

***Restoring Ontario's Competitiveness Act, 2018***  
**Executive Summary**

January 2019

On December 6, 2018, Bill 66 - the *Restoring Ontario's Competitiveness Act, 2018* - passed First Reading by Ontario's Conservative Government. Second Reading will likely occur after the legislature resumes on February 19, 2019.

If enacted in its current form, Bill 66 will amend 18 pieces of legislation, including the *Employment Standards Act* ("ESA"), *Labour Relations Act* ("LRA"), *Agricultural Employees Protection Act* ("AEPA"), and *Pension Benefits Act* ("PBA"). The intent of these changes is to reduce red tape and the regulatory burden currently placed on employers. The following is a summary of the key amendments.

**Employment Standards Act**

**Excess Hours of Work and Overtime Averaging**

At present, section 17.1 of the *ESA* requires an employer to obtain both the agreement of an employee **and** approval from the Director of Employment Standards before it can permit or require an employee to exceed 48 hours of work in a work week. Bill 66 removes the requirement for Director's approval. If passed, an employer will be able to permit or require an employee to work in excess of both the maximum daily and weekly hours of work based on employee (or trade union) agreement alone.

Bill 66 also repeals sections 22.1 and 22.2 of the *ESA*, removing the requirement the Director approve an averaging agreement between an employer and its employees for the purpose of determining entitlement to overtime pay. As with excess hours of work, the employer would still need to obtain the agreement of any affected employee or trade union. Bill 66 also limits the period of time over which an employee's hours of work could be averaged to a maximum of four weeks.

These amendments are expected to provide an employer with greater flexibility to manage its workforce.

**ESA Poster**

Bill 66 amends section 2 of the *ESA* such that the Director, and not the Minister, is required to publish a poster providing information about the *ESA* and its regulations. More importantly, the amendment removes the requirement an employer affix the poster in the workplace. However, an employer continues to be required to provide a copy of the poster to any new employee within the first 30 days of employment, in accordance with subsection 2 (5) of the *ESA*.

**Labour Relations Act**

**Public Body as Non-Construction Employer**

At present, it is possible for certain broader public sector entities to be bound to collective agreements in the construction industry, despite the fact they are not engaged in construction in the traditional sense. An entity bound to a construction trade union is generally prohibited from having any construction work performed by a non-union construction company or contractor.

Bill 66 expressly deems municipalities and certain local boards, school boards, hospitals, colleges, universities and public bodies within the meaning of the *Public Service of Ontario Act, 2006*, to be a non-construction employer for the purpose of the *LRA*. This means they would no longer be bound to any collective agreement insofar as it applies to the construction industry. Employees working in the construction industry for a non-construction employer will no longer be represented by their existing trade union. Should employees working in the construction industry for a non-construction employer wish to seek union representation, they will do so under the non-construction certification provisions of the *LRA*.

This amendment is expected to increase competitiveness by not restricting the subcontracting of construction work to contractors bound to a specific union and, instead, will permit these public sector entities to seek the best contractor and price regardless of union affiliation.

### **Agricultural Employees Protection Act**

#### **Ornamental Horticultural Worker**

At present, an employee employed in horticulture by an employer whose primary business is agriculture or horticulture is exempt from the *LRA* but not expressly covered the *AEPA*. Bill 66 extends the application of the *AEPA* to an employee who engages in ornamental horticulture. This means an ornamental horticulture employee will be covered by the *AEPA* and exempted from the *LRA*, providing these workers with the same protection as other agricultural workers.

### **Pension Benefits Act**

#### **Jointly Sponsored Pension Plan**

Bill 66 repeals subsection 80.4 (1) of the *PBA* allowing an employer to merge a single-employer pension plan with a jointly sponsored pension plan without requiring government approval. At present, the ability to transfer to a jointly sponsored pension plan is only available with respect to a public sector plan or a prescribed pension plan or class of pension plans.

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**We will continue to monitor Bill 66 and update our clients and readers. For more information or assistance please contact the employment and labour law experts at Sherrard Kuzz LLP.**

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