

LABOUR AND EMPLOYMENT**BILL 18: STRONGER WORKPLACES FOR A STRONGER ECONOMY ACT, 2014**

by W. Eric Kay and Andrew J. Skinner

The *Stronger Workplaces for a Stronger Economy Act, 2014* ("Bill 18") which received royal assent from the Ontario Legislature on November 20, 2014 will amend five employment law statutes, specifically the *Employment Standards Act, 2000*, the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009*, the *Labour Relations Act*, the *Occupational Health and Safety Act*, and the *Workplace Safety and Insurance Act, 1997*.

Employment Standards Act, 2000 (the "ESA")

Minimum Wage - Commencing October 1, 2015, the minimum wage rate will be adjusted every year based on the Consumer Price Index. The Ministry of Labour will publish the minimum wage no later than April 1, 2015 on the Government of Ontario website. The minimum wage adjustment process will be subject to review by the Ministry before October 1, 2020, and every five years afterwards.

ESA Poster - After May 20, 2015, employers will be required to post the most recent informational poster published by the Ministry of Labour as well as translations in certain cases.

Unpaid Wages - The *ESA* provides jurisdiction to the Employment Standards Officer to issue orders to employers to pay unpaid wages. Previously, the maximum amount that could be ordered was \$10,000. Bill 18 has eliminated the \$10,000 cap and has extended the limitation period for bringing a claim to the Ministry of Labour. An employee now has up to two years to make a claim against the employer for unpaid wages. These changes will take effect after February 20th, 2015.

Temporary Employees - Before Bill 18, employers who retained temporary help agencies to provide the services of agency employees did not assume statutory liability for claims for unpaid wages of the agency's employees. Bill 18 imposes joint and several liability on the agency **and** the employer for unpaid wages owing to agency employees. If a temporary employee was assigned by an agency to provide services, and the agency does not pay the temporary employee some or all of their wages, the agency's client will be liable to pay unpaid wages proportionate to the number of hours the temporary employee worked for that employer. In line with these changes, employers and temporary help agencies are now both required to keep a record of the number of hours worked by each agency employee and retain these records for a minimum of three years.

Employers can now be ordered to self-audit and report the results to an Employment Standards Officer. An employer that has received a notice to self-audit must review its records and practices to determine whether it is in compliance with the *ESA*.

Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009 (the "EPFNA")

The *EPFNA* protects live-in caregivers from recruiter charges and services not prescribed by the *EPFNA*, and from property, passport, or work permit retention by an employer or recruiter.

Bill 18 has expanded to *EPFNA*'s protections to all foreign temporary workers employed in or looking for employment in Ontario, not just live-in caregivers and others. Accordingly the name of the act, *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*, has been changed to *Employment Protection for Foreign Nationals Act*.

Employers and recruiters of foreign nationals are now required to provide foreign nationals with information published by the Director of Employment Standards.

The changes to the *EPFNA* will come into force on November 20, 2015

Labour Relations Act, 1995 (the "LRA")

Bill 18 has amended the *LRA*'s provisions applicable to the construction industry with collective bargaining agreements between trade unions and employers. When a collective bargaining agreement has a term of no more than three years, Bill 18 establishes a two month window before the expiry of the agreement where trade unions can apply to the Labour Relations Board for certification, and employees may apply to the Board for a declaration that a trade union no longer represents them.

Occupation Health and Safety Act (the "OHSA")

Bill 18 has amended the *OHSA* to expand the health and safety responsibilities of employers. As of November 20, 2014, the definition of "worker" in the *OHSA* now includes unpaid students, individuals who are receiving training from employers but are not employees under the *ESA*, and individuals who perform work but do not receive monetary compensation.

Workplace Safety and Insurance Act, 1997 (the "WSIA")

Bill 18's amendments to the *WSIA* gives the Lieutenant Governor in Council the power to make regulations which would result in

employers having to bear the cost of insurance premiums and other accident costs in the event that a temporary employee is injured while providing services to the client employer. Currently, temporary help agencies, as the employer, is responsible for these costs. However, the amendments to the *WSIA* suggest that new regulations may be forthcoming.

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