

The Changing Face of Employment and Labour Law in Ontario

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As 2015 draws to a close, let's take stock of where we've been and where we're going:

Ontario's Changing Workplaces Review

The Changing Workplaces Review ("Review") involves a series of public consultations to solicit views on reforming Ontario's employment and labour laws, including the *Employment Standards Act*, 2000 and *Labour Relations Act*, 1995 ("LRA"). Topics for review include: the changing demographic of Ontario's workforce; how Ontario can become a more globally competitive economy; the demand for skilled trades; the rise of "non-standard employment" including for example, temporary employment, involuntary part-time employment, on-call workers, and telecommuting; and the decline of unionization. As it relates to the construction industry, the Review will not address: the construction industry provisions of the *LRA*; minimum wage; and any matter for which an independent review has already been initiated, including the gender wage gap and migrant workers, among other topics. The Ontario government plans to introduce legislation in the Fall of 2016.

Occupational Health and Safety Update

i. New Training Requirements for Workers Working at Heights

On April 1, 2015, amendments to the *Occupational Health and Safety Awareness Training Regulation* under the *Occupational Health and Safety Act* ("OHS Act") came into force and include new training requirements for workers working at heights. Every worker who uses a travel restraint system, fall restricting system, fall arrest system, or safety net or belt as a source of protection must receive specific training to be renewed every three (3) years. Every construction employer must ensure workers receive training approved by the Chief Prevention Office ("CPO"), and have training records available to a MOL inspector upon request. If a worker has been trained in compliance with the prior training requirements, before April 1, 2015, the worker will have until April 1, 2017 to complete a program in accordance with the new standards. More information and a list of training providers can be found on the Ministry of Labour's website:

[<http://www.labour.gov.on.ca/english/hs/topics/heights.php>].

ii. Bill 132: Sexual Violence and Harassment Action Plan

In March of 2015, the Ontario government released an action plan entitled: “*It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment*” (“Action Plan”). The Action Plan includes thirteen (13) commitments from the Province, **two (2) of which relate to construction workplaces:**

1. Introduction of legislation to strengthen provisions related to sexual violence and harassment in the workplace, on campus, in housing and through the civil claim process (Commitment No. 1).
2. Enhancement of workplace laws to strengthen enforcement under the *OHSA* including the establishment of a Code of Practice to help employers develop stronger sexual harassment policies (Commitment No. 12).

Bill 132, *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)*, 2015 (“Bill 132”), fulfills the government’s commitment to enhance workplace laws to strengthen enforcement under the *OHSA* making sexual harassment in the workplace a health and safety issue.

Significantly, Bill 132 expands the definition of “workplace harassment” in the *OHSA* to specifically include “workplace sexual harassment”. This proposed definition is very similar to the one currently found in the Ontario *Human Rights Code*. However, its inclusion in the *OHSA* creates a *pro-active* obligation on an employer to take steps to prevent workplace sexual harassment *prior to* a complaint being made. Under Bill 132, every employer will be required to have a workplace sexual harassment policy including a process to deal with a complaint and manage information obtained during the process; conduct an investigation into an incident or complaint of workplace sexual harassment and harassment in general; and inform the complainant, in writing, of the results of the investigation and what corrective action will be, or has been, taken.

Also significant is the authority granted to a MOL inspector to order an employer to conduct an investigation into a workplace harassment complaint using an independent third party (at the employer’s expense), and cause the third party to produce a written report for the employer. As at the writing of this article, it is not clear whether the third party must in some way be certified or accredited to carry out such an investigation.

iii. Changes to Joint Health and Safety Committee Certification

On March 1, 2016, changes to the Joint Health and Safety Committee (“JHSC”) Training Standards will come into effect. The new standards contain requirements for the approval of certification training programs and training providers. Key components include: Part One Training generic to all workplaces where certified JHSC members are required under the *OHSA*; Part Two Training that is workplace-specific, focusing on recognition, assessment and control of hazards; and refresher training every three years. At workplaces where a JHSC is required under the *OHSA*, unless otherwise prescribed, at least one JHSC member representing the employer and one representing workers must be certified by the CPO. Certified JHSC members who completed both Part One and Part Two training

under the 1996 standards, prior to March 1, 2016, will continue to be certified and will not be required to complete further training under the new standards.

Accessibility for Ontarians with Disabilities Act (“AODA”)

As of January 1, 2016, every private sector organization, including construction companies, will have new obligations under the Integrated Accessibility Standards (“IAS”) of the AODA. Small organizations (fewer than 50 employees in Ontario) will be required to provide training on IAS and the *Human Rights Code* to: employees and volunteers; persons involved in developing policies; and persons who provide goods, services or facilities on the organization’s behalf. Small organizations will also have to ensure processes for receiving and responding to feedback from employees, the public, and clients, are accessible to persons with disabilities.

Large organizations (50 or more employees in Ontario) will be required to: advise employees of support policies; make accessible information required to perform the job and information generally; establish a written process to develop individual accommodation and return to work plans; and consider accessibility needs regarding performance management, career development and advancement, and redeployment. Requirements regarding recruitment will also be imposed on large organizations including: notifying employees, the public, and applicants about accommodation during employment; providing and arranging accommodation in consultation with persons with disabilities upon request; and informing successful applicants about accessibility policies.

WSIB Rate Framework Review

The Workplace Safety and Insurance Board (“WSIB”) has initiated a review of its employer classification, premium rate setting and experience rating systems (“Proposed Rate Framework”). In the Fall of 2015, the WSIB received more than 55 stakeholder submissions, including one from ORBA. Consultation is expected to last well into 2016.

News from the Ontario College of Trades

In October 2014, the Ministry of Training Colleges and Universities appointed Tony Dean to conduct an independent review of key areas of Ontario’s skilled trades system under the Ontario College of Trades (“College”). On November 20, 2015, the Dean Report was released, including recommendations on how to improve certain College policies and procedures (*i.e.*, scope of practice for trade; trade classification; ratio review; and enforcement, *etc.*). While the extent to which the recommendations will be implemented remains to be seen, the College has indicated it has “already begun to undertake foundational work that aligns with some of Mr. Dean’s recommendations”.

To learn more and for assistance regarding any of these important developments, contact a member of Sherrard Kuzz LLP.

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