

Ontario Government Announces Upcoming Changes to Employment and Labour Laws:

Government Begins Implementing Expert Report

As set out in our previous [article](#), on May 23, 2017 proposed changes to the *Employment Standards Act, 2000* ("ESA") and the *Labour Relations Act, 1995* ("LRA") were outlined in an expert report entitled *Changing Workplaces Review: An Agenda for Workplace Rights*. On May 30, 2017, the Ontario Government announced that it intended to implement some of these recommendations. While legislation has not yet been tabled, the Government did announce what is in store for Ontario employers. The material points from that announcement are summarized below (the full announcement can be found [here](#)).



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Proposed Changes to the ESA

Minimum Wage Increases:

- Increasing the general minimum wage from \$11.40 per hour to \$14 per hour on January 1, 2018 and \$15 per hour on January 1, 2019.

Equal Pay for Equal Work:

- Part-time, temporary employees and agency workers must be paid equally to full-time employees when performing the same job for the same employer. These employees would be able to request a review of their wages and the employer would have to respond to the request by adjusting pay or providing a written explanation for the wage difference.

- Pay systems that differentiate on the basis of seniority, merit, or quantity and/or quality of production would be exempt.

Scheduling:

- An employee would have the right to request a schedule or location change after being employed for 3 months.
- Employees could refuse to accept shifts without penalty if asked to work with less than 4 days' notice.
- An employee who works for more than 3 hours per day, but is given less than 3 hours' work upon reporting to work, must be paid 3 hours at his/her regular rate of pay.

- If a shift is cancelled within 48 hours of its start, employees must be paid 3 hours at their regular rate of pay.
- When employees are “on-call” and subsequently do not get called into work, they must be paid three hours at their regular rate of pay.

Employee Misclassification

- Employers will have to prove that independent contractors are properly classified in any litigation. Employers who misclassify employees as independent contractors would be subject to harsher penalties (including prosecution, public disclosure of a conviction and monetary penalties).

Paid Vacation:

- The 2 week vacation entitlement would increase to 3 weeks after 5 years’ service.

Personal Emergency Leave:

- The 50 employee threshold for personal emergency leave would be eliminated such that all employees would be entitled to 10 personal emergency leave days per year, 2 of which are paid.
- Employers would be prohibited from requesting a sick note from an employee taking a personal emergency leave.

Proposed Changes to the LRA

Union Certification:

- Card-based union certification (i.e. no vote required) would be established for certain industries (temporary help agencies, building services, home care and community services).
- Unions would be able to more easily be certified without a vote when an employer engages in conduct that contravenes the LRA.
- Employee contact information would have to be disclosed to a union by the employer if the union can demonstrate 20% membership support.
- Easier access to first contract arbitration and an intensive mediation process before strike/lock-out.

Structure of Bargaining Units:

- Unions would be able to apply to the Ontario Labour Relations Board (the “OLRB”) for an order consolidating or changing the structure of bargaining units within a single employer where the existing bargaining units are no longer appropriate for collective bargaining.

Just Cause Protection

- Employees would be afforded protection from discipline or

discharge without just cause by their employer in the period between certification and conclusion of a first contract, and during the period between the date the employees are in a legal strike or lock-out position and the new collective agreement.

Next Steps

The Government is streamlining the process of implementing the expert report as it is expected that legislation will be introduced in the weeks ahead. The Government has committed to some of the changes starting in 2018. The changes noted above are significant and some (such as paid sick leave and a \$15 minimum wage) were not part of the expert report. We will keep you apprised of the full contents of the legislation once it has been released.