

Changing Workplaces Review and Other ESA Developments

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Agenda

- ESA Developments
- The Changing Workplaces Review
 - Overview of ACSESS Submissions
 - Issues Advanced by Employee Advocates
 - Joint Employment
 - The US Model
 - Next Steps

ESA Developments – Bill 139

- Bill 139 amendments from 2009
- Regulated the use of "assignment employees"
- Clarified that agency is employer under the ESA
- Permitted assignment employees to allege reprisals by the client of the agency
- Otherwise, agency responsible for ESA entitlements
- Regulated fees

ESA Developments – Bill 18

- Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014*
- Agency and customer are now jointly and severally liable for:
 - regular wages
 - overtime pay
 - public holiday pay
 - premium pay

Impact of Bills 139 and 18

- Bill 139 changes have created significant administrative difficulties for agencies – for example:
 - Rule that agreement to try to place employee creates an employment relationship
 - Rule that time between placements = a layoff
 - Deemed termination and severance rules where a layoff reaches defined thresholds

Changing Workplaces Review

- Ontario government launched public consultations on February 17, 2015
 - *Employment Standards Act, 2000*
 - *Labour Relations Act, 1995*
- Various subjects are the focus of the Review, including:
 - Non-standard working relationships, including temporary jobs, part-time work, and self-employment

Changing Workplaces Review

- The Advisors have been conducting public hearings, receiving written submissions and holding stakeholder meetings
- Majority of submissions are coming from trade unions and employee groups – 75%
- ACSESS met with the Advisors in September 2015 and provided follow-up information and contact until February 2016

Overview of ACSESS Submissions

- Provided information to educate the Advisors about the temporary help agency industry
- Explained benefit of temporary employment for assignment employees
 - Clear need to counteract strategy of employee advocacy groups

Overview of ACSESS Submissions

- Reminder of existing ESA regulation and protections provided to assignment employees
- Specific responses to key issues and positions being advanced by employee advocacy groups
 - Key group is the Workers' Action Centre
 - Nearly 50 recommendations, many relating directly or indirectly to temporary agencies and their employees

Employee Issues – Wage Parity

- Strong push for wage parity where assignment employee is doing comparable work to that of customer's employees
 - same wages, benefits and working conditions
- Advisors clearly signaled concern with long-term assignments generally, and especially where wage parity is absent and where benefits not provided

Employee Issues – Joint and Several Liability

- The Workers' Action Centre and others are advocating for full joint and several liability for all ESA entitlements
- This despite the recent introduction of some joint and several liability in Bill 18
- Advisors giving serious thought to "joint employer" issues more generally

Employee Issues – Elimination of Client Fees

- The Bill 139 changes significantly limited permissible fees
- Preserved right for agency to charge a fee where a customer hires an assignment employee within 6 months of the first date of the assignment
- There is a perception that any fee is a barrier to permanent employment and employee advocates calling for their elimination

Employee Issues – Ban on Long-Term Assignments

- As noted earlier, there is a strong concern about long-term assignments
- WAC recommends a 6-month limit before customer would become employer of assignment employee

Joint Employment

- Labour boards in Canada have made findings that customers are joint employers with the agencies for labour relations purposes
- Generally, focus will be on which party has control of the workplace and employment relationship, and boards will consider a variety of factors
- Boards can also consider if the customer and agency are related employers

The US Approach – Joint Employers

- *Browning-Ferris Industries of California, Inc.*,
2015 National Labour Relations Board
- Joint-employers test:
 - Both employers within the meaning of the common law test
 - Co-determine matters governing the essential terms and conditions of employment

The US Approach – Joint Employers

- Control can be indirect and need not be exercised, standard is based simply on the **right** to exercise control
- The Advisors are aware of this decision and are considering recommendations for the *Labour Relations Act* and possibly the ESA to make joint employer findings easier

Next Steps

- Interim Report(s) from the Special Advisors expected in late April or May
- Short period for public comment – 2 to 3 months
- Final report expected this Autumn
- All indications are that report will focus heavily on "vulnerable workers" – a term that includes temporary assignment employees

Protecting Your Interests

- Counterbalance employee-focused submissions
- Uniquely positioned to provide critical insight as to:
 - Economic realities of complex and constantly evolving workplaces
 - Business response to government oversight and regulation

Protecting Your Interests

- While Advisors cannot amend the ESA directly, their recommendations will create political pressure on the Government
- Employer voices are not being heard because of limited involvement
- Encourage customers to participate – Advisors need to hear about the importance of the staffing industry to business competitiveness

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