Recently the National Assembly of Quebec put forth Bill 176: An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance. While the title of this proposed Bill is largely indicative of its contents, there are a few surprises contained within. The following is a brief overview of some of the proposed modifications to the Act respecting labour standards.

**Placement and Recruitment Agencies**

In line with other provinces that already have similar legislation in place, Quebec aims to join their ranks by legislating placement and recruitment agencies.

Under the Bill's proposed additions, all placement or recruitment agencies would require a licence to operate. That licence would be issued by the Commission according to regulations that have not yet been revealed.

The proposed legislation puts an obligation on the “client employer” to ensure that the placement or recruitment agency with whom it deals is properly licensed.

Furthermore, placement agencies would be prohibited from paying their employees at a lower rate than employees of the client establishment who are performing the same tasks simply because of their employment status or if they work fewer hours per week. Therefore, any differences in remuneration would likely need to be justified by differences in the ability, training
or years of experience.

Significantly, the Bill proposes that the placement agency and the “client employer” be held solidarily (i.e. jointly) liable for any pecuniary obligations which may arise under the Act. Such pecuniary obligations include for instance wages, statutory holidays, overtime and annual leave. This provision in particular is a serious change from the current status in which only the true employer, whether the agency or the client employer can be liable. This will place a larger burden on client employers to ensure that placement agencies conform to labour practices or else they will find themselves potentially liable.

**Sexual Harassment**

The proposed Bill expressly includes sexual harassment as a form of psychological harassment. This has been functionally the case for many years and is simply legislating the existing state of affairs.

However, the Bill includes a new requirement that employers adopt a “psychological harassment prevention and complaint processing policy and make it available to their employees.”

While previously such policies were highly recommended and many employers already had them, such policies will now become mandatory for employers as part of the obligation to ensure an environment free from harassment.

**Differences in Treatment**

The Bill proposes an important, and likely controversial, addition to the existing provision that prohibits differences in treatment. Namely, it proposes to prohibit differences in pension plans and other employee benefits based solely on employees’ hiring dates. This new provision will not have a retroactive effect, meaning existing pension plans and benefits which differentiate based on hiring date can continue.

To that effect, the Bill also proposes a whole new section that articulates the recourse process for employees who believe they are subject to a difference in treatment. Similar to existing recourses, employees could file a written complaint to the Commission within 90 days of the distinction becoming known to them. The Commission will then undertake an inquiry and attempt to settle the matter. If the complaint has merit and no settlement can be reached, the Commission will pursue the complaint and represent the employee at the Administrative Labour Tribunal. At the conclusion of such a complaint the Administrative Labour Tribunal would have very broad powers to order an employer to allow employees into a particular pension plan or to
be given benefits owed and compensate any losses to the employees due to their lack of inclusion in the plan or benefit.

**Facilitating Family-Work Balance**

As the title of the Bill indicates, numerous provisions have been proposed to increase entitlements to workers in terms of vacation, other leaves with and without pay, and improved hours of work.

The Bill proposes to allow employees to refuse to work if they have not been informed at least five days in advance that they will be required to work. Presently, there is no minimum advance notice required for informing employees of their work schedule.

Under this Bill, employees will be given three weeks of paid vacation per year after three years of service, whereas now this entitlement is only available after five years of service. This would represent an important change for employers in terms of additional costs related to this measure but also in terms of staffing. If adopted, this measure could very well enter into force just in time for the upcoming summer holidays.

Absences due to sickness, an organ or tissue donation for transplants, an accident or a criminal offence, have been broadened to include absences due to domestic violence. While this is a laudable addition, given the sensitive nature of this type of absence, we question what type of evidence an employer may request from their employee in order to allow such an absence.

Further, employees need no longer have a minimum of three months of continuous service with their employer in order to benefit from such absences. The Bill also proposes that the first two days of such an absence be with pay, whereas previously they were all without pay. However, these two days of “with pay” absence are only available to those employees who do indeed have three months of service with the employer.

Employers and employees under the proposed amendments will be able to agree to stagger working hours on a basis other than a weekly basis, without the necessity of authorization from the Commission. However, the maximum period is over four weeks and the work week cannot exceed more than 50 hours per week. Thus, overtime would be calculated after 160 hours.

Presently the Act provides for 10 days of unpaid leave so that an employee may fulfil obligations relating to the care, health or education of various direct family members or those of their spouse. The Bill proposes three important modifications to this provision. The first is that the first two of these 10 days are with pay. However, this is cumulative with the two paid days of
leave mentioned above. This means that the employee is entitled to two paid days of leave in a year whether they be for the purpose of sickness et al. or for fulfilling familial obligations. Secondly, the category of person to whom the employee must fulfil familial obligations would be broadened from the employee’s spouse, child, spouse’s child, parent, grandparent, or sibling, to “a relative or a person for whom the employee acts as a caregiver, as attested by a professional working in the health and social services sector”. This could encompass many other relatives previously excluded, such as aunts, uncles, cousins, nieces, nephews, etc. Finally, the proposed changes would allow for an employer to require from the employee proof of the reason for the absence.

We remain available to assist employers who wish to know more about how these proposed changes may impact their operations.