Ontario Passes Game Changing Amendments To Workplace Laws

November 22, 2017

The Government of Ontario passed the Fair Workplaces, Better Jobs Act, 2017 (the "Act") on November 22, 2017, and its amendments will begin to come into force as early as December 3, 2017. We originally wrote about the Act outlining the proposed changes on May 30, 2017.

The version of the Act passed by legislature was similar to the draft legislation updated in September 2017 following a round of summer consultations. However, new changes were also added following further consultations held early in November 2017, including (i) provision for Domestic or Sexual Violence Leave to include five paid days' leave; (ii) a new unpaid leave to care for critically ill adults; and (iii) new powers allowing the Ontario Labour Relations Board ("OLRB") to require employers to disclose additional employee contact information to unions recruiting members for certification.

Employment Standards Changes

The Act centres on amendments to the minimum employment standards contained in Ontario's Employment Standards Act, 2000 ("ESA"). These changes will take effect across four key dates that Ontario employers should now have marked in their calendars:

December 3, 2017;
January 1, 2018;
April 1, 2018; and
January 1, 2019.
As a helpful reference, below is a summary of major changes under Bill 148 and the dates they come into force:

Date	Amendments Coming Into Force
December 3, 2017	• Parental leave entitlements will be extended from 35 weeks to 61 weeks for employees who take pregnancy leave, and from 37

	weeks to 63 weeks otherwise (Note: These changes coincide with federal amendments to the *Employment Insurance Act*). • Critical Illness Leave of up to 17 weeks to care for adult family members will be introduced
January 1, 2018	• General Minimum Wage increases to $14 per hour • Paid Vacation entitlement increases to 3 weeks and 6% of wages for workers with at least five years' length of service • "True Interns" are no longer exempted from the ESA • Crown Employees are no longer exempted from most provisions of the ESA • Public Holiday pay calculation will be based on dividing earnings by number of days worked in the previous pay period • Family Medical Leave will be extended to 28 weeks in a 52-week period • Domestic and Sexual Violence Leave will be introduced, and will include 5 paid days' leave • Personal Emergency Leave will include 2 paid days' leave and will apply to all employers regardless of size • Retention Periods for vacation-related documents will increase to 5 years • Related Employer criteria will no longer include reference to the intent or effect of an employer's business arrangements
April 1, 2018	• "Equal Pay For Equal Work" provisions come into force
January 1, 2019	• General Minimum Wage increases to $15 per hour • "3 Hour Rule" provisions come into force • Record-Keeping Requirements corresponding to the 3-Hour Rule come into force • Schedule and Location Changes may be requested by employees with at least 3 months' length of service.

As of the date of the Royal Assent, misclassification of an employee as a contractor will also become a contravention of the ESA.

Labour Relations Changes

The Act also brings about significant amendments to Ontario's labour relations regime under the Labour Relations Act, 1995 ("LRA"). Although originally drafted to come into force 6 months after royal assent, the Act's amendments to the LRA will now be coming into force on January 1, 2018. Most notably, the following changes will come into force:

Prior to seeking certification, trade unions may apply to the OLRB for employee lists and contact information for proposed bargaining units.
Card-based certification will be available to employees in the building services, home care and community services and temporary help agency industries.
Newly-certified bargaining units may be consolidated by the OLRB.
Remedial Certification will be mandatory where an employer interferes with the conduct of a certification vote.
Mediation-Arbitration will be available for first collective agreements following a "no board" report.
No discharge of employees, except for cause, will be permitted between the commencement of a legal strike/walkout and a new collective agreement, or between certification and a first collective agreement.
Bargaining unit structures may be reviewed and revised by the OLRB on written agreement between the employer and trade union; and
Maximum penalties for contravention of the act increase to $5,000 for individuals and $100,000 for organizations.
Changes to the labour regime arising from the Act include a new provision allowing unions seeking certification to first apply for and receive a list of employee names and contact information for a proposed bargaining unit. Following its latest round of revisions, the Act was changed to allow the OLRB to order a broad range of information to be disclosed for these purposes — including employees' job titles, business addresses, and alternative contacts.

Other Changes

The final round of additions to the Act also saw the inclusion of new amendments to the Ontario Occupational Health and Safety Act that restrict employers from requiring employees to wear footwear with elevated heels. This prohibition, however, does not extend to employers whose employees are performers in the entertainment or advertising industries.

What Now?

Employers who have not already reviewed and revised their employment policies in anticipation of the changes under the Act will have limited time to do so before the first of its amendments come into force on December 3, 2017. Approximately one month later, the bulk of amendments will come into force on January 1, 2018. Employers in unionized workplaces and employers facing the possibility of unionization may have particular cause for concern, as amendments to the LRA will be coming into force five months earlier than previously anticipated. As the government now turns its attention to

the regulations under the ESA, employers can also expect further clarity in the coming months on those changes coming into force later than January 2018.

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