

## TORIES' OMNIBUS BILL AMENDS NUMEROUS LABOUR STATUTES

### ***BILL 57: GOVERNMENT EFFICIENCY ACT, 2001***

#### First Reading

On 17 May 2001, the Harris Government introduced Bill 57, the *Government Efficiency Act, 2001* for First Reading in the Legislature. Bill 57 is an omnibus bill that amends over 50 different statutes. Included are substantive amendments to the

- \* Employment Standards Act 2000
- \* Occupational Health and Safety Act
- \* Workplace Safety and Insurance Act
- \* Hospital Labour Disputes Arbitration Act, and
- \* Ontario College of Teachers Act, 1996.

Set out below are only the most significant of the proposed changes to these statutes.

#### **BILL 57 AMENDMENTS TO THE EMPLOYMENT STANDARDS ACT 2000**

Bill 57 proposes to make extensive amendments to the Employment Standards Act 2000, the new employment standards legislation that the Government passed last year but which has not yet been proclaimed in force. The Bill 57 amendments to the Employment Standards Act 2000 would come into force on a day to be named by proclamation of the Lieutenant Governor.

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Among these proposed amendments are the following:

#### **Pregnancy Leave**

- \* Under Bill 57 the provisions regarding pregnancy leave would be amended to prescribe the latest date on which an employee may begin her pregnancy leave. An employee may begin her leave no later than her due date or the day on which she gives birth, whichever is earlier.

### **Pregnancy, Parental and Emergency Leave and the Right to Defer Vacation**

- \* Bill 57 would introduce a new section that preserves an employee's right to vacation where there is a conflict between a pregnancy, parental or emergency leave and vacation. Under this new provision, a person taking pregnancy, parental or emergency leave may defer taking vacation until the leave expires if under the employment contract the employee may not defer vacation or there are restrictions on the employee's ability to take vacation and, as a result, in order to exercise her or his right to leave, the employee would either have to forfeit vacation pay or take less than her or his full leave entitlement.

### **Severance Pay**

- \* The provisions regarding severance pay are amended to allow an employer to pay severance pay in instalments either with the agreement of the employee or with the approval of the Director of Employment Standards.

### **Limitation Period for Filing Complaints**

- \* Bill 57 would introduce a new provision imposing a two year limitation period for filing complaints under the Act. Under this provision, if a complaint is not filed within two years of the contravention, the complaint will not be dealt with. The new provision states that "a complaint regarding a contravention that occurred more than two years before the day on which the complaint is filed shall be deemed not to have been filed."

### **Employment Standards Officers May Be Subject to Prosecution**

- \* Bill 57 would introduce a new section allowing employment standards officers to be prosecuted for failing to follow any policies established by the Director of Employment Standards. The consent of the Deputy

Attorney General is needed to commence such a prosecution.

### **Provisions Regarding Contraventions under the Old Employment Standards Act**

- \* When the Employment Standards Act 2000 was passed in December 2000, it contained transition provisions which provided that contraventions of the old Employment Standards Act could be the subject of enforcement under the ESA 2000. As a result, contraventions of the old Employment Standards Act would be dealt with under the terms of that former Act.

### **BILL 57 AMENDMENTS TO THE OCCUPATIONAL HEALTH AND SAFETY ACT**

Bill 57 makes a number of amendments to the Occupational Health and Safety Act. The major substantive changes relate to

- \* introducing new codes of practice;
- \* reporting with respect to toxic substances; and
- \* inspection of unsafe work refusals.

### **New Codes of Practice**

- \* Bill 57 introduces a new Part III.1 to the Occupational Health and Safety Act. This Part empowers the Minister of Labour to approve all or part of a code or standard of practice "made by any person or body or by the Ministry". Compliance with this approved code or standard of practice is deemed to be compliance with a requirement imposed by a regulation made under the Act. Failure to comply with the code is not, in itself, a breach of the regulatory requirement. In a prosecution under the Act, an employer can defend itself by proving that "whatever was done afforded protection for the health and safety of workers that was at least equal to the protection that would have been given if the approved code of practice had been complied with.

### **Repealing Provisions Dealing with Reporting Regarding Toxic Substances**

- \* At present, section 34 of the Occupational Health and Safety Act prohibits a person from manufacturing, distributing or supplying any new biological or chemical agent for commercial or industrial use in a workplace unless the person first submits to the Director a notice of their intention to do so and a notice listing all the ingredients of the new agent. The Director is required to promptly make a decision as to whether the introduction of the new agent may endanger the health and safety of workers and shall require a person possessing special, expert or professional knowledge or qualifications to make a report and assessment of the agent. The report would analyse the ingredients of the agent, the composition and properties of the agent, the toxicological effect of it, the effect of exposure to it, protective measures to be used in relation to it, the emergency measures to be used to deal with exposure and the effect of the use, transport and disposal of the agent. The report would be prepared at the expense of the manufacturer, distributor or supplier.

Bill 57 would repeal section 34 on a day to be named by proclamation.

- \* At present, section 36 of the Occupational Health and Safety Act requires every employer to make and maintain an inventory of all hazardous materials and all hazardous physical agents that are present in the workplace, including a list of the ingredients of all the hazardous materials. The employer is also required to make readily accessible and post in the workplace a floor plan showing the names of all hazardous materials and their locations. Section 38 of the Act requires that a copy of this inventory shall be made available to workers, to the health and safety committee, to the medical officer of health of the local health unit, to the local fire department and to the Director.

Bill 57 would repeal section 36 on the day Bill 57 receives Royal Assent and would make corresponding amendments to section 38 so that the inventory of hazardous materials no longer need be made available.

### **Unsafe Work Refusal**

- \* Under the current s. 43(7) of the Occupational Health and Safety Act, where a worker refuses work on the basis that it is unsafe, an inspector is required to come to the workplace physically and investigate the work refusal "in the presence" of the employer, worker and person representing the worker. This provision is amended so that the inspection need not be done in person but could now be done merely "in consultation with" the employer, workers and worker representative.

### **BILL 57 AMENDMENTS TO THE WORKPLACE SAFETY AND INSURANCE ACT**

#### **Employer Records**

- \* Section 80 of the Workplace Safety and Insurance Act currently requires a Schedule 1 employer to keep accurate records of the wages paid to an employee and to keep these records in Ontario. Bill 57 would add a new requirement that the employer must produce these records when the Board or any of its officers requires the employer to do so.

### Prosecutions under the Act

- \* Currently, prosecutions with respect to making false or misleading statements or representations and wilfully failing to notify the Board of a material change in circumstances must be commenced within 2 years of the most recent contravention. Bill 57 amends the Act to remove the limitation with respect to prosecutions for these two kinds of offences.
- \* Bill 57, however, adds a general two year limitation period for commencing prosecutions with respect to any offence under the Act other than making false or misleading statements or representations or wilfully failing to notify of a material change in circumstances.

### BILL 57 AMENDMENTS TO THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT

- \* HLDAA is amended to provide that the mandatory interest arbitration provisions under HLDAA do not apply to employers who are receiving funding from the Ministry of Community and Social Services under the *Developmental Services Act* or are parties to an agreement with the Ministry of Community and Social Services to receive funding under the *Developmental Services Act*.
- \* Bill 57 provides that if, before the day on which Bill 57 receives Royal Assent, a conciliator had been appointed and the Minister has already given the parties notice that the conciliator has been unable to effect a collective agreement, HLDAA applies with respect to the making of this collective agreement but would not apply to future agreements.
- \* This change would appear to be in response to recent rulings by the Ontario Labour Relations Board that had found some such employers to be subject to HLDAA.

### BILL 57 AMENDMENTS TO THE ONTARIO COLLEGE OF TEACHERS' ACT, 1996

### New Rosters for Committee Panels; Rosters may include Cabinet appointments

- \* Bill 57 would amend the Ontario College of Teachers Act, 1996 to enact new provisions prescribing in more detail who may be members of the panels of the
  - \* Investigation Committee
  - \* Discipline Committee
  - \* Registration Appeals Committee and
  - \* Fitness to Practice Committee.
- \* Panels of the committee must be composed of at least three persons. A majority of the panellists must be members of the committee. At least one panellist must be a committee member elected by members of the College and at least one panellist must be a committee member appointed by Cabinet. Any panellist who is not a member of the committee must be chosen from a newly created roster of panellists.
- \* The College Council is given new powers to make by-laws establishing a roster of eligible panellists and respecting the selection, qualifications and training of eligible panellists. The roster shall consist of such persons as the College council considers qualified to serve as members of a panel of a committee. However, Cabinet is also given the power to "appoint such persons to a roster of panellists ... as he or she considers appropriate".