

Ontario Government Proposes Major Changes To Workplace Legislation



On December 4, 2013, the Ontario government introduced Bill 146, the *Stronger Workplaces for a Stronger Economy Act, 2013*. Bill 146 implements some of the recommendations made by the Law Reform Commission of Ontario that submitted a report on vulnerable workers.

Although the bill has just been introduced, if it passes through the legislature and then receives royal assent, it will have a significant impact on workplace regulation in Ontario. Some of the key proposed changes include the following:

- **More ESA claims.** The elimination of the \$10,000 cap on unpaid wages claims under the *Employment Standards Act, 2000* (ESA) and an increase in the time limit for wage claims from 6 months (or 12 months for vacation pay) to 2 years. This has the potential to increase the amount of claims filed with the the Ministry of Labour (MOL) and the amounts ordered by the MOL against employers.
- **Preparing self-audits.** The MOL would be able to order employers to conduct detailed self-audits with respect to their ESA compliance and submit the results to the MOL. This is in addition to the powers the MOL has already to conduct inspections, investigations and compel the production of documents/records from employers. This change means that employers can potentially be ordered to produce reports that the MOL could then use against the employer (e.g., to order payments be made to employees). Employers will have to be extremely careful how they conduct these self-audits and should seek legal advice.
- **Disincentives to use temporary help agencies.** Companies that use temporary labour assigned from a temp agency would be responsible for the wages that the agency does not pay its own assigned employees. This means that employers could potentially pay for the labour twice (first to the agency, and then to the workers when the agency fails to pay its workers). In addition, companies that use temporary labour assigned from an agency will be responsible for WSIB accident costs if a temporary worker is injured at the work site. This has the potential to increase WSIB costs for the company using the temporary labour. Clearly the intent (or at least the impact) of this Bill is to increase the costs of using temporary labour so that such labour is not used. Employers would be smart to review their indemnities with temporary agencies (and perhaps ensure that they are dealing with reputable – and solvent – agencies).
- **Inform employees of their rights.** Employers would be required to provide each employee with a copy of the MOL's employment standards information poster (in most cases in the language of the employee's choice). As Bill 146 has the aim of

protecting vulnerable workers, the Government is clearly interested in passing measures that ensure employees are informed of their employment standards rights.

- **Health and safety protection for interns.** Bill 146 attempts to close what some have called a “loophole” in the *Occupational Health and Safety Act* (OHSA) and specifically apply OHSA to interns. While we disagree that interns did not have workplace protections under OHSA – interns already benefited from working side-by-side with workers subject to detailed OHSA regulations – Bill 146 expands the definition of “worker” to include those not receiving monetary compensation, including unpaid co-op students. If Bill 146 is passed, employers would have to ensure that all provisions of OHSA are applied to interns, including, most notably, OHSA’s work refusal provisions.

The Ontario Government has not been shy in communicating its intent to protect vulnerable workers and Bill 146 makes it clear that the Government is prepared to follow through on its statements. Bill 146 will certainly increase the costs of doing business in Ontario while exposing employers to more regulation and increased risks of employee claims. We will continue to monitor the progression of this legislation going forward.

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