



What's New in HR Law

“Anti-Scab” Legislation and Possible Ban of Replacement Workers in Federal Workplace Strikes/Lock-Outs

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Earlier this week, the Federal government tabled Bill C-58, a new “anti-scab” legislation that would ban federally-regulated employers from hiring replacement workers to perform the work of unionized employees during a strike or lockout. This Bill would apply to all federally regulated industries including banking, telecommunications, transportation infrastructure, and Crown corporations. The proposed legislation would not apply to employees in the federal public service or to provincially or territorially regulated employees. Around one million employees in Canada are federally-regulated, 34% of which are unionized and would be affected by this proposed legislation.

What Does the Proposed Legislation Entail?

If passed, Bill C-58 proposes amendments to the *Canada Labour Code* that would prohibit federally-regulated employers from using replacement workers, often referred to as ‘scabs’, during a strike or lockout. Employers would also not be permitted to allow newly hired employees, contractors, or employees of another employer to perform bargaining unit work during a strike or lockout. Bargaining unit employees would be similarly prohibited from crossing the picket line to return to their jobs during a strike or lockout. However, it is likely that employees excluded from the bargaining unit who are hired **before** the day on which notice to bargain is given, such as supervisors or managerial employees, would

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still be permitted to perform bargaining unit work. Employers would also still be permitted to rely on contractors or another employer's employee who provided services before notice to bargain was given, so long as they continue to provide the services in the same manner, extent and circumstances as they did before notice was given.

If a union believes an employer is using replacement workers in a prohibited manner, they may file a complaint with the Canada Industrial Relations Board ("CIRB") who would then investigate. Under the proposed legislation, employers could face fines of up to \$100,000 per day for a violation.

However, the proposal does include exemptions for situations where replacing workers would be necessary to prevent threats to health and safety or property and environmental damage.

Bill C-58 also requires employers and unions to agree early on in the collective bargaining process what work would need to continue during a strike or lockout, if any. It provides the parties with 15 days to reach an agreement. If the parties cannot agree on this issue, the CIRB may decide within 90 days what activities are necessary to maintain. The Federal Minister of Labour can also refer questions to the CIRB in aims of protecting the health and safety of Canadians.

If the Bill is passed and entered as new legislation, there will be an 18 month timeline for implementation.

Check the Box

Bill C-58 continues to progress through Parliament and has not yet come into force. However, if passed, it may have significant impacts on the collective bargaining process between federally-regulated employers and unions, including the necessity to develop "maintenance of activity" agreements. Employers may wish to consider alternative arrangements for continuing work during strikes or lock-outs, including utilizing employees excluded from the bargaining unit as well as contractors or another employer's employees who already provided services before the notice to bargain was given.

The Canadian Federation of Independent Business has stated that this legislation may tip the scale in favour of large unions and lead to further labour disruptions, which could have negative impacts on employers and small businesses in particular.

Be sure to check back regularly for updates on Bill C-58 and its development.

Need More Information?

For more information or assistance with collective bargaining, strikes and lockouts involving federally-regulated employers, contact Brian P. MacDonald at bmacdonald@filion.on.ca or your regular lawyer at the firm.

Filion Wakely Thorup Angeletti LLP thanks Naomi Santesteban for her assistance in preparing this article.



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