

Manitoba Amends Its Labour Relations Act And Employment Standards Code



- Manitoba has amended its *Labour Relations Act* (LRA) and *Employment Standards Code* (ESC). These amendments came into force on November 8, 2024.
- The amendments to the LRA address union certification, the use of replacement workers, and continuation of essential services during a lockout or strike.
- The amendments to the ESC extend the length of leave for serious injury or illness from 17 weeks to 27 weeks.

On November 8, 2024, Manitoba's [Bill 37, The Budget Implementation and Tax Statutes Amendment Act, 2024](#) and [Bill 9, The Employment Standards Code Amendment Act](#), received Royal Assent and came into force. Bills 37 and 9 amend Manitoba's [Labour Relations Act](#) (LRA) and [The Employment Standards Code](#) (ESC), respectively.

Amendments to the LRA

Certification

Automatic certification with support of more than 50% of employees in unit

The Manitoba Labour Board (Board) must automatically certify a union, without a vote, when an application for certification establishes that more than 50% of the employees in the unit wish to have the union represent them as their bargaining agent.

Secret ballot vote with support of between 40% to 50% of employees in unit

The Board must conduct a vote by secret ballot of the employees in the proposed unit when between 40% to 50% of the employees in the unit wish to have the union represent them as their bargaining agent.

Dismissal of application with support of fewer than 40% of employees in unit

The Board must dismiss an application for certification if fewer than 40% of the employees in the unit wish to have the union represent them as their bargaining agent.

Board certification on an interim basis

If a union applies for certification and the Board is satisfied that any dispute about the proposed unit's composition cannot affect the union's right to certification, the Board can certify the union as the bargaining agent for the unit

on an interim basis, pending the Board's determination of the unit's composition.

Either party may then give notice to commence collective bargaining under s. 60 of the LRA.

Once the Board determines the composition of the unit, it must issue a final certificate to the union certifying it as the bargaining agent for the employees in the unit.

Replacement Workers

Use of replacement workers during lockout or strike prohibited

During a lockout or strike, the employer or a person acting on its behalf, must not use the services of a replacement worker to perform:

- the work of an employee in the locked-out or on-strike unit; or
- the work normally performed by a person who is performing the work of an employee in the locked-out or on-strike unit.

Replacement workers include a person:

- hired or engaged after the date notice to commence collective bargaining is given;
- who ordinarily works at another workplace of the employer;
- who is transferred to the employer's workplace where the lockout or legal strike is occurring if the person was transferred after the date on which notice to commence collective bargaining is given;
- who is employed, engaged or supplied to the employer by another person; or
- who is an employee at the employer's workplace where the lockout or legal strike is occurring, and who is in a unit that is not locked out or on legal strike.

Exceptions

The prohibition against the use of the services of a replacement worker during a lockout or strike does not apply to a person:

- who, before the day notice to commence collective bargaining is given, ordinarily works at one of the employer's other workplaces and:
 - performs management functions primarily, or
 - is employed in a confidential capacity in labour relations matters;
- whose services were being used before the day notice to commence collective bargaining was given to perform work that was the same or substantially similar to the work of an employee in the locked out or legally striking unit. The services of such a person may continue to be used by the employer throughout a lockout or strike, provided they are used in the same manner, to the same extent and in the same circumstances as they were used before the notice to commence bargaining was given.

Exception – threat, destruction or damage

An employer that uses the services of a replacement worker to perform work does not contravene the prohibitions against doing so if the services are used solely to deal with a situation that presents or could reasonably be expected to present a threat:

- to the life, health or safety of any person,
- of destruction of or serious damage to the employer's property or premises, or
- of serious environmental damage; and

- the use of the services is necessary to deal with the situation because the employer is unable to do so by any other means.

Essential Services

Continuation of essential services

During a lockout or legal strike, the employer, the union for the employees in the unit, and the employees in the unit must continue the supply of essential services, *i.e.*, services, operation of facilities, or production of goods necessary to:

- prevent a threat to the health, safety or welfare of residents of Manitoba;
- maintain the administration of justice; or
- prevent a threat of serious environmental damage.

Essential services agreement

The parties to a collective agreement must, no later than 90 days before its term expires, enter into an essential services agreement. This agreement must set out:

- the supply of services, operation of facilities or production of goods that they consider necessary to continue in the event of a lockout or strike; and
- the manner and extent to which the employer, the union for the employees in the unit, and the employees in the unit must continue the supply, operation and production, including the number of employees that, in the opinion of the employer and the union, would be required for that purpose.

If the employer and the union conclude that it is not necessary to continue essential services during a lockout or strike, they must set out this conclusion in the essential services agreement.

Immediately after entering into the essential services agreement, the employer and the union must file a copy of it with the Board. Upon request, they must also provide a copy to the minister (*i.e.*, the administrator of the LRA) as soon as reasonably practicable.

If no essential services agreement entered into

If the employer and the union do not enter into an essential services agreement within the time frame listed above, the Board must, on an application by the employer or the union, determine any question regarding the application of the requirement to continue the supply of essential services during a lockout or strike.

The employer and union may enter into an essential services agreement and file it with the Board any time before the Board has determined its application. When the agreement is filed, the Board is no longer seized of the application.

Minister may refer questions to the Board

The minister may refer questions to the Board regarding whether an essential services agreement entered into by the employer and the union is sufficient to ensure the continuation of essential services during a lockout or strike.

Actions Board may order

If, in determining an application brought by either the employer or union or a referral by the minister to the Board, it is the Board's opinion that a lockout or

strike could result in a failure to maintain essential services, the Board may, by order:

- designate the essential services that must be maintained;
- specify the manner and extent to which the supply of essential services must be continued; and
- impose any measure it considers appropriate for carrying out its requirement to continue the supply of essential services.

Substantial interference with collective bargaining

An employer or a union affected by such an order may apply to the Board for a finding that it substantially interferes with meaningful collective bargaining. If the Board finds that its order has that effect, it may order that all matters that remain in dispute between the parties be settled by the Board or by arbitration.

Amendment to the ESC

Leave for serious illness or injury (sick leave)

The length of leave for serious injury or illness under the ESC is extended from 17 weeks to 27 weeks. Accordingly, as of November 8, 2024, the day Bill 9 came into effect, employees who are on leave for serious injury or illness or who have given their employer notice of an intention to take this leave, are entitled to a total of up to 27 weeks of leave.

Bottom Line for Employers

Employers in Manitoba are encouraged to immediately review and amend their workplace policies and procedures to ensure they are executing their new obligations under the LRA, if applicable, and under the ESC. This is particularly urgent given that these obligations came into force on November 8, 2024.

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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