Reinventing the Wheel: Changes to the Standard “40 Hour” Work Week and Expanded Decertification Timelines



Saskatchewan has overhauled all of its employment related laws and combined them into *The Saskatchewan Employment Act*. While the Act itself has been finalized it has not yet come into force and is not yet law. The hold-up appears to be the mammoth-sized Regulations which have not yet been released by the Ministry of Labour Relations and Workplace Safety. The rumor is that the Act will be proclaimed into law at the end of March of 2014.

This is the largest overhaul of Saskatchewan employment laws in decades. No doubt there will be an adjustment period and there will be great improvements and challenges while workplaces across Saskatchewan must adjust to the new laws.

One of these potential changes that may pose a challenge is the reinvention of the “standard work week”. Another significant change is the expanded period for decertification applications.

The Standard Workweek

Currently a “standard work week” in Saskatchewan is 8 hours a day and 40 hours a week. An employee who works above and beyond these daily and/or weekly hours must be paid overtime at 1.5 times their wage. This is the “default” work week and is the only current option without obtaining an “averaging permit”.

The Saskatchewan Employment Act is changing this “default” 40-hour work week. The Act will permit **two** types of standard work weeks at the sole discretion of the employer. These options for the new “standard” work week will be:

- the standard five-day (5), eight-hour (8) work week, and/or
- a four-day (4), ten-hour (10) work week.

Full-time employees who work either of these new schedules will **not** need to be paid overtime. However, it appears that part-time employees will still be entitled to overtime after 8 hours are worked in a day. Once the Regulations are released, we will provide an update on whether part-time employees must still be paid overtime after 8 hours.

Despite the increased flexibility, employees still must consent to working more than

44 hours in a week, and are not permitted to be scheduled for more than 44 hours in the normal course of business. *The Saskatchewan Employment Act* does allow for some exceptions under extenuating circumstances. For example, the 44 hours per week cap would not apply if there is an emergency circumstance where there is imminent risk or danger to a person, property or an employer's business that could not have been foreseen by the employer.

A further change to *The Saskatchewan Employment Act* is that overtime hours can now be banked if the employer and employee come to an agreement on this. Currently, the law in Saskatchewan does not allow an employee to bank overtime hours. However, the reality is that many employers and employees currently agree to banking overtime.

Expanded Decertification Timelines

The Saskatchewan Employment Act will also drastically change the timelines for decertification applications. Currently, in Saskatchewan union members have the right to apply for decertification from their union only during certain set periods. This is standard across all jurisdictions in Canada. These defined set periods balance the right and opportunity of employees to decertify from their union, with the need for unions to have periods of stability so that they can effectively represent their membership.

The Saskatchewan Employment Act will allow decertification applications at any time after the first two years of the unit's existence. The only rule is that there would have to be 12 months between attempts at decertification. Other than that, the union could face having to respond to decertification campaigns at any time, including during times of intense bargaining.

Therefore, the concept of an open period for decertification of a union will be all but eliminated, and the open period is now anytime with few narrow exceptions:

- Not during the first two years following the first certification order; and
- Not within 12 months of a previously failed decertification attempt.

These expanded open periods for decertification will be the most liberal across Canadian jurisdictions and unions could see an increase in applications for decertification in Saskatchewan.

Summary

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

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