

New workplace legislation could generate ‘unintended consequences’ for construction

by Angela Gismondi Jun 12, 2017

The Ontario government is planning to introduce new legislation that includes broad ranging amendments to Ontario’s Employment Standards Act (ESA) and Labour Relations Act (LRA), but it is unclear whether or not the changes will impact the construction industry.

The legislation is being proposed by the Ministry of Labour (MOL) in response to the Changing Workplaces Review Final Report.

According to the MOL, the intention of the proposed legislation, the Fair Workplaces, Better Jobs Act 2017, is to create more opportunities and security for workers across Ontario, but some construction industry stakeholders are worried the changes might inadvertently affect construction employers and workers.

Andrew Pariser, vice-president of the Residential and Construction Council of Ontario (RESCON), is particularly concerned about changes being made to the base legislation.

"Changing employment law, whether it's the OLRA or the ESA, creates a high likelihood of unintended consequences because those acts are so incredibly complicated. They've (the MOL) come out and said construction is not the focus, but when you change or propose changes to scheduling or leaves or the definition of a contractor, whether its independent or dependent, that has the potential to impact construction," said Pariser.

"It (the report) also speaks to the fact that construction is the bright spot in Ontario's economy and by and large it is where there is a growth in full time jobs. So you don't want to have changes to protect workers in one industry but have it negatively affect workers in another industry."

As the legislation proceeds to committee and through the legislative process, two areas RESCON will be paying particular attention to are scheduling and the definition of a dependent versus independent contractor, ensuring the current practices around subcontracting are not unintentionally affected by changes to the legislation. Residential construction often involves between 20 to 25 trades on site, Pariser explained.

"It's not practical for a builder to directly employ all of those employees and so it's heavily reliant on subcontracting and that's just a well-established practice that no one has ever challenged," said Pariser.

He also pointed out the initial Changing Workplaces Review Final Report contained 172 recommendations and he applauded the government for narrowing down the focus in the Fair Workplaces, Better Jobs Act.

"You can't look at 172 issues and do so in a meaningful way," said Pariser. "I think there has got to be a lesson going forward. It's fine and it's proper to review legislation but I think you need to do it with more precision."

Ian Cunningham, president of the Council of Ontario Construction Associations, was concerned with the impact the proposed legislation might have on small businesses as keeping up with changing regulations is especially challenging for this particular sector.

"The highest priorities of small businesses are generating revenues and managing costs," said Cunningham in an email to the Daily Commercial News. "Sometimes this takes them out of strict compliance with the ESA. If the bill is passed, the government has indicated that it intends to hire up to 175 new ESA enforcement officers. I'm pleased that the government has also indicated that ESA enforcement officers will take an education first approach to inform employers about their obligations under the new regulations."

The United Steelworkers (USW) issued a release stating the Changing Workplaces Review Final Report falls short. They focused on the imbalance of the employer-employee relationship.

The USW is calling on Ontario Premier Kathleen Wynne and Labour Minister Kevin Flynn "to also move beyond the review and truly rebalance the employee-employer relationship by guaranteeing: a broader-based bargaining model that is even more inclusive and reaches beyond employees of franchisees; the option of binding arbitration to solve long strikes or lockouts and the protection of the right to strike by prohibiting employers from using replacement workers; card-check certification rights for all Ontarians, no matter where they work. Currently this right is limited to those in the construction sector, a restriction that has no justification."

Fair Workplaces, Better Jobs Act highlights

TORONTO — The Fair Workplaces, Better Jobs Act, 2017 proposed by the Government of Ontario would:

- Raise Ontario's general minimum wage to \$14 per hour on Jan. 1, 2018, and then to \$15 on Jan. 1, 2019, followed by annual increases at the rate of inflation;
- Mandate equal pay for part-time, temporary, casual and seasonal employees doing the same job as full-time employees; and equal pay for temporary help agency employees doing the same job as permanent employees at the agencies' client companies;
- Expand personal emergency leave to include an across-the-board minimum of at least two paid days per year for all workers;

- Bring Ontario's vacation time into line with the national average by ensuring at least three weeks' vacation after five years with the same employer;
- Make employee scheduling more fair, including requiring employees to be paid for three hours of work if their shift is cancelled within 48 hours of its scheduled start time; and
- Introduce measures to expand family leaves and make certain employees are not misclassified as independent contractors.