What's New in HR Law

Bill 148 Passes Third and Final Reading: Amendments to the *Labour Relations Act, 1995* and the *Occupational Health and Safety Act*

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BOTTOM LINE

Bill 148: *The Fair Workplaces, Better Jobs Act, 2017* proposes significant changes to the *Labour Relations Act, 1995* and the *Occupational Health and Safety Act*. Bill 148 passed its third and final reading before the Ontario legislature on November 22, 2017. Bill 148 is now awaiting Royal Assent and will come into force as early as January 1, 2018.

The finalized Bill 148 contains amendments to the *Labour Relations Act, 1995* that will significantly alter aspects of the bargaining relationship between unions and employers.

Additionally, amendments to the *Occupational Health and Safety Act* will place restrictions on employers' ability to require that its employees wear shoes with an elevated heel.

Bill 148 also includes significant amendments to the *Employment Standards Act, 2000*. We have reviewed these amendments in a separate article released concurrently with the present one.

The Impact of Bill 148 on Unionized Workplaces

Below is a comprehensive summary of Bill 148 and its amendments to the *Labour Relations Act, 1995*.

1. Card-Based Union Certification

The Bill will amend the *Labour Relations Act, 1995* by allowing unions seeking certification in certain non-construction industries to proceed with card-based certification. Those industries are: building services, home care and community services, and temporary help agencies.

Under the card-based system, a union will be automatically certified if it presents membership evidence demonstrating that over 55% of the proposed bargaining unit are union members. If the union fails to provide membership evidence for over 40% of the bargaining unit, the certification application will be dismissed. If membership evidence suggests membership between 40% to 55% of the proposed bargaining unit, a representation vote will be ordered.

2. Employee Lists and Union Access to Employee Information

The Ontario Labour Relations Board (the "Board") will have the power to order an employer to disclose certain employee information to a trade union in the form of an "employee list."

- **Application for Employee List:** Unions may apply to the Board for an order directing an employer to provide the union with an employee list for a proposed bargaining unit. In order to apply, however, the union must demonstrate that it has achieved the support of 20% of the employees in the proposed bargaining unit.

- **Notice of Disagreement:** Employers can serve a notice of disagreement with the Board within two days of receiving an employee list request. An employer who serves a notice of disagreement may be required to provide a statutory declaration that sets out the number of employees in the union's proposed bargaining unit.

- **Information to be Disclosed:** Where the Board orders the disclosure of an employee list, the employer will be required to provide the union with a list of the names, phone numbers and personal emails (if provided to the employer) of each employee in the proposed bargaining unit. The Board may also order the employer to disclose to the union other employee information, such as their titles and business addresses, and any other means to contact the employees, other than a home address.

- **Subsequent Certification Applications:** Where a union is successful in obtaining an employee list for a proposed bargaining unit of employees, the union may alter its proposed bargaining unit description for any subsequent application for certification relating to the employees on the employee list.

- **Confidentiality:** The Bill will impose duties of confidentiality on both the employer and union with respect to any employee list:

    - The employer will be required to ensure that all reasonable steps are taken to protect the security and confidentiality of the list during its creation, compilation, storage, handling, transportation, transfer, and transmission.

- The union must ensure that all reasonable steps are taken to protect the security and confidentiality of the list, and to prevent unauthorized access to the list.

- When the list must be destroyed, destruction must be done in such a way that the list cannot be reconstructed or retrieved.

Note: The Bill's new rules pertaining to employee lists will not apply to the construction industry.

3. Votes Outside the Workplace

Bill 148 empowers the Board to conduct certification votes outside of a workplace, including by Internet or telephone. The Board may also authorize Labour Relations Officers to direct the voting process and associated voting arrangements.

4. Remedial Certification

Bill 148 provides that remedial certification will occur where the Board determines that an employer has committed an unfair labour practice that impacted its employees' support for a union. Under the current *Labour Relations Act, 1995,* remedial certification was only one of several potential measures that the Board could employ in such a situation.

5. First Contract Mediation

- **First contract mediation and arbitration:** Employers and unions will have easier access to first contract mediation and arbitration.

    - Either party may apply for the appointment of a first contract mediator at any time after the Minister of Labour has issued a No Board Report. During the 45-day period after the mediator is appointed, no strike, lock-out, decertification application or displacement application may occur.

    - If the parties do not reach a collective agreement after 45 days of first contract mediation, then either party may apply to the Board for first contract arbitration.

- **Educational support during first contract mediation or arbitration:** Employers and unions may request educational support with respect to labour relations and collective bargaining. Upon such a request, the Minister of Labour—or the appointed mediator or arbitrator—must make the requested educational supports available.

- **Extended time limits with respect to first contract mediation:** Bargaining parties will have extended time limits with respect to first contract mediation:

    - No employee can strike, and no person or union can authorize or threaten a strike, in the 45 days after the time that the Minister of Labour appoints a first contract mediator.

    - The Board cannot deal with any decertification or displacement applications until 45 days after the appointment of a first contract mediator.

- The parties may apply to the Board to direct the settlement of a first contract if: (a) 45 or more days have passed since the appointment of a first contract mediator; and (b) the parties have not yet entered into a collective agreement.

6. Consolidating Bargaining Units

The Board will have the power to consolidate bargaining units after successful union certification if the existing bargaining units are no longer appropriate. The Board may even exercise the power to consolidate bargaining units that are represented by different unions, and then declare which of the unions will represent the employees of the consolidated bargaining unit.

7. Reviewing and Amending the Structure of Bargaining Units on Mutual Agreement

An employer and a trade union or council of trade unions that represents multiple bargaining units may jointly agree in writing to review the structure of the bargaining units. As well, with the consent of the Board, the parties to a collective agreement may agree to:

- Consolidate bargaining units
- Amend the description of a bargaining unit
- In response to a consolidation, make one collective agreement apply to the consolidated unit while terminating the other agreements
- Amend an existing collective agreement
- Make arrangements to account for a situation in which only some employees in a consolidated bargaining unit are in a legal strike position
- Permit a party to give notice to bargain collectively.

8. Successor Rights

Successor rights will extend to the re-tendering of building services contracts. Successor rights will also apply to the re-tendering of publicly-funded contract services.

9. Return to Work After a Strike or Lock-Out

There will no longer be a six-month limitation on employees being able to return to work after a lawful strike has started. Employers will be required to reinstate an employee when a lawful strike or lock-out has concluded.

10. "Just Cause" Protection

Unionized employees will have "just cause" protection from discipline or discharge between certification and the conclusion of a first contract. Similarly, employees will be protected from discipline or discharge without just cause between the date of a legal strike or lock-out and either: (a) the ratification date of a new collective agreement; or (b) the date on which the union's bargaining rights are terminated.

The Impact of Bill 148 on the *Occupational Health and Safety Act*

The Bill will amend the *Occupational Health and Safety Act* to prohibit an employer from requiring a worker to wear footwear with an elevated heel.

The Bill also creates two exceptions to this prohibition: (i) where an elevated heel is required for a worker to safely perform his or her work; and (ii) where a worker is employed as a performer in the entertainment and advertising industry.

Check the Box

Bill 148 has passed its Third Reading and is awaiting Royal Assent. The Bill's amendments to the *Labour Relations Act, 1995* will likely come into force on January 1, 2018. The Bill's amendments to the *Occupational Health and Safety Act* will come into force on the day that Bill 148 receives Royal Assent. As the new year approaches, employers should ensure that they are prepared to adapt to the changing landscape of labour relations law in Ontario.

For more information, please contact Cassandra Ma at 416-408-5508 or speak to your regular lawyer at the firm.

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