

Ontario workplaces set to see major changes

Government introduces Fair Workplaces Act

BY SARAH DOBSON

AFTER two long years of wait, the Ontario government announced its intentions to make sweeping changes to workplace legislation.

For one, it plans to raise the province's minimum wage to \$15 per hour by 2019.

The government also wants to ensure casual, part-time, temporary and seasonal employees are paid equally to full-time employees when performing the same job for the same employer.

Ontario hopes to set out new scheduling rules for shift work and prohibit employers from misclassifying employees as "independent contractors." Workers would also be entitled to three weeks of paid vacation after five years of service with the same employer.

Further change would see personal emergency leave (PEL) apply to employers with 50 or fewer workers, and ensure all employees are entitled to 10 PEL days per year, including two paid days.

Ontarians are being tested in new ways, said Premier Kathleen Wynne in making the announcement of the Fair Workplaces, Better Jobs Act, citing as examples new technologies, automation, global competition, reduced benefits, increased part-time work and protectionism south of the border.

"People are anxious about their jobs and they're anxious about their future," she said. "With all of

the change and uncertainty in the economy, and change in the nature of work itself, it's tough to feel as though you're getting ahead right now, even as our economy recovers."

"If we make the right choices now, we can help the people of Ontario navigate that turbulence and set our province on a course toward long-term success."

Workplace review

The proposed changes closely follow many of the recommendations made in a special advisory report on the province's Changing Workplaces Review released in May.

"While the report pays lip service to creating an environment that is supportive of business and our changing economy... by and large, (it) definitely favours employees and favours trade unions, and most employers will see these recommendations adversely affecting their ability to do business in Ontario," said Richard Nixon, a partner at DLA Piper in Toronto. "Is this going to make Ontario a more attractive place for employers to locate their businesses or expand their businesses? I say, emphatically, no."

These are potentially big changes the employer community will have to be ready for, said Craig Rix, a lawyer at Hicks Morley in Toronto.

"To the extent that any of these major changes come about, I think that the HR community is going to

be very busy helping guide their organizations in making sure that they fully understand the full scope and extent of what these changes mean to the way we do business."

In hearing the report's recommendations, the Ontario Chamber of Commerce had called for a comprehensive economic impact analysis.

"You can make legal and academic recommendations, as the special advisors have done, that are based on interjurisdictional analysis, but the truth is that until you can answer with some confidence what the economic impact of any of one of these changes will be on our workforce, on our business, on the ability and desire of businesses to hire, then we are concerned it will have many unintended consequences," said Karl Baldauf, vice-president of policy and government relations at the Ontario Chamber of Commerce.

But this is not about crippling the economy of Ontario, said Chris Buckley, president of the Ontario Federation of Labour.

"It's not about putting businesses out of business, this is about collectively, both labour and government, working together to improve the lives of workers, not just unionize workers."

Wynne said the goals for economic growth and improved employee rights are not mutually exclusive.

"We have to make sure that busi-

nesses have what they need to keep growing, and we also have to make sure everyone in the province can benefit from that growth. That's not an either/or proposition," she said. "Our plan rewards good employers (and) helps ensure responsible, law-abiding employers don't face unfair competition from businesses that skirt the law and take advantage of workers."

One area of focus involves enforcement and administration. The province plans to hire up to 175 more employment standards officers by 2020-21. And by then, the employment standards program plans to resolve all claims filed within 90 days, and to inspect one in 10 Ontario workplaces.

Leave extensions

The government is proposing several changes around leaves, including the provision of three weeks of vacation after five continuous years of employment.

But five years is a long time for a person to wait, especially when people may change jobs several times during that time, said Buckley, in looking for advancement, better security or better income.

However, that vacation means costs for employers, said Baldauf.

"If a business has \$500,000 committed to salaries and benefits, government can't legislate that that change, so the pie just gets smaller.

And so maybe salaries decrease a bit, or costs for consumers go up.”

The report also said all employees should be given personal emergency leave, which currently is only available when a workplace employs more than 50 people. The leave would include two paid days.

“We’ve tried to strike a balance,” said Wynne. “The 10 days of personal emergency leave, we thought, within that, there has to be some support, there has to be some paid support, so we landed on the two days.”

But smaller employers just want people showing up at work to do the job, said Nixon.

“It’s the effect on an employer’s productivity and ability to meet the demands of its customers that is going to be affected. Arguably, larger employers are able to find someone to substitute for someone who’s away. Are smaller employers who employ three people, five people, seven people going to be able to do that?”

Precarious workers

Baldauf also has concerns about the changes around temporary workers.

“You may be discouraging people from hiring as many folks. They may be saying, ‘OK, well I’m going to have smaller workforce.’”

Many people do part-time work because they enjoy it and it’s flexible, he said.

“Part-time (work) is a good and positive component of a functioning economy, and if we’re discouraging businesses from maintaining that as an option, then we’re hurt-

ing students (and) a lot of people who are transitioning towards retirement, who choose that as the option.”

The government also made several proposals when it comes to scheduling workers. Employees can refuse to accept shifts without repercussion if their employer asks them to work with less than four days’ notice.

Employees who regularly work more than three hours per day, but upon reporting to work are given less than three hours, must be paid three hours at their regular rate of pay. And if a shift is cancelled within 48 hours of its start, employees must be paid three hours at their regular rate of pay.

That’s all well and good, but it may encourage or discourage employers from hiring students, said Nixon.

“Be careful what you ask for, be careful here, because the law of unintended consequences may come into play.”

Bargaining and union rights

The proposed legislation would also establish card-based union certification for the temporary help agency industry, the building services sector and the home care and community services industry.

The government also hopes to make access to first-contract arbitration easier, adding an “intensive mediation component” to the process.

And it would eliminate certain conditions for remedial union certification, allowing unions to more easily become certified if an employ-

er engages in misconduct that contravenes the Labour Relations Act.

That makes sense, according to Buckley.

“For far too long, it’s been easy for employers to stall the process, it’s easy for employers to put roadblocks up,” he said. “We wanted to eliminate any roadblocks and get down to fair and equitable collective bargaining.”

The government is also proposing unions be given access to employee lists and certain contact information if a union can demonstrate it has already achieved the support of 20 per cent of employees involved.

“The combined potential changes to the union certification process should, if they were all adopted, create a rather compelling case for employers to be diligent in working hard to create a workplace that wasn’t one that was ripe for organizing,” said Rix.

The proposed legislation would also allow the Ontario Labour Relations Board (OLRB) to change the structure of bargaining units within a single employer, if the existing bargaining units are no longer appropriate for collective bargaining.

The proposed changes would also allow the OLRB to consolidate newly certified bargaining units with other existing bargaining units under a single employer, if those units are represented by the same bargaining agent.

“That’s a power the Canadian Industrial Relations Board already has, and has had for decades,” said Nixon. “Trade unions may be saying on the one hand that they’re not sat-

isfied but, frankly, this tilts the balance more in favour of trade unions than has been in the past.”

But it appears secret ballot voting has been protected, which is a good thing, according to Baldauf.

“That’s something we think is very important to ensure that individuals have that right protected, that they don’t have to fear undue influence from union organizers, so that’s something that would be very beneficial.”

Additional changes

The Ontario government is also proposing:

- employees who hold more than one position with an employer and who are working overtime be paid at the rate for the position they are working during the overtime period
- a new, separate leave for child death from any cause for a period of up to 104 weeks
- increasing the family medical leave from up to eight weeks in a 26-week period to up to 27 weeks in a 52-week period
- no longer requiring employees to contact their employer before filing claim under the Employment Standards Act
- expressly empowering the OLRB to conduct votes outside the workplace, including electronically and by telephone
- increasing maximum fines under the Labour Relations Act to \$5,000 for individuals and \$100,000 for organizations (from \$2,000 for individuals and \$25,000 for organizations).