



Employment Bulletin

Bill 69: Labour Relations Amendment Act

Bill 69, which significantly amends the Ontario Labour Relations Act received third reading before the Ontario Legislature on November 28, 2000. The following are some of the highlights of the Labour Relations Amendment Act.

Changes to the "Key Man" Doctrine:

- When a union brings a related employer application to the OLRB seeking a declaration that a non-unionized employer is related to a unionized employer the OLRB considers several factors, including:

1. Is there more than one legal entity?
2. Are the entities engaged in related or associated activities?
3. Are the entities under common control or direction?

- In the construction industry, in particular, the OLRB has refined the above analysis and often will find that an employer is related to another employer if they share, or shared, the same "key" individual. For example, if a company operates for several years as a unionized drywalling subcontractor, and an employee controls the day to day activities of the business, he will be considered to be the key individual in the company.

- If thereafter that key individual incorporates a new company, and attempts to operate business

without union involvement, it is very possible that the second corporation could be subject to a related employer finding. Alternatively, the OLRB may find that there has been a sale of business from the first corporation to the second because of the transfer of the "key man." In either circumstance, the OLRB may order that the union would have bargaining rights over the second corporation.

- Bill 69 provides that if an application is made for related employer or sale of business declarations, the OLRB shall consider the following:

1. the length of any hiatus between when the individual was a key individual with one entity and when the individual was a key individual with the other entity or entities;
2. whether the first entity with respect to which the individual is alleged to have been a key individual was one with which he or she occupied a formal management role; and,
3. whether the first entity with respect to which the individual is alleged to have been a key individual was able to carry on business without substantial disruption or loss when he or she ceased to be involved with that entity.

- The above considerations specifically address factors which the OLRB has previously minimized when applying the "key man" doctrine.

“Bill 69 also contains significant amendments to the province-wide collective bargaining arrangement in the residential sector in Toronto, Halton, Peel, York, Durham and Simcoe.”

Additionally, Bill 69 indicates that in these applications the OLRB shall not consider any relationship by way of blood, marriage or adoption between individuals in each entity. This addresses the situation where a family business is dissolved when the patriarch of the family decides to retire and the children, who have been working for the family business for some time, incorporate a new company to do substantially the same work as the family business had done.

Province Wide Collective Bargaining in the Residential Sector:

- Bill 69 also contains significant amendments to the province-wide collective bargaining arrangement in the residential sector in Toronto, Halton, Peel, York, Durham and Simcoe. Most collective agreements in the residential sector of the construction industry in those geographic locations shall be deemed to expire on April 30, 2001.
- Strikes or lockouts will only be permitted between April 30 and June 15, 2001, after which either party can require that any dispute be referred to binding interest arbitration.
- All of these collective agreements will have a 3 year term which cannot be extended.

Employment in the ICI Sector

- If an employer so elects, a provincial agreement will be deemed to contain the following provisions:
 1. up to 75% of employees performing work in the ICI Sector may be hired by the employer without referral from the trade union; and,
 2. up to 40% of the employees hired directly by the employer may be employees who are not members of the union.

Additional Amendments:

- The Lieutenant Governor in Council may make a regulation deeming the bargaining rights held by all employee bargaining agencies with respect to an employer in an area to have been abandoned if a majority of them filed with the Minister a written agreement to abandon those bargaining rights with respect to that employer in an area comprising all of Ontario or specified parts of Ontario.
- An employer bargaining agency may apply to an affiliated bargaining agent to agree to amendments to an agreement with respect to the kind of work performed, the market in which it is performed or the location of the work where the work could be performed in the ICI sector.

Please contact us if you wish copies of the Bill or an update with respect to its status.

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