

'TIS THE SEASON - ONTARIO GOVERNMENT INTRODUCES BILL SETTING MINIMUM PAY RATES FOR PRIVATE-SECTOR CONTRACTORS ON GOVERNMENT CONTRACTS

Posted on April 20, 2018

Categories: [Insights](#), [Publications](#)

This week, Ontario's Liberal government introduced legislation by which the government would set new wage requirements for certain workers under government contracts. Bill 53, known as the *Government Contract Wages Act, 2018* (the "Bill") passed first reading on April 17, 2018.^[1]

The Bill proposes to increase the minimum wage for construction workers under contract with government entities, as well as building security guards or cleaners providing services under contract for a building leased to, owned or occupied by a government entity. Importantly, the Bill affects both contractor and subcontractor wages.

The Bill may be amended as it moves through the legislative stages to become law. There is also a chance that the Bill will die on the Order Paper prior to the June 2, 2018 election, without having become law. As the Bill stands, it mandates:

- minimum published rates that contractors and subcontractors must pay to applicable Ontario employees;
- a new government position (Director of Government Contract Wages, the "Director") to determine pay for worker categories;
- employer records including dates, times and the applicable minimum government contract wage per worker, whether and to whom work is subcontracted (including where subcontracted to self-employed persons, sole proprietorship or partnerships) and information yet to be prescribed by regulation;
- employers must supply (to both subcontractors and the Director) prescribed information regarding subcontracted work;
- monetary penalties (or imprisonment, where the offender is an individual) for non-compliance, as under the Employment Standards Act, 2000 (the "ESA"),^[2] including publishing a list of offending employers.^[3]

The Director's wage-setting powers under the Bill are widely discretionary, which, if the Bill becomes law, made

lead to some uncertainty for affected employers before appropriate regulations are established. The Director may also set different minimum wages for different types of work, different types of contracts or contracts with different government entities, as well as work done in different parts of the province.^[4]

As with the *ESA*, employers would be barred from contracting out of the Bill's minimum standards.^[5] However, employers should note that the Bill will apply only to work done in Ontario and has no retroactive effect. That is, prescribed wages will only apply to workers under contracts concluded, or procurement processes for contracts commenced, *after* the Director has made and published an order establishing the new wage rates.^[6]

Compliance with wage rates set by the Director may become a mandatory criterion in tenders for construction contracts and other work covered by the Bill. Contractors and other employers bidding on government contracts should be mindful of the requirements of their respective procurement processes to ensure they are not disqualified for failing to meet mandatory evaluation criteria. In the construction context in particular, where there is a tendency to conduct strict low-bid-wins invitation to tender procurements, bidders may have less flexibility to price work where minimum wage rates have been set by the Director.

If the Bill becomes law, contractors and other employers doing business with the government of Ontario should not hesitate to consult a member of McMillan's employment or procurement groups if they are uncertain whether they are subject to minimum wage rates. A proactive approach will mitigate against unnecessary disqualification from procurement processes or increased labour costs not properly accounted for before a contract is concluded.

By Kyle Lambert, Timothy Cullen and Alexis Lemajic (Articling Student)

[1] Bill 53, An Act respecting the establishment of minimum government contract wages, 3rd Sess, 41 Parl, Ontario, 2018 (first reading April 17, 2018, short title Government Contract Wages Act, 2018) , online: <http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session3/b053_e.pdf> [Bill 53].

[2] SO 2000, c 41 [ESA].

[3] Bill 53, ss 3, 4, 8, 26, 35 and 41.

[4] Bill 52, s 4(2).

[5] ESA, s 5; Bill 53, s 5.

[6] Bill 53, ss 3(3), (4), (5).

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.



© McMillan LLP 2018