IN FACT AND IN LAW

Labour Law

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Quebec Changes the Rules of the Game:
No Difference in Treatment

by Véronique Morin

After several months of discussions between the various participants on the principle and drafting of the amendments contemplated by the government, the *Act to amend the Act respecting labour standards as regards differences in treatment* (S.Q. 1999, chapter 85 – Bill number 67) (hereinafter the "Act") was assented to on December 20, 1999.

The Act came into force on January 1, 2000, but contains certain provisions allowing it to be implemented gradually.

The Act essentially aims to prohibit differences in treatment of employees based solely on the date of hiring between employees performing the same tasks in the same establishment regarding matters covered by labour standards under the Act or a regulation:

> "**87.1 No agreement or decree may, with respect to a matter covered by a labour standard that is prescribed by Divisions I to VI and VII of this chapter and is applicable to an employee, operate to apply to the employee, solely on the basis of the employee's hiring date, a condition of employment less advantageous than that which is applicable to other employees performing the same tasks in the same establishment.**
>
> **The same applies in respect of a matter corresponding to any of the matters referred to in the first paragraph where a labour standard pertaining to that matter has been fixed by regulation.**"

This prohibition can be summarized as follows:

- it covers conditions of employment related to wages, hours of work, statutory holidays, annual vacations, rest periods, leave for family events, notices of termination of employment or of layoff and work certificate, as well as various labour standards dealing with uniforms, premiums, indemnities, allowances, tools, cloakrooms, etc.;
- it prohibits any employment condition that is less advantageous based solely on the hiring date of the employees in question, but not on their seniority or years of service (section 87.2 of the Act);
- the prohibition covers employees performing the same tasks in the same establishment.

Scope of prohibition

It is henceforth prohibited to implement, by collective agreement, employment contract or decree, different wage scales for employees, based solely on their respective hiring dates, without giving these employees the opportunity to catch up with the more generous wage scales or other employment conditions otherwise benefiting their work colleagues.

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In other words, an employer cannot grant less advantageous employment conditions to an employee because he or she was hired after a specific date, while other employees benefit from more advantageous employment conditions because they were hired before that date.

The terms "*tasks*" and "*establishment*" are not defined in the Act. It should be noted that the notion of "*tasks*" was preferred to that of "*job title*" or "*job*" likely in order to promote the objectives of the Act. In addition, the term "*establishment*" could be interpreted by reference to the case law dealing with the anti-scab provisions which has defined an establishment as a distinct physical fraction of an undertaking which operates under one management unit.[1]

Permitted exceptions to the Act

Retirement

On the one hand, the Act clearly excludes the provisions relating to retirement from its application (section 87.1 of the Act and division VI.1 of the *Labour Standards Act*). The purpose of this exclusion is essentially to prevent pension plans from being affected by the Act as a result of the definition given to the notion of "*wages,*" which include benefits having a pecuniary value due for the work or services performed by an employee (section 1, paragraph 9 of the *Labour Standards Act*).

Additional Wage Grades

On the other hand, it would be possible to change the existing wage scales or create new ones by adding additional wage grades at either end of these scales, on condition that each scale covers all the employees performing the same tasks in the same establishment. Section 87.2 of the Act explicitly permits the implementation of different wage scales for employees based on their years of seniority or years of service.

Employment Conditions of a Handicapped Person

The employment conditions of a handicapped employee who benefits from a specific accommo-dation, and those temporarily applicable to an employee following a reclassification or demotion, an amalgamation or an internal reorganization are explicitly excluded from the prohibition against differences in treatment.

Higher Wage Conditions

Finally, the act deals with the situation of employees benefiting from higher wages than those provided for by newly adopted scales under the Act. It permits these "privileged" employees to continue to benefit from their specific wage conditions provided that these conditions are "*progressively eliminated within a reasonable period of time.*" The Act contains no other provision expounding further on the requirements for eliminating these higher wages.

Recourses

The amendments made to section 102 of the *Labour Standards Act* give recourse to the victim of a violation of the differences-in-treatment provisions, through the complaint procedure before the Labour Standards Commission.

Where an employee is subject to the provisions of a collective agreement or a decree, he may choose to file a complaint with the Labour Standards Commission without first having to exhaust his recourses under the collective agreement or decree. It suffices that he show the Commission he has not used such a recourse or, if he has, that he discontinued it before a final decision was rendered. The recourses of employees subject to a collective agreement or decree are therefore alternative, but not cumulative. However, the Act seems to give no priority to the recourses provided for in collective agreements

[1] *Syndicat des travailleurs en communication du Canada, section locale 81 (FTQ)* v. *Télébec ltée,* Montreal S. Ct., 500-05-007921-859, October 18, 1985, D.T.E. 85T-951.

Syndicat des travailleurs et des travailleuses de la Société des alcools du Québec *v.* la Société des alcools du Québec, *[1991] R.J.Q. 112 (S. Ct.)*

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and decrees dealing with differences in treatment, thus ignoring the standards and recourses that may be included in such collective agreements or decrees on the same subject.

It is probable that employees who intend to file a complaint will prefer the recourse before the Labour Standards Commission since it is simpler and often less costly.

Coming into force of the various provisions of the Act

While it was assented to on December 20, 1999 and came into force on January 1, 2000, the Act's effects will be deferred over time according to each situation contemplated.

Any first collective agreement, new collective agreement or arbitration award in lieu thereof which comes into force after February 29, 2000 must comply with the provisions of the Act. On the other hand, collective agreements coming into force before March 1, 2000 and containing clauses that entail differences in treatment contrary to the Act, will continue to be effective until a new collective agreement is concluded. For example, a collective agreement containing differences in treatment could be validly concluded after February 29, 2000 if it is stipulated to have a retroactive effect to the expiry date of the preceding agreement (itself preceding March 1, 2000). This same agreement could even be concluded for 6, 8 or 10 years if this is the will of the parties.

With regard to individual contracts of employment ("agreement" under the *Labour Standards Act*), the Act will only take effect as of July 1, 2000.

The employment conditions imposed by decree under the provisions of the *Act respecting collective agreement decrees* need only comply with the provisions of the Act as of January 1, 2001.

Conclusion

The advisability of maintaining or amending the provisions of the Act may come up for review in a few years, as the Act imposes an obligation on the Minister of Labour to submit a report to the government by June 30, 2004.

In the meantime, parties having come to an agreement on employment conditions should review them without delay, in an economic and social context henceforth subject to additional rules. We suggest however that each agreement or situation be studied before identifying the measures required by the amendments that have been made.

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