

Proposed Changes to Ontario's Employment and Labour Laws

May 30, 2017 10:04 A.M.

The Ontario government has announced its intention to introduce proposed legislation, the Fair Workplaces, Better Jobs Act, 2017. The legislative proposals include broad ranging amendments to Ontario's Employment Standards Act and Labour Relations Act.

While the province's economy is strong and growing, the nature of work has changed, leaving many workers struggling to support their families on part-time, contract or minimum-wage work. Workers in Ontario have the right to strong protections at work. Fairness and decency must continue to be the defining values of our workplaces. These legislative changes seek to create more opportunity and security for workers across Ontario.

Minimum Wage Increases

Ontario is increasing its minimum wage rates - generally, the lowest rate that can be paid by employers to employees.

If passed, the government is proposing to increase the general minimum wage to:

- 14 per hour on January 1, 2018
- \$15 per hour on January 1, 2019

The special minimum wage rates for liquor servers, students under 18, hunting and fishing guides, and homeworkers will be maintained, and will increase by the same percentage as the general minimum wage.

Minimum Wage Categories	Current to Sept. 30, 2017	Oct. 1, 2017 to Dec. 31, 2017	Jan. 1, 2018 to Dec 31, 2018	Jan 1 2019 to Sept. 30, 2019
General Minimum Wage	\$11.40 per hour	\$11.60	\$14.00	\$15.00
Students under 18 who work not more than 28 hours per week when school is in session,	\$10.70 per hour	\$10.90	\$13.15	\$14.10

or work during a school break or
summer holidays

Liquor Servers	\$9.90 per hour	\$10.10	\$12.20	\$13.05
Hunting and Fishing Guides	\$56.95: Rate for working less than five consecutive hours in a day	\$58.00	\$70.00	\$75.00
	\$113.95: Rate for working five or more hours in a day whether or not the hours are consecutive	\$116.00	\$140.00	\$150.00
Homeworkers (employees doing paid work in their own home for an employer)	\$12.55 per hour	\$12.80	\$15.40	\$16.50

Proposed Changes to Employment Standards

Equal Pay for Equal Work Provisions: Casual, Part-time, Temporary & Seasonal Employees

The proposed legislation would ensure that casual, part-time, temporary and seasonal employees are paid equally to full-time employees when performing the same job for the same employer.

The proposed amendments would 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 have to respond to the request 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:

- Seniority system
- Merit system

- Systems that determine pay by quantity or quality of production
- Other factors (sex and employment status do not qualify as exceptions to this requirement)

The proposed legislation would also protect casual, part-time, temporary and seasonal employees against repercussions for inquiring about their wage rate or asking another employee about their wage rate.

If the proposed legislation passes, this proposal would come into force on April 1, 2018.

Equal Pay for Equal Work Provisions: Temporary Help Agency Employees

The proposed legislation would ensure Temporary Help Agency (THA) employees (assignment workers) are paid equally to permanent employees of the THA client when performing the same job.

The proposed changes would protect assignment employees from repercussions for inquiring about their wage rate or the wage rate of an employee of the client.

If the proposed legislation passes, this proposal would come into force on April 1, 2018.

Termination of Assignment

The legislation would require a THA to provide an assignment employee with at least one week's notice when an assignment scheduled to last longer than three months will be terminated early.

If less than one week's notice is given, the assignment employee must be paid for the difference, unless the assignment employee is offered at least one week's worth of reasonable work during the notice period.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Scheduling

The proposed legislation would set out new scheduling rules:

- Employees would have the right to request schedule or location changes after having been employed for three months, without fear of reprisal.

- Employees who regularly work more than three hours per day, but upon reporting to work are given less than three hours, must be paid three hours at their regular rate of pay.
- Employees can refuse to accept shifts without repercussion if their employer asks them to work with less than four days' notice.
- If a 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 not called in to work, they must be paid three hours at their regular rate of pay. This would be required for each 24 hour period that employees are on-call.
- If a collective agreement is made between an employer and a union, the agreement would prevail in place of some of these new rules.

If the proposed legislation passes, this proposal would come into force on January 1, 2019.

Overtime Pay

Under the proposed legislation, employees who hold more than one position with an employer and who are working overtime must be paid at the rate for the position they are working during the overtime period.

If the proposed legislation passes, this proposal would come into force on January 1, 2018

Employee Misclassification

The proposed legislation would prohibit employers from misclassifying employees as "independent contractors." This is intended to address cases where employers improperly treat their employees as if they are self-employed and not entitled to the protections of the ESA.

Employers that misclassify their employees could be subject to penalties including prosecution, public disclosure of a conviction and monetary penalties.

In the event of a dispute, the employer would be responsible for proving that the individual is *not* an employee.

There will be no change to the definition of "employee" to include a "dependent contractor." The current ESA definition is already quite broad, and changes to the definition are likely to have unintended consequences. The real issue is the misclassification of the employees.

As well, the Law Commission of Ontario, which recently studied this issue, specifically advised against a "dependent contractor" provision as its scope would be very difficult to define without

inadvertently capturing true "independent contractors". This would create significant legal and potentially economic uncertainties.

If the proposed legislation passes, this proposal would come into force on Royal Assent.

Joint Liability

The proposed legislation would remove the provision that requires proof of "intent or effect" to defeat the purpose of the Employment Standards Act, 2000 when determining whether related businesses can be treated as one employer and held jointly and severally liable for monies owing under the Act.

The current language has limited the effectiveness of the joint liability provisions. This change would restore the original intention.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Paid Vacation

The proposed legislation would ensure that employees are entitled to three weeks of paid vacation after five years of service with the same employer.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Public Holiday Pay

The proposed changes would simplify the formula for calculating public holiday pay so that employees are entitled to their average regular daily wage.

Other elements of the public holiday provisions would also be simplified.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Paid Emergency Leave

Personal emergency leave (PEL) currently applies only in workplaces with 50 or more employees. Under the proposed amendments, this threshold would be eliminated.

The proposed legislation would also ensure all employees are entitled to 10 PEL days per year, including two paid PEL days.

The reasons for taking PEL would also be expanded so that employees experiencing domestic or sexual violence or the threat of sexual or domestic violence could take the leave.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Leave for the Death of a Child and for Crime-Related Disappearance

The proposed legislation would create a new, separate leave for child death from any cause for a period of up to 104 weeks.

The proposed amendments would also establish a separate leave for crime-related child disappearance for a period of up to 104 weeks.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Family Medical Leave

The proposed legislation would increase Family Medical Leave from up to 8 weeks in a 26-week period to up to 27 weeks in a 52-week period.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Physician Notes for Absences

The proposed changes would prohibit employers from requesting a sick note from an employee taking Personal Emergency Leave.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Paying Employees

The proposals would create the authority to prescribe additional methods of payment.

The proposals would also allow for an Employment Standards Officer to order money to be paid directly to an employee when an employer or Temporary Help Agency client owes money to that employee.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Employee Contact

The proposed legislation would no longer require employees to contact their employer before filing claim under the Employment Standards Act (ESA).

Under the proposed changes, the Director of Employment Standards could no longer refuse to assign an Employment Standards Officer to investigate an ESA claim due to insufficient information from the claimant.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Penalties for Non-Compliance of the ESA

The proposed legislation would increase flexibility around the administrative monetary penalties that Employment Standards Officers can give out to employers that do not comply with the ESA.

The government also intends to amend a regulation under the ESA to increase the maximum administrative monetary penalties for non-compliant employers from \$250, \$500, and \$1000 to \$350, \$700, and \$1500, respectively.

The proposed changes would allow the Director of Employment Standards to publish (including online) the names of individuals who have been issued a penalty, a description of the contravention, the date of the contravention and the amount of the penalty.

If the proposed legislation passes, the legislative proposal would come into force on January 1, 2018.

Interest on Unpaid Wages

The proposed legislation would enable Employment Standards Officers to award interest on employees' unpaid wages and on fees that were unlawfully charged to employees.

The Director of Employment Standards would be allowed, with the Minister's approval, to determine rates of interest for amounts owing under different provisions of the ESA.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Collections

The proposed changes would improve wage collections by the government or an authorized collector, including:

- Allowing a collector authorized by the Director of Employment Standards to issue warrants, place liens on real and personal property and to hold a security while a payment plan is underway
- Enabling government and the authorized collector to collect and share personal information

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Electronic Agreements

The proposed changes would make clear that electronic agreements between employers and employees, such as an agreement to work excess hours, can serve as an agreement in writing.

If the proposed legislation passes, this proposal would come into force on January 1, 2018.

Exclusions

The proposed legislation would:

- Ensure that almost all existing ESA requirements and entitlements would apply to Crown employees. If the proposed legislation passes, this proposal would come into force on January 1, 2018.
- Ensure that all ESA requirements and entitlements would apply to people receiving training for work through their employer.
- However, individuals working as part of an experiential learning program run by a university, community college, private career college or high school would be excluded from the requirements and entitlements under the ESA. If the proposed legislation passes, this proposal would come into force on January 1, 2018.
- Ensure that students who are employed and regularly work more than three hours are paid for at least three hours even if they work less than three hours. If the proposed legislation passes, this proposal would come into force on January 1, 2019.
- Ensure that all ESA requirements and entitlements would apply to employees working in a simulated job or working environment for their rehabilitation (commonly known as a

"sheltered workshop"). If the proposed legislation passes, this proposal would come into force on January 1, 2019.

- Beginning in fall 2017, the Ministry of Labour will conduct a review of ESA exemptions and special industry rules, including consultation with affected stakeholders. This review would include exemptions in place for managers and supervisors.

Proposed Changes to the Labour Relations Act

Union Certification

The proposed legislation would:

- Establish card-based union certification for the temporary help agency industry, the building services sector and home care and community services industry.
- Make the following changes to the union certification process:
- Eliminating certain conditions for remedial union certification, allowing unions to more easily get certified when an employer engages in misconduct that contravenes the LRA
- Making access to first contract arbitration easier, and also adding an intensive mediation component to the process.
- Requiring the Ontario Labour Relations Board (OLRB) to address first contract mediation-arbitration applications before dealing with displacement and decertification applications
- Allow unions to access employee lists and certain contact information, provided the union can demonstrate that it has already achieved the support of 20 per cent of employees involved
- Expressly empower the OLRB to conduct votes outside the workplace, including electronically and by telephone
- Empower the OLRB to authorize Labour Relations Officers to give directions relating to the voting process and voting arrangements in order to help assure the neutrality of the voting process

Successor Rights

The proposals would extend successor rights to the retendering of building services contracts.

The proposed legislation would also enable the government to apply this expanded notion of successor rights, by regulation, to the retendering of other publicly funded contracted services.

Structure of Bargaining Units

The proposed legislation would allow the OLRB to change the structure of bargaining units within a single employer, where the existing bargaining units are no longer appropriate for collective bargaining.

The proposed changes would also allow the OLRB to consolidate newly certified bargaining units with other existing bargaining units under a single employer, where those units are represented by the same bargaining agent.

Return-to-Work Rights and Procedures

Currently, the LRA gives employees the right, under certain conditions, to return to work within six months of the commencement of a lawful strike. The proposed changes would remove the six-month limitation.

The proposed legislation would require an employer to reinstate an employee at the conclusion of a legal strike or lock-out (subject to certain conditions), and to provide access to grievance arbitration for the enforcement of that obligation.

Just Cause Protection

The proposed legislation would protect employees from being disciplined or discharged 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.

Fines

The proposals would increase maximum fines under the Labour Relations Act to \$5,000 for individuals and \$100,000 for organizations (from the current \$2,000 for individuals and \$25,000 for organizations).

Coming Into Force

If the proposed legislation is passed, all labour relations proposals would be in effect six months after the Act comes into force.

Exemptions

The Ministry of Labour will work with affected ministries to consult with stakeholders to review the Special Advisors' recommendation to remove the exclusions under the LRA taking into account ongoing litigation.

Enhancing Employment Standards Enforcement

The province plans to hire up to 175 more employment standards officers and launch a program to educate both employees and small and medium-sized businesses about their rights and obligations under the Employment Standards Act. Education will help employers understand their obligations.

Once the new employment standards officers are hired by 2020-2021, the Employment Standards program will resolve all claims filed within 90 days and inspect 1 in 10 Ontario workplaces. Additionally, the program will provide compliance assistance to new employers specifically focusing on medium and small business. This will help good employers understand their obligations.

Enforcement will focus on employers who compete unfairly by breaking the law, and will level the playing field for the majority of employers that follow the rules.

Increased enforcement will aim to motivate compliance and deter non-compliance. This requires resources in enforcement and in education to impact employer behaviour and deter potential violators.

These new resources will help to ensure that the proposed changes under the ESA are fully and effectively implemented.