

BILL 148 IS LAW: TIMELINE TO HELP UNIONIZED EMPLOYERS TRANSITION

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The *Fair Workplaces, Better Jobs Act, 2017* (Bill 148) received royal assent on November 27, 2018, which is the final stage of the legislative process by which a bill becomes law. However, not all of the changes made to Ontario's employment standards legislation by Bill 148 are in force immediately. In addition to the changes outlined in our recent bulletin, [Timeline to Help Employers Transition](#), unionized employers should also be aware of the following changes to the Labour Relations Act (LRA) made by Bill 148, which come into force on January 1, 2018:

- **Employee Lists.** If a union can demonstrate that it has the support of 20 per cent of the members of a proposed bargaining unit, the union is permitted to apply to the Board for an order directing an employer to provide it with a list of employees, including employee names, phone numbers and email addresses. If, in the opinion of the Board, it is equitable to do so in the circumstances, the Board may order that the list also include, (a) other information relating to the employee, including the employee's job title and business address; and (b) any other means of contact that the employee has provided to the employer, other than a home address.
- **Remedial Certification.** Where it is satisfied that an employer has contravened the LRA, and as a result the union was not able to obtain 40 per cent support, or if the true wishes of the employees were not likely reflected in a representation vote, the Board is required to automatically certify the union as the bargaining agent of the employees in the bargaining unit.
- **Structure of Bargaining Units.** The Board is empowered to review the structure of bargaining units and make orders in respect of the structure of bargaining units after a unit's certification, and the parties may by agreement and with the consent of the Board make changes to the structure of bargaining units. This type of bargaining unit review would be allowed if: (a) an employer, trade union or council of trade unions applies for a review either at the time of the application for certification or within three months of certification; and (b) a collective agreement has not yet been entered into; and (c) the union or council or trade unions in question already represents employees of the employer in another bargaining unit or a different location.
- **Card-Based Certification.** Card-based certification is introduced in the building services industry, home

care and community services industry, and the temporary help agency industry. Under this process, where a union can demonstrate that it has the support of 55 per cent of employees in the proposed bargaining unit, the bargaining unit may be certified without a vote. If the union has the support of 40 per cent of the employees, but less than 55 per cent a representation vote would be ordered.

- **Just Cause Protection Following Certification.** If a trade union is certified as bargaining agent, the employer cannot discharge or discipline an employee in that bargaining unit without just cause during the period between the certification date and the date on which the first collective agreement is entered into during the negotiation period.
- **Successor Rights.** Successor rights would apply to services provided directly or indirectly by or to a building owner or manager that are related to the servicing of the premises, including building cleaning services, food services, and security services industries.

Several other changes will also come into force on January 1, 2018, including the expanded use of first collective agreement arbitration and mediation as well as an increase in fines for violations of the LRA for individuals from \$2,000 to \$5,000 and from \$25,000 to \$100,000 for organizations.

Please do not hesitate to contact any member of McMillan's Employment and Labour Relations group if you have any questions about Bill 148 or require assistance with your organization's transition plans.

by Stefanie De Fransisco

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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