Union Activity Is On The Rise – Is Your Business Ready?



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Against the backdrop of a cost-of-living crisis and prevailing economic uncertainty in Ontario, it is perhaps unsurprising that both labour experts and unions are predicting a tumultuous year ahead for employers.

For most employers, the prospect of a union organizing campaign – and the ensuing disruption to normal business operations – is daunting. Staying union-free is a natural priority for businesses; however, it is critical that employers understand how to navigate the strict legislative protections in place to protect the right of employees to unionize. The stark reality of Ontario's labour relations framework is that even a minor misstep by an employer can result in significant consequences – including automatic certification.

Understanding the Certification Process

The certification process establishes the collective bargaining relationship between the union and the employer. Many employers are taken aback by the speed at which the process moves, and, as a result, find themselves on the back foot when responding to union activity.

As a first step in the certification process, a union will launch an organizing campaign targeting a particular workplace in an effort to gauge interest and ultimately have employees sign union membership cards. This process is typically a closely guarded secret from the employer and may not come to light until after a certification application has been filed by the union.

If a union is able to obtain membership cards from at least 40% of employees, it can file an application for certification with the Ontario Labour Relations Board. The application will include a description of the proposed bargaining unit and an estimate of the number of employees to be included in the bargaining unit. Once a certification application has been filed, an employer cannot alter any terms or conditions of employment.

Employers have just **two business days** to file a response to a certification application. A failure to meet this deadline will almost certainly result in the Board moving the application forward without your participation. Unless the

circumstances are truly extraordinary, the Board will not grant an extension of time or accept a late filing.

If the union has provided membership evidence for at least 40% of employees in the bargaining unit on the application filing date, the Board will schedule a representation vote to be held within **five business days** of the application. If more than 50% of employees vote in favour of unionization, the union will be certified as the exclusive bargaining agent for the workplace.

Employer Do's and Don'ts

Although there are strict limitations can and cannot do with a respect to union activity in the workplace, a well-informed employer can nevertheless take steps to ensure that its legal rights and strategic interests are protected.

Do: Train supervisors to spot union activity and respond appropriately. Front-line supervisors are often best placed for discussions with employees about the merits of unionization; however, an untrained supervisor may inadvertently overstep and lead to allegations that the employer has engaged in an unfair labour practice.

Don't: Encourage employees to withdraw their support of the union, threaten job losses if the union is successful, or make any inflammatory comments about the union. A good rule of thumb is to assume all conversations are being recorded – don't say anything that you would not want played in front of the Board.

Do: Direct employees with questions about the certification process to www.labourwatch.com for more information and contacts for legal support.

Don't: Go it alone! The world of labour relations is complex at the best of times and even experienced employers may find themselves daunted by a surge of union activity. Contact your labour lawyer immediately upon receiving a certification application.

The Bottom Line

Understanding the way that unions acquire bargaining rights and become certified under the Ontario *Labour Relations Act* is the first step to strategically responding to an organizing campaign or certification application.

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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