

LABOUR AND EMPLOYMENT NEWSLETTER



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EMPLOYER NOT RESPONSIBLE FOR HEALTH PREMIUM: ARBITRATOR

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In the October 15, 2004, Labour & Employment Communiqué, we informed you that an Ontario arbitrator ruled that the new Ontario Health Premium ("Premium") is payable by the employer.

In a conflicting decision of only nine paragraphs, another arbitrator has ruled that the employer is not responsible to pay for the Premium. In *Re Jazz Air Inc. and Air Line Pilots. Assn., International*, Arbitrator Teplitsky based his decision on three factors. First, the arbitrator stated that the parties to the collective agreement "could not have contemplated" the Premium when the collective agreement was negotiated. Second, since the Premium is calculated based on all income, and not just income from one employer, there was no method available for Air Canada Jazz to ascertain an employee's global income and, therefore, to accurately calculate the quantum owed. Thirdly, "benefits are always specifically bargained and identified" and, in this case, the Premium was not referred to in the collective agreement. Although acknowledging that there is a distinction between a premium and a tax, Arbitrator Teplitsky stated that this issue is of "least significance".

As there are now two conflicting decisions, one of which is expected to be the subject of a judicial review application, the law concerning the Premium continues to be in a state of flux. Although both the Minister of Finance and the Premier continue to publicly declare that employers should not be responsible for the Premium, the issue has yet to be resolved. In addition, Miller Thomson is aware of several more Premium decisions that are pending and that will, when released, provide additional clarity to this uncertain issue. Please note, however, that the above decisions have been decided based on the particular facts, circumstances, and collective agreement language under review, and are not necessarily binding upon your organization.

Miller Thomson will continue to monitor and notify you of any developments concerning this issue.

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Our Labour and Employment Practice Group is dedicated to providing comprehensive and integrated legal services, and advises management in all aspects of labour relations and employment law. For more information about our Group, visit our website at www.millerthomson.com or contact:

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