

Bill 66 Receives Royal Assent — Changes to the Employment Standards Act, 2000 and the Labour Relations Act, 1995

April 5, 2019

On April 3, 2019, Bill 66 *Restoring Ontario's Competitiveness Act, 2018* received Royal Assent. Bill 66 was originally introduced on December 6, 2018 and makes changes to a number of statutes, including Ontario's *Employment Standards Act, 2000* (ESA) and *Labour Relations Act, 1995* (LRA).

Changes to the ESA

Approval for Excess Hours of Work

Bill 66 removes the requirement that an employer must obtain approval from the Director of Employment Standards (the Director) in order to make agreements with its employees or a trade union allowing employees to work in excess of 48 hours in a week. The requirement that an employer obtain written agreement from an employee or a trade union still applies, and should be reviewed before any employee subject to the hours of work provisions in the ESA is permitted to work excess hours.

2. Approval for Overtime Averaging

Bill 66 eliminates the requirement that an employer must obtain approval from the Director in order to enter into agreements with employees or a trade union to average hours of work for purposes of overtime pay. Notably, however, the amended provisions set a four-week limit on the overtime averaging period. Currently, there are no regulations or amendments providing for exceptions to this limit.

As with excess hours of work, the requirement to obtain agreement from an employee or a trade union still applies, and the requirements relating to the content of those agreements should be reviewed before they are entered into.

Transitional provisions in Bill 66 allow for existing overtime averaging approvals to continue until the earlier of the date the agreement is revoked by the employer, employee or trade union, the day the approval expires, or the day the approval is revoked by the Director.

3. ESA Poster Display

Bill 66 eliminates the requirement for employers to display the poster in a conspicuous place in the workplace, but maintains the requirement to distribute the poster to each employee.

The changes to the ESA came into force on April 3, 2019, when Royal Assent was received.

Changes to the LRA

Bill 66 modifies the definition of "non-construction employer" and deems the following organizations to be non-construction employers:

- A municipality
- A local board as defined in s. 1(1) of the *Municipal Act* or s. 3(1) of the *City of Toronto Act, 2006*

- A local housing corporation as defined by s. 24 of the *Housing Services Act, 2011*
- A corporation established under s. 203 of the *Municipal Act, 2001* or under s. 148 of the *City of Toronto Act, 2006*
- A district social services administration board established under the *District Social Services Administration Boards Act*
- A school board within the meaning of the *School Boards Collective Bargaining Act, 2014*
- A hospital within the meaning of the *Public Hospitals Act*
- A college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*
- A university in Ontario that receives regular direct operating funding from the government and the university's affiliates and federates
- A public body within the meaning of the *Public Service of Ontario Act, 2006*

Employers deemed to be non-construction employers may opt-out of this classification by making an election in accordance with provisions introduced by Bill 66.

The majority of the amendments to the LRA, including the modification of the definition of “non-construction employer” and the listing of deemed non-construction employers, are not yet in force and come into force on a day to be named by proclamation of the Lieutenant Governor.

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