

Ontario Legislation Expanding Employer Accountability Re-Introduced: Bill 18



On July 16, 2014, the Government of Ontario re-introduced legislation to amend various employment-related statutes: Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014* (formerly Bill 146 – the *Stronger Workplaces for a Stronger Economy Act, 2013*). The clear intention of this legislation (should it come into force) is to expand the accountability of employers by amending various employment statutes in Ontario. Below, we briefly review the key proposed amendments. The changes are substantially the same as outlined in our December 4, 2013 Communiqué: Expanding Employer Accountability – Bill 146.

Employment Standards Act, 2000 (“ESA”)

There are several important potential changes to the ESA.

Indexing of Minimum Wage

This is the main substantive change added with the re-introduction of the legislation. It is proposed that the minimum wage will be indexed and increased based on changes to the Consumer Price Index (“CPI”). However, notwithstanding negative changes to the CPI, the minimum wage cannot be **decreased** as a result of the indexing calculation set out in the legislation. The indexing will begin on October 1, 2015.

No Maximum on Amount of Recovery and Retroactivity Extended

Currently, the maximum amount of wages that an employee can recover from an employer under the ESA is \$10,000. Under Bill 18, the \$10,000 maximum would be removed so that there would be no limit on the amount of wages that an employee could recover under the ESA for claims made after Bill 18 comes into force. Further, Bill 18 would extend the time frame for retroactive wage recovery from six months to two years. In the result, the potential liability for employers who are found to have violated the ESA provisions relating to wages will be significantly higher, if Bill 18 comes into force.

Self-audits for Employers

Another important change to the ESA proposed in Bill 18 is the power of an Employment Standards Officer (“Officer”) to order an employer to conduct a “self-audit”. If an

employer is ordered to conduct a self-audit, the employer will then have to report back to the Officer and declare whether or not the employer has contravened the ESA. If the employer has contravened provisions relating to wages, the employer will have to provide a report with the names of the employee(s) to whom wages are owing, the amount of wages, and an explanation of the calculation along with proof of payment of the outstanding wages (if any). If the employer identifies non-wage related contraventions of the ESA, the Employer will have to advise the Officer of the steps that the Employer has taken or will take to comply with the ESA. The Officer may still issue an order to pay wages or direct compliance with the ESA if the Officer believes it is appropriate to do so in the circumstances. Significantly, even if an employer reports that it is in compliance with the ESA, the Officer can still conduct an inspection or investigation of the workplace to determine whether or not the employer has complied with the ESA.

Joint and Several Liability of Temporary Help Agencies and Clients

Bill 18 also proposes to make temporary help agencies and their clients jointly and severally liable for wages owing to workers who performed work for a client. While the temporary help agency has the primary responsibility to pay employees who perform work for a client, the temporary worker will be able to make a claim against the client for any wages owing. Further, a temporary worker may pursue a claim for wages against the client even if the worker has not exhausted his/her options with the temporary help agency. For the purposes of such a claim, the client will be deemed to be the employer of the worker.

In addition to joint and several liability, both the temporary help agency and client must record the hours worked by a worker from the agency. These records must be kept for three years. The records can be stored with a third party but must be readily available for inspection.

ESA Poster for Employees

In addition to having the ESA poster in the workplace, employers will have to provide each existing employee with a copy of the poster within 30 days of Bill 18 coming into force or within 30 days of an employee being hired. If an employee requests a translated version, the employer must check with the Ministry of Labour to determine if there is a version in the language requested by the employee.

Occupational Health and Safety Act

Under Bill 18, the definition of "worker" is amended to specifically include the following unpaid individuals:

- a secondary school student performing work or services under a school board authorized work experience programme;
- a person performing work or services under a college, university, or other post-secondary institution approved programme;
- a person who receives training from an employer but is not an employee under section 1(2) of the ESA as having met the "person receiving training" conditions; and
- any person who is prescribed by regulation.

Workplace Safety and Insurance Act, 1997

If a temporary help agency worker is injured while working for an agency client, Bill 18 provides a mechanism to allocate the injury and accident costs to the client. The wages paid by the temporary help agency to the worker for work performed for the

client would be deemed to be paid by the client. The client must notify the Workplace Safety and Insurance Board of the injury. The client will have access to certain records that are normally provided to the employer.

Employment Protection for Foreign Nationals, 2009

Previously, this legislation was generally restricted to live-in caregivers. It would be expanded under Bill 18 to include foreign nationals who are working or are attempting to find work in Ontario pursuant to an immigration or foreign temporary employee programme.

Transition

At this time, not all sections of Bill 18 would be in effect when the legislation comes into force. Some parts of Bill 18 would not be in effect until up to two years after the Bill comes into force.

Summary

The changes reviewed above could have a significant impact on workplaces and accountability for employers in Ontario. We will monitor developments relating to this legislation and will provide future updates.

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