

Employment and Labour

June 29, 2017

Extensive Changes to Ontario Employment Law Proposed for January 1, 2018

The Ontario government has proposed sweeping changes to provincial legislation governing employment relationships. As early as January 1, 2018, many amendments to the *Employment Standards Act, 2000* (the “ESA”) and the *Labour Relations Act, 1995* (the “LRA”) will become effective if the proposed legislation passes. Employers should carefully review the proposed changes and prepare to revise their policies and employment contracts as necessary to ensure compliance in order to avoid liability and other unintended consequences. Employees should be aware of how their rights and responsibilities may change.

Proposed Changes to the ESA

Certain of the key proposed changes affecting the ESA include:

Minimum Wage and Equal Pay for Equal Work

- The Minimum Wage will increase to \$14 per hour on January 1, 2018, and \$15 per hour on January 1, 2019.
- Casual, part-time, temporary and seasonal employees will have to be paid equally to full-time employees performing the same job for the same employer.
- Temporary Help Agency employees will need to be paid equally to permanent employees when performing the same job, and will be entitled to notice or pay in lieu of notice if an assignment is terminated early.

Scheduling

- Employees will be able to request schedule or location changes after being employed for 3 months.

- Employees must be paid for 3 hours at their regular rate of pay if: their shift is shortened to less than 3 hours upon reporting to work, the shift is cancelled within 48 hours of its start time, or the employee is “on-call” but is not called into work.
- Employees can refuse shifts if given less than 4 days’ notice.

Vacation, Overtime, and Holiday Pay

- Paid vacation time will increase to 3 weeks after 5 years of service.
- Employees who hold more than one position with an employer and who are working overtime must be paid at the rate for the position they are working during the overtime period.
- Employees will be entitled to their average regular daily wage for the purposes of calculating public holiday pay.

Leaves

- Employees will be entitled to up to 10 days of personal emergency per year, 2 of which must be paid. The reasons for taking personal emergency leave will be broadened to include domestic or sexual violence, or the threat of domestic or sexual violence. Employers will be prohibited from requesting physician notes for personal emergency leave absences.
- Employees may take leaves for the death of a child from any cause, or crime-related child disappearance, for a period of up to 104 weeks in each case.
- Family medical leave will increase to 27 weeks per year.

Misclassification and Joint and Several Liability

- Misclassification of employees as independent contractors will be prohibited and could expose the employer to penalties including prosecution, public disclosure of conviction, and monetary penalties.
- Joint and several liability of related businesses will not require proof of “intent or effect” to defeat the purpose of the ESA.

Employee Complaints and Employer Penalties for Non-Compliance

- Employees will not have to contact their employer before filing a claim under the ESA.
- The maximum administrative monetary penalties for non-compliant employers will increase, and the penalties may be publicly disclosed.
- Employment Standards Officers will be able to award interest on employees’ unpaid wages.

Proposed Changes to the LRA

Among others, proposed changes to the LRA include:

- changes to the union certification process,
- extension of successor rights,
- changes to the structure of bargaining units,
- broadened return-to-work rights, and
- increased maximum fines.

Employers and employees who are subject to the LRA should familiarize themselves with these changes.

Additional information can be found in Ontario’s Changing Workplaces Review Final Report, available on the Ministry of Labour’s website.

Conclusion

If passed, the proposed legislation will significantly change many aspects of the current employment law landscape as early as January 1, 2018. Employers and employees alike should take the next six months to consider how these changes may impact them. In particular, employers should consider whether changes may need to be made to their policies and contracts, and employees should keep in mind that they may have new and broadened rights to assert and protect.

Please contact any member of our Employment Law Group for further information or advice concerning the proposed changes.