

New “Stronger Workplaces” Act Increases Obligations For Ontario Employers



On November 20, 2014, Bill 18, the *Stronger Workplaces for a Stronger Economy Act, 2014*, received royal assent. This amends five employment and labour-related statutes in Ontario in an effort to protect employees. The effect is to increase the overall responsibilities of Ontario employers. The most significant amendments are to Ontario's *Employment Standards Act, 2000* (ESA) and affect (a) caps on liability, (b) the use of temporary help agencies, (c) minimum wage increases and (d) enhanced compliance measures.

Removal of Cap on Liability for Wages

One notable change introduced by Bill 18 concerns claims for unpaid wages. Historically, the Ontario Ministry of Labour's right to award an employee damages for unpaid wages was limited in two ways. First, the ESA placed a \$10,000 cap on the amount of damages the Ministry could award. Second, the ESA created a six-month period of recovery for unpaid wages and a twelve-month period of recovery for repeat offences or unpaid vacation pay.

However, effective February 20, 2015, the \$10,000 cap will be eliminated and the limitation periods will be replaced with a two-year period of recovery (subject to complex transitional provisions). The two-year period of recovery creates a limitation period comparable to the time period for an employee to commence a civil action in Ontario. One effect of this change is that more employees may make larger claims through the ESA's administrative claims process and, unlike in a court proceeding, there is no deterrent to the employee being faced with a costs award if the claim is unreasonable.

Temporary Help Agencies

Other major changes introduced by Bill 18 impact the use of temporary help agencies. Prior to Bill 18 being passed, an employer client who hired temporary workers through a temporary help agency was not statutorily liable for overtime pay or regular wages owed to that temporary worker. Rather, the temporary help agency was solely responsible. However, effective November 20, 2015, employer clients may be held jointly and severally liable with an agency for any overtime pay or regular wages owed to a temporary worker (but will not be held liable for termination pay or vacation pay).

In addition, effective November 20, 2015, Ontario employers and temporary help agencies will need to meet enhanced record-keeping obligations by recording both the daily and weekly hours worked by temporary workers and retaining those records for at least three years.

Minimum Wage Increases

Bill 18 has amended the ESA further by tying minimum wage increases occurring after October 1, 2015, directly to Ontario's consumer price index. Under this framework, increases to minimum wage rates in Ontario will be announced by April 1st of each year and would come into effect six months later on October 1st.

Enhanced Compliance Measures

The ESA has also been amended in an effort to promote enhanced compliance with minimum employment standards. For example, effective May 20, 2015, all Ontario employers are responsible for not only posting the latest version of the "*What you should know about the Ontario Employment Standards Act*" poster in a conspicuous place in the workplace, but for also providing a copy of the poster to all current employees by June 20, 2015. Each newly hired employee must receive a copy of the poster within the first 30 days of commencing employment.

In addition, effective May 20, 2015, employment standards officers will have the authority to order employers to conduct comprehensive self-audits and to report any issues of non-compliance with the ESA.

Other Notable Amendments

Bill 18 has amended other statutes as follows:

- *Occupational Health and Safety Act*: Effective November 20, 2014, the definition of "worker" under Ontario's *Occupational Health and Safety Act* is expanded to include people who are working for no pay such as interns, students and volunteers.
- *Employment Protection for Foreign National Act, 2009*: Effective November 20, 2015, the protections under the *Employment Protection for Foreign National Act, 2009* will be extended to all foreign nationals working in Ontario, not just live-in caregivers.
- *Labour Relations Act, 1995*: Effective May 20, 2015, the *Labour Relations Act, 1995* is amended with respect to the construction industry. Under these amendments, there will be a two-month open period during which (a) another trade union may apply to the Ontario Labour Relations Board for certification and to displace the incumbent union and (b) employees may apply to the Board for a declaration that a trade union no longer represents them.
- *Workplace Safety and Insurance Act, 1997*: On a day to be named by proclamation, the Lieutenant Governor in Council will be able to make regulations attributing liability for the costs of workplace injuries to temporary workers from a temporary help agency to the agency's employer client.

Practical Implications for Ontario Employers

With the passage of Bill 18, Ontario employers face enhanced obligations. In order to meet these obligations and to avoid the consequences of failing to do so, employers may wish to consider taking the following steps:

1. Conduct regular self-audits to ensure compliance with all applicable employment standards legislation and to correct any issues of non-compliance prior to

receiving a request from a Ministry inspector to conduct an audit.

2. Update policies and practices to reflect the new laws coming into effect (e.g., employers should update their hiring policies to include a requirement that all new hires must be provided with a copy of the ESA poster at the time of hire).
3. Train managers and HR personnel about the new laws and how they will impact the workplace (e.g., record-keeping responsibilities relating to temporary agency workers).

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