Update On Legislative Changes For MB Employers, Including Proposal To Ban Replacement Workers & Re-introduce Automatic Certification



In our previous blog post, we outlined a number of significant changes to labour and employment legislation announced by the Manitoba Government.

At that time, the province announced the introduction of a new public holiday for Orange Shirt Day, confirmed a minimum wage increase to $15.80 effective October 1, 2024, proposed extending long-term leave for serious illness or injury, proposed repealing *The Public Sector Construction Projects (Tendering) Act* and announced potential proposals to change *The Labour Relations Act*, including automatic union certification and banning replacement workers during strikes or lockouts.

This article will provide an update on the progress of some of these changes and an overview of additional proposed changes.

Restoration of 1:1 apprenticeship-supervisor ratio

On March 27, 2024, the Manitoba Government announced that it would restore the 1:1 ratio of apprentices to supervisors for skilled trades.

In 2015, the province previously amended the Regulations under *The Apprenticeship Act* to allow for a 2:1 ratio of apprentices to journeypersons. This allowed an employer to require journeypersons to oversee two apprentices.

To date, the Regulations have not yet been amended. The press release announcing the change advised that the province would determine regulatory changes in consultation with the Apprenticeship and Certification Board. The press release further indicated that "[s]pecial considerations will be given for required circumstances, like those in northern and rural Manitoba."

Proposed extension to long-term leave for serious injury or illness

Bill 9, *The Employment Standards Code Amendment Act*, would increase the length of the leave of absence for serious illness or injury from 17 weeks to 27 weeks. This would

provide statutory protections to employees who require a leave of absence of up to 27 weeks, including the prohibition on terminating their employment due to the leave. Bill 9 has yet to progress beyond first reading.

Proposed repeal of *The Public Sector Construction Projects (Tendering) Act*

Similarly, Bill 7, *The Public Sector Construction Projects (Tendering) Repeal Act* has yet to progress beyond first reading. Bill 7 would repeal the Act and allow public sector entities to again require that successful bidders on tenders become party to a collective agreement, exclusively use unionized employees or otherwise compensate a union as directed.

Proposals to ban replacement workers and re-introduce automatic certification

On May 6, 2024, the Manitoba Government introduced Bill 37, *The Budget Implementation and Tax Statutes Amendment Act, 2024*. The Act includes some of the most significant changes to *The Labour Relations Act* in Manitoba's recent history, including the following:

- The Manitoba Labour Board (the "Board") would be required to automatically certify any union that can establish on application that more than 50% of the employees in the proposed unit wish to have the union represent them as their bargaining agent, without the need to hold a secret ballot vote. Currently, there is no ability under the Act for a union to become automatically certified. Before a union can be certified, there must be a secret ballot vote and more than 50% of the affected employees must vote in favour of the union. The only existing exception to this is when the Board finds that an employer's unfair labour practice(s) has rendered a vote unlikely to demonstrate the true wishes of the affected employees;
- The Board would be required to order a secret ballot vote where the union has established that more than 40%, but less than 50%, of the employees in the proposed unit wish to have the union represent them as their bargaining agent. Currently, a secret ballot vote must be ordered if 40% or greater support for the union is established;
- The Board would be entitled to issue an interim certification order even where there is a dispute regarding the composition of the unit, if the Board is satisfied that the dispute would not affect the union's right to certification. Currently, the Board's practice is to not certify a union until all disputes regarding the inclusion or exclusion of positions and employees are resolved. The effect of this change would be that the parties would be required to commence collective bargaining even where there are disputes over who is included in the bargaining unit, if the disputes did not affect the union's ability to establish majority support of the employees in the unit;
- An employer and union would be prohibited from declaring a lockout or strike, respectively, unless the parties have entered into an agreement regarding the maintenance of essential services during such strike or lockout, or received an order from the Board determining the level of essential services to be provided;
- The meaning of "essential services" would include the supply of services, operation of facilities or production of goods to the extent necessary to prevent a threat to the health, safety or welfare of residents of Manitoba, maintain the administration of justice or prevent a threat of serious environmental damage. The employer, union and employees in the unit must maintain these services during any lockout or strike;
- The essential services agreement would need to be negotiated no later than 90

days prior to the expiry of the term of the collective agreement. The agreement must set out the services that are essential and the manner and extent to which the employer, the union and the employees in the unit must continue the supply, operation and production of such services. This includes the number of those employees that, in the opinion of the employer and the union, would be required for that purpose. If the parties agree that none of the services are essential, they would still be required to confirm that in writing;
- Any essential service agreement would be required to be filed with the Board immediately and would have the same effect as an order of the Board once filed;
- If the union and employer cannot reach an agreement on the maintenance of essential services, either party may apply to the Board and the Board will determine the issue for the parties;
- A party that fails to comply with an essential services agreement, or order, would commit an unfair labour practice;
- A union and an employer would be required to provide a minimum of three days' notice of any strike or lockout, and such notice expires if the strike or lockout does not take place. Currently, there is no requirement in Manitoba to provide advance notice of a strike or lockout;
- An employer, or a person acting on behalf of an employer, would be prohibited from using the services of a replacement worker hired after notice to bargain was provided during a lockout or strike. Additional prohibitions would include using the services of any of the following as replacement workers:
    - A person who normally works at another workplace of the employer, unless such person primarily performs management functions or is employed in a confidential capacity in matters relating to labour relations;
    - A person who is transferred to the workplace where the strike or lockout is taking place and such transfer occurred after notice to bargain was provided;
    - A person who is employed, engaged or supplied to the employer by another person (such as a contractor); and
    - A person who is employed at the workplace where the strike or lockout is occurring, but is employed in a unit that is not locked out or on strike.
- An employer who used a prohibited replacement worker during a strike or lockout would commit an unfair labour practice and be subject to a complaint before the Board. An employer could defend such a complaint if they could establish that:
    - The services are used solely in order to deal with a situation that presents or could reasonably be expected to present:
        - a threat to the life, health or safety of any person;
        - a threat of destruction of or serious damage to the employer's property or premises; or
        - a threat of serious environmental damage.
    - The use of the services is necessary in order to deal with the situation because the employer is unable to do so by any other means.

Bill 37 remains at first reading and will not be given further consideration until the fall session.

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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