

# Ontario's workplace laws continue to be the target of change as the government introduces Bill 66 – Restoring Ontario's Competitiveness Act, 2018

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Ontario continues its workplace law reform with the introduction of Bill 66, *Restoring Ontario's Competitiveness Act, 2018*. Introduced on December 6, 2018, Bill 66 is omnibus legislation that proposes regulatory amendments to a number of statutes including the *Employment Standards Act, 2000* ("ESA"), the *Labour Relations Act, 1995* ("LRA") and the *Pension Benefits Act*. The proposed amendments in Bill 66 remove a number of regulatory burdens on employers relating to items ranging from the posting of ESA information to the merger of pension plans.

## Employment Standards Act

- **ESA Poster**

The ESA currently requires the Minister of Labour to publish a poster setting out information about the ESA that he or she deems appropriate. Bill 66 would downgrade this responsibility from the Minister of Labour to the Director of Employment Standards (the "Director"). More importantly for employers, the Bill 66 amendments would remove the existing obligation to post the poster in a conspicuous place in the workplace. Similarly, Bill 66 would remove the obligation of an employer to enquire about translations of the poster, where the majority language of a workplace is a language other than English. Employers will still be required to provide copies of the most recent version of the poster to employees.

- **Excess Weekly Hours of Work**

Bill 66 also targets the process for exceeding the maximum hours of work per week set out in section 17 of the ESA. Currently, in order to exceed the 48 hour per week maximum, an employer must have an agreement with the employee, or their collective bargaining agent if applicable, as well as approval from the Director. Bill 66 would remove the requirement to obtain Director approval and limit the requirements for these arrangements to only the written agreement between the employer and the employee or bargaining agent.

- **Overtime Averaging Agreements**

Similar changes are proposed for the requirements relating to overtime averaging arrangements. The proposed amendments would remove the requirement for Director approval for averaging arrangements. The averaging period would be limited to the lesser of either four weeks or the period agreed to in the averaging agreement. The averaging agreement would be required to

provide a start date and an expiry date. The term of the averaging agreement would not exceed two years in the case of a non-unionized employee and, for unionized workers, the agreement could extend until the effective date of the next collective agreement.

Under Bill 66, existing overtime averaging agreements would be deemed to have met the requirements set out in the ESA 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.

The Bill 66 amendments to the ESA would come into effect upon Royal Assent.

## **Labour Relations Act**

Bill 66 also proposes significant changes to the construction industry provisions of the LRA. A new deeming provision in the statute would operate to make the following public sector entities "non-construction employers":

- 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 foregoing entities would be exempt from the construction industry provisions in the LRA if Bill 66 becomes law. The Bill 66 amendments go on to provide that once the new provisions come into 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 includes employees that are not in the construction industry.

The proposed changes to the construction industry provisions would come into effect on a future date to be proclaimed by the Lieutenant Governor.

## **Other Amendments**

Bill 66 also proposes a significant change to the *Pension Benefits Act* ("PBA"). Currently, the PBA restricts 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 would remove this requirement and permit private sector plans to merge with JSPP without such regulatory designation. This change would come into effect the day that Bill 66 receives Royal Assent.

Bill 66 would extend the application of the *Agricultural Employees Protection Act, 2002* to employees who engage in ornamental horticulture, except those employed by a municipality or employed in silviculture. This change would also come into effect when Bill 66 receives Royal Assent.

## **In our view**

Although Bill 66 has only just been introduced, it is likely that it progresses through the legislative process with fairly little modification. The timing for Bill 66 does however remain uncertain since the Legislature adjourned on December 6, 2018 and will not again sit until February 19, 2019. At that point Bill 66 will recommence its passage. We will keep Focus readers apprised of any significant changes as Bill 66 progresses through its various readings.

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