

NEW ONTARIO WORKPLACE LEGISLATION TO IMPACT USE OF CONTRACT AND TEMPORARY WORKERS

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The Final Report from Ontario's much-publicized [Changing Workplaces Review](#) ("**Review**") recently proposed a wide range of changes to the province's *Employment Standards Act, 2000* ("**ESA**") and the *Labour Relations Act, 1995*. In response to the Review, the Ontario government has introduced new legislation - *The Fair Workplaces, Better Jobs Act, 2017* – to implement a number of those changes.

Some of the new standards are particularly focused on so-called "vulnerable workers", including workers who are improperly classed as independent contractors and workers employed through temporary help agencies.

Employee Classification

The proposed legislation would prohibit employers from misclassifying employees as "independent contractors", with a view to addressing cases in which employers improperly treat their employees as if they are self-employed and not entitled to the protections of the ESA.

Ontario has also signaled that 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.

Temporary Help Agencies

The proposed legislation will also provide that employees coming from temporary help agencies (also called "assignment workers") must be paid equally to an employer's permanent employees who are performing the same job. The government has stated that its goal is to protect assignment workers from repercussions for inquiring about their wage rate or the wage rate of another employee. Should the legislation pass, this proposal would take effect on April 1, 2018, rather than immediately upon royal assent.

In addition, the legislation proposes to establish a card-based union certification for the temporary help agency industry. Card-based certification permits union certification as a bargaining agent where a sufficient percentage of employees in the given bargaining unit have signed up for the union (signed union cards). At present, only the construction industry has a card-based certification.

What Employers Should Know

Having the Ministry of Labour (or a Court) look beyond the express wording of a workplace contract to determine whether an employer-employee relationship exists is not new. However, the Ontario government, as seen through the proposed legislation and enforcement changes discussed above, has now placed a heavy emphasis on protecting vulnerable workers. Ontario employers will need to be vigilant in properly classifying employees and in ensuring that any worker hired from a temporary help agency is compensated in accordance with the *ESA*'s requirements.

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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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