

They're Here . . . New Labour Relations Act Amendments Make Unionizing Easier



For non-union employers, it's not just a line from a scary movie. Manitoba law already promotes unionization and preserves unionized workplaces. The preamble to The Labour Relations Act says:

WHEREAS it is in the public interest of the Province of Manitoba to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees

However, the legislative scheme has just got more union-friendly. On November 7, 2024 the provincial government passed amendments that will lower the bar significantly for unions trying to organize employees and apply for certification – the right to bargain on behalf of employees.

The new key items are:

- Certification without a vote based on “more than 50%” membership
- Representation votes on certifications limited to “at least 40% but 50% or fewer” support levels
- The Labour Board can order an interim certificate, if a dispute over a bargaining unit description or disputed employee eligibility does not affect the majority support

The history of automatic certification (without the need for a vote) in Manitoba has unfortunately been a political football. Generally, NDP governments have enacted some version of automatic certification (most recently at 65% +1 for over a decade until 2016), while Progressive Conservative governments have legislated mandatory secret ballot representation votes (secret ballot vote with 40% or more support), most recently from in or about 2016 until November 7, 2024.

There are different rules for decertification, displacement (one union raiding another), and discretionary certification (after the Labour Board finds that an employer committed an unfair labour practice and the true wishes of employees cannot be ascertained). These rules have not been changed.

What to expect?

Manitoba now has the lowest threshold for certification by unions among the western

provinces. If the recent experience in British Columbia is a guide, applications for certification of currently non-union workplaces could skyrocket. In B.C., applications for certification increased by over 40% in the year following a change to a 55% threshold, which made unionizing easier in B.C.

Our experience in automatic certification situations has been that there can be more litigation over the bargaining unit configuration, managerial exclusions and employee eligibility. This can be the case where a union or employer believes that it would make the difference between automatic certification and a vote. This happens because certain inclusions or exclusions may put the union into a different support threshold to trigger automatic certification, a vote, or a dismissal for lack of support.

Other jurisdictions with automatic certification without a vote based solely on filed membership support:

Federal and Territories (NWT, Yukon, Nunavut) 50%+1

British Columbia 55%

Nova Scotia construction industry 50%+1

New Brunswick 60%+1 (Board discretion to order vote between 50 – 60%)

Ontario construction industry 55% +1

PEI 50%+1 (Board discretion to order vote based on employee concerns or card cancellations)

Quebec 50%+1

Jurisdictions with mandatory representation votes:

Alberta

Newfoundland and Labrador

Nova Scotia (non-construction)

Ontario (non-construction)

Saskatchewan

Future Bulletins:

In upcoming articles, we will be providing information on other amendments that prohibit the use of replacement workers during a strike or lockout, and the expansion of essential services legislation beyond government and healthcare sectors.

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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