

Ontario proposes major changes to employment and labour laws

Date : May 31, 2017

Further to our Focus Alert from last week, on May 30, 2017, the government of Ontario announced its intention to introduce proposed legislation entitled the *Fair Workplaces, Better Jobs Act, 2017*. The government has indicated that the legislation will be introduced over the next few days and, if passed, will result in significant amendments to both the Ontario *Employment Standards Act* (“ESA”) and the Ontario *Labour Relations Act* (“LRA”).

Proposed changes to the ESA

In a news conference held on May 30, 2017, the government of Ontario highlighted the following five changes:

Proposed Increases to Ontario’s Minimum Wage

If passed, the legislation will increase the general minimum wage from the current \$11.40/hour to \$15.00/hour according to the following schedule:

- \$11.60/hour effective from October 1, 2017, to December 31, 2017;
- \$14.00/hour effective January 1, 2018; and
- \$15.00/hour effective January 1, 2019.

The special minimum wage rates for liquor servers, students under 18, hunting and fishing guides, and homeworkers will be maintained, and will receive the same percentage increases as the general minimum wage.

Minimum wage rates will continue to be indexed to the rate of inflation following the increase in 2019.

Equal Pay for Equal Work: Casual, Part-Time, Temporary, and Seasonal Workers

The proposed legislation would require that casual, part-time, temporary, and seasonal workers be paid equally to full-time employees who are performing the same job for the same employer. If employees in these categories believe that they are not receiving equal wages to full-time employees, the proposed amendments would allow them to request a review of their wages. Employers would have to respond to such requests with either an adjustment in pay or a written

explanation.

There would be exceptions to the requirement for equal wages where a difference in wages is based on:

- a seniority system;
- a merit system;
- systems that determine pay by quantity or quality of production; or
- other factors (sex and employment status do not qualify as exceptions to this requirement).

Casual, part-time, temporary and seasonal workers would also be protected against repercussions for making inquiries about their wage rate or asking another employee about their wage rate.

If passed, these changes would come into force on April 1, 2018.

Increase Minimum Vacation Entitlements

The proposed legislation would ensure that after five years of service with the same employer, an employee would be entitled to a minimum of three weeks of paid vacation. This reflects an increase from the current minimum standard of two weeks of vacation for each vacation entitlement year, regardless of years of service.

If the proposed legislation passes, these changes would come into force on January 1, 2018.

Personal Emergency Leave

Currently under the ESA only employees in workplaces with 50 or more employees are entitled to take personal emergency leave (“PEL”). Under the proposed amendments, this threshold would be eliminated, such that all employees in Ontario, regardless of the size of their employer, would be entitled to ten PEL days per year. In addition, two of these ten days would have to be paid by the employer. The amendments also provide that employers would be prohibited from requesting a sick note from employees taking personal emergency leave.

If the proposed legislation passes, these changes would come into force on January 1, 2018.

Changes to Scheduling Rules

The proposed legislation would establish new rules regarding scheduling. The proposed changes are as follows:

- After having been employed for three months, employees will be entitled to request

- schedule or location changes without fear of reprisal;
- An employee who regularly works more than three hours per day who reports to work and is given less than three hours, must be paid for three hours at their regular rate of pay;
 - If an employer asks an employee to take a shift with less than four days' notice, the employee can refuse to accept the shift without any repercussions;
 - If an employer cancels an employee's shift within 48 hours of its start, the employee must be paid three hours of pay at their regular rate of pay;
 - Employees who are "on-call" but are not called into work, must be paid three hours at their regular rate of pay (for each 24 hour period the employee is "on-call"); and
 - If a collective agreement is in place between an employer and a union, the agreement rules with respect to scheduling would prevail in place of some of these new rules.

If the proposed legislation passes, these changes with respect to scheduling would come into force on January 1, 2019.

In conjunction with these proposed changes, the government has also announced changes to enforcement mechanisms under the ESA. The government proposes to increase the maximum administrative monetary penalties under the ESA, and will be hiring up to 175 more employment standards officers by 2020-21.

Proposed changes to the LRA

The government of Ontario also proposed major changes to the LRA.

Union Certification

The proposed legislation would establish card-based union certification for the temporary help agency industry, the building services sector, and the home care and community services industry. The proposed legislation would also make several changes to the union certification process, including the following:

- Eliminating certain conditions for remedial union certification when an employer engages in misconduct that contravenes the LRA;
- Making access to first contract arbitration easier, and adding an intensive mediation component to the process;
- Empowering the Ontario Labour Relations Board ("OLRB") to conduct votes outside the workplace, including electronically and by telephone; and
- Allowing unions to access employee lists and certain contact information if they can demonstrate 20% support of employees being certified.

Successor Rights

The proposed legislation would extend successor rights to the retendering of building services contracts, and would also enable the government to apply this expanded notion of successor rights to the retendering of other publicly funded contracted services.

Structure of Bargaining Units

The proposed legislation would allow the OLRB to restructure the bargaining units within a single employer where the existing bargaining units are no longer appropriate for collective bargaining. Furthermore, the OLRB would also have authority to consolidate newly certified bargaining units with other existing units under the same employer, where they are represented by the same bargaining agent.

Return-to-Work Rights and Procedures

The proposed legislation would eliminate the 6-month limitation on an employee's right (under certain conditions) to return to work following the commencement of a lawful strike and require employers to reinstate employees at the conclusion of a legal strike or lock-out. It would also provide access to arbitration for the enforcement of such an obligation.

Just Cause Protection

The proposed legislation would prevent employers from disciplining or discharging employees without just cause during the period between certification and conclusion of a first collective agreement, and during the period between the date the employees are in a legal strike or lock-out position and the conclusion of a new collective agreement.

If the proposed legislation passes, all amendments to the LRA would come into effect six months after the *Fair Workplaces, Better Jobs Act, 2017* comes into force.

In the coming days, Emond Harnden will review the *Fair Workplaces, Better Jobs Act, 2017*, and we will provide further commentary with respect to the proposed amendments.

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