FTR Now

Amendments Made to Temporary Help Agency Bill

Date: April 24, 2009

On December 10, 2008, we notified clients of the Ontario Government's plan to amend the *Employment Standards Act, 2000* to regulate temporary help agencies. In our *FTR Now*, "Newsflash: Ontario Government to Amend the *Employment Standards Act, 2000*", we discussed the content and impact of Bill 139, the *Employment Standards Amendment Act (Temporary Help Agencies), 2008*.

The Bill was considered by the Standing Committee of Legislative Assembly, which heard submissions from interested parties at the end of March and beginning of April. As a result, the Standing Committee amended Bill 139 in some significant ways.

The significant amendments to the Bill relate to the termination and severance provisions. In the original version of the Bill, the temporary lay-off provisions of the *ESA, 2000* did not apply to employees of temporary help agencies who are temporarily assigned to clients ("assignment employees"). Rather, employees were deemed terminated in any case where they were not assigned to a client for more than 35 consecutive weeks.

Under the revised Bill, the temporary lay-off provisions of the *ESA, 2000* will apply to assignment employees, though with some modifications:

- A week of lay-off is defined as a week where the assignment employee is not assigned any work (Note: most employees are considered to be on lay-off in a week where they earn less than 50% of wages for the purposes of termination and less than 25% for the purposes of severance)
- "Excluded weeks" do not count for the purposes of determining whether the employee has exceeded the 13 weeks of lay-off in 20 weeks, or, if applicable, the 35 weeks of lay-off in 52. Excluded weeks are weeks where the employee is: not available to work; refuses an offer of work that is not a constructive dismissal; is subject to disciplinary suspension; or where there is a strike or lockout occurring at the agency. Excluded weeks do count towards the 20-week or 52-week period.
- For the purposes of calculating notice and severance, the employee's weekly wage is determined by averaging the employee's wages over a 12-week period. There is a slight variation in the 12-week period depending on the circumstances of the termination or severance

In addition to the amendments to the termination provisions of the Bill, there are minor revisions with respect to the obligation to provide information to assignment employees and the public holiday provisions. Information may now be given to assignment employees orally, but must be followed up in writing as soon as possible. Also, the temporary help agency must advise the assignment employee of the duration of the assignment where that information is available.

The changes to the public holiday provision are mostly technical and relate to the changes to the termination and severance provisions. Under the new version of the Bill, employees on lay-off (as defined for assignment employees) on the day of a holiday will be entitled to holiday pay only and not a substitute day off.

The Bill will now undergo Third Reading, and is expected to pass in its amended form in the reasonably near future. The Bill will come into force six months after it receives Royal Assent.

If you have any questions, please do not hesitate to contact your regular Hicks Morley lawyer.

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