

FIRST LOOK: Big Changes Coming to Ontario Employment Standards and Labour Relations Laws (2017), 27 E.L.L.R. AT P. 29

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Co-Author: Jack Siegel

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In February 2015, Ontario's Minister of Labour appointed noted labour and employment lawyers Michael Mitchell and John Murray (also a retired judge) as special advisors to lead the Government's "Changing Workplaces Review". Their mandate was to hold public consultations focusing on how the *Employment Standards Act, 2000* and *Labour Relations Act, 1995* could be amended to best protect workers while supporting businesses in our changing economy. Following closely upon the release of their Report^[1] in late May and its 173 recommendations, the Minister on June 1, 2017 introduced Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, which, if passed, would enshrine in Ontario law a great many of these proposals.

This, our first article on the subject, addresses only the most significant proposed amendments. They include:

Employment Standards Act, 2000:

- Increases the minimum wage;
- Increases minimum paid vacation entitlement of long term employees (five or more years' service) from two weeks to three weeks per year;
- Simplifies calculations of public holiday pay so employees receive their average regular daily wage;
- Eliminates employer ability to pay lower rates to part-time, temporary, seasonal or casual employees;
- Extends personal emergency leave of up to 10 days per year to all workers,
- Introduces a new requirement that the first two days of personal emergency leave must be paid days;

- New employee rights: to request scheduling changes, to refuse shifts assigned with less than four days' notice, and to receive a minimum of three hours' pay for shifts that are less than three hours long when the employee regularly works more than three hours, or for being on call when not called in for at least three hours, or for shift cancellations on less than 48 hours' notice; and
- Introduces changes that affect pay rates and notice periods for temporary help agency employees and employers, with anticipated impacts upon business that use the services of such agencies.

Labour Relations Act, 1995:

- Prohibits bargaining unit employee discipline or discharge without just cause from the date of certification until a first collective agreement is entered into, or during a period of legal strike or lock-out;
- Significantly expands upon the right of striking employees to return to work by requiring employers to reinstate employees during or at the conclusion of both a legal strike or a lock-out (subject to certain conditions), and providing access to grievance arbitration for the enforcement of that obligation;
- Entitles unions during organizing drives to obtain employee lists and certain contact information provided they can demonstrate the support of at least 20 per cent of the employees in the proposed bargaining unit, and
- Establishes card-based union certification in specific industries, namely the temporary help agency industry, the building services sector and home care and community services industry.

With limited exceptions, the proposed amendments to the *Employment Standards Act, 2000* are intended to come into force on January 1, 2018 and all of the proposed amendments to the *Labour Relations Act, 1995*, are to come into force six months after Bill 148 is adopted.

Taken as a whole, this entire package of reforms is likely to have a profound impact on Ontario workplaces and the way in which employers in the province conduct their business. Key changes, assuming the legislation is adopted without much amendment, will include:

1) Minimum Wage Increases

The general minimum hourly wage, presently scheduled to increase from \$11.40 to \$11.60 on October 1, 2017, will further increase to \$14.00 on January 1, 2018, and to \$15.00 on January 1, 2019, representing a modest "rate of inflation" increase of 1.8% on October 1, followed by more significant increases of 20.7% for 2018 and another 7.1% for 2019. All told, the cumulative effect between now and January 1, 2018 will be a 31.6% increase. The special minimum wage rates for liquor servers, students under 18, hunting and fishing guides, and homeworkers will increase by the same percentage as the general minimum wage.

Employers who presently pay any of their employees less than \$15.00 per hour need to start anticipating these increases now, planning any workforce adjustments, price changes and budgets so as to cause the least possible disruption to their bottom line.

2) Equal Pay

Part-time, temporary seasonal and casual employees (“Non-FT Employees”) will be entitled to be paid on an equal basis to full-time employees when performing the same job for the same employer. This wage parity requirement would not, however, apply to any wage differential based on seniority, merit systems, systems that tie pay to quantity or quality of production, or, for that matter, any other factors other than sex or employment status.

Industries that employ a high percentage of Non-FT Employees at pay rates lower than that provided to regular full time employees may need to undertake a wide ranging review of their employment models to accommodate these changes. The economic benefit of utilizing Non-FT Employees will essentially be neutralized, and some hard questions will need to be asked, such as whether to release some employees while increasing others to full time status. It is notable; however, that Bill 148 does not address benefits or pensions for Non-FT Employees, in keeping with the recommendation of the Changing Workplaces Review that these questions be instead subject to further study.

Affected employees will be able to request a review of their wages if they believe that they are not wages equal to those paid to full-time employees. Employers, in turn, will be required to respond to such requests with either an adjustment in pay or a written explanation, which, of course, may then be used in any complaint for non-compliance that might then be brought forward to an Employment Standards Officer.

3) Card-Based Certification

In the Labour Relations / union organizing sphere, Bill 148 provides for an alternate process for the certification of trade unions as the bargaining agents of employees in certain “specified industries”. These industries, whose employees might be seen as harder to organize through a process involving a union certification vote, are defined to be the building services industry, the home care and community services industry, and the temporary help agency industry. In the specified industries (as is presently the case only in the construction industry), an applicant trade union may elect to have its certification application dealt with by membership cards and without a vote. If the union submits with its application membership cards representing more than 55% of the members of the bargaining unit, card-based certification may be granted. If, however, the membership support level is between 40% and 55%, a representation vote will still be required (and if support is less than 40%, the application will fail).

For the specified industries, this represents a return to organizing rules that have not been in place for over 20 years. The Government’s intention is plainly to make union representation more accessible for employees in these industries, and affected employers may wish to adjust their labour relations strategies accordingly, in anticipation of these changes.

4) Access to Employee Lists

Bill 148 will require employers to provide lists of potential bargaining unit members to unions in the midst of organizing drives, where those unions can demonstrate the support of at least 20 per cent of the employees in the proposed unit. While the use of such lists by unions is strictly

confined to the purposes of an organizing campaign, and the list must be kept confidential and not be disclosed to anyone other than the appropriate officials of the trade union, this mandatory access to personal information of employees does have the potential to raise some challenging privacy questions.

Given a Liberal majority government in this province that can be expected to deliver passage of Bill 148 as part of a longstanding commitment in anticipation of the June 2018 election, Ontario employers should probably not spend much time engaging in ideas of avoiding the inevitable. While amendments are certainly possible, it should be anticipated that these will be confined to the finer details, and will not undermine the broad thrusts of this ambitious piece of legislation.

[1] The full Final Report and Summary are available here:
<https://www.labour.gov.on.ca/english/about/workplace/>