Primer: Bill 148 - Changes to Ontario's Employment and Labour Laws

CUPE SCFP Ontario

BACKGROUND

On June 1, the Ontario government introduced Bill 148: Fair Workplaces, Better Jobs Act 2017. These changes are the culmination of years of mobilizing and lobbying among union members, worker advocates, anti-poverty activists, faith leaders and many more, working in collaboration with the Fight for $15 and Fairness campaign, the Ontario NDP, and the Ontario Federation of Labour's Make It Fair campaign.

CUPE has been involved in this struggle, organizing town halls, participating in consultations, lobbying MPPs and working alongside community partners to demand change. But our work must continue. This is a once in a generation opportunity to achieve major labour law reform so we must continue fighting to get the changes that workers in this province deserve.

During our recent town hall, we reviewed Bill 148 and CUPE's priorities. While the bill is far reaching and will impact our collective agreements in a variety of ways, this factsheet **does not** go over all these changes. Instead it is an overview of the changes we will be focusing our lobbying effort towards. There are public hearings that are coming up in July in a number of communities across the province. The bill is expected to pass this Fall and as the process unfolds, CUPE will be providing further information.

The Employment Standards Act is viewed as a floor which offers the minimum protections to which all workers are legally entitled even when they have no union representation. The Labour Relations Act is what governs the process of joining a union and collective agreements. If this bill passes in the Fall, the Employment Standards Act will exceed some parts of our collective agreements, for example a new minimum wage that is set to increase to $15 by January 2019, a third week of vacation after five weeks of services, and equal pay for part-time workers who are performing the same work in the same way as their full-time coworkers.

Labour Relations Act Amendments

Card check: In Canada, there are two main ways in which workers can organize into unions and establish bargaining rights: card check or mandatory vote. Card check requires that a majority of workers sign a card stating they wish to be represented by the union, and once that happens, they are considered to be certified as a union. Mandatory votes require that a vote be held and that a majority of ballots cast are in favour of joining the union. Mandatory vote systems allow employers to engage in unfair labour practices by intimidating workers before the vote. Card check encourages certification and can promote union density. Currently the construction sector and all workers under federal jurisdiction in Ontario have access to card check and all other sectors have mandatory vote. The government proposes to introduce card check, but only for the building services industry, home care and community care industries and temporary help agency industry. We believe that card check should be available for all sectors.

Bargaining unit consolidation: Many CUPE members work at a single employer with multiple bargaining units. In some cases, CUPE represents all of these bargaining units and in other cases there are multiple unions present. The proposed legislation gives the Ontario Labour Relations Board power to:

1. Consolidate newly certified bargaining units with other existing bargaining units, where those units are represented by the same union. This must occur within 90 days of certification; we agree with this idea, it would help us organize smaller units into larger units in the same workplace, but we disagree with the 90-day limit; and
2. Consolidate bargaining units from multiple unions. We do not agree with this new consolidation power in circumstances where there are multiples unions. For any member who has been through representation votes in their workplaces, they will know this happened because of a merger or amalgamation. But this change would give an employer or any other union the right to call for this at any time. This will cause representational conflicts between unions where we spend time fighting each other over workers who are already in a union. And it gives the employer the upper hand to cause these kinds of conflicts.

Additionally, we believe that the Labour Board should be able to combine existing units into one, where there is a single union involved and a common employer operating in multiple locations

Successor rights: When a unionized business is sold, successor rights provide workers with bargaining and collective agreement rights with the new employer. One major exception is that these rights have generally not been applied to contracting out or contract tendering situations, in which a lead company contracts out its work to a

subcontractor. The new legislation extends successor rights to just the building services industry (security, food services, and cleaning). We believe that successor rights should be available for all sectors.

Anti-scab (a.k.a. replacement workers): When an employer hires scab labour during a strike or lockout, it undermines the progress of collective bargaining and can prolong labour disputes. In keeping with a long-held principle of our union and the entire labour movement, we propose that the government should introduce a ban on scab workers.

Automatic First Contract Arbitration: Employers regularly use tactics to avoid reaching a first collective agreement and undermine the viability of newly certified bargaining units. First Contract Arbitration ends the immediate dispute and after a hearing would impose an agreement, allowing both parties to establish mature and enduring bargaining relationships. The current Labour Relations Act provides some access to First Contract Arbitration, notably when "employers refuse to accept the right of their employees to engage in collective bargaining." However, access to First Contract Arbitration is not automatic, and employers are able to find ways to block the successful completion of bargaining without triggering First Contract Arbitration.

The proposed legislation grants a new type of mediation-intensive model before seeking arbitration for all first contract disputes. While this model is better than the status quo, CUPE believes that automatic FCA upon request would encourage workers who want to join a union but might be deterred if they fear that they will need to strike to get a first collective agreement.

Exemptions to the Labour Relations Act: There is an emerging body of jurisprudence from the Supreme Court of Canada that supports the greatest possible scope for freedom of association, including the right to collectively bargaining. Currently there

are several categories of workers who are not covered by the Labour Relations Act. This includes agricultural and horticultural workers who are particularly vulnerable, and the denial of their ability to access full collective bargaining rights makes matters worse. The Labour Relations Act should reflect the decisions made by the Supreme Court by removing most of exclusions.

Early disclosure of workplace information: Workers who want to unionize their workplaces face many structural barriers to achieving this goal. One such barrier is the lack of information about how many other people are employed at their workplace, and how to contact them. Providing unions with access to employee lists with full contact information and other workplace details would help remove this barrier to workers exercising their right to unionize. CUPE also believes that the government should repeal the requirement that a union's application for certification exactly mirror its initial application for the list, because employers often play games with lists, putting people on them who shouldn't be because they are management. We need the ability to amend our applications once we have more information.

Employment Standards Act Amendments

Opting out of the Employment Standards Act: The Employment Standards Act is "the floor" or more accurately, the very minimum standards. Workers should never fall below that floor and instead it should be something to negotiate up from. The proposed legislation would allow some employers to maintain inferior provisions than the Employment Standards Act in our collective agreements. We believe that the Employment Standards Act should never allow this. Instead, the Employment Standards

Act should act as a hard minimum which no worker will fall below and no loop holes should exist.

Just cause: Unlike the legislation that covers workers in the federal sector, Ontario's Employment Standards Act does not require employers to have "just cause" for terminating an employee's employment. This means an employer can dismiss an employee for any reason at any time, even if they have passed probation, have seniority and didn't do anything wrong. This is particularly problematic in the case for temporary foreign workers. As some of Ontario's most precarious workers, employer retaliation can mean being sent back to their country of origin. The government has not proposed any legislation to protect Ontario workers. The Employment Standards Act should be amended to provide protection against unjust dismissal, meaning employees could not be dismissed without just cause, and could be reinstated if they were dismissed without cause. By extending just cause provisions to all workers, we will also be able to cover those workers who might be terminated as a result of trying to organize a union – which was a Labour Relations Act amendment we were seeking as well.

Equal pay for equal work: Under the Employment Standards Act it is illegal to pay a woman less for doing work that is "substantially the same" as a man. However, there are many other exceptions where it is legal to pay different wages for the same work, such as for causal or temporary workers, seasonal, part-time, students, etc. The government has proposed changes that state if workers (who are not full-time) are doing "substantially the same kind of work in the same establishment" as full timers, they must be paid the same. Our concern is that they have introduced a variety of exemptions to this including merit, quantity/quality of production and "other factors".

Even once the Equal Pay provisions come into effect, the government has written in a grandparent clause which will permit employers to continue treating workers unfairly until expiration of any collective agreement. CUPE proposes that these exceptions should be abandoned and that the only reason to allow for different pay is length of service.

Sick leave & Domestic Violence / Sexual Violence Leave: Under the current legislation, workers whose employer regularly employs 50 or more employees are entitled to 10 days of unpaid Personal Emergency Leave. The government has proposed legislation that requires 50 employees so that all workers can take Personal Emergency Leave, and introduces two days of paid leave as part of the ten days total available annually for Personal Emergency Leave. These days can be used for sick leave and can also be used for bereavement, or by workers experiencing domestic or sexual violence or the threat of sexual or domestic violence. CUPE believes that seven of these Personal Emergency Leave days should be paid for and that a separate allotment of ten paid days should be available for any workers who experience domestic or sexual violence.

Minimum wage: The government has made admirable headway on increasing the minimum wage. The minimum wage will go to a) October 2017 - $11.60; b) January 2018 - $14.00; and c) January 2019 - $15.00. After that it will be indexed to inflation. However, the government proposes keeping a multi-tier wage system intact and paying students and those who serve liquor at a lower minimum wage. CUPE stands in opposition to two-tier agreements in our collective agreements and also with regards to the minimum wage.

Misclassification: Since the Employment Standards Act only covers people who fit under the definition of "employee" under that Act, workers who are really employees

under the Employment Standards Act are sometimes “misclassified” by their employers as “independent contractors”. Then the employer says they are not covered by the Employment Standards Act. The proposed legislation would prohibit employers from misclassifying employees as "independent contractors." However, it would not include “dependent contractor” under the definition of employee. CUPE believes that the definition of “employee” should also include dependent contractor as defined in the Labour Relations Act. The Bill also puts the onus on the employer to prove the person isn’t an employee, instead of on the worker to prove they are. Enforcement of this will largely rely on workers to file claims for misclassification. CUPE believes that a more proactive step to enforcing the new prohibition on misclassification would be to create a legal presumption of employee status for workers performing or providing labour services to the employer for a fee.

Keep up-to-date with the latest information on this process on our website:
https://cupe.on.ca/public-consultations-bill-148-fair-workplaces-better-jobs-act-2017/