# Changes To Federal Workplace Legislation Proposed In 2024 Budget



**On April 16, 2024, the Federal government released its budget for 2024 (the "Budget")[1] which proposed several amendments to the *Canada Labour Code* (the "*Code*"), as well as changes to the *Employment Equity Act*. On May 2, 2024, the Federal Government introduced Bill C-69, entitled *An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024 (Budget Implementation Act, 2024, No. 1)* (the "*Budget Implementation Act*").[2]**

### Right to Disconnect

The *Budget Implementation Act* proposes to amend the Code by introducing a new Division in the Code requiring federal employers to establish and periodically update a policy on disconnecting from work-related communications. The policy would not apply to any employee who is exempt from certain hours of work provisions under the Code.

Pursuant to the proposed Act, the policy would have to include:

- A general rule respecting work-related communication outside of scheduled work hours;
- The employer's expectations and any opportunity for employees to disconnect; and
- Any exceptions to the rule.

Employers would have to consult their employees in the development and updating of their policy and provide employees with a 90-day period to comment.

This Division of the Code would not apply to a unionized employer if a union and the employer agree that the collective agreement meets its requirements. In case of discrepancy between the policy and the collective agreement, the collective agreement would prevail.

Employers would have one year from the date the requirement comes into force to develop a policy. The policy would need to be updated every three years and be posted in the workplace. Additionally, employers would have to provide a copy of their policy to every employee within 30 days of its application.

## Gig Workers

The Budget proposed amending the Code to improve protections for federally regulated "gig workers" by strengthening prohibitions against employee misclassification (e.g. treating a person who is an employee as an independent contractor). We wrote more about these possible changes in a previous article on the gig economy.[3]

However, the proposed amendments to the Code in the *Budget Implementation Act* appear to have a broader scope. They would introduce a presumption under the Code that any person who is paid remuneration by an employer is an employee, unless the employer can prove the contrary. The *Budget Implementation Act* would also:

1. make it an offence to treat an employee as if they were not an employee; and
2. allow employees to make a complaint where they believe they have been misclassified.

The Budget also states that Employment and Social Development Canada (ESDC) and the Canada Revenue Agency will enter into necessary data-sharing agreements to facilitate inspections and enforcement regarding employee misclassification.

## Technical Amendments

The *Budget Implementation Act* also proposes several technical amendments to the Code, including:

- introducing regulation-making power to establish a time limit for filling a vacant health and safety representative position and to define "shift" and "work period" for specific purposes under the Code;
- clarifying that the time frame to cease a contravention of the Code is at the discretion of the Head of Compliance and Enforcement; and
- introducing clarifying provisions concerning the recovery of notice of termination, severance pay, and the ability of the Canada Industrial Relations Board to make certain orders in the context of an unjust dismissal complaint.

## *Employment Equity Act*

Following the recommendations from the *Employment Equity Act* Review Task Force's report released in April 2023,[4] the Budget proposed legislative amendments to modernize the *Employment Equity Act*, including by expanding designated equity groups.

The Budget did not specify the expanded designated equity groups, however, in December 2023, the Federal government had announced its initial commitments to modernize the *Employment Equity Act*, which included:

- Creating two new designated groups: "Black people" and "2SLGBTQI+ people";
- Replacing the term "Aboriginal peoples" with "Indigenous peoples", and updating the definition to include First Nations, Métis and Inuit and to ensure it is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples Act*;
- Replacing the term "members of visible minorities" with "racialized people" and updating the corresponding definition; and
- Aligning the definition of "persons with disabilities" with the *Accessible Canada Act* to make it more inclusive.[5]

On May 3, 2024, ESDC announced that they were consulting on putting these changes in place, as well as inviting input on the current state of the *Employment Equity Act* and ways to improve it. Interested parties are invited to provide feedback until

July 31, 2024.

No proposed amendments concerning the *Employment Equity Act* are included in the *Budget Implementation Act*.

## What's Next?

These proposed changes are being accompanied by financial support from the Federal government. Beginning in 2024-2025, the Budget also proposes providing C$3.6 million over five years to enable the Labour Program at ESDC to implement these proposed legislative changes to the Code.

We at Fasken will be keeping an eye on these proposed amendments as they progress through the legislative process.

**Footnotes**

1. See 2024 Federal Budget.

2. See 2024 Budget Implementation Act.

3. See Delivery Waiting: Regulating Employment in the Gig Economy.

4. See "A Transformative Framework to Achieve and Sustain Employment Equity – Report of the Employment Equity Act Review Task Force".

5. See the News Release from Minister O'Regan on December 11, 2023.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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