

Overview: Ontario Employment and Labour Law changes announced

On Tuesday, May 30th, the Ontario government announced they will introduce new legislation by June 1st to amend the Labour Relations Act (LRA) and the Employment Standards Act (ESA)¹.

The announcement focused on key “highlights”, some of which go beyond the Special Advisors’ recommendations recently released in the Final report of the Changing Workplaces Review:

- Increased minimum wage: \$14 by Jan.01/18, \$15 by Jan.01/19, adjusted annually to inflation.
- Equal pay for part time workers, effective April 01/18.
- Increase annual vacation to 3 weeks after five years’ service with one employer.
- “Fair Scheduling” (e.g. 3 hours pay if your shift is cancelled with less than 48 hours’ notice.)
- Up to 10 days’ personal leave per year, 2 days of which are paid, and can be used as sick time.
- Extension of card based certification to Temp Agency workers, Building Services workers and Homecare and Community Agency workers.
- Full access to employee contact lists for unions that have signed up 20% of workers.
- OLRB to be empowered to order off-site voting and electronic voting in Certification votes.

These and other changes are expected in legislation to be introduced on Wednesday or Thursday before the House rises for the summer recess on June 1st. The Bill will then go to public hearings over the summer, be amended and sent back to the House for 2nd Reading in the Fall. After the 2nd Reading vote it will go back to Committee again, be subject to further amendments and according to the Minister of Labour will “probably” get passed by the end of the year.

While there are many positive changes included in the coming package (e.g. \$15 minimum wage), this news is somewhat overshadowed by the government’s failure to extend card based certification to all workers, despite the fact that their Liberal counterparts in Ottawa are extending card check for all federal workers. Failure to fully restore card check in Ontario also prolongs the situation whereby meaningful access to collective bargaining is a constitutional right to which Ontarians do not have equal access under the law. CUPE Ontario and the Ontario Federation of Labour have stressed this failure to act is a missed opportunity.

It is important to note that the process is far from over, and the Labour movement, the NDP and progressives will continue to push for a full restoration of card check.

We will be conducting a full review both in terms of impacts to our union, and to the broader community.

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¹ See the CUPE Ontario 2017 convention app or cupe.on.ca for more detailed information.

Appendix

Missing or concerning:

LRA

- Card based certification for all instead of some
- Prohibition on replacement worker (anti-scab)
- Elimination of exclusions to the LRA
- Successor rights for all instead of some
- Broader base bargaining (e.g. franchisee based bargaining)

ESA

- Many workers are still exempted from ESA protection (e.g. domestic workers/caregivers, agricultural and horticultural workers). However, the government has said that in fall 2017 the Ministry of Labour will conduct a review of ESA exemptions and special industry rules.
- No just cause protection for employees covered under the ESA (particularly concerning for Temporary Foreign Workers).
- No seven-day paid sick leave. However, there is an expansion of personal emergency leave to business with fewer than 50 employees – two of these days will be paid.

Review of LRA proposals

Union Certification

The proposed legislation would:

- Establish card-based union certification for three sectors: 1) temporary help agency industry 2) building services sector 3) home care and community agencies
 - While this will benefit certain sectors, without card-based certification for all, we continue the two-tier system of access to our constitutionally protected right to collective bargaining.
- Eliminating certain conditions for remedial union certification, allowing unions to more easily get certified when an employer engages in misconduct that contravenes the LRA
 - Promising but we will need to wait until we see the full set of conditions. They have said they will eliminate the requirement to demonstrate adequate membership support and the need for a second vote.
- Making access to first contract arbitration easier, and adding an intensive mediation component to the process.
 - Not automatic access as we had asked for. An “intensive mediation” component is model after British Columbia which treats first contract arbitration as part of the collective bargaining process and not as a remedy. Unclear as to what happens if the “intensive mediation” method fails.
- Requiring the Ontario Labour Relations Board (OLRB) to address first contract mediation-arbitration applications before dealing with displacement and decertification applications
 - Positive.
- Allow unions to access employee lists and certain contact information, provided the union can demonstrate that it has already achieved the support of 20 per cent of employees involved
 - Positive. No mention of access to list for applications to decertify.
- Expressly empower the OLRB to conduct votes outside the workplace, including electronically and by telephone
 - Potentially positive however further examination of potential negatives need to be explored.
- Empower the OLRB to authorize Labour Relations Officers to give directions relating to the voting process and voting arrangements to help assure the neutrality of the voting process
 - Positive.

Successor Rights

- The proposals would extend successor rights to the retendering of building services contracts.
 - Potentially positive but limited in scope. Should be extended to all contract services industries.
- The proposed legislation would also enable the government to apply this expanded notion of successor rights, by regulation, to the retendering of other publicly funded contracted services.
 - Positive however successor rights should be default, include the private sector, and not be left up to the governments desecration.

Structure of Bargaining Units

- The proposed legislation would allow the OLRB to change the structure of bargaining units within a single employer, where the existing bargaining units are no longer appropriate for collective bargaining.
 - Consent of unions still yet to be determined. This may lead to problematic representation votes between different bargaining agents.
- The proposed changes would also allow the OLRB to consolidate newly certified bargaining units with other existing bargaining units under a single employer, where those units are represented by the same bargaining agent.
 - Positive.

Return-to-Work Rights and Procedures

- Currently, the LRA gives employees the right, under certain conditions, to return to work within six months of the commencement of a lawful strike. The proposed changes would remove the six-month limitation.
 - Positive.
- The proposed legislation would require an employer to reinstate an employee at the conclusion of a legal strike or lock-out (subject to certain conditions), and to provide access to grievance arbitration for the enforcement of that obligation.
 - Positive.

Just Cause Protection

- The proposed legislation would protect employees from being disciplined or discharged without just cause by their employer in the period between certification and conclusion of a first contract, and during the period between the date the employees are in a legal strike or lock-out position and the new collective agreement.
 - Positive however it is not extended to non-unionized workers which is a concern.

Fines

- The proposals would increase maximum fines under the Labour Relations Act to \$5,000 for individuals and \$100,000 for organizations (from the current \$2,000 for individuals and \$25,000 for organizations).
 - Positive.

Coming into Force

- If the proposed legislation is passed, all labour relations proposals would be in effect six months after the Act comes into force.
 - If passed before January 7, 2018, these changes would occur just before the next provincial election June 7, 2018.

Exemptions

- The Ministry of Labour will work with affected ministries to consult with stakeholders to review the Special Advisors' recommendation to remove the exclusions under the LRA taking into account ongoing litigation.
 - This delay will leave many workers without access. Establishing a “review” is valuable time wasted.

ESA (proposals below and *review forthcoming*)

Minimum Wage Increases

Increase the general minimum wage to (and indexed to inflation moving forward):

- \$14 per hour on January 1, 2018
- \$15 per hour on January 1, 2019

The special minimum wage rates for liquor servers, students under 18, hunting and fishing guides, and homeworkers will be maintained, and will increase by the same percentage as the general minimum wage.

- Positive however the two-tier system remains intact for some. We will need to examine how this will affect our members.

Equal Pay for Equal Work Provisions: Casual, Part-time, Temporary & Seasonal Employees

- The proposed legislation would ensure that casual, part-time, temporary and seasonal employees are paid equally to full-time employees when performing the same job for the same employer.
 - Positive. We will need to examine how this will affect our members.

Equal Pay for Equal Work Provisions: Temporary Help Agency Employees

- The proposed legislation would ensure Temporary Help Agency (THA) employees (assignment workers) are paid equally to permanent employees of the THA client when performing the same job.
- The proposed changes would protect assignment employees from repercussions for inquiring about their wage rate or the wage rate of an employee of the client.

Termination of Assignment

- The legislation would require a THA to provide an assignment employee with at least one week's notice when an assignment scheduled to last longer than three months will be terminated early.
- If less than one week's notice is given, the assignment employee must be paid for the difference, unless the assignment employee is offered at least one week's worth of reasonable work during the notice period.

Scheduling

- Employees would have the right to request schedule or location changes after having been employed for three months, without fear of reprisal.
- Employees who regularly work more than three hours per day, but upon reporting to work are given less than three hours, must be paid three hours at their regular rate of pay.
- Employees can refuse to accept shifts without repercussion if their employer asks them to work with less than four days' notice.
- If a shift is cancelled within 48 hours of its start, employees must be paid three hours at their regular rate of pay.

- When employees are "on-call" and not called in to work, they must be paid three hours at their regular rate of pay. This would be required for each 24 hour period that employees are on-call.
- If a collective agreement is made between an employer and a union, the agreement would prevail in place of some of these new rules.

Overtime Pay

- 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.

Employee Misclassification

- The proposed legislation would prohibit employers from misclassifying employees as "independent contractors."
- In the event of a dispute, the employer would be responsible for proving that the individual is *not* an employee.
 - A positive step but no mention of proactive enforcement which places undue burden on workers to enforce their rights.

Joint Liability

- The proposed legislation would remove the provision that requires proof of "intent or effect" to defeat the purpose of the Employment Standards Act, 2000 when determining whether related businesses can be treated as one employer and held jointly and severally liable for monies owing under the Act.

Paid Vacation

- The proposed legislation would ensure that employees are entitled to three weeks of paid vacation after five years of service with the same employer.
 - A good step but the requirement for five year of service with the same employer will limit reach.

Public Holiday Pay

- The proposed changes would simplify the formula for calculating public holiday pay so that employees are entitled to their average regular daily wage.

Paid Emergency Leave

- Personal emergency leave (PEL) currently applies only in workplaces with 50 or more employees. Under the proposed amendments, this threshold would be eliminated.
- The proposed legislation would also ensure all employees are entitled to 10 PEL days per year, including two paid PEL days, which could be taken as sick days.
- The reasons for taking PEL would also be expanded so that employees experiencing domestic or sexual violence or the threat of sexual or domestic violence could take the leave.

Leave for the Death of a Child and for Crime-Related Disappearance

- The proposed legislation would create a new, separate leave for child death from any cause for a period of up to 104 weeks.

- The proposed amendments would also establish a separate leave for crime-related child disappearance for a period of up to 104 weeks.

Family Medical Leave

- The proposed legislation would increase Family Medical Leave from up to 8 weeks in a 26-week period to up to 27 weeks in a 52-week period.

Physician Notes for Absences

- The proposed changes would prohibit employers from requesting a sick note from an employee taking Personal Emergency Leave.

Paying Employees

- The proposals would create the authority to prescribe additional methods of payment.
- The proposals would also allow for an Employment Standards Officer to order money to be paid directly to an employee when an employer or Temporary Help Agency client owes money to that employee.

Employee Contact

- The proposed legislation would no longer require employees to contact their employer before filing claim under the Employment Standards Act (ESA).
- Under the proposed changes, the Director of Employment Standards could no longer refuse to assign an Employment Standards Officer to investigate an ESA claim due to insufficient information from the claimant.

Penalties for Non-Compliance of the ESA

- Increase flexibility around the administrative monetary penalties that Employment Standards Officers can give out to employers that do not comply with the ESA.

Interest on Unpaid Wages

- Enable Employment Standards Officers to award interest on employees' unpaid wages and on fees that were unlawfully charged to employees.

Collections

The proposed changes would improve wage collections by the government or an authorized collector, including:

- Allowing a collector authorized by the Director of Employment Standards to issue warrants, place liens on real and personal property and to hold a security while a payment plan is underway
- Enabling government and the authorized collector to collect and share personal information

Electronic Agreements

The proposed changes would make clear that electronic agreements between employers and employees, such as an agreement to work excess hours, can serve as an agreement in writing.

Exclusions

The proposed legislation would:

- Ensure that almost all existing ESA requirements and entitlements would apply to Crown employees.
- Ensure that all ESA requirements and entitlements would apply to people receiving training for work through their employer.
- However, individuals working as part of an experiential learning program run by a university, community college, private career college or high school would be excluded from the requirements and entitlements under the ESA. If the proposed legislation passes, this proposal would come into force on January 1, 2018.
- Ensure that students who are employed and regularly work more than three hours are paid for at least three hours even if they work less than three hours. If the proposed legislation passes, this proposal would come into force on January 1, 2019.
- Ensure that all ESA requirements and entitlements would apply to employees working in a simulated job or working environment for their rehabilitation (commonly known as a "sheltered workshop"). If the proposed legislation passes, this proposal would come into force on January 1, 2019.
- Beginning in fall 2017, the Ministry of Labour will conduct a review of ESA exemptions and special industry rules, including consultation with affected stakeholders. This review would include exemptions in place for managers and supervisors.