FTR Now

Ontario to Amend Occupational Health and Safety Legislation

Date: March 11, 2011

On March 3, 2011, the Ontario government introduced Bill 160, the *Occupational Health and Safety Statute Law Amendment Act, 2011* ("Bill 160"). The proposed Bill 160 amendments, which are intended to respond to the recommendations provided by the Expert Panel on Occupational Health and Safety, would significantly amend the *Occupational Health and Safety Act* ("*OHSA*").

In this *FTR Now*, we review the proposed amendments and how they may impact your organization.

BACKGROUND

The *OHSA* is comprehensive legislation that regulates the health and safety of most workplaces in Ontario (subject to certain exemptions) through the implementation of standards. It sets out duties of workplace parties relating to workplace health and safety, establishes procedures for dealing with workplace hazards and provides mechanisms to enforce the law.

ESTABLISHMENT OF TRAINING STANDARDS

One key aspect of the proposed legislation is with respect to the establishment of new "approved training" standards.

Specifically, Bill 160 would permit the Minister of Labour (the "Minister") to establish standards for training programs and to approve programs that meet those standards. The Minister could also establish standards that a person must meet in order to become an approved training provider, and may approve a person who meets the standards as a training provider with respect to one or more approved training programs. Further, the Minister could collect information and maintain records of workers' successful completion of approved training programs.

Currently, one worker member and one employer member of the joint health and safety committees ("JHSC") are required to be certified by the Workplace Safety and Insurance Board. In addition to the new "approved training" standards outlined above, Bill 160 would empower the Minister to establish training and certification standards for members of the JHSC and require constructors or employers to ensure that health and safety representatives have received the requisite training to enable them to effectively exercise their powers and perform their duties under the *OHSA*. A person who is already certified under the *Workplace Safety and Insurance Act, 1997* would be deemed certified under this new provision.

CO-CHAIR OF JOINT HEALTH AND SAFETY COMMITTEE CAN MAKE RECOMMENDATIONS

The *OHSA* currently gives the JHSC the power to make recommendations to a constructor or employer for the improvement of the health and safety of workers. Bill 160 provides that if the JHSC fails to reach consensus on such recommendations, either co-chair of the JHSC can make written recommendations to a constructor or employer summarizing the opposing positions, how the committee attempted to reach consensus and the co-chair's recommendation.

DIRECTOR MAY ESTABLISH POLICIES

Bill 160 would amend the *OHSA* to authorize a Director designated under the *OHSA* to establish policies respecting the

interpretation, administration and enforcement of the *OHSA* and to require an inspector to follow such policies. These policies, if established, would likely provide additional guidance to employers on how inspectors would be applying the *OHSA* in their enforcement duties.

CHIEF PREVENTION OFFICER

Significantly, the Bill would add Part II.1 (Prevention Council, Chief Prevention Officer and Designated Entities) to the *OHSA*, thereby establishing a "Prevention Council" responsible for providing advice to the Minister, composed of workers, employers and other persons with occupational health and safety experience.

The Prevention Council would give advice with respect to the appointment of a Chief Prevention Officer ("CPO") and provide advice to the CPO on occupational health and safety matters. The CPO would be responsible for developing a provincial occupational health and safety strategy, preparing an annual report on occupational health and safety and advising the Minister on occupational health and safety matters.

The Minister would also be empowered to designate an entity as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters if the entity meets standards established by the Minister, moving this role over from the Workplace Safety and Insurance Board. All entities currently so designated under the *Workplace Safety and Insurance Act, 1997* are deemed to be designated under the *OHSA*. Once designated, such an entity would be required to operate in accordance with the standards and any other requirements imposed upon it, and would be eligible for a grant from the Ministry.

REPRISALS TO BE REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD

Of further note, the Bill would amend section 50 of the *OHSA* (Reprisals by Employer Prohibited) and empower inspectors to refer a matter to the Ontario Labour Relations Board (the "Board") where a worker alleges reprisal, in certain circumstances. Specifically, the matter cannot have been dealt with by final and binding settlement by arbitration under a collective agreement or by the worker filing a complaint with the Board, the worker must consent to the referral and a policy respecting referrals must have been established by a Director before the inspector may refer the matter to the Board.

IMPLICATIONS

Bill 160 passed First Reading on March 3, 2011 and it remains to be seen whether further amendments will be made to the proposed legislation. We will monitor Bill 160 as it moves through the legislative process.

If you wish to follow the legislative developments relating to Bill 160, please visit or subscribe to our legislative blog.

If you have any questions about how Bill 160 may impact your organization, please contact John J. Bruce at 416.864.7285, Nadine S. Zacks at 416.864.7484 or your regular Hicks Morley lawyer.

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