularly for children under 18 months.

Recommendation 4: The Government of Canada should make EI benefits more accessible to those who are paying into the system but are not eligible to receive benefits (e.g. self-employed or precarious workers).

Recommendation 5: Provincial and territorial governments should update employment standards to ensure job protections for the full 18 months.

Recommendation 6: Employers should revisit top-up policies and decide how to address extended leave, whether by spreading existing benefits over the additional six months, providing benefits for twelve months only, or increasing benefits to maintain existing top-up rate for the full leave.

Recommendation 7: Employers without top-up plans should investigate the potential return on investment in supplemental unemployment benefits (e.g. employee engagement and retention).

4. CONCLUSION

In the span of only two days, the Government of Canada announced two major steps toward improving Canadian workplaces. It is likely that many workers will benefit from stronger protections from violence and harassment, and many parents will be happy to take advantage of an 18-month parental leave. There is still room for improvement, however, and it will take the cooperation of multiple levels of governance to ensure the best outcome for Canadians. Provinces and territories will have to ensure that their workers are protected from violence and harassment and that when these incidents do occur there is sufficient support in place. They will also need to implement job protections for employees who choose to extend their parental leave to eighteen months. Employers need to review their in-house policies to address violence and harassment and to provide job protection for an extended parental leave. Finally, it will take all three of these groups to continue working toward a strategy to improve access to quality affordable childcare for all Canadians.

SOURCES

A Joint Letter from Community and Labour Organizations concerning Federal Consultations on Parental & Caregiving Leaves and E.I. November 4, 2016. Accessed at: <https://ccaacacpsge.files.wordpress.com/2016/11/joint-letter-by-community-and-labour-organizations.pdf>

Bouw, Brenda. April 6, 2017. What employers need to know about 18-month parental leave. The Globe and Mail. Accessed at: <https://www.theglobeandmail.com/report-on-business/small-business/talent/what-employers-need-to-know-about-18-month-parental-leave/article34576831/>

Bruce, Steve. November 6, 2017. No protection: Why your job may be at risk under 18-month parental leave. CBC. Accessed at: <http://www.cbc.ca/news/canada/prince-edward-island/pei-jobs-protection-parental-leave-changes-1.4404884>

Dearden, Kate and Maciej Lipinski. November 10, 2017. Federal Government Announces Expansion of Parental Benefits and Other Leave-Related Changes Under EI. Borden Ladner Gervais. Accessed at: http://blg.com/en/News-And-Publications/Publication_5134

Employment and Social Development Canada. November 7, 2017. Government of Canada takes strong action against harassment and sexual violence at work. Accessed at: https://www.canada.ca/en/employment-social-development/news/2017/11/government_of_canadatakesstrongactionagainststharassmentandsexualv.html

Hemmadi, Murad. November 13, 2017. Unsanctioned harassment; A new federal bill would force employers to take action but doesn't mandate specific penalties for perpetrators. MacLean's. Accessed at: <http://www.macleans.ca/politics/ottawa/government-proposes-bill-c-65-to-tackle-workplace-harassment/>

House of Commons of Canada. November 7, 2017. An Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017, No. 1. Accessed at: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-65/first-reading>

MacCharles, Tonda. November 7, 2017. Ottawa proposes tougher law on federal workplace harassment. The Toronto Star. Accessed at: <https://www.thestar.com/news/canada/2017/11/07/liberals-seek-to-tighten-workplace-harassment-rules-for-businesses-parliament.html>

Paterson, Jennifer. August 15, 2017. How will 18-month parental leave affect top-up programs? Benefits Canada. Accessed at: <http://www.benefitscanada.com/benefits/health-benefits/how-will-the-move-to-18-month-parental-leave-affect-top-up-programs-102036>

Press, Jordan. November 9, 2017. Expanded parental leave, new caregiver benefit, to come into effect Dec. 3. CTV News. Accessed at: <http://www.ctvnews.ca/politics/expanded-parental-leave-takes-effect-dec-3-1.3670044>

Robson, Jennifer. March 2017. Parental Benefits in Canada: Which Way Forward? Institute for Research on Public Policy. Accessed at: <http://irpp.org/research-studies/study-no63/>

Sheikh, Muneeza. November 17, 2017. Opinion: It's simply not practical to expect employers to properly handle workplace harassment disputes. CBC News. Accessed at: www.cbc.ca/news/opinion/workplace-harassment-1.4406337

Stolte, Elise. November 20, 2017. Province promises new protection against workplace bullies within weeks. Edmonton Journal. Accessed at: <http://edmontonjournal.com/news/local-news/province-promises-new-protection-against-workplace-bullies-within-weeks>

Stone, Laura and Erin Andersson. November 10, 2017. Sexual harassment commonplace for women on Parliament Hill, MPs say. The Globe and Mail. Accessed at: <https://www.theglobeandmail.com/news/politics/sexual-harassment-commonplace-for-women-in-politics-mps-say/article36915364/>

The Canadian Press. November 7, 2017. Employers, labour groups push Liberals to rethink parental leave changes. Accessed at: <http://www.cbc.ca/news/politics/parental-leave-term-extension-1.3840314>

Tremonti, Anna Maria. CBC's The Current. March 27, 2017 full episode transcript. Accessed at: <http://www.cbc.ca/radio/thecurrent/the-current-for-march-27-2017-the-current-1.4040102/march-27-2017-full-episode-transcript-1.4042886>

Winter, Elizabeth, Craig S. Rix and Paul E. Broad. August 25, 2017. Big Changes to Bill 148 after Committee Review. Hicks Morley. Accessed at: <https://hicksmorley.com/2017/08/25/big-changes-to-bill-148-after-committee-review/>