



# What's New in HR Law

## Bill 66 Receives Royal Assent

April 9, 2019

### Bottom Line

The Ontario Government's omnibus legislation, *Bill 66, Restoring Ontario's Competitiveness Act, 2019*, which received Royal Assent on April 3, 2019, amends the *Employment Standards Act, 2000* (the "ESA"), the *Labour Relations Act, 1995* (the "LRA") and the *Pension Benefits Act* (the "PBA"). Changes were made to the Bill by the Standing Committee on Central Government since we last reported on it at the Second Reading stage.

Bill 66 amendments relevant to employers include:

### Amendments to the *Employment Standards Act*

Employers are no longer required to post the *ESA* poster in the workplace; however, they still have to provide their employees with a copy.

Bill 66 has also amended the *ESA* to remove the requirement for Director approval before:

- employers enter into written agreements that allow their employees to exceed 48 hours of work in a work week.
- employers enter into written agreements that allow them to average their employee's hours of work over a number of weeks for the purpose of determining the employee's entitlement to overtime pay.

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To be enforceable, overtime averaging agreements must specify a start date and end date. The period of time over which the employee's hours may be averaged **must not exceed four weeks**.

If the employer and their employees agree, they can renew the averaging agreement after it expires.

These *ESA* amendments are now law, as they came into force upon Royal Assent on April 3, 2019.

### **Amendments to the *Labour Relations Act, 1995***

Bill 66 has amended the *LRA* so that the following employers are deemed to be non-construction employers:

- municipalities;
- local boards within the meaning of the *Municipal Act, 2001* or the *City of Toronto Act, 2006*;
- local housing corporations within the meaning of the *Housing Services Act, 2011*;
- Corporations established under the *Municipal Act, 2001* or under the *City of Toronto Act, 2006*;
- district social services administration boards;
- school boards;
- public hospitals;
- colleges of applied arts and technology;
- universities that receive regular direct operating funding from the Government, and the university's affiliates and federates;
- public bodies within the meaning of the *Public Service of Ontario Act, 2006*.

As a result of this amendment, the construction industry provisions of the *LRA* no longer apply to the above employers and trade unions that represent employees of the above employers who are employed, or may be employed, in the construction industry no longer represent those employees.

Moreover, a collective agreement binding any of the above employers and the corresponding trade union will cease to apply, in so far as the collective agreement applies to the construction industry.

One important change made by the Standing Committee was to include an opt-out option for the above employers, so that the employers **could choose** to remain bound by the applicable construction industry collective agreement. Deemed non-construction employers under Bill 66 may now choose to opt-out of the application of the *LRA* amendments if the following conditions are met:

- the employer has employees represented by a trade union who are employed, or may be employed, in the construction industry;
- the employer makes an election in writing, setting out the day the opt-out is made, and signed by a person or body with authority to bind the employer;
- the opt-out is filed with the Minister of Labour within 3 months of Bill 66 receiving Royal Assent.

The *LRA* non-construction employer amendments are not yet in force; they will come into force upon proclamation. However, employers choosing to opt-out may start the process now, as the opt-out provisions under Bill 66 came into effect on April 3, 2019.

### **Amendments to the *Pension Benefits Act***

Bill 66 removes subsection 80.4 (1) of the *PBA*. This allowed only certain prescribed public sector pension plans to be converted from single employer pension plans to risk-shared jointly sponsored pension plans (“JSPP”). As a result of this amendment, private sector employers are no longer required to obtain a government regulation designating their pension plan as eligible for JSPP conversion.

The *PBA* amendments are now law, as they came into force upon Royal Assent on April 3, 2019.

### **Check the Box**

As Bill 66 has now received Royal Assent, employers should review their current operations and decide whether they have a renewed interest in:

- hours of work agreements;
- overtime averaging agreements; or
- a JSPP pension conversion.

Any existing Director approved agreements will remain in force until their expiry, so there is no need to arrange a new agreement where a Director approved agreement is in effect.

Public sector employers employing construction employees governed by provincial collective agreements should confirm whether or not they will be deemed a non-construction employer per Bill 66 and then decide whether or not to avail themselves of the opt-out option.

### **Need more information?**

Should you need more information, please contact [Lucas Mapplebeck](#) at 905-972-6875, or your regular lawyer at the firm.



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