



# What's New in HR Law

## Bill 148: Updates to the *Labour Relations Act, 1995*

November 2, 2017

### **BOTTOM LINE**

On October 18, 2017, the Ontario legislature concluded its second reading of Bill 148. The Bill's proposed amendments with respect to the *Labour Relations Act, 1995*, remained largely unchanged from the review completed in late August by the Standing Committee on Finance and Economic Affairs. However, employers should stay aware of the upcoming changes as this legislative session continues to unfold.

### **The Status of Bill 148**

*Bill 148: The Fair Workplaces, Better Jobs Act, 2017*, proposes significant changes to the *Employment Standards Act, 2000*, and the *Labour Relations Act, 1995*. The provincial government introduced Bill 148 on June 1, 2017, and passed it through the first reading stage on that same day.

Throughout the summer months, the Standing Committee on Finance and Economic Affairs (the "Committee") heard submissions about the proposed legislative changes under Bill 148. On August 21, 2017, the Committee voted on amendments to the Bill.

This fall, Bill 148 proceeded to the second reading stage, and the legislature finished its debates on October 18, 2017. At the end of the second reading stage, Bill 148's proposed amendments

with respect to the *Labour Relations Act, 1995*, remained largely unchanged from the Committee's review.

We note that the second reading stage included significant debate about the proposed amendments to the *Employment Standards Act, 2000*. We have reviewed these proposed amendments in a previous article dated October 23, 2017.

## **The Impact of the Amended Bill 148 on Unionized Workplaces**

The Committee's review and the second reading stage indicate that Bill 148 may significantly alter aspects of the bargaining relationship between unions and employers. Below is a comprehensive summary of the amended Bill 148 and the proposed amendments to the *Labour Relations Act, 1995* that were added, maintained and rejected by the Committee.

### **A. Amendments Added by the Committee**

**Statutory declaration regarding the number of employees in a union's proposed bargaining unit:** Employers may be required to provide a statutory declaration that sets out the number of employees in a union's proposed bargaining unit. This requirement will be triggered if the union applies for an employee list and the employer wishes to challenge the description of the proposed bargaining unit.

**Duties of confidentiality:** Both employers and unions will have duties of confidentiality with respect to an employee list:

The employer must 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, the destruction must be done in such a way that the list cannot be reconstructed or retrieved.

**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 Ontario Labour Relations Board (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.

**Sectoral bargaining:** Although there was some debate during second reading about the creation of sectoral bargaining in every sector of work, Bill 148 has not been amended thus far to include sectoral bargaining.

**B. Amendments Maintained by the Committee**

**Card-based certification:** Card-based certification will become available to employees of temporary help agencies, companies in the building services sector, and organizations that provide home care or community services. Note that this proposed amendment received some criticism during second reading debate. Some individuals expressed a desire to maintain the secret ballot process for union certification, whereas other individuals were concerned that card certification would not be made available to all sectors of workers.

**Remedial certification:** Remedial certification will automatically occur where the Board determines that an employer has committed an unfair labour practice that impacted upon its employees' support for a union.

**Employee lists:** Unions may apply to the Board for an order directing an employer to provide the union with an employee list. 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.

**Votes outside of a workplace:** The Board may conduct 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.

**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. The parties must then mediate for 20 days, during which no strike or lock-out may occur.

If the parties do not reach a collective agreement after 20 days of first contract mediation, then either party may apply to the Board for first contract arbitration.

**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.

**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.

**Return to work:** 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.

**“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. Note that, during second reading debate, there was some concern that Bill 148 did not explicitly protect employees from reprisals during the union organization period before certification.

### **C. Amendments Rejected by the Committee**

**Purpose clause:** Initially, Bill 148 would have removed the purpose clause from the *Labour Relations Act, 1995*. The Committee voted against this change, so the purpose clause will remain within the statute.

**Powers of a first contract mediator:** Bill 148 previously contained a provision that would have allowed a first contract mediator to hold all of the powers that are held by a conciliation board. However, the Committee struck down this provision, thereby maintaining limits on the powers of a first contract mediator.

**Restructuring bargaining units:** The prior version of Bill 148 would have empowered the Board to restructure bargaining units when existing bargaining units were inappropriate. However, the Committee voted against this change.

### **Check the Box**

Bill 148 is still moving through the legislative process, so many practical aspects relating to the Bill's implementation and application remain unknown.

Now that Bill 148 has passed second reading stage, the Ontario legislature has referred the Bill back to the Standing Committee on Finance and Economic Affairs for further review. The committee hearings are scheduled to occur during the week of October 31, 2017. During the upcoming committee hearings, employers may have a chance to voice their concerns about Bill 148 and its proposed legislative changes.

As Bill 148 proceeds toward royal assent, unionized employers should keep informed about the potential amendments to the *Labour Relations Act, 1995*, and ensure that they are prepared to adapt to the changing landscape of labour relations law.

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



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