

Bill 66 receives Royal Assent – More changes to ESA now in effect

Date : April 11, 2019

Bill 66, *Restoring Ontario's Competitiveness Act, 2019*, received Royal Assent on April 3, 2019. As discussed in a previous Focus Alert (see [Ontario's workplace laws continue to be the target of change as the government introduces Bill 66](#)), Bill 66 is omnibus legislation that amends, in part, the *Employment Standards Act*, the *Labour Relations Act* and the *Pension Benefits Act*.

Employment Standards Act (“ESA”)

The following ESA amendments came into effect on April 3, 2019:

ESA Poster

Employers are no longer required to post the ESA poster in the workplace. Employers are still required to provide the most recent version of the poster to employees within 30 days of their date of hire. The responsibility to prepare and publish the poster has been transferred from the Minister of Labour to the Director of Employment Standards (“Director”).

Excess Weekly Hours of Work

Employers are no longer required to obtain approval of the Director in order to exceed the 48 hour per week maximum. Employers can enter into these arrangements with the written agreement between the employer and the employee or bargaining agent.

Overtime Averaging Agreements

Bill 66 removed the requirement for approval of the Director for overtime averaging arrangements. The averaging period is now limited to the lesser of either four weeks or the period agreed to in the averaging agreement. The averaging agreement is required to provide a start date and an expiry date. For non-union employees, the term of the averaging agreement is not to exceed two years, and for unionized employees, the agreement can extend until the effective date of the next collective agreement. Existing overtime averaging agreements that were approved by the Director before April 3, 2019 continue to be valid until the earlier of the day the agreement is revoked, the day the Director's approval expires or the day the Director's approval is revoked.

Labour Relations Act (“LRA”) – Deemed Non-Construction Employers

Bill 66 amends the definition of “non-construction employer” to include “an employer who is deemed to be a non-construction employer.” As previously reported, Bill 66 deems the following public sector entities as exempt from the construction industry provisions of the LRA:

- municipalities;
- local boards within the meaning of the *Municipal Act, 2001*;
- school boards;
- hospitals;
- colleges and universities; and
- public bodies within the meaning of the *Public Service of Ontario Act, 2006*.

The Standing Committee on General Government amendments to Bill 66 expanded the list of exempted public sector entities to also include:

- a local board as defined in the *City of Toronto Act, 2006*
- a local housing corporation as defined in the *Housing Services Act, 2011*
- a corporation established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006*
- a district social services administration board established under the *District Social Services Administration Boards Act*

This deeming provision is to come into effect on a future date to be proclaimed by the Lieutenant Governor. Once in effect, employees of the new “non-construction employers” in the construction industry will no longer be represented by their trade union, and, any collective agreement will cease to apply to such employees. Employers or trade unions may apply to the Ontario Labour Relations Board to redefine the composition of their bargaining units where the bargaining unit also includes employees that are not in the construction industry.

The Standing Committee amendments to Bill 66 also added a procedure for certain non-construction employer entities to elect to opt out of the application of these new rules. The opt out election must be filed with the Minister of Labour within three months after Bill 66 received Royal Assent. The opt out provision came into effect on Royal Assent, being April 3, 2019.

Pension Benefits Act (“PBA”)

The PBA previously restricted a private sector employer from merging its pension plan with a jointly sponsored pension plan (“JSPP”) by limiting such mergers to public sector pension plans, or pension plans that are designated by regulation. Bill 66 removed this requirement and permits private sector plans to merge with JSPP without such regulatory designation. This change came

into effect on April 3, 2019.

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