Ontario Government Will Proceed With Major Changes To Employment And Labour Laws

May 30, 2017

The Ontario government announced its intention to introduce *The Fair Workplaces, Better Jobs Act, 2017*.

On May 30, 2017, the Ontario government announced its intention to introduce *The Fair Workplaces, Better Jobs Act, 2017*. This legislation would include significant amendments to the *Employment Standards Act, 2000* ("ESA") and the *Labour Relations Act, 1995* ("LRA").

As reported in an earlier Alert, the Ontario Government released the Final Report of the Changing Workplaces Review on May 24, 2017. The Final Report contained 173 recommendations ranging from specific amendments to the ESA, the LRA and the *Occupational Health and Safety Act*, to broader policy changes and future discussions. *The Fair Workplaces, Better Jobs Act, 2017*, is the government's response to the Final Report.

The legislation, if passed, would result in the following major changes to the ESA on the dates indicated:

- **Increases to Minimum Wage (January 1, 2018):**
  - $14 per hour on January 1, 2018, then $15 on January 1, 2019, and annual increases at the rate of inflation; and
  - Special minimum wage rates (e.g. liquor servers, students under 18) will be maintained, but the rates will increase by the same percentage as general minimum wage;
- **Increase to Paid Vacation (January 1, 2018):** Increase to three weeks' paid vacation for employees with more than five years' service with an employer.
- **Paid Sick Days (January 1, 2018):** Current 10 Personal Emergency Leave days would apply in all workplaces, and two of those days would be paid. Employers would be prohibited from asking for a doctor's note from an employee taking a PEL day.
- **Equal Pay for Part-Time Employees (April 1, 2018):** Employers must respond in writing to a casual, part-time, temporary and seasonal employees who believes they are not receiving equal wages to full-time employees. Exceptions to

wage difference would include: seniority system, merit system, systems that determine pay by quantity or quality of production or other factors.

- **Equal Pay for Temporary Help Agency (April 1, 2018):** Amendments would ensure THA employees are paid equally to permanent employees of the client when performing the same job.
- **Independent Contractor Classification (on Royal Assent):** "Misclassification" will be prohibited, and subject to new penalties. No change to definition of "employee".
- **Joint Liability (January 1, 2018):** Remove the language in the ESA that requires proof of "intent or effect" to determine whether related businesses are treated as one employer and held jointly and severally liable.
- **Scheduling (January 1, 2019):** A variety of changes, including the right to request schedule or location changes, right to refuse shifts if less than 4 days' notice provided, and payment of minimum of three hours if shift is shortened, cancelled, or employee is "on call" and not called in.
- **Overtime (January 1, 2018):** Employees with more than one position must be paid at the rate for the position they are working during the overtime period.

Other proposed amendments of interest to the ESA include:

- Simplify Public Holiday Pay (January 1, 2018);
- Expansion of certain leaves of absence (January 1, 2018);
- Temporary Assignment Agencies would have to give at least a week's notice when an assignment longer than three months would be terminated early (January 1, 2018);
- Changes to enforcement under the ESA, such as an increase to penalties, hiring more officers and awarding interest on unpaid wages (January 1, 2018);
- Change partial exemption for Crown employees, but maintain an exemption for university/college/secondary school students (January 1, 2018);
- Review ESA exemptions and special industry rules, including exemptions for managers and supervisors (Fall 2017).

The following major changes to the LRA would be in effect six months after the legislation comes into force:

- Card-Based Certification for temporary help agency industry, building services sector and home care and community services industry;
- Remedial Union Certification to be amended to make certification easier;
- First Contract Arbitration to be made easier, plus a new intensive mediation component;
- Union Access to Employee Information, upon demonstrating 20 per cent support;
- Electronic and Telephone Voting;
- Government will consult on removing exemptions (e.g. architects, lawyers, doctors);
- Changes to successor rights, structure of bargaining units, return to work rights, and just cause protection.

Many of the proposed amendments will affect employers across Ontario, while others are very specific to a particular industry. With this in mind, employers should be aware that the Ontario Government has stated it will undertake broad consultation to obtain feedback from stakeholders on the draft legislation. For more information about how the

changes will affect your workplace, please contact BLG's Labour and Employment Group.

By

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