

ONTARIO BILL 148 WHAT DOES IT MEAN FOR EMPLOYERS IN THE CONSTRUCTION INDUSTRY

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The Ontario Labour Relations Board has recognized that the construction industry is a “unique industrial relations environment” that functions through a web of relationships involving owners, general contractors, management companies, subcontractors, employees, and unions.

So it should come as no surprise that the recently introduced *Fair Workplaces, Better Jobs Act, 2017* ("**Bill 148**") – which contains numerous proposed amendments to Ontario's *Employment Standards Act, 2000* ("**ESA**") and *Labour Relations Act, 1995* ("**LRA**") – is primed to have a profound impact on provincially-regulated employers in the construction industry.

In this bulletin, we will highlight some of the proposed amendments that employers in the construction industry should be paying particular attention to.

Employment Standards Act, 2000

Bill 148 proposes the following changes to the ESA, the statute governing minimum employment standards in the province of Ontario:

- **Equal Pay with Comparable Full-time Employees:** The Bill proposes an entitlement to equal pay regardless of “employment status”. This means that part-time, casual and seasonal employees must be paid the same wages as full-time employees who perform the same or similar work. The Bill also proposes equal pay for assignment employees of labour supply agencies (e.g., construction labourers) who perform substantially the same work as employees of agency clients.
- **Scheduling:** If passed, Bill 148 would introduce new scheduling requirements, including an entitlement to 3 hours of pay for shifts under 3 hours in duration, an entitlement to 3 hours of pay in the event of shift cancellation without sufficient notice, and a right to refuse requests or demands to work on days that an employee is not scheduled to work.
- **Related Employers, etc.:** Bill 148 would introduce a new provision prohibiting employers from treating workers who are their employees (e.g., in related employer situations) as if the workers were not their employees for purposes of the ESA.

- **Other Proposed Changes:** Also included are numerous other changes to the ESA, such as changes to the provisions respecting minimum wage, overtime pay, vacations, and public holidays. For more information, please see our previous bulletin – [Ontario Proceeding with Important Amendments to the Labour Relations Act, 1995](#).

Labour Relations Act, 1995

The [Changing Workplaces Review – Final Report](#) which gave rise to Bill 148 expressly excluded the construction industry-specific provisions of the LRA from the scope of its mandate. Nevertheless, employers in the construction industry should still be aware of the following proposed changes to the general provisions of the LRA:

- **Employee Lists:** If passed, Bill 148 would empower unions to apply to the Labour Relations Board for an order directing an employer to provide the union with a list of the employer's employees. In order to receive the list, the union must be able to demonstrate that at least 20 percent of the employees in its proposed bargaining unit are members of the union.
- **Remedial Certification:** The Bill proposes significant amendments to section 11 of the LRA – the section that prescribes remedies for unfair labour practices. In particular, the Labour Relations Board would be required to automatically certify a union if an employer has contravened the LRA and, as a result, the union was not able to obtain 40 percent support, or if the true wishes of employees were not likely to be reflected in a vote.
- **Other Proposed Changes:** Bill 148 proposes numerous other changes to the LRA, including changes to the provisions respecting first collective agreement arbitration and the right to return to work following a strike. For more information, please click [here](#).

Status of Bill 148

Bill 148 passed its first reading on June 1, 2016. The Bill will now make its way to a Standing Committee on Finance and Economic Affairs for further consideration and feedback from stakeholders. It will then return to the legislature for its second of third readings.

Although Bill 148 is still in its very early stages, employers in the construction industry would be wise to start preparing themselves now for the imminent upcoming changes to the ESA and LRA.

by Paul Boshyk

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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