JANUARY 2014

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Employment Update

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THE TIMES THEY ARE A-CHANGIN': UPDATE ON PROPOSED LABOUR AND EMPLOYMENT LAW AMENDMENTS

Jack B. Siegel and Melanie I. Francis

As we recently reported in our **Blaneys@Work** blog (http://blaneysatwork.com), the Ontario government recently introduced Bill 146, *The Stronger Workplaces for Stronger Ontario Act, 2013*.

This is a wide-reaching piece of legislation that will, if passed, make changes to five different Acts. The Bill can be read in its entirety at http://blny.ca/Bill146. Below we summarize the changes to the five Acts and provide an overview as to how these changes may impact employers if they come to fruition.

Employment Standards Act, 2000

There are a number of distinct amendments being proposed with respect to the *Employment Standards Act, 2000* (the "ESA").

Perhaps the most notable are changes to the monetary and time limits currently in place under the ESA. Should the legislation pass, gone will be the $10,000 limit on Ministry Orders to Pay - there would be no cap at all going forward. A significant change of this nature will likely open the door to an increased number of claims under the ESA. Also gone would be the six-month and 12-month time limitation periods currently in place under the Act, to be replaced with a general two-year time limit. This would significantly extend the period within which claims for wages, overtime vacation pay and the like can be made.

Other changes will impact businesses that are clients of temporary help agencies. Passage of Bill 146 as written would introduce a risk to the clients of a temporary help agency that fails to pay its employees who provided services to the client. Under the amended ESA, such clients would become "jointly and severally liable" with their agencies for employee wages, meaning that unpaid employees who provided services to the client would have an enforceable claim against both the defaulting agency and that client. Clients would also be required to maintain a record of the hours worked by those employees of the temporary agency.

Should these amendments come into effect, businesses that rely upon temporary help agencies will have to ensure that appropriate measures are in place to protect themselves against such risks. While it is still too early to determine what measures might be most effective, consideration could be given to contractual holdbacks or letters of credit to be posted by the temporary help agency. At minimum, clients of temporary help agencies, even today, should ensure that they are dealing with established, solvent entities for which the risk of such a default is low.

At present, the ESA requires employers to conspicuously post in their workplaces a Ministry of Labour poster detailing information about the

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Act and its regulations. Proposed changes in Bill 146 would expand upon that and require employers to actually provide a copy of that poster to each employee, and ensure that available translations are provided if requested.

Finally, the proposed changes would permit an Employment Standards Officer to require an employer to conduct a "self-audit" - an examination of its own records and/or practices to determine whether it is in compliance with the ESA. The Employment Standards Officer would retain the jurisdiction to conduct an investigation or inspection and take enforcement action where appropriate.

Workplace Safety Insurance Act, 1997

Proposed changes to the *Workplace Safety Insurance Act, 1997* would also impact employers that utilize temporary help agencies. Recognizing that the "host employer" necessarily controls both the work environment and safety practices the amendments would shift the workers' compensation costs of an injured agency employee to the WSIB account of the "host employer." This could in turn impact upon that employer's WSIB premiums, and expose it to surcharges based upon a below average safety record. The "host employer" would also take on the responsibility to report to the WSIB regarding any injury to such an employee within three days of its occurrence.

Occupational Health and Safety Act

The legislative changes discussed thus far are clearly designed to provide increased support to some of the more vulnerable workers in society. The proposed changes to the *Occupational Health and Safety Act* conform to this trend. Bill 146 would expand the definition of "worker" to include trainees and volunteers who would not otherwise be seen to be workers entitled to protections under this legislation. Although we believe it has always been important for employers to create a safe environment for all individuals attending their workplaces, employers should take notice that individuals previously excluded from the protections afforded by the Act, including the right to refuse unsafe work, would have their rights enshrined in legislation.

The Employment Protection For Foreign Nationals Act (Live-in Caregivers and Others), 2009

The proposed amendments would shorten the title to eliminate the words in parentheses and broaden the entire scope of the Act to extend its protections to all foreign nationals employed in Ontario or attempting to find employment in the province. Given this broad expansion, the number of employees impacted by the Act would increase substantially, including for example, migrant farm workers.

The Labour Relations Act, 1995

Today, there is an "open season" during the last three months of a construction industry collective agreement. This provides a window of time during which competing unions may seek to "raid" a bargaining unit represented by another union, or individual employees may apply for a vote that would permit them to go entirely non-union. Bill 146 would shorten this open season to two months. While this may have a benefit to unions and employers alike in potentially decreasing the frequency of such applications, it would also reduce by a third, the duration of individual employees' opportunities to exercise their choice in workplace representation.

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Melanie is a member of the firm's Employment & Labour and Election & Political Law groups.

Melanie practices in all areas of employment, labour and human rights law, and has been involved in matters before the Superior Court of Justice, the Court of Appeal for Ontario, the Human Rights Tribunal of Ontario, the Ontario Labour Relations Board and boards of arbitration. Melanie has also been involved in a number of occupational health and safety matters before the Ontario Court of Justice.

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Next Steps

By the time of the Legislature's winter break, Bill 146 had only received first reading, meaning that there is still a long way to go before it could become law. The Legislature is set to resume on February 18, 2014, at which point we may get a sense of how quickly these proposed changes will work their way through the legislative process. With a potential election looming, and the unpredictable nature of minority government at play, it is quite possible that these significant changes will not get very far. We will continue to keep you updated as the process unfolds, including advising of any opportunities for participation in public hearings, should they be held with sufficient advance notice.

Important Reminder

Beginning July 1, 2014, the training requirements set out in the Occupational Health and Safety Awareness Training Regulation (O. Reg. 297/13) will require employers in Ontario to ensure that all of their workers and supervisors complete a basic occupational health and safety awareness training program. A copy of the regulation can be read at http://blny.ca/OReg29713.

Employers are reminded that the content of the training must meet the requirements set out in the regulation. Free training materials that comply with these requirements are available from the Ministry of Labour, in a variety of languages. ■

EXPECT THE BEST

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