

Union-Friendly Amendments To The Labour Relations Act – Part 2: Ban On Replacement Workers During A Strike Or Lockout



This article is part two of three on the proposed changes to *The Labour Relations Act* set out in *The Budget Implementation and Tax Statutes Amendment Act, 2024*. This part addresses new legislation dealing with replacement workers.

Key Amendments

- during a lockout or legal strike an employer may not hire or engage individuals to perform the work of an employee who is locked out or on strike.
- a prohibition on transferring employees from another workplace of the employer to do bargaining unit work.
- a prohibition on using persons employed or supplied by another person to do bargaining unit work.
- a prohibition on transferring other employees from the same location who are not on strike into doing bargaining unit work.

These changes bring Manitoba in alignment with the federal jurisdiction, Québec and British Columbia with respect to protections of work in a bargaining unit during a legal strike or lockout. Anti-Replacement Worker (often referred to by unions as anti-scab) Legislation makes strikes and lockouts more impactful on employers and can provide unions with additional leverage in collective bargaining.

There are exceptions to this proposed legislation to deal with continuing services if non-bargaining unit employees were already performing this or substantially similar work before the strike or lockout. Another exemption is for when the services are used solely to deal with an emergency situation. An emergency situation is defined as one that presents a threat to life safety or health, destruction or serious damage to the employer's property or premises or in the event of a threat of serious environmental damage. In those cases, the employer must not be able to deal with the situation by other means.

Of note is that employees employed performing management functions primarily or in a confidential capacity are not impacted and are still able to perform the work of striking or locked out bargaining unit members, and so are still able to serve as replacement workers for striking or locked out employees.

It is noteworthy that other Anti-Replacement Worker Legislation is framed differently than Manitoba's. Other jurisdictions generally have *specific* language, which limits an employer's presumptive right to use replacement workers during a strike or lockout. Manitoba's legislation creates a presumption that employers may not use replacement workers.

Using replacement workers in a prohibited manner would be an unfair labour practice and subject to the Manitoba Labour Board's full slate of powers and remedies available to it.

Labour Relations Boards have generally exercised their discretion in favour of finding appropriate remedies for breaches of Anti-Replacement Worker Legislation, ranging from simple declaratory relief in the instances of very minor or technical breaches to ordering investigations into the unlawful conduct, damages, injunctive relief, among other things.

What might happen when these amendments go into effect?

The availability and use of replacement workers is a tool that employers have been able to use in Manitoba to limit the impact of strikes and lockouts on business. As a result, we may see an increase in strike activity as unions feel empowered that striking will provide greater leverage.

We also anticipate greater scrutiny of any person that the employer uses to perform bargaining unit work during a legal strike or lockout. Employers should be careful to ensure that any bargaining unit work performed is in a situation exempted from the legislation. Employers should anticipate unions to be eager to protect bargaining unit work from being performed by replacement workers during a strike or lockout, and so should exercise extreme caution in having that work performed.

Employers should be aware of the substantial impact that a strike or lockout will have on a business and attempt early on and with consistency to reach a collective agreement at the bargaining table that is fair, reasonable and appropriate in the circumstances to both the employer and employees. As a result of this legislation, we expect that unions will be more willing to counsel a bargaining unit toward a strike if negotiations are breaking down.

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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