Adoption Of Bill C-58: Regulating The Use Of Replacement Workers In Conflict Situations (Strikes Or Lockouts) For Federally Regulated Employers

On June 20 2024, Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012,* which aims to regulate the use of temporary replacement workers in Canada, has passed the final stage of the legislative adoption process by receiving Royal Assent (the "Act"). Inspired in particular by the provinces of Québec and British Columbia, the Act seeks to prohibit federally regulated employers from using such workers during a strike or lockout, subject to certain provisos and conditions.

Currently, Canadian employers may replace their workers during a strike or lockout to continue operations, provided only that they are not being used "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives[.]"

However, once the Act, which was introduced as a bill in the House of Commons in late 2023, comes into force, this state of affairs will change.

The Act amends Part I of the *Canada Labour Code*, which governs labour relations, collective bargaining, dispute resolution and the rights and responsibilities of various stakeholders in the workplace. As its title suggests, the Act also makes certain consequential amendments to *Canada Industrial Relations Board Regulations, 2012*.

Replacement workers

The main change introduced by the Act is to broaden the prohibition on the use of replacement workers by eliminating the requirement of demonstrating a purpose of undermining a trade union's representational capacity mentioned above. Similarly, the Act clarifies this prohibition by broadening the range of workers whose services must not be used during a work stoppage, while setting out some exceptions.

Accordingly, a federally regulated employer will no longer cause the duties of an employee who was a member of the striking or locked out bargaining unit to be performed by the following means:

- any employee or any person who performs management functions or who is employed in a confidential capacity in matters related to industrial relations if that employee or person is hired after the day on which notice to bargain collectively is given;
- any contractor (other than a dependent contractor) or any employee of another employer, unless those services were already used by the employer before the day on which notice to bargain collectively was given and they are used only to the same extent and in the same circumstances as they were used before said day;
- any employee who is in the striking or locked out bargaining unit where the strike or lockout involves the cessation of work by all employees in the unit;
- at the workplace at which the strike or lockout is taking place, any employee who normally works elsewhere or who was transferred to the aforementioned workplace after the day on which notice to bargain collectively is given;
- any volunteer, student or member of the public.

Despite these prohibitions, the Act does stipulate that an employer will be able to use replacement workers if it has to deal with a situation that presents or could reasonably be expected to present a (i) threat to the life, health or safety of any person, (ii) threat of destruction of, or serious damage to, the employer's property or premises, or (iii) threat of serious environmental damage affecting the employer's property or premises.

However, even where such a scenario applies, employers will have to meet specific criteria to ensure they use replacement workers appropriately. First, replacement workers should be used only where it is impossible to deal with the situation by any other means. Second, the employer should make it mandatory to prioritize offering such work first to employees in the striking or locked out bargaining unit before offering it to anyone else. Lastly, even where all conditions are met, employers are prohibited from using these exceptions to continue the supply of services, operation of facilities or production of goods.

To bolster these requirements, the Act also stipulates that every employer who contravenes these new provisions may be liable to a fine of up to $100,000 for each day during which the offence is continued.

Moreover, the Act prohibits the use of replacement workers, without specifying where this work is to be performed.

Maintenance of activities

On a different note, while the parties to collective bargaining are currently required to maintain, during a strike or lockout, the activities necessary to prevent an immediate and serious danger to the safety or health of the public, the Act seeks to enhance this process.

In particular, the objectives of the Act are threefold: to encourage parties to reach an earlier agreement respecting activities to be maintained in the event of a work stoppage; to encourage faster decision making by the Canada Industrial Relations Board (the "CIRB") when parties are unable to agree; and to reduce the need for the Minister of Labour to intervene when necessary.

Specifically, within 15 days of receipt of the notice to bargain collectively, the parties will have to enter into an agreement that sets out the activities that they consider necessary to continue and the extent to which the employer, the trade union and the employees in the bargaining unit would be required to continue those activities. Where no agreement can be reached, any party could refer the matter to the CIRB, which will then have 82 days to make an order. In addition, the Minister of

Labour would also be able to refer any questions to the CIRB.

Future developments

The Act will bring about significant changes to federal labour law and how labour disputes are handled and agreements negotiated. This being said, Federal employers will have time to properly prepare for this reform, as the Act will come into force only twelve months after receiving Royal Assent, the final step in the legislative process, on June 20, 2025].

Rest assured that we will be constantly monitoring the impact of the Federal Employers Act once it comes into force.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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