
ONTARIO WORKPLACE LAWS BILL RECEIVES ROYAL ASSENT

*By Barry W. Kwasniewski**

A. INTRODUCTION

On November 20, 2014, Bill 18, the *Stronger Workplaces for a Stronger Economy Act, 2014* (“Bill 18”), received Royal Assent. Bill 18 is an omnibus bill, which amends five different labour and employment-related statutes in Ontario, including the *Employment Standards Act, 2000* (“ESA”).¹ The main substantive change is that the Ontario minimum wage will be tied to the Consumer Price Index (“CPI”) starting in October 2015. Also relevant for charities and not-for-profits is that the definition of “worker” under the *Occupational Health and Safety Act* (“OHS”) has been broadened to include unpaid co-op students and interns. Additionally, the definition of “worker” under the OHS may now be broad enough to encompass volunteers. The amendments will come into force at different times, some immediate and others up to two years from Royal Assent. As Royal Assent has occurred, employers, including charities and not-for-profits, should assess the changes and take steps to address the effect of these changes to their workplaces and relationships with their employees. This *Charity Law Bulletin* reviews Bill 18 changes which are most relevant to charities and not-for-profits.

B. BILL 18, STRONGER WORKPLACES FOR A STRONGER ECONOMY ACT, 2014

Bill 18 amends the ESA; the *Labour Relations Act, 1995*; the OHS; the *Workplace Safety and Insurance Act, 1997*; and the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009*. Bill 18 is intended to expand employers’ accountability and increase protections for vulnerable workers.

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¹ SO 2014, C.10.

Some sections of Bill 18, including the new definition of “worker” under the OHSA, came into force immediately upon Bill 18 receiving Royal Assent. Other sections will come into force at staggered times over a period of two years.

1. *Employment Standards Act, 2000 (“ESA”)*

One of the main changes under Bill 18 is that the provincial minimum wage under the ESA will be indexed and based on changes to the CPI in Ontario, as of October 2015.² However, if there are negative changes to the CPI, the minimum wage cannot be decreased by the new indexing calculation. The minimum wage will apply as of October 1 of each year, and must be published online by the Ontario Government as of April 1 of each year. This change creates more predictability in how minimum wage is determined and reflects recommendations from Ontario’s Minimum Wage Advisory Panel.

Bill 18 also removes a limit (currently \$10,000) on the maximum amount of wages that an employee can recover from an employer arising from a complaint under the ESA.³ It also extends the time frame for retroactive wage recovery from six months to two years, therefore increasing potential liability for employers who contravene the ESA’s wage provisions. These amendments come into force on February 20, 2015, three months after Royal Assent. Under the current law, employees owed more than \$10,000 in unpaid wages are required to initiate civil proceedings against the employer, or forego claims for amounts owed in excess of the \$10,000 cap applicable to ESA wage orders. This change will likely result in more ESA complaints for unpaid wages, and fewer court actions.

Additionally, under Bill 18, an Employment Standards Officer (“ESO”) can order an employer to conduct a “self-audit” regarding whether the employer has contravened the ESA.⁴ Employers are required to report the results of these audits to the ESO regardless of whether they have contravened the ESA. The report must include the period covered by the audit, the provisions covered, and the date by which the employer must provide the report. Additionally, if the employer has contravened the ESA’s wage provisions, the report must include the name of the employee owed wages, an explanation of the wages owed, and proof of any required payment to the employee. Alternatively, if an employer

² *Ibid* at Schedule 2, section 2.

³ *Ibid* at Schedule 2, section 7(1).

⁴ *Ibid* at Schedule 2, section 6, 91.1.

contravention is not wage-related, the employer must include a description of how it will ensure subsequent compliance in the report. These amendments will come into force six months after Royal Assent (May 20, 2015).

2. Occupational Health and Safety Act (“OHSA”)

Under Bill 18, the definition of “worker” in the OHSA is amended immediately upon Royal Assent to incorporate unpaid individuals, including co-op students from secondary schools, colleges, and universities, as well as interns.⁵ The new definition of “worker” under subsection 1(1) of the OHSA is as follows:

“worker” means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

- 1) A person who performs work or supplies services for monetary compensation.
- 2) A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
- 3) A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
- 4) A person who receives training from an employer, but who, under the *Employment Standards Act, 2000*, is not an employee for the purposes of that Act because the conditions set out in subsection 1 (2) of that Act have been met.
- 5) Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation.

While commentary from legislative debates on Bill 18 appears to show the Ontario Government intended this definition to apply to unpaid trainees, interns, and learners, it remains to be seen whether the definition will be interpreted to include other categories of unpaid workers, such as volunteers. Section five of this new definition potentially leaves room for volunteers to be included as “workers” entitled to statutory protections under the OHSA, such as the right to refuse work where the worker believes his or her health and safety are in danger.⁶

This protection gives unpaid students and interns the right to know about workplace hazards and the right to refuse unsafe work. For charities and not-for-profits, this expansive definition of “workers” is

⁵ *Ibid* at Schedule 4, section 1.

⁶ *Occupational Health and Safety Act*, RSO 1990, CHAPTER O.1, section 43(3).

particularly important because unpaid workers were not previously covered by the OHSA. This change imposes statutory obligations on charities and not-for-profits to protect the health and safety of unpaid workers, potentially including volunteers, in the same manner as paid employees.

3. Employment Protection for Foreign Nationals, 2009 (“EPFN”)

Prior to Bill 18, the EPFN was generally restricted to live-in caregivers. Now, under Bill 18, the EPFN is expanded to include foreign nationals who work or are attempting to find work in Ontario pursuant to an immigration or temporary employee programme.⁷ This change expands employment protections to all foreign employees who come to Ontario. Amendments related to the EPFN will come into force on the first anniversary of Royal Assent (November 20, 2015).

C. CONCLUSION

Bill 18 will result in significant changes for all employers across Ontario, including charities and not-for-profits. Charities and not-for-profits with employees and volunteers should be aware of these changes and make sure that their policies and practices will comply with the new laws.

Bill 18 can be accessed at: http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session1/b018rep.pdf