ONTARIO PASSES AMENDMENTS TO THE *LABOUR RELATIONS ACT, 1995* AND *EMPLOYMENT STANDARDS ACT, 2000*

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The Government of Ontario has passed another piece of legislation that substantially amends the province's employment and labour relations legislation.

On April 3, 2019, Ontario Bill 66, the *Restoring Ontario's Competitiveness Act*, 2018, received Royal Assent. As of April 3, 2019, the following changes are in effect:

Amendments to the Labour Relations Act, 1995
The amendments to the *Labour Relations Act*, 1995 mean municipalities and certain local boards, school boards, hospitals, colleges, universities and public bodies may deemed to be "non-construction employers".

Consequently, any collective agreement through which these public entities were previously bound to a trade union will no longer apply in so far as it applies to the construction industry. This means construction trade unions will no longer represent employees of these public entities who perform construction work. However, collective agreements for non-construction employees remain in effect and may be revised by the Ontario Labour Relations Board to reflect this change.

It also means the affected public entities will not be required to subcontract work to unionized contractors. Non-union construction companies will be able to bid on work from public entities that was formerly restricted to only unionized companies. This may lead to increased competition for public contracts, reduced construction and maintenance costs for the public, and other construction efficiencies.

Interestingly, affected public entities may chose to opt out of being deemed a "non-construction employer" within three months of the day these amendments take effect. The choice to opt out – and thus remain bound to existing construction collective agreements – is irrevocable.

Some construction trade unions have already announced their opposition to this amendment and have threatened to challenge it in court under the freedom of association provisions of the *Canadian Charter of Rights and Freedoms*. Public entities can also expect unions to engage in lobbying activities and other campaigns in an effort to convince employers to opt out of this exclusion and remain unionized.

Changes to the *Labour Relations Act*, 1995 did not take effect immediately upon Royal Assent, but rather will take effect on a date to be proclaimed by the Lieutenant Governor.

Amendments to the Employment Standards Act, 2000

1) Director approval for excess hours and overtime averaging agreements is no longer required

Employers no longer need to obtain Director approval of excess weekly hours of work agreements or overtime averaging agreements.

Employers wanting to enter into excess hours (more than 48 hours worked in a week) or overtime averaging agreements with an employee need only obtain the employee's written approval. Overtime averaging is limited to periods of up to four weeks.

Previously, employers were required to obtain written approval from the employee and Director to have an employee work more than 48 hours in a given week or to average hours of work for the purpose of calculating the employee's overtime pay entitlement.

2) ESA Poster no longer needed

Employers no longer have to display the province's ESA Poster in the workplace. However, employers must still provide a copy of the Poster to each employee.

If you have any questions or concerns about Bill 66's potential impact on your workplace, please contact Patrick Groom, Kyle Lambert, or another member of McMillan's Labour and Employment team.

by Patrick Groom and Kyle Lambert

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.