

## Bill 146 may be much ado about nothing

Quoting Carissa Tanzola and Heather Robson

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Employers are being advised to wait and watch what happens with **bill 146's** proposed changes to employment legislation in Ontario as the political climate in the province means it may not get passed before voters potentially go to the polls this spring.

In early December, the Ontario government introduced bill 146, the “stronger workplaces for a stronger economy act,” with changes to statutes that would protect workers considered vulnerable, such as those employed by temporary help agencies as well as unpaid workers

and temporary foreign workers.

The amendments would require employers to be more closely tied to the temp agencies they use to hire staff in terms of wages, overtime, and the Workplace Safety Insurance Act. The bill also seeks to amend the Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), to extend protection to all foreign nationals working in Ontario pursuant to an immigration or temporary foreign employee program.

Currently, protection is given only to workers employed as live-in caregivers. The amendments will also prohibit a foreign worker from being charged a fee for recruitment and placement, and from having personal documents such as passports withheld from them.

“When the bill was introduced, the minister of Labour indicated his concern about the increase of the use of foreign workers and for that reason it was prudent to extend to all occupations,” says Heather Robson, a lawyer with Sherrard Kuzz LLP in Toronto.

The bill also proposes to remove the impact of the costs associated with a temporary worker’s injury from the temp agency’s experience rating and place it with the employer who hired the worker.

When it comes to the other changes some employment lawyers say it may be introducing unnecessary overlap.

“I think from our perspective a lot of the suggestions are going to be putting more requirements on employers that are maybe not necessary,” says Carissa Tanzola of Sherrard Kuzz. “When you get down to it employers have

their own record-keeping requirements, are subject to Ministry of Labour audits just as temp agencies are. What this legislation is asking employers to do is keep additional records for temp workers.”

The bill has only passed first reading and some employers are looking to make submissions to the legislature to express concerns. In the meantime, employers are being advised to strengthen indemnity clauses if not already in place but also consider asking for references for temp agencies in the future.

“I think employers will perhaps be a little more careful about who they use so they are comfortable that they won’t be stuck with any additional liabilities,” says Tanzola.

But others feel the suggested changes would clarify existing law and level the playing field.

“I think it’s a good thing, overall, but perhaps much ado about nothing,” says William Gale of Grosman Grosman and Gale LLP. “In some respects this new bill involves an initiative to have employers understand the law better and have employers take positive steps to communicate clearly to employees what their rights and obligations are under the act.”

Under the current Employment Standards Act, a claim for unpaid wages by an employee is limited in two ways:

- There is a six-month time limit imposed on most wage claims (increased to 12 months for repeat violations and claims for unpaid vacation pay); and
- There is a \$10,000 cap imposed on the amount an employment standards officer or the Ontario Labour Relations Board can award in a wage order.

The six- and 12-month time limits would be replaced by a single, two-year time limit for all wage claims and the \$10,000 cap would be eliminated in the amendments and no cap would be imposed.

“That’s all a little confusing as it currently exists because normally in a civil action there is a two-year limitation period; so now they’re making it uniform so it removes differing limitation periods across the board,” says Gale. “I see that as all being positive and making things easier to understand about who is responsible for what.”

If the amendments do pass, it will force temp agencies and their clients to sit down and rethink their agreements, says Paul Broad of Hicks Morley Hamilton Stewart Storie LLP.

“By making joint-and-several liability for wages or shifting costs of WSIB it certainly alters the factors under which they originally negotiated their arrangements and I suspect most temp agencies and their clients will have to sit down and say, ‘OK what does this now mean in terms of who has responsibility for what liability,’” says Broad.

Broad, who works with both temp agencies and employers who use them, is telling his clients to “wait and see”

because there is a big question whether the bill will get passed because of the minority government and general political climate. He says the government is trying to “plug a hole” where a client has been using the people from temp agencies and they haven’t been paid.

“What they are trying to do is not allow a temp agency to disappear and not pay their wages. The reason they have to do that is under the previous Bill 139 amendments from a few years ago. The ESA made it clear the temp agency is the employer and so for ESA purposes the temp agency is the only one who can be liable for wages as they are deemed to be the employer under the statute,” says Broad.

Proposed changes to employment legislation in Ontario may be an attempt by the current Ontario government to reduce the use of temporary employees but Gale says he doesn’t see the changes really deterring the use of temp agencies.

“There is a large amount of red tape involved in employers taking on the role of notifying employees when they are needed for work but with a temp agency they just pick up the phone and say make it happen. I think that is a big part of why temp agencies are hired in the first place — the lack of predictable long-term need. There is also CPP and EI involved in taking on longer-term employees,” says Gale.

With respect to the changes involving WSIB premiums, Broad says because it is ultimately the employer who controls the workplace, there would be some recognition in the proposed amendments that when there is an accident the client holds some responsibility since they are the ones in control of the safety practices in the workplace.

“I think probably what’s driving that is an attempt to get clients to make sure they have safe workplaces because it will reflect on their WSIB insurance ratings,” says Broad.

What’s not known, says Robson, is because the Workplace Safety and Insurance Act already allows for the transfer of costs if another employer is responsible for a worker’s injury, how it would be affected by the changes.

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