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Bulletin to Members:

Ontario introduces Fair Workplaces, Better Jobs Act, 2017

No. 17/002 -June 12, 2017

Ontario has introduced legislation that will fundamentally reform the province's existing Employment *Standards Act, 2000* (ESA) and *Labour Relations Act, 1995* (LRA).

The proposed legislation, Bill 148, *Fair Workplaces, Better Jobs Act, 2017*, contains broad ranging recommendations from the 419-page Changing Workplaces Review Final Report published in May 2017.

The Changing Workplaces Review, initiated by Labour Minister Kevin Flynn in 2015, is the most significant review of the ESA and LRA the Government of Ontario has undertaken in decades. During the review process, two phases of consultation took place to provide the general public and stakeholders with the opportunity to comment on how the LRA and ESA could be amended to better address today's workplace issues.

The final Report contains 173 recommendations including raising the minimum wage, ensuring part-time workers are paid the same hourly wage as full-time workers, introducing paid sick days for every worker and including members of the architectural and land surveying profession in the LRA.

Fair Workplaces, Better Jobs Act, 2017 was introduced and referred to the Standing Committee on Finance Economic Affairs on June 1.

Sherrard Kuzz LLP, one of Canada's leading employment and labour law firms, is reviewing the legislation and its recommendations and will be developing an analysis.

Meanwhile, if you have any questions or concerns, please contact David Zurawel, CEO's Director of Government and Stakeholder Relations at 416-620-1400 ext 222 or dzurawel@ceo.on.ca.

The full Changing Workplaces Review Report is available [here](#). The pdf copy of the bill is available [here](#).



Backgrounder

Fair Workplaces, Better Jobs Act, 2017 include the following amendments.

Minimum Wage Increases

The government is proposing to increase the general minimum wage to:

- 14 per hour on January 1, 2018
- \$15 per hour on January 1, 2019

Proposed Changes to Employment Standards

Equal Pay for Equal Work Provisions: Casual, Part-time, Temporary & Seasonal Employees

The proposed legislation would ensure that casual, part-time, temporary and seasonal employees are paid equally to full-time employees when performing the same job for the same employer.

The proposed amendments would enable employees to request a review of their wages if they believe that they are not receiving equal wages to full-time employees. The employer would have to respond to the request with either an adjustment in pay or a written explanation.

There would be exceptions to the requirement for equal wages where a wage difference is based on:

- Seniority system
- Merit system
- Systems that determine pay by quantity or quality of production
- Other factors (sex and employment status do not qualify as exceptions to this requirement)

The proposed legislation would also protect casual, part-time, temporary and seasonal employees against repercussions for inquiring about their wage rate or asking another employee about their wage rate.

If the proposed legislation passes, this proposal would come into force on April 1, 2018.

Scheduling

The proposed legislation would set out new scheduling rules:

- Employees would have the right to request schedule or location changes after having been employed for three months, without fear of reprisal.



- Employees who regularly work more than three hours per day, but upon reporting to work are given less than three hours, must be paid three hours at their regular rate of pay.
- Employees can refuse to accept shifts without repercussion if their employer asks them to work with less than four days' notice.
- If a shift is cancelled within 48 hours of its start, employees must be paid three hours at their regular rate of pay.
- When employees are "on-call" and not called in to work, they must be paid three hours at their regular rate of pay. This would be required for each 24 hour period that employees are on-call.
- If a collective agreement is made between an employer and a union, the agreement would prevail in place of some of these new rules.

If the proposed legislation passes, this proposal would come into force on January 1, 2019.

Overtime Pay

Under the proposed legislation, employees who hold more than one position with an employer and who are working overtime must be paid at the rate for the position they are working during the overtime period.

If the proposed legislation passes, this proposal would come into force on January 1, 2018

Employee Misclassification

The proposed legislation would prohibit employers from misclassifying employees as "independent contractors." This is intended to address cases where employers improperly treat their employees as if they are self-employed and not entitled to the protections of the ESA.

Employers that misclassify their employees could be subject to penalties including prosecution, public disclosure of a conviction and monetary penalties.

If the proposed legislation passes, this proposal would come into force on Royal Assent.

Paid Vacation

The proposed legislation would ensure that employees are entitled to three weeks of paid vacation after five years of service with the same employer.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.



Public Holiday Pay

The proposed changes would simplify the formula for calculating public holiday pay so that employees are entitled to their average regular daily wage.

Other elements of the public holiday provisions would also be simplified.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Paid Emergency Leave

Personal emergency leave (PEL) currently applies only in workplaces with 50 or more employees. Under the proposed amendments, this threshold would be eliminated.

The proposed legislation would also ensure all employees are entitled to 10 PEL days per year, including two paid PEL days.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Family Medical Leave

The proposed legislation would increase Family Medical Leave from up to 8 weeks in a 26-week period to up to 27 weeks in a 52-week period.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Employee Contact

The proposed legislation would no longer require employees to contact their employer before filing claim under the Employment Standards Act (ESA).

Under the proposed changes, the Director of Employment Standards could no longer refuse to assign an Employment Standards Officer to investigate an ESA claim due to insufficient information from the claimant.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Penalties for Non-Compliance of the ESA

The proposed legislation would increase the maximum administrative monetary penalties for non-compliant employers from \$250, \$500, and \$1000 to \$350, \$700, and \$1500, respectively.

The proposed changes would allow the Director of Employment Standards to publish (including online) the names of individuals who have been issued a penalty, a description of the contravention, the date of the contravention and the amount of the penalty.



If the proposed legislation passes, the legislative proposal would come into force on January 1, 2018.

Interest on Unpaid Wages

The proposed legislation would enable Employment Standards Officers to award interest on employees' unpaid wages and on fees that were unlawfully charged to employees.

The Director of Employment Standards would be allowed, with the Minister's approval, to determine rates of interest for amounts owing under different provisions of the ESA.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Electronic Agreements

The proposed changes would make clear that electronic agreements between employers and employees, such as an agreement to work excess hours, can serve as an agreement in writing.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Exclusions

The proposed legislation would:

- Ensure that all ESA requirements and entitlements would apply to people receiving training for work through their employer.
- However, individuals working as part of an experiential learning program run by a university, community college, private career college or high school would be excluded from the requirements and entitlements under the ESA. If the proposed legislation passes, this proposal would come into force on January 1, 2018.
- Ensure that students who are employed and regularly work more than three hours are paid for at least three hours even if they work less than three hours. If the proposed legislation passes, this proposal would come into force on January 1, 2019.
- Beginning in fall 2017, the Ministry of Labour will conduct a review of ESA exemptions and special industry rules, including consultation with affected stakeholders. This review would include exemptions in place for managers and supervisors.

Proposed Changes to the Labour Relations Act

Union Certification

The proposed legislation would:

- Establish card-based union certification for the temporary help agency industry, the building services sector and home care and community services industry.
- Make the following changes to the union certification process:



- Eliminating certain conditions for remedial union certification, allowing unions to more easily get certified when an employer engages in misconduct that contravenes the LRA
- Making access to first contract arbitration easier, and also adding an intensive mediation component to the process.
- Requiring the Ontario Labour Relations Board (OLRB) to address first contract mediation-arbitration applications before dealing with displacement and decertification applications
- Allow unions to access employee lists and certain contact information, provided the union can demonstrate that it has already achieved the support of 20 per cent of employees involved
- Expressly empower the OLRB to conduct votes outside the workplace, including electronically and by telephone
- Empower the OLRB to authorize Labour Relations Officers to give directions relating to the voting process and voting arrangements in order to help assure the neutrality of the voting process

Successor Rights

The proposals would extend successor rights to the retendering of building services contracts.

The proposed legislation would also enable the government to apply this expanded notion of successor rights, by regulation, to the retendering of other publicly funded contracted services.

Structure of Bargaining Units

The proposed legislation would allow the OLRB to change the structure of bargaining units within a single employer, where the existing bargaining units are no longer appropriate for collective bargaining.

The proposed changes would also allow the OLRB to consolidate newly certified bargaining units with other existing bargaining units under a single employer, where those units are represented by the same bargaining agent.

Return-to-Work Rights and Procedures

Currently, the LRA gives employees the right, under certain conditions, to return to work within six months of the commencement of a lawful strike. The proposed changes would remove the six-month limitation.

The proposed legislation would require an employer to reinstate an employee at the conclusion of a legal strike or lock-out (subject to certain conditions), and to provide access to grievance arbitration for the enforcement of that obligation.

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Members of the Architectural, Land surveying, Legal or Medical Profession Entitled to Practice in Ontario and Employed in a Professional Capacity

The proposed legislation would include members of the architectural, dental, land surveying, legal or medical profession entitled to practice in Ontario be included in the LRA and be given the same rights and protections as other employees.

Coming Into Force

If the proposed legislation is passed, all labour relations proposals would be in effect six months after the Act comes into force.

Enhancing Employment Standards Enforcement

The province plans to hire up to 175 more employment standards officers by 2020-2021, and launch a program to educate both employees and small and medium-sized businesses about their rights and obligations under the *Employment Standards Act*. Education will help employers understand their obligations.

These new resources will help to ensure that the proposed changes under the ESA are fully and effectively implemented.

Backgrounder text extracted from Proposed Changes to Ontario's Employment and Labour Laws