

## FTR Now

# Ontario Government to Amend Workplace Laws

**Date:** May 29, 2015

On May 28, 2015, the Ontario government introduced Bill 109, the *Employment and Labour Statute Law Amendment Act, 2015*, proposed legislation intended to effect a number of changes to workplace laws, including:

- the labour relations provisions of the *Fire Protection and Prevention Act, 1997* ("*FPPA*");
- the *Public Sector Labour Relations Transition Act, 1997* ("*PSLRTA*"); and
- the *Workplace Safety and Insurance Act, 1997* ("*WSIA*").

In this *FTR Now*, we review some of the key changes introduced by Bill 109.

## AMENDMENTS TO THE *FPPA*

Bill 109 would make a number of changes to the labour relations provisions of the *FPPA* by incorporating a wide range of provisions from the *Labour Relations Act, 1995* ("*LRA*") regarding such matters as unfair labour practices, membership in associations, and expedited rights arbitration, with modifications to take into account the unique nature of firefighter labour relations.

Bill 109 would amend the *FPPA* to address membership in firefighter associations in a number of ways. First, the *FPPA* would be amended to expressly permit associations to require the inclusion of closed shop language in a collective agreement (already contained in many collective agreements in the sector), with features such as mandatory association dues deductions and provisions requiring membership in the association or giving preference of employment to members of an association.

However, these new provisions are balanced by the inclusion of provisions designed to protect firefighters who have either been expelled or suspended from their association, or who have been denied membership or had it withheld from them, where such actions are based on a number of listed, protected grounds (including, for example, engaging in "reasonable dissent" within the association). These provisions may assist municipalities that employ full-time firefighters who also serve as volunteer firefighters in other municipalities (so-called "double hatters") as they will provide a measure of protection for the full-time position held by the double hatter.

Bill 109 would also amend the *FPPA* by the addition of a range of prohibitions on unfair labour practices which parallel those found in the *LRA*. This would include a revised duty of fair representation obligation applied to associations, and a clearer process by which complaints may be brought to the Ontario Labour Relations Board ("OLRB") for resolution.

One other change of note relates to the introduction of an expedited rights arbitration process, similar to that found in section 49 of the *LRA*, under which either party to a collective agreement could ask the Minister of Labour to appoint a single arbitrator to decide an unresolved grievance.

Bill 109 provides that these changes will have some retroactive effect, as they will apply immediately to any ongoing matters before the OLRB or a labour arbitrator provided that there had not been a decision rendered as of the date Bill 109 was first introduced (i.e. as of May 28, 2015).

The amendments to the *FPPA* will come into force on the date that Bill 109 receives Royal Assent.

## **AMENDMENTS TO THE *PSLRTA***

The *PSLRTA* is legislation that is intended to facilitate rationalizations and other restructurings in the broader public sector, and to provide procedures to resolve conflicting collective bargaining rights and other disputes that result. Where a restructuring results in a new bargaining unit in which the employees were previously represented by more than one trade union, the *PSLRTA* will generally require a vote to be held to determine the new bargaining agent (subject to limited exceptions).

Bill 109 would amend the *PSLRTA* to add a new exception to the requirement to hold a vote. Under the amendments, where one trade union held bargaining rights for a prescribed percentage of employees in the new bargaining unit, that trade union will become the new bargaining agent for all employees in the unit without the need for a vote.

While Bill 109 does not establish the exact percentage, it provides that it must be more than 60%. Based on our previous experience with *PSLRTA*, we anticipate that this change will have the greatest impact on health services integrations, such as those involving hospitals.

The amendments to the *PSLRTA* will come into effect six months after Bill 109 receives Royal Assent.

## **AMENDMENTS TO THE *WSIA***

Finally, Bill 109 would make a number of amendments to the *WSIA*. The statute would be amended to provide protection to employees who have filed, or intend to file, a claim for benefits by prohibiting employers from:

- prohibiting or discouraging workers from filing claims; and
- influencing or inducing workers to withdraw or abandon claims.

The prohibitions extend to all manner of promises, threats and discipline, including terminations, suspensions or otherwise imposing a penalty on workers. A new monetary penalty (amount to be prescribed by regulation) would apply in addition to any fine that could be imposed by a court if the employer was also found guilty of an offence.

A further change is that the maximum fine that could be imposed on a person who is not an individual (e.g. a corporation) found guilty of an offence under the *WSIA* would be increased from \$100,000 to \$500,000.

The *WSIA* would also be amended to eliminate the deemed net average earnings provision currently applicable when calculating the level of survivor benefits payable in cases where the worker has no net average earnings on the date of injury. Rather than applying the statutory minimum of \$15,312.51 per year, the amendments would allow the Workplace Safety and Insurance Board ("WSIB") to use the net average earnings of workers engaged in the same trade, occupation, profession or calling as the deceased worker at the time that the injury first arose.

This change would apply retroactively to any injury that occurred on or after January 1, 1998, and permits survivors (1) to request the WSIB to reconsider decisions it has already rendered, and (2) to refile claims with the WSIB that have already been determined by the Workplace Safety and Insurance Appeals Tribunal ("Tribunal"). This represents a significant liability for any Schedule 2 employer that has relied upon the wording of the current *WSIA* and has obtained decisions from the Tribunal on this issue.

Finally, the WSIB would be required to appoint a "Fair Practices Commissioner" to serve as the ombudsman of the WSIB. The new Commissioner would have the authority to investigate complaints and make recommendations.

The changes to the *WSIA* would come into effect on the day that Bill 109 receives Royal Assent.

## NEXT STEPS

We will continue to monitor Bill 109 as it moves through the legislative process.

If you any questions about how Bill 109 might affect your organization, please feel free to contact your [regular Hicks Morley lawyer.](#)

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