

Bill C-58's Ban On Use Of Replacement Workers In Strikes Or Lockouts In Federally Regulated Workplaces To Become Effective On June 20, 2025



On June 20, 2024, Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012* ([Bill C-58](#)) received Royal Assent. Bill C-58, which will go into effect on June 20, 2025, prohibits an employer from using the services of replacement workers to perform all or part of the duties of an employee in the bargaining unit on strike or locked out in federally regulated workplaces, subject to exceptions. Once effective, the new law will influence how an employer in a federally regulated workplace conducts itself during strikes and lockouts.

Repeal of Existing Prohibition

Bill C-58 repeals the existing provision in the *Canada Labour Act* (CLC) that contains a limited prohibition of the use of replacement workers in a legal strike or lockout in federally regulated workplaces. The repealed provision provided that the use of the services of replacement workers by an employer is prohibited when they are used “for the demonstrated purpose of undermining a trade union’s representational capacity rather than the pursuit of legitimate bargaining objectives.”

Replacement Worker Prohibition

The new replacement worker prohibition in Bill 58 does not require the “demonstrated purpose” currently referred to in the CLC, or any demonstrated purpose; it prohibits the use by an employer of the services of any of the following replacement workers “to perform all or part of the duties of an employee who is in the bargaining unit on strike or locked out”:

- a. any employee or manager employed in a confidential capacity in matters related to industrial relations, who was hired after the day on which notice to bargain is given;
- b. any contractor, other than a dependent contractor, or any employee of another employer;
- c. any employee whose normal workplace is a workplace other than that at which the strike or lockout is taking place or who was transferred to the workplace at

which the strike or lockout is taking place after the day on which notice to bargain collectively is given;

d. any volunteer, student or member of the public.

Bill C-58 also contains exceptions to the prohibition of using replacement workers:

- **Contractors:** If before the day notice to bargain was given, an employer was using the services of a contractor, and their services were the same as or substantially similar to the duties of an employee in the bargaining unit, Bill C-58 permits the contractor's services to be continued to be used throughout a strike or lockout involving that unit, provided they are used in the same manner, to the same extent and in the same circumstances as they were used before notice was given.
- **Imminent or Serious Threats:** Additionally, Bill C-58 permits an employer to use replacement workers to perform bargaining unit work if the services are used solely to deal with a situation that presents or could reasonably be expected to present an imminent or serious threat:
 - to the life, health or safety of any person
 - of destruction of, or serious damage to, the employer's property or premises
 - of serious environmental damage affecting the employer's property or premises.

However, the use of replacement workers must be necessary to address the situation because the employer is unable to do so by any other means, and the employer must first give employees in the bargaining unit on strike or locked out the opportunity to perform the necessary work before using replacement workers.

Bargaining Unit Prohibition

Bill C-58 further provides that during a strike or lockout intended to involve the cessation of work by all employees, an employer is prohibited from using the services of an employee in that bargaining unit, except for the maintenance of activities to "the extent necessary to prevent an immediate and serious danger to the safety or health of the public" and for the service of grain vessels.

Complaints Process and Monetary Penalties

Violating the replacement worker or bargaining unit prohibitions will be an unfair labour practice under Part I of the CLC. Bill C-58 requires a union that believes that an employer was illegally using the services of a replacement worker during a strike or lockout to file an unfair labour practice complaint with the Canada Industrial Relations Board (CIRB). If an employer is prosecuted and convicted of breaching the prohibition on using the services of replacement workers, Bill C-58 provides that it could be subject to a maximum fine of \$100,000 for each day during which the offence is committed or continued.

Maintenance of Activities Agreement

Bill C-58 provides that the employer and the union must enter into a Maintenance of Activities Agreement (MOA Agreement) within 15 days of the notice to bargain and immediately file it with the CIRB and the Minister of Labour, even if it provides that the parties agree that no activities need to be maintained. If the parties do not come to an MOA Agreement within 15 days, they must apply to the CIRB to decide which activities need to be maintained, if any, and the CIRB must resolve this within

82 days. The CIRB would be empowered to expedite proceedings. The MOA Agreement (or the CIRB's determination of an application regarding maintenance of activities) would have to be in place before the parties can issue a 72 hours' notice for a strike or lockout.

Bottom Line for Employers

When it becomes effective in less than a year on June 20, 2025, Bill C-58 will notably affect how an employer in a federally regulated workplace must conduct itself during a strike or lockout and put non-compliant employers at risk of significant monetary penalties. An employer subject to the CLC should take the time now to consider how this change may affect strategy during the collective bargaining process. An employer should also become familiar with Bill C-58 so that when it comes into force they will be prepared to comply upon the occurrence of a strike or lockout.

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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