

An Update on the Changing Workplaces Review

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We are now one step closer to the conclusion of the Ontario Ministry of Labour's ("MOL") [Changing Workplaces Review](#), which will potentially result in significant changes to the *Employment Standards Act, 2000* (the "ESA") and the *Labour Relations Act, 1995* (the "LRA").

The review process, which has been ongoing since June 2015, is aimed at updating and modernizing Ontario's employment and labour legislation. This will be the first major overhaul of these laws in well over a decade. By considering both the *ESA* and the *LRA* together, the MOL is attempting to take an integrated approach to changes that affect both unionized and non-unionized workplaces.

The Special Advisors who are conducting the review are scheduled to issue a final report in February 2017 that will contain recommendations and options that could be incorporated into new legislation. Those recommendations will be primarily aimed at strengthening protections for vulnerable workers, in part by addressing the increasing prevalence of "non-standard employment" (e.g. involuntary part-time work, temporary employment, self-employment without help and multiple job holders). The Special Advisors' mandate also includes a requirement that the recommendations take into account the impact of any changes on employers.

The MOL recently released its Interim Report, a 300+ page document that describes the current state of Ontario's laws and summarizes the submissions that the Special Advisors have received so far. The Interim Report is the result of 12 public hearing dates in cities across Ontario, as well as 300 written submissions from 200 stakeholders. The Special Advisors are not making any specific recommendations at this stage. Instead, they are providing an update on what has been put forward and seeking further input and feedback from interested parties.

A detailed description of the 50 topics and 225 options that are addressed in the Interim Report is beyond the scope of this update. However, below are some examples of the types of options that are being considered as part of the review process. While none of these options are being

specifically endorsed by the Special Advisors, they are under consideration and are therefore being put forward for discussion purposes.

- *ESA*^[1]

- **Definition of employee:** Establish a process to address the misclassification of employees as independent contractors or add a dependent contractor provision to the *ESA*.
- **Identity of employer:** Hold employers and/or contractors responsible for compliance with the *ESA* by their contractors or subcontractors, or create a “joint employer” test.
- **Exclusions:** Specifically address the status of interns under the *ESA*.
- **Hours of work:** Allow employers to require employees to work up to 12 hours per day or 48 hours in a week without consent, but give employees the absolute right to refuse excess hours where they have unavoidable and significant family or educational commitments.
- **Paid vacation:** Increase the entitlement for vacation time from 2 weeks per year to 3 weeks per year after a certain period of employment with the same employer.
- **Part-time and temporary work:** Require part-time, temporary and casual employees to be paid the same as full-time employees in the same establishment unless differences could be justified based on other factors.
- **Severance pay:** Reduce or eliminate the 50 employee threshold, the payroll threshold, the 5-year condition and/or the 26-week cap, as well as clarify whether payroll outside Ontario is included in the calculation.
- **Greater right or benefit:** Allow employers and employees to contract out of the *ESA* based on a comparison of all the minimum standards against the full terms and conditions of employment.
- **Enforcement:** Implement an *ESA* Committee, as an expansion of the health and safety committees already in place pursuant to the *Occupational Health and Safety Act*, or require employers to conduct an annual self-audit.

- *LRA*^[2] - Employers generally indicated a preference for maintaining the status quo in labour laws. In contrast, unions and employee-side advocates suggested numerous changes, many of which were aimed at making it easier to organize employees in the private sector.

- **Related and joint employers:** Create: (i) a rebuttable presumption that an entity directly benefiting from a worker’s labour is the employer of the worker for purposes of the *LRA*; and (ii) a certification model for franchisors and franchisees that would apply to specific industries or sectors where there are large numbers of vulnerable workers in precarious jobs.
- **Certification:** Return to a card-based certification system that would more closely resemble the system current in place in the construction industry.
- **Employee lists:** Establish a procedure that would allow: (i) unions conducting organizing campaigns; and (ii) employees seeking to decertify their union; to access employee lists with contact information.
- **Voting:** Allow for the possibility of voting in a certification application through telephone or internet voting.
- **Prosecution and penalties:** Change the prosecution model, such as by allowing private prosecutions for breaches of the *LRA*, giving the Ontario Labour Relations Board the authority to impose administrative penalties, or creating a position of Director of Enforcement.
- **Bargaining structure:** A wide variety of options are being considered, some of which affect certain sectors or geographic areas.

The Interim Report expressly seeks further input from interested parties on the options that are being considered. It appears there may be some concern that most of the feedback that has been provided to date has been from employee-side advocates, even though the changes to the *ESA* and the *LRA* that are under consideration could have a significant impact on employers. Accordingly, the Special Advisors will continue to receive submissions on the topics addressed in the Interim Report until October 14, 2016 (other than the personal emergency leave provisions under the *ESA*, for which submissions are due August 31, 2016). Details on how to provide feedback are available on the [MOL's website](#).

[1] Note: Minimum wage is not being considered as part of this review process, as it was recently addressed by the MOL in a separate review.

[2] Note: The construction industry provisions of the *LRA* are not being considered as part of this review process.