

# ONTARIO PROCEEDING WITH IMPORTANT AMENDMENTS TO THE LABOUR RELATIONS ACT, 1995

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On June 1, 2017, Ontario's [The Fair Workplaces, Better Jobs Act, 2017](#) ("**Act**") received first reading. The Act is the Government of Ontario's response to the many recommendations for changes to Ontario's workplace laws made by the Changing Workplaces Review.

The Act contemplates several amendments to the *Labour Relations Act, 1995* ("**LRA**") and should the Act pass in its current form, the amendments to the LRA will have a serious impact on both unionized and non-unionized employers, alike.

## I. Unionized Workplaces

Below is an overview of proposed amendments to the LRA that are more likely to impact workplaces that are currently unionized:

- **Amending bargaining units:** The Act would give the Ontario Labour Relations Board ("**Board**") power to review a bargaining unit's structure if: (1) an employer or union representing the bargaining unit applies for review, and (2) the Board is satisfied that the bargaining unit is *no longer appropriate for collective bargaining*.

Moreover, if the Board determines that the employer and union cannot reach an agreement on the appropriate bargaining unit, it would have the power to make orders to, among other things, determine the appropriate bargaining unit by creating a new unit or consolidating, restructuring, or otherwise reconfiguring the existing bargaining unit.

- **Successor rights in building services industries:** The Act would enable successor rights for 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. It would do so by excluding them – as it presently does for the construction industry – from sale of business provisions in Section 69.

The amendments would mean that unions would keep bargaining rights where a building owner or manager elects to have another company (employer) provide those services at its premises.

- **Right of striking employees to return to work:** The amendments would require employers to reinstate employees to their former employment at the conclusion of a lawful strike. Employees would have access to grievance and arbitration procedures under either the LRA or collective bargaining agreement to enforce the return to work obligation.
- **Consolidation of bargaining units:** The Act would give the Board authority to review and make orders respecting the structure of bargaining units after a unit's certification. This type of bargaining unit review would be allowed to occur if:
  1. 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,
  2. a collective agreement has not yet been entered into, and
  3. the union or council or trade unions in question already represents employees of the employer in another bargaining unit or a different location.

## II. Non-unionized Workplaces

Non-unionized employers must be aware of several proposed amendments, most of which are aimed at removing barriers to union organization. These include:

- **Employee lists and contact information:** The Act would permit a union to apply to the Board for an order directing the employer to provide the union with a list of employees, including employee names, phone numbers, and email addresses.
- **Remedial certification for certain breaches:** The Act would require the Board to certify a trade union as bargaining agent that it determines could be appropriate for collective bargaining where (pursuant to Section 11(1)) an employer contravenes the LRA in order to impact a representation vote.
- **Discharge/discipline during the negotiation period:** The Act proposes to add a section to the LRA stating that if a trade union is certified as bargaining agent, the employer shall not discharge or discipline an employee in that unit without just cause during the period between the certification date and the date on which the first collective agreement is entered into.
- **Card-based certification:** Amendments to the LRA would provide for card-based union certification – whereby a union is certified as bargaining agent when a given percentage of employees in the unit sign union cards – in the building services industry, home care and community services industry, and the temporary help agency industry.

## III. Enhancing the Ontario Labour Relations Board's Authority

Finally, in addition to the amendments discussed above, the Act proposes to enhance the Board's overall

authority to govern the collective bargaining process and enforce the LRA's requirements. Notable procedural amendments include:

- **Power to make interim orders:** Amendments to the LRA would give the Board the ability to make interim orders and decisions in any proceeding, without the obligation to provide reasons.
- **First Collective Agreement Mediation/Arbitration:** Parties that cannot negotiate a collective agreement on their own can apply to the Board to appoint a mediator and ultimately to arbitrate the first collective agreement, without the need to demonstrate unfair practices by either party as required currently under section 43(2) of the LRA.
- **Electronic voting:** The Act would amend the LRA to allow the Board to conduct votes at a location and in a manner that is, in its opinion, appropriate under the circumstances. This includes conducting votes outside the workplace and electronically or by phone.
- **Increases to maximum fines:** Finally, the Act proposes to increase the monetary penalties for persons who contravene the LRA or any ruling made thereunder. The maximum fine for an individual would increase from \$2000 to \$5000, with the maximum fine for a corporation or union increasing from \$25,000 to \$100,000.

#### IV. Takeaways for Employers

The nature of the proposed LRA amendments, coupled with Ontario's focus on enhancing its authority to enforce its new legislation, mean that employers should review the proposed changes and determine how they might be affected as soon as possible.

The speed with which Ontario introduced the Act after publication of the CWR's recommendations indicates that the province intends to proceed quickly with the Act's overall passage. While there may still be changes to the Act, employers in both unionized and non-unionized workplaces (especially in targeted industries, i.e. building services) should begin preparing for the potential impact of the proposed amendments to the LRA.

We will continue to keep you updated as the Act proceeds through the Ontario legislature.

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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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