ONTARIO PROCEEDING WITH FURTHER SUBSTANTIAL AMENDMENTS TO WORKPLACE LEGISLATION

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On the heels of Bill 47, the *Making Ontario Open for Business Act,* through which the Ontario government undid many of the changes to the *Employment Standards Act, 2000* (ESA) and *Labour Relations Act, 1995* (LRA) brought by the previous government through Bill 148, the Ontario government is now proceeding with further important amendments to the province's workplace legislation.

Ontario has introduced Bill 66, the *Restoring Ontario's Competitiveness Act*, 2018, an omnibus bill that proposes changes to several statutes, including the following changes to the LRA and ESA:

Amendments to the Labour Relations Act, 1995

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

Consequently, any collective agreement binding these public entities to a trade union ceases to 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 This means construction trade unions will no longer represent employees of these public entities who perform construction work.

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.

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*.

Amendments to the Employment Standards Act, 2000

Bill 66 proposes a number of changes that will lessen employers' statutory compliance obligations. These include:

1) Eliminating Director approval for excess hours and overtime averaging agreements

Employers will no longer be required to obtain Director approval of excess weekly hours of work agreements or overtime averaging agreements. At present, employers must obtain written approval from the employee and Director approval to have an employee work more than 48 hours in a given week. Similarly, employers can presently agree (in writing) with an employee and obtain Director approval to average hours of work for the purpose of calculating the employee's overtime pay entitlement.

If Bill 66 passes in its current form, Director approval for excess hours and overtime averaging agreements will not be required. Employers will, however, still need to obtain an employee's written approval of each. In addition, overtime averaging will be limited to periods of up to four weeks.

2) ESA Poster

The present obligation to post a copy of a poster setting out information about the ESA will also be removed. For now, employers must post a copy of the poster in a location in which it will come to employees' attention and provide employees with a copy of the poster. If Bill 66 passes in its current form, the employers will no longer have to display the poster, though they will still be required to provide each employee with a copy.

Considerations

Bill 66 has only passed first reading in Ontario's Legislature and will not take effect, whether in its current form or as amended, until 2019 given that the Legislature has adjourned until February. We will continue to provide updates on Bill 66 as it proceeds through the Legislature.

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.

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.