What's New in HR Law

Bill 148 - What it Means for Minimum Wage, Worker Classification and Successor Rights

July 21, 2017

BOTTOM LINE

Bill 148: *The Fair Workplaces, Better Jobs Act, 2017* ("Bill 148") proposes to amend a number of employment and labour relations standards, including: (1) increasing minimum wage, (2) prohibiting improper worker classification, and (3) extending union successor rights to building services providers and other publicly funded service providers. These amendments may have significant practical effects for employers. Employers need to be aware of Bill 148's practical effects before the amendments are adopted into the legislation.

Practical Effects of Bill 148

ESA PROPOSED CHANGES

Minimum Wage

Proposed Change

Bill 148 proposes an increase to the minimum wage for the majority of Ontario employees to $14.00/hour commencing on January 1, 2018, and a further increase to $15.00/hour commencing on January 1, 2019. Bill 148 also proposes to increase the minimum wage for

specific employee groups in a manner that would be proportionate to the general minimum wage increase.

Practical Effect

The increase to the minimum wages has been the most widely discussed provision under Bill 148. The change would mark a drastic increase from the previous minimum wage of $11.40/hour. The increase will cause higher operating costs for employers, which means that advance preparation should be completed to ensure that employers can meet the increases.

For those employers who have employees with wages that are currently less than $14.00/hour, current revenue should be measured against likely operating costs once the proposed minimum wage kicks in. Employers should assess whether they will be able to meet the increased costs. If they cannot, staffing levels and other operational and administrative processes may need to be adjusted to reduce other costs.

Regardless, the minimum wage increase requires employers to contemplate their financial situation and to prepare for a sizeable increase in operating costs.

Employers should also keep in mind that the minimum wage is set to increase on October 1, 2017. On that date, the minimum wage will increase from $11.40/hour to $11.60/hour. This increase will occur regardless of Bill 148. Employers need to be aware of this increase in order to remain ESA compliant.

Employee Classification

Proposed Change

Bill 148 proposes a provision that prohibits employers from treating "employees" as if they were "independent contractors". Bill 148 also requires employers to prove that an "independent contractor" is not an "employee" under the *ESA* when an employment standards officer engages in a workplace inspection or investigation.

Practical Effect

The *ESA*'s minimum standards only apply to "employees", and do not apply to "independent contractors". In recent years, Ontario employers have attempted to use more "independent contractors" in an effort to avoid some employment costs.

However, in some cases workers are being misclassified as "independent contractors" despite the fact that the relationship more closely resembles an employment relationship. The effect is that some workers are not being provided the minimum employment standards that they should be receiving as a result of the improper classification.

This change will place the onus upon employers to demonstrate that "independent contractors" fit within the contractor classification and are not actually "employees". With this provision, the Ministry of Labour is attempting to cut down on worker misclassification to ensure that all "employees" are receiving minimum employment standards.

With this proposed provision in mind, and before Bill 148 is accepted, employers should engage in a review of worker classifications to determine whether the independent contractors that it uses actually fit within that classification. If the relationship between the employer and the

"independent contractor" more closely resembles that of an employment relationship (employer controls the worker's schedule, the worker uses the employer's tools etc.), the employer should consider re-classifying those workers and should begin applying the *ESA*'s minimum standards to them.

***LRA* PROPOSED CHANGE**

Successor Rights

Proposed Change

Bill 148 proposes to extend union successor rights to the retendering of building services contracts. Further, it proposes to apply successor rights to the retendering of publicly funded contracted services.

Practical Effect

Under the *LRA*, unions are entitled to maintain existing bargaining rights and collective agreements when an employer sells its business to a new employer. In these situations, the new employer will be bound to the union that held the bargaining rights for the old employer's employees and will be bound to any collective agreement in place for the old employer. These are called successor rights. The purpose of successor rights is to ensure that employers are not able to escape unionization simply by selling their businesses.

Bill 148 seeks to expand successor rights to building service providers. Where a building uses a unionized service provider and subsequently engages a new service provider to complete the same services, the new service provider will adopt the previous union and will become bound to any collective agreement entered into by the old service provider. Currently, successor rights do not extend to building services providers in this manner.

Bill 148 also extends successor rights to other publicly funded service providers in addition to building services providers.

If this Bill 148 provision were to pass, successor rights under the *LRA* would continue to apply in the same manner as before and would still continue to apply to private employers. Bill 148 merely proposes to extend successor rights to building service providers and to other publicly funded contracted services.

Companies that operate buildings need to be aware if this Bill 148 provision passes. When dealing with service providers, building operators would need to be cognizant of the fact that if its service provider(s) becomes unionized, the union's rights will remain regardless of which service provider is chosen. Similarly, service providers that are bidding on building services work need to be aware of the union status of previous service providers. If a service provider enters into a contract with a building and that building previously used a unionized service provider, the new service provider will adopt all of the previous provider's union responsibilities. Service providers should keep this in mind when bidding on future building work.

Check the Box

Employers may wish to engage in the following steps before Bill 148 is adopted into the law:

- Assess potential operational costs in light of the significant future increase to the minimum wage, and adjust current procedures to help reduce costs.
- Consider current worker classifications to determine if “independent contractors” are properly classified; reclassify and apply employment standards as needed.
- Building services providers and other publicly funded service providers should consider the union status of preceding service providers before bidding on new employer work.

For further information, please contact Danny G. Parker at 519.435.6007, or your regular lawyer at the firm.

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