

Ontario releases sweeping workplace protection report

Subtitle: Experts warn about unintended consequences of recommendations in The Changing Workplaces Review Final Report

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With 173 recommendations calling for expanded protection for workers in Ontario, [The Changing Workplaces Review](#) final report was released May 23.



Erin Kuzz, partner at Sherrard Kuzz LLP, urges employers to educate themselves and make their voices heard if the content of the Workplaces Review recommendations are concerning.

The 419-page report comes after two years of consultations and review, and while Erin Kuzz, partner at Sherrard Kuzz LLP in Toronto, says the recommendations are sweeping, she adds there is one important fact to remember: This isn't a done deal.

“While certainly I think it's realistic to think a number of the recommendations will be followed in terms of legislation, we don't know that for certain yet,” Kuzz says. “Employers really need to educate themselves and make their voices heard if the content of these recommendations are of concern to them.”

The report was commissioned to address the changing workplace and is expected to provide the road map for upcoming labour reforms — as the introduction reads, it is the “first independent report in Canada to consider, as a unified exercise, the need for specific legislative changes to two separate but related pieces of workplace legislation, namely, the Employment Standards Act and the Labour Relations Act.”

The report, written by special advisors Michael Mitchell and John Murray, states that the recommendations are “aimed at creating better workplaces in Ontario, where there are decent working conditions and widespread compliance with the law.”

It goes on to state that “foremost among our recommendations is a new Workplace Rights Act, to herald a new era of workplace decency and compliance with the law.”

But Lara Speirs, EVP and general counsel, legal and public affairs, at Randstad Canada, says her company is concerned “that the perverse effect will be to discourage investment and eliminate jobs, thereby diminishing economic opportunities in Ontario.”

Mary McIninch, executive director, government relations at the Association of Canadian Search, Employment and Staffing services, agrees with Speirs, saying, “We urge the government to lead an evidence-based approach to review the proposed changes before adoption.”

Speirs says Randstad shares the stance of the Ontario Chamber of Commerce and the Keep Ontario Working Coalition, which is summarized in a public [statement](#). The statement argues that before any of the recommendations from the report are implemented, there needs to be a comprehensive economic impact analysis.

McIninch agrees, saying the step would be “consistent with the Government of Ontario’s Open for Business policy, which necessitates a ‘clear assessment of the total costs and benefits, including those to business, the public and government administration’ as fundamental to new regulations.”

The analysis should have clear acceptability thresholds, and the reforms implemented should be “limited to those that pass such thresholds or are being implemented with a commensurate economic offset measure,” she says.

“We need to do a cost-benefit analysis; we need to really understand how these changes will impact our economy,” Speirs says, adding that Randstad also shares the government’s ultimate goal of job growth and protecting workers, but it’s “how we get there” that differs. Randstad is concerned that heavier regulation will drive jobs out of Ontario and have the opposite of its intended impact.

“If you look globally in other jurisdictions, that’s exactly what happened. When you overly regulate like this, it becomes so expensive for employers that you have these unintended consequences.”

Speirs says Randstad’s focus has always been on better education and enforcement of the existing legislation and regulations — “give some teeth to the existing one,” she says — before adding more legislative amendments.

Some of the recommendations include expanded rights to unionize in areas that historically haven’t been allowed to — dental, medical and legal professionals are among that group — as well as expanded job protections with mandatory vacation and family leave entitlements.

Kuzz says that although the recommendations were not a shock — they were signalling they were preparing to do a very comprehensive review — a few of the recommendations have stood out to her.

The approach to franchisees is one. The concept that if two separate franchisees of the same organization are each unionized they could be required to bargain together or the collective agreement that one has bargained could be deemed to apply to another one.

“As much as there are commonalities by definition in a franchise situation, they are fundamentally separate businesses,” she says. “I think that’s something that will have quite an impact on an industry that represents a significant portion of the economy and significant employers.

“The recommendations around temporary workers are also significant,” Kuzz says. “The limit on the period of time that a temporary worker can be paid at a rate less than the permanent staff I think will have an impact on that industry and one of my concerns is I’m not sure that impact will be entirely positive for workers.”

The reality is a lot of people who do temporary work do it because they can’t find permanent work and companies who use temporary workers in many cases don’t require permanent employees, she says. If you create a situation where there is a disincentive to use temporary workers, “I do not believe the result is going to be that suddenly those individuals employed in a temporary capacity are all suddenly going to get full-time jobs.

“As much as that may be the nirvana, and that may be the goal and it’s a laudable goal, I don’t think it’s realistic. I think it might harm many more workers than it helps them.”

Another recommendation that Kuzz says should be getting employers’ attention is that once a union has support from 20 per cent of a group of employees it wants to represent, the employer could be required to provide personal contact information for all employees within the group.

“Unless we can have a level of certainty the people signing the union cards are doing so with the knowledge of the impact of what they’re doing, to then be able to have relatively few employees sign cards but then have the employer share personal information to the entire group is really disturbing,” she says.

In a [statement](#), Minister of Labour Kevin Flynn said the government has reviewed the recommendations and will be “announcing our formal response within the next week.”

“We’ve seen through the process of the consultations that employee advocates — individuals and unions — were well organized, focused and persuasive,” says Kuzz. “I don’t believe the reviewers heard as much or in as focused a manner from employer advocates.

“This may be employers’ last opportunity to make their voices heard while the government is in the process of considering the legislation that will flow from this review.”



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