



# What's New in HR Law

## Premier Wynne Announces Proposed Employment and Labour Reforms Following the *Changing Workplaces Review*

May 31, 2017

Yesterday, the Government of Ontario announced its intention to introduce *The Fair Workplaces, Better Jobs Act, 2017* (the “Act”), in response to the Final Report of the *Changing Workplaces Review* released last week. A summary of the Changing Workplaces Review is available [here](#).

The Act would bring major changes to the *Employment Standards Act, 2000* (the “ESA”) and the *Labour Relations Act, 1995* (the “LRA”), the most significant of which are summarized below.

### Proposed Changes to the *Employment Standards Act, 2000*

- **Minimum Wage Increases:**
  - \$14 per hour on January 1, 2018
  - \$15 per hour on January 1, 2019
  - Special minimum wage rates for e.g. liquor servers and students under 18 will be maintained, but will increase by the same percentage as the general minimum wage.
- **Employee Misclassification.** Create penalties applicable to employers who have misclassified an employee as an “independent contractor”. The employer would bear the onus of demonstrating that the individual is *not* an employee.

The following changes would come into effect on January 1, 2018, if passed:

- **Vacation with Pay.** Increase vacation entitlement to three weeks after five years of employment with the same employer, with corresponding increases to the vacation pay provisions (i.e. 6% vacation pay instead of 4% after 5 years).
- **Overtime.** Require that employees who hold more than one position with an employer and who are working overtime be paid at the rate for the position they are working during the overtime period.
- **Notice of Termination for Temporary Help Agency Employees:** Require a Temporary Help Agency to provide assignment employees with at least one week's notice (or pay in lieu thereof) that an assignment scheduled to last longer than 3 months will terminate early. This obligation will be offset if an employee is offered other work during the notice period.
- **Leaves.**
  - Eliminate the 50-employee threshold for eligibility for 10 personal emergency leave days per year. Additionally, all employees will be entitled to have two paid personal emergency leave days. Employees would be able to use personal emergency leave days if they are a victim or have been threatened with domestic or sexual violence.
  - Prohibit employers from requesting a doctor's note from an employee taking personal emergency leave.
  - Increase Family Medical Leave (to care for dying relatives) from up to 8 weeks to up to 27 weeks (in a 52-week period).
- **Exclusions.** Ensure that all existing *ESA* requirements and entitlements apply to Crown employees, and people receiving training for work through their employer.
- **Penalties for Non-Compliance.** Increase an Employment Standards Officer's ("ESO") flexibility regarding the administrative monetary penalties for employers that do not comply with the *ESA*, up to \$1,500. Additionally, ESOs would be able to publish the names of individuals who have been issued a penalty, a description of the contravention, and the amount of the penalty.
- **Interest on Unpaid Wages.** Enable ESOs to award interest on employees' unpaid wages and on fees that were unlawfully charged to employees.
- **Collections.** Improve wage collections by the government or an authorized creditor.

The province has indicated that it plans to hire up to 175 more ESOs by 2020-2021 and launch a program to educate employees and small and medium-sized businesses regarding their rights and obligations under the *ESA*. Once the additional ESOs are hired, the province intends to resolve all claims filed within 90 days and will inspect 1 in 10 Ontario workplaces. The Director of Employment Standards would also be unable to refuse to assign an ESO to investigate a claim due to insufficient information from the claimant.

The following changes would come into effect on April 1, 2018, if passed:

- Equal Pay for Equal Work: Casual, Part-time, Temporary and Seasonal Employees
  - Enable employees to request a review of their wages if they believe that they are not receiving equal wages to full-time employees. The employer would then be required to respond with either an adjustment in pay or a written explanation. There would be exceptions to the requirement for equal wages where a wage difference is based on:
    - a seniority system;
    - a merit system;
    - systems that determine pay by quantity or quality of production; and
    - other factors (other than sex and employment status).
  - Require that Temporary Help Agency employees be paid the same as permanent employees of the client when performing the same work.

The following changes would come into effect on January 1, 2019, if passed:

- Scheduling. Provide employees with the following rights:
  - Right to Request: An employee who has been employed for three months will have a right to request, in writing, that the employer: decrease or increase hours of work; give a more flexible schedule; or alter the location of work. The employer would be required to discuss the issue with the employee and provide reasons, in writing, if the request is refused.
  - Three-Hour Rules:
    - Employees who report to work and are given less than three hours of work must be paid three hours at their regular rate of pay.
    - If a scheduled shift is cancelled within 48 hours of its start, employees must be paid three hours at their regular rate of pay.
    - When employees are “on-call” and are not called in, they must be paid three hours at their regular rate.
  - Right to Refuse: An employee may refuse to accept a shift without repercussion if asked to work on less than four days’ notice.
- Pay for Students. Ensure that students who are employed and regularly work more than three hours are paid for at least three hours, even if they work for less than three hours.

In addition to the above-noted changes, the Ministry of Labour has indicated that it will conduct a review of the exemptions and special industry rules set out in the **ESA** beginning in the fall of 2017, including the exemptions in place for managers and supervisors.

#### Proposed Changes to the **Labour Relations Act, 1995**

If the Government’s proposed changes to the **LRA** are passed, the following changes will come into effect six months after the **Act** comes into force:

- Card Based Certification. Establish card-based union certification for temporary help agencies, the building service sector, and home care and community services.
- Union Certification:
  - Eliminate certain conditions for remedial union certification, allowing unions to more easily get certified when an employer engages in misconduct.

- Make access to first contract arbitration easier, as well as adding an intensive mediation component to the first contract arbitration process.
  - Require the Ontario Labour Relations Board (“OLRB”) to address first contract mediation-arbitration applications prior to dealing with displacement and decertification applications.
  - Allow unions to access employee lists and certain employee contact information, if the union can demonstrate that it has already achieved the support of 20 per cent of employees involved.
  - Empower the OLRB to conduct votes outside the workplace, including electronically and by telephone and to authorize Labour Relations Officers to give directions relating to the voting process and voting arrangements.
- Successor Rights. Extend successor rights to the retendering of building services contracts, and apply successor rights to the retendering of other publicly funded contracted services.
  - Structure of Bargaining Units. Allow the OLRB to change the structure of existing bargaining units within a single employer where the existing bargaining units are no longer appropriate for collective bargaining. Additionally, the OLRB would be able to consolidate newly certified bargaining units with existing bargaining units under a single employer where those units are represented by the same bargaining agent.
  - Return to Work Rights and Procedures. Remove the six-month limitation on employees being able to return to work after the commencement of a lawful strike and require an employer to reinstate an employee at the conclusion of a legal strike or lock-out. Employees would also have access to grievance arbitration for the enforcement of that obligation.
  - Just Cause Protection. Protect employees from being disciplined or discharged without just cause by their employer in the period between certification and the conclusion of a first contract, and in the period between the date the employees are in a legal strike or lock-out position and the new collective agreement.

## ANALYSIS

It is noteworthy that the Ontario government’s suggested reforms move beyond the recommendations from the *Changing Workplaces Review* (the “*Review*”). In particular, changes to the minimum wage were explicitly outside of the scope of the *Review*.

Furthermore, the *Review* did not recommend card based union certification, which the Government has proposed for the following industries: temporary help agencies, building service sector and in home care and community services.

The proposal for all businesses to provide for personal emergency leave including two days of paid leave out of the ten days provided, coupled with the substantial increase to the minimum wage, could significantly impact smaller and medium sized businesses.

Another sector that stands to be significantly impacted by these reforms is the temporary staffing industry. With the introduction of the notice requirements and the obligation for agencies to provide the same rate of pay to an employee performing the same job for a client, we anticipate that these changes could impact the bottom line of these agencies.

While these reforms are the government's declaration of intention, we await the opportunity to review the draft legislation, which is expected in the Fall.

For further information, please contact Jamie Knight, Rob Bayne, Alexa Sulzenko, Meaghen Russell, or any other lawyer you deal with at Filion Wakely Thorup Angeletti LLP, at 416-408-3221.



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