



# What's New in HR Law

## Bill 57 Seeks to Change Fire Sector Interest Arbitration Procedure and Protect Volunteer Firefighters

November 19, 2018

### **BOTTOM LINE**

On November 15, 2018, the Ontario government introduced [Bill 57, Restoring Trust, Transparency and Accountability Act, 2018](#) ("Bill 57").

Bill 57 proposes amendments to the *Fire Protection and Prevention Act, 1997* (the "FPPA") to implement significant changes to both the interest arbitration procedure and the factors considered by arbitrators at interest arbitration. In addition, it will enhance the protection of volunteer firefighters who are also regular salaried employees in a fire department and assigned to fire protection services.

Bill 57 is part of the Ontario government's 2018 Ontario Economic Outlook and Fiscal Review and proposes to amend numerous other statutes, as well as the FPPA.

### **Procedural and Substantive Changes to the Interest Arbitration Process**

Bill 57 proposes to repeal certain sections of the FPPA in order to implement new procedures for referring matters to interest arbitration if the parties are unable to reach a collective agreement.

**This update is for general discussion purposes and does not constitute legal advice or an opinion.**

Instead of appointing a board of arbitration, Bill 57 proposes interest arbitrations be conducted by a single arbitrator mutually selected by the parties.

Also, Bill 57 will amend the criteria that an arbitrator must take into consideration to include the following:

- A comparison, as between the employees and other employees in the public and private sectors, of the terms and conditions of employment
- A comparison, of collective bargaining settlements reached in the same municipality and in comparable municipalities, including those reached by employees in bargaining units to which the *Labour Relations Act, 1995* applies, having regard to the relative economic health of municipalities
- The economic health of Ontario and the municipality, including, but not limited to, changes to labour market characteristics, property tax characteristics and socio-economic characteristics
- The employer's ability to attract and retain qualified firefighters
- The interest and welfare of the community served by the fire department
- Any local factors affecting the community

Both the employer's ability to pay in light of its fiscal situation and the requirement to compare the nature of work performed by the employees have been removed from this list. Instead, the Ontario government has placed an emphasis on comparing collective bargaining settlements reached in the same and comparable municipalities.

Also new is the requirement that an arbitrator's written reasons must clearly demonstrate he or she considered not only the above criteria, but also the parties' written submissions, and any other matters the arbitrator deemed appropriate.

### **Notice of Arbitration Given On or After November 15, 2018**

If notice of arbitration is given under section 49 of the FPPA on or after November 15, 2018, and a hearing has not started on the day Bill 57 receives Royal Assent, the new legislation will apply, and a single arbitrator will conduct the arbitration.

If the arbitration board had already been appointed, the chair will continue as the sole arbitrator, and the other members of the board will be terminated.

Arbitrations commenced by notice given before November 15, 2018 will proceed under the old legislation, and a board of arbitration will be appointed.

### **Enhanced Protection for Volunteer Firefighters**

If Bill 57 is passed, the FPPA will prohibit employers and employers' organizations from refusing to employ a person as a firefighter, refusing to assign a person to fire protection services, or discharging a firefighter merely because the person has worked, is currently working, or intends to work as a volunteer firefighter.

Furthermore, a fire association cannot require an employer to engage in the above behaviour for reason that the firefighter:

- has been expelled or suspended from membership in the association;
- has had his or her membership in the association denied or withheld;
- was or is a member of another association or a trade union;
- has engaged in activity against the association or on behalf of another association or a trade union;
- has engaged in reasonable dissent within the association, including with respect to the person's work, past work or intended work as a volunteer firefighter;
- has been discriminated against by the association in the application of its membership rules, including with respect to the person's work, past work or intended work as a volunteer firefighter;
- has refused to pay initiation fees, dues or other assessments to the association which are unreasonable; or
- has worked, is working or intends to work as a volunteer firefighter, regardless of whether or not such work is within the jurisdiction, or adversely affects the interests, of the association.

Currently, the FPPA states the above does not apply to a firefighter who has engaged in an "unlawful activity" against the association. However, Bill 57 proposes to add a provision which explicitly states that working as a volunteer firefighter is not an unlawful activity for the purposes of the section.

In addition, fire associations will be prohibited from denying membership to, suspending, expelling, fining, penalizing, or otherwise disciplining a firefighter because they have worked, are working, or intend to work as a volunteer firefighter. These prohibitions apply even if the volunteer firefighter's work is within the same jurisdiction, or adversely affects the fire association. Fire Associations will also be prohibited from commencing a civil action against these firefighters as an attempt to collect a fine or other monetary penalty in order to circumvent the new prohibitions proposed by Bill 57.

For the purposes of these new amendments, the Ontario government has clarified that "volunteer fire fighter" includes "a person who is also regularly employed on a salaried basis in a fire department and assigned to fire protection services, including a technician, in a different fire service, regardless of whether the services provided as a volunteer firefighter are within the jurisdiction, or otherwise adversely affects the interests, of any association."

## **Check the Box**

Bill 57 is still in the first reading stage. It will have to be referred to second reading, and then sent to a Standing Committee for further review.

If Bill 57 is referred to a Standing Committee, employers may have a chance to voice their thoughts and concerns about the proposed legislation.

As Bill 57 proceeds through the legislative process to Royal Assent, employers should keep informed about the changes to the FPPA and ensure they are prepared to adapt to these new requirements.

## Need more information?

Contact [Natalie Garvin](#) at 416-408-5512, or your regular lawyer at the firm.

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