

Bill 47, Making Ontario Open for Business Act, 2018, Receives Royal Assent

Date : November 22, 2018

The Ontario government introduced Bill 47, the *Making Ontario Open for Business Act, 2018*, on October 23, 2018. As discussed in a previous Focus Alert, the Bill proposed amendments to the *Employment Standards Act, 2000* (the “ESA”) and the *Labour Relations Act, 1995* (the “LRA”) repealing many of the changes implemented by the former Liberal government’s Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*.

Bill 47 received Royal Assent on November 21, 2018. The Standing Committee on Finance and Economic Affairs (“Standing Committee”) did not make any changes to the Bill 47 provisions regarding the ESA, as summarized in [our previous Focus Alert](#) “*Ontario government introduces Bill 47, Making Ontario Open for Business Act, 2018 – repeals much of labour-friendly Bill 148*”. Bill 47 amendments to the ESA that remain unchanged after Standing Committee review include the following:

- repeal of Personal Emergency Leave (“PEL”) and the introduction of three new unpaid leaves in its place (Sick Leave, Family Responsibility Leave and Bereavement Leave);
- repeal of scheduling and on-call provisions which were scheduled to come into force on January 1, 2019;
- repeal of equal pay for equal status based on employment status and temporary help agency assignment employee status; and
- freezing of minimum wage at \$14/hour until October 1, 2020.

The Standing Committee did make some changes to the Bill 47 LRA amendments, some of which are discussed below. Unchanged Bill 47 amendments to the LRA include the following:

- repeal of card-based certification for the temporary help agency industry, building services industry, and the home care and community services industry;
- repeal of the mandatory remedial certification regime;
- repeal of the Bill 148 first contract mediation and mediation-arbitration provisions and revert back to the pre-Bill 148 regime;
- reinstate the six-month limitation on employees’ right to reinstatement following the commencement of a lawful strike, subject to some exceptions.

Changes to Bill 47’s LRA Provisions

Removal of Power to Review Bargaining Unit Structure

Bill 47 initially included an amendment to section 15.1 of the LRA, repealing the power of the

Ontario Labour Relations Board (“OLRB”) to review and consolidate newly-certified bargaining agents with other existing bargaining agents. That power was substituted with the OLRB’s ability to review the structure of the bargaining units upon application where the OLRB is satisfied that the existing bargaining units are no longer appropriate for collective bargaining.

The amended Bill has now repealed section 15.1 in its entirety, without any replacement language regarding the OLRB having the power to review bargaining unit structure.

Amendments to Notice and Communication Provisions

Bill 47 amends the LRA to recognize alternative methods of communication other than mail to also include courier, fax, email and any other prescribed method. The Standing Committee further amended those provisions to stipulate that they are subject to the rules governing the OLRB’s practice and procedure and the exercise of the Board’s powers to expedite proceedings.

The changes also stipulate that notices or communication sent by mail are presumed to have been received by the addressee in the ordinary course of mail unless the contrary is proven. Additionally, notices or communications sent by the Minister, the OLRB or the Director of Dispute Resolution Services by any of the expanded means are deemed to have been received by the addressee unless the contrary is proven.

Regulations

Bill 47 originally included the addition of a requirement for a party requesting the appointment of a conciliation officer to file a copy of the most recent collective agreement, if any, with the request. A further amendment has been made to provide the Lieutenant Governor in Council with the ability to make regulations for the purposes of that provision.

Ontario College of Trades and Apprenticeship Act, 2009 (“OCTTA”)

The Standing Committee did not make any changes to the Bill 47 amendments to the OCTTA which includes, among other changes, establishing a one-to-one journeyperson to apprentice ratio for all trades that are subject to ratios.

Coming Into Force

The ESA amendments will come into force on January 1, 2019. The one exception is the Bill 148 repeal of the exception from the application of the ESA to an individual performing work in a simulated job or working environment for the primary purpose of the individual’s rehabilitation. Rather than being repealed on January 1, 2019 as originally scheduled under Bill 148, the repeal will come into force on proclamation.

The LRA-related provisions of Bill 47 came into force on November 21, 2018, the day that Bill 47 received Royal Assent.

The amendments to the OCTTA also came into force on November 21, 2018, with the exception of the repeal of the OCTTA which will come into force at a later date on proclamation.

Proposed Regulations

On November 7, the government posted proposed amendments to certain regulations under the ESA as a consequence of the passage of Bill 47. The proposed amendments include:

- Changes to the special rules found in s. 3 of O. Reg. 285/01 applying to certain professions for PEL. The special rules pertaining to PEL for construction employees would no longer be necessary. The special rules for certain professionals would be amended to apply to the new proposed leaves;
- Repealing s. 9. Of O. Reg. 285/01 exempting firefighters, students subject to the minimum wage, and persons employed in the recorded film and television sectors from the equal pay for equal work provisions relating to employment status, which were repealed by Bill 47;
- Removal of exemptions in O. Reg. 526/17 from the scheduling and related record-keeping requirements for recorded film and television sectors and employees in the auto sector. With the repeal of the scheduling and related record-keeping requirements under the ESA, exemptions from those provisions would no longer be necessary;
- Amendment to ensure that employees currently exempt from Part IX of the ESA (Minimum Wage), who are currently exempt from the three-hour rule, remain exempt from the rule when it is moved into the body of the ESA from O. Reg. 285/01; and
- Repeal of the special rules for auto sector employees in relation to PEL.

The government is accepting comments on the proposed changes until December 16, 2018. The summary of the changes, and the government's contact information, can be found [here](#).

In Our View

The LRA provisions of Bill 47 are now in force, and almost all of the ESA provisions will come into force in the new year. Employers are therefore encouraged to revisit their existing contracts, collective agreements, and policies in light of the changes to the law.

For further information, please contact [Jacques Emond](#) at 613-940-2730 or [Kecia Podetz](#) at 613-940-2752.