

LEGAL

Ontario Strengthening Worker Protections and Making Minimum Wage Increases More Predictable

Lancaster House – On November 6, 2014 the government of Ontario passed Bill 18, the *Stronger Workplaces for a Stronger Economy Act*, which makes significant changes to a number of employment-related statutes, including the *Employment Standards Act*, (ESA), the *Occupational Health and Safety Act* (OHSA), the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*, and the *Workplace Safety and Insurance Act*, (WSIA). The changes contained in the omnibus legislation implement some of the recommendations made by the Law Commission of Ontario in its report titled "Vulnerable Workers and Precarious Work" released back in April of 2013.

Amendments were made to the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others)*, which extend its application beyond live-in caregivers to all foreign nationals working in Ontario. The legislation requires employers and recruiters to provide Ministry-prepared information sheets to foreign workers and prohibits employers from recovering fees and other costs from foreign workers or from withholding personal documents such as passports.

With respect to the ESA, the new legislation makes temporary help agencies and the companies that retain them "jointly and severally liable" for unpaid wages, overtime, public holiday pay and premium pay for working on a holiday that are owed to temporary agency workers. Agencies are also responsible for tracking and recording hours worked by a worker and are required to retain those records for three years.

The legislation also changes the law pertaining to claiming unpaid wages. Prior to the amendments, an employee had six-months to make a claim and 12 months for repeated violations and claims for unpaid vacation pay. There was also a cap of \$10,000 that an employment standards officer or the Ontario Labour Relations Board could award in a wage order. Bill 18 amends the six- and 12-month time limits for the recovery of wages to a single two-year time limit and eliminates the \$10,000 cap on wage orders.

Bill 18 further amends the ESA with a new framework for regularly changing the minimum wage. Minimum wage adjustments are now tied to Ontario's Consumer Price Index as published by Statistics Canada. Under the legislation, increases to the general minimum wage and all special categories will be announced by April 1 of each year, and will come into effect on October 1. The

amendments also require a review of minimum wage rates every five years.

Prior to this new legislation, Ontario's minimum wage was increased from \$10.25 to \$11.00 on June 1st, 2014.

Bill 18 also expands the definition of "worker" for the purposes of the *Occupational Health and Safety Act*. Previously, the Act applied to persons "who perform work or supply services for monetary compensation," subject to certain exceptions. This definition traditionally excluded unpaid workers, such as interns.

With the implementation of Bill 18, the definition of "worker" now includes:

- A person who performs work or supplies services for monetary compensation.
- A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
- A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution.
- A person who receives training from an employer but who under the ESA, is not an employee for the purposes of the Act.

- Other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation.

Employee Found Liable for Insufficient Notice of Resignation

Harris – Recently the BC Supreme Court ruled a former employer was entitled to payment for damages after an employee failed to provide sufficient notice of his resignation. The court found that the employee's sudden departure caused economic hardship and ruled the employee was liable for \$56,116, which was the full cost of replacing him.

The employee was hired to manage the company's drilling and blasting business and was in that role for five years. He initially worked for the company's Maritimes operation and subsequently moved to the Western Canada division. His primary responsibility was to research and bid on project opportunities.

The employee resigned by sending a letter to his general manager and then left his Kamloops office. He had no further contact with the company in his capacity as an employee. At the time of his resignation, he was the only employee working in the company's Western Canada division. Because of the sudden and unexpected departure, the company had to send another employee out from its Ontario headquarters to BC to manage the Western Canada division.

The Court determined that the expenses incurred by the company for relocating the replacement employee and his family from Ontario to BC following the resignation amounted to the aforementioned \$56,116.

The decision confirms that employees are required to provide notice when they resign so the employer is able to arrange for another employee to cover their work or have sufficient time to hire somebody new.