

## Building services seen as precarious employment

Ontario's proposed labour legislation covers wide sweep of issues

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By Barbara Carss

Cleaners, security guards, parking attendants and building-specific food service workers could attain union certification through a streamlined one-step process if proposed amendments to Ontario's Labour Relations Act are adopted. Building services are also among a handful of sectors subject to a special measure that would uphold collective agreements and bargaining units when contracts are re-tendered, while, more generally, proposed changes to the Employment Standards Act would apply to the vast majority of workplaces in the province.

A relatively fast-tracked schedule to raise the provincial minimum wage to \$15 an hour by January 1, 2019 captured much of the attention when [new legislation](#) to address employers' responsibilities and workers' entitlements was tabled in the Ontario legislature earlier this month, but the envisioned overhaul of the two Acts — known as Bill 148 — encompasses dozens of revisions and additions to the rules. This follows the report and recommendations of the government's appointed review panel, which consulted widely on the state of Ontario workplaces over a two-year period. Its [final report](#) was released a week before Bill 148 was introduced.

Some proposals, such as those related to overtime, holiday pay, emergency and medical leave, cover employees at all levels of the wage scale. Other measures are directed at people in low-paid, part-time and/or less stable positions, commonly defined as precarious employment, and Premier Kathleen Wynne did not shy from naming the source of many such jobs as she outlined highlights of the legislation.

“We will modernize rules around creating a union. That includes the extension of card-based certification to three vulnerable sectors — temporary workers, building services workers and home and community care workers,” she announced in a [May 30 speech](#).

### Labour Relations Act amendments

Workers in the designated sectors would gain the same flexibility that the construction trades already have to unionize without a formal vote. Under these rules, which have been in place for much of this decade, union organizers can submit an application to the Ontario Labour Relations Board (OLRB) for certification once they believe that at least 55 per cent of the potential membership of a bargaining unit has signed up. Employers have two days to respond after they're notified of the application.

If there is no response, the bargaining unit is certified. If employers dispute the application — typically contending that it does not represent the required percentage of prospective members — the Labour Board can either order a formal vote if it's determined that at least 40 per cent of prospective members of the bargaining unit have signed up, or dismiss the application for having too few signatories.

Recent research from [Social Planning Toronto](#) notes the obstacles to organizing workers such as cleaners who move through multiple jobsites often on erratic schedules where they interact with few colleagues. Although card-base certification requires a higher commitment threshold, at 55 per cent versus 50 per cent in a formal vote, it avoids the potentially contentious lead-up to that vote.

“Generally speaking, it's easier for the union for two reasons: 1) the union has control over when and how they obtain the cards to be signed, and when they file the application with the Ministry, so they can wait until they have the numbers they need; and 2) the certification could happen without the company even knowing there is a certification effort underway,” explains Michael Horvat a partner who practices with Aird & Berlis LLP's labour and employment group.

“For employers, it can be challenging to respond within two days, particularly if the application is submitted at 4 p.m. on a Friday. The timelines are extremely tight and very unforgiving,” says Andrew Pariser, vice president of the Residential Construction Council of Ontario ([RESCON](#)). “You do see a lot of certifications where there has been no response or submission from an employer.”

Nor are there necessarily set parameters for defining a bargaining unit and, accordingly, what 55 per cent of it might be. In addition to employees of contractors providing third party services, building owners/managers' in-house maintenance and security staff would theoretically qualify for card-based certification.

“It will be interesting to see how it works out in building services. The requirement is only an appropriate unit, not the most appropriate unit,” Horvat adds.

Bill 148's move to extend successor rights when building service contracts are re-tendered is likewise uncharted territory. Under current law, existing collective agreements remain in place when a business is sold because it is a transaction between the vendor and the purchaser, but they do not have to be honoured when a contract is re-tendered because there is no exchange of value between the outgoing and incoming contractor. The proposed amendment would specifically require building services contractors to take on the obligations of their predecessors.

“This is a significant change. This is now creating a connection that the law didn't previously recognize,” Horvat says. “Effectively, the building location could be unionized for the service. It's going to become an element of disclosure in transactions.”

It could also provide more stability for incumbent contractors. Looking to the construction sector, the highly unionized labour force serves as something of an equalizer. “In competitive

settings, you can't compete on the price of labour. That's just the industry reality," Pariser observes.

## Operating costs and investor information

Full-day public hearings on the proposed Act are planned for 10 Ontario cities next month and written comments can be submitted until July 21. This will likely bring more discussion on the potential flow-through repercussions for building operating costs to light.

Industry insiders do expect a higher minimum wage will increase costs throughout the supply chain. Even where employers are already paying hourly rates around \$15 there will be pressure to preserve the differential above the minimum wage for workers with more seniority — perhaps as part of the strategy to appease those who might contemplate unionization.

For the workers themselves, this should be welcome. Social Planning Toronto's [analysis](#) reveals a divide even in sectors where wages are low and shifts are irregular. Data for 2,754 workers between the ages of 25 and 64 shows that 54 per cent of unionized workers earn at least \$40,000 annually, compared to just 43 per cent of non-unionized workers. More notably, 59 per cent of unionized workers have a pension plan and 45.5 per cent have benefits versus 20 per cent of non-union workers with pension plans and a mere 13.3 per cent with benefits.

Yet, the legislation hits one of commercial real estate's big-three operating costs at a time when the other two — utilities and property tax — are also under pressure. The Ontario government's recent electricity cost adjustments largely benefit residential ratepayers, while May's Global Adjustment of 12.31 cents per kilowatt-hour doesn't exhibit any discernible discount for [Class B commercial electricity customers](#). Simultaneously, many Ontario municipalities are phasing out [property tax rebates](#) for vacant commercial and industrial space.

"I'm hearing that some managers are actually beginning to modify their cleaning specifications because of continuing rising electricity costs," reports Peter Willmott, a facilities management advisor at Ryerson University and a long-time instructor in real estate finance, management and operations with the [BOMI Institute](#). "After landlords have done as much as they can to maximize energy efficiency, labour becomes the next cost-cutting option. Spiralling electricity costs along with new labour costs will likely lead to shrinking staff sizes."

From a real estate investment perspective, there is some tentative momentum for disclosure and transparency relating to workforce conditions. The Global Real Estate Sustainability Benchmark ([GRESB](#)) primarily tracks the environmental performance of portfolios, but survey participants are also [asked to report](#): if they have policies regarding workers' rights and labour-management relationships; whether their employees are trained on workplace and supply chain health, safety and well-being; and if their external contractors are subject to business ethics, human rights and health and safety requirements.

The Vancouver-based Shareholder Association for Research & Education ([SHARE](#)) is working with a UK-based non-governmental organization on a new [workforce disclosure initiative](#), thus far signing on 18 Canadian institutional investors with \$70 billion of assets under management

for the inaugural survey and report. Although these entities are largely in the public equities class, more institutional investors in Canada and the United States are calling on their real estate arms or asset managers to consider social conditions for all who are employed somewhere in their portfolios.

“Reporting around employees is still framed very much as a cost for employers, but more and more funds have been adopting responsible contracting policies,” says Hugues Letourneau, SHARE’s senior environmental, social and governance (ESG) analyst. “Asset managers then embed responsible contracting in their RFPs.”

*Barbara Carss is editor-in-chief of Canadian Property Management.*