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Restoring Ontario's Competitiveness Act, 2018
Executive Summary

April 2019

On April 3, 2019, Ontario's Bill 66 - the *Restoring Ontario's Competitiveness Act, 2018* – received Royal Assent. Bill 66 amends 17 pieces of legislation, including the *Employment Standards Act* ("*ESA*"), *Labour Relations Act* ("*LRA*"), *Agricultural Employees Protection Act* ("*AEPA*"), and *Pension Benefits Act* ("*PBA*").

The stated intent of these amendments 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

Prior to Bill 66, section 17.1 of the *ESA* required an employer obtain both the agreement of an employee **and** approval from the Director of Employment Standards before permitting or requiring an employee to exceed 48 hours of work in a work week. Bill 66 removes the requirement for Director's approval. An employer will now 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.

Bill 66 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. The employer must still 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 can be averaged to a maximum of four weeks.

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 must still 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*.

These amendments to the *ESA* are in force as of **April 3, 2019**.

Labour Relations Act

Public Body as Non-Construction Employer

Prior to Bill 66, several broader public sector entities that carry out construction work were "certified" under the *LRA* as employers in the construction industry. As a result, these entities are bound by construction collective agreements despite the fact they do not "operate a business" in the construction industry in the traditional sense. An entity bound to a construction trade union collective agreement is generally prohibited from having any construction work performed by a construction company or contractor not bound to that trade union.

Bill 66 expressly deems a number of broader public sector entities, to be a non-construction employer for the purpose of the *LRA*. This includes a municipality, local housing corporation, school board, hospital, college, university and public body within the meaning of the *Public Service of Ontario Act, 2006.*

Under Bill 66, a non-construction employer is no longer bound to any collective agreement insofar as it applies to the construction industry and to its employees working in the construction industry. Further, the construction employees of a non-construction employer are no longer represented by their existing construction trade union. Should employees working in the construction industry for a non-construction employer wish to seek union representation, they must do so under the non-construction certification provisions of the *LRA.*

These amendments are expected to increase competitiveness by allowing the subcontracting of construction work to contractors not bound to a specific union. This will permit these public sector entities to seek the best contractor and price regardless of union affiliation.

In some limited circumstances, an entity that would otherwise be deemed to be a non-construction employer under Bill 66 may prefer to continue as a construction employer, with its construction employees represented by their existing construction trade union. Bill 66 allows an entity to make a one-time, irrevocable election to opt out of Bill 66's deeming provision. An employer wishing to opt out must do so by no later than **July 3, 2019**.

The remaining amendments to the non-construction employer provisions of the *LRA* come into effect on a date to be named by proclamation of the Lieutenant Governor. We expect this will occur shortly after the opt-out window has closed. Accordingly, an affected employer that has **not** elected to opt-out will likely see the non-construction employer amendments apply to them **on or after July 4, 2019**.

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. An ornamental horticulture employee will therefore be covered by the *AEPA* and exempted from the *LRA*. This amendment provides these workers with the same protection as other agricultural workers.

This amendment takes effect as of **April 3, 2019.**

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.

This amendment takes effect as of **April 3, 2019.**

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For assistance assessing the impact of Bill 66 on your workplace, contact the employment and labour law experts at Sherrard Kuzz LLP.