

BE PREPARED: ONTARIO ENACTS SIGNIFICANT CHANGES TO EMPLOYMENT LAWS

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Earlier this year, we wrote that the Ontario government had introduced new legislation – the [Stronger Workplaces for a Stronger Economy Act, 2014](#) ("Bill 18") – that would introduce significant amendments to several employment-related statutes if enacted.

As it turns out, it did not take very long for Bill 18 to take effect: on November 20, 2014, the legislation received Royal Assent from the Lieutenant Governor, making it law. Even though some of the amendments do not take effect right away, the changes introduced by Bill 18 will impact all employers in Ontario. Employers should familiarize themselves with the new laws and adjust their workplace policies and practices accordingly.

1. **Employment Standards Act, 2000 (the "ESA")**

The most extensive and significant changes introduced by Bill 18 are to the ESA, including the following:

- **Minimum Wage.** As of October 2015, all minimum wage increases will be tied to the Consumer Price Index ("CPI") published annually by Statistics Canada. The new minimum wage arising from the CPI calculation will be published by April 1 of each year.
- **Unpaid Wages.** Employees seeking recovery for unpaid wages are no longer limited to a maximum recovery of \$10,000 or a limitation period of six months. Bill 18 removes the maximum entitlement and extends the recovery period to two years.
- **Self-Audits.** Bill 18 empowers Employment Standards Officers to order employers to conduct "self-audits" regarding ESA compliance. Bill 18 also imposes an obligation on employers to report and correct violations identified by the self-audit.
- **Joint and Several Liability.** Temporary help agencies and their clients are now jointly and severally liable for unpaid wages to assignment employees. Although the temporary help agency has the primary responsibility for wage payments, assignment employees can bring a claim for unpaid wages against the client if the temporary help agency does not meet its obligation to the employee.
- **Record Keeping.** Temporary help agencies and their clients must record the number of hours worked by each assignment employee. These records must be maintained for three years and be readily available

for inspection.

- **ESA Poster.** Employers must provide a copy of the Ministry of Labour's poster to each employee within 30 days of their start date.

2. *Labour Relations Act, 1995 (the "LRA")*

Bill 18 amends the LRA by reducing the "open period" for displacement applications in the construction industry (commonly known as union raids) from three months to two months. During the open period, representatives from unions can attempt to increase their membership by "raiding" the members of other unions. This change reduces the period within which employees can seek alternate representation and may reduce the time and resources spent on displacement application litigation.

3. *Workplace Safety and Insurance Act, 1997 (the "WSIA")*

Bill 18 amends the WSIA in relation to temporary help agencies in two ways:

- **Liability.** Where an assignment employee is injured while working for the client of a temporary help agency, Bill 18 empowers the Lieutenant Governor in Counsel to make regulations that shift the full cost of the resulting compensation claim to the client.
- **Reporting.** Bill 18 imposes a reporting obligation on the client (in addition to the reporting obligation already owed by the temporary help agency) to report injuries involving agency employees. The client must notify the Workplace Safety and Insurance Board within three days of learning about an injury to an assignment employee if the injury occurred while providing services to the client.

4. *Occupational Health and Safety Act (the "OHSA")*

Bill 18 amends the definition of "worker" in the OHSA to include persons who perform work for no compensation, including students, interns and trainees. This change ensures that the protections afforded by the OHSA will apply to all workers.

5. *Employment Protection for Foreign Nationals Act, 2009 (the "EPFNA")*

Bill 18 extends the protections already given to live-in caregivers under the EPFNA to other foreign nationals working or looking for work in Ontario pursuant to an immigration or foreign temporary employee program. Among other things, Bill 18 requires employers and recruiters to provide Ministry-prepared information sheets to foreign workers, and places limits on the ability of employers and recruiters to recover fees and other costs from foreign workers.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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