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## Employment

# Amendments to the Employment Standards Act

Just What You've Been Waiting For – More Legislative Changes!



While the condominium industry has justifiably been preoccupied with the long-awaited amendments to the Condominium Act, there are other important legislative changes coming that could impact condominiums. One example is the extensive amendments to the Employment Standards Act (ESA).

In 2015, the Ontario government commissioned a report to look at amendments to the ESA and other employment legislation. The purpose was to respond to changing workplace trends, particularly the increase in service sector jobs and temporary or non-standard work. The review process has culminated in a report, called *The Changing Workplaces Review*, released by the government in May 2017. Soon thereafter, the government introduced Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*. Not all of the 173 recommendations in the Review report made their way into the legislation, but there are still a number of significant changes to the ESA that could affect condominium corporations. Whether or not your condominium corporation

employs staff directly, these changes could affect you, even if only financially.

The Bill has not yet been passed by the Legislature but is expected to be approved by the Legislature in late Fall 2017.

The most direct financial impacts of the changes are those that increase the minimum levels of pay, vacation pay and, for the first time, introduce a new paid emergency leave requirement.

The change that has been most discussed is the increase to the minimum wage. The minimum wage will be increased to \$15 per hour by 2019 (up from \$11.60 as of October 1, 2017). It will be adjusted annually thereafter for inflation.

Minimum vacation entitlement is also increasing for some workers, in that workers with more than five years' service with the same employer must now receive a minimum of three weeks' paid vacation per year. Currently, paid vacation is capped at two weeks, regardless of the length of service.

New scheduling rules will mean that employees have to be paid for at least three hours' work if they were on call but not required to work, or were required to work, but worked less than three hours. An employer can cancel a shift or on call requirement but must give the employee at least 48 hours notice. If the cancellation occurs less than 48 hours beforehand, the employee is still entitled to three hours' pay.

As well, the Act will, for the first time, contain mandatory paid leave. Currently, employees whose employer regularly employs 50 or more employees are entitled to up to 10 days leave without pay as a result of a personal illness, or the death, injury or medical emergency of an immediate family member. Under the amended Act this personal emergency leave is extended to all employees, regardless of the size of the employer. As well, two of the ten days' leave will have to be paid days.

Unpaid leaves are also being increased. Parental leave, for example is increasing from the maximum of 35 weeks to 61 weeks.

When coupled with pregnancy leave (17 weeks, which will remain unchanged) an employee can now take up to 78 weeks off following the birth of a child. (Pregnancy leave is available only to a woman who gives birth, but parental leave may be taken by either parent).

There are also new provisions allowing employees to take up to 15 weeks of unpaid leave if the employee, or his or her child, experiences domestic or sexual violence or the threat of domestic or sexual violence. The leave must be taken for any of the purposes of obtaining medical or legal

assistance in relation to the domestic or sexual violence.

The provisions for family medical leave are also being expanded. Currently, the Act provides leave of up to 8 weeks without pay to care for an immediate family member who is at risk of death within 26 weeks. That is being increased to 27 weeks if the family member is at risk of dying within 52 weeks.

#### Equal Pay for Equal Work

A major focus of the Review Report was the changing nature of work and in par-

ticular the rise in temporary or agency-type work. The legislation has a number of features designed to ensure that agency, temporary or part-time employees are treated the same as full-time employees doing the same work.

For example, the Act will now require that employees whose only difference is their employment status (i.e. full-time versus part-time, seasonal or casual) be paid the same rate of pay if they do the same job. As well, a temporary help agency will be prohibited from paying an employee on assignment less than the employees of the client of the agency who perform the same work.

Employees can still be paid differently if the difference is due to a seniority system, merit system or a system that measures earnings by quantity or quality of production. In other words, as long as the difference in pay is not due to the fact that the person is a part-time, seasonal or temporary worker, the difference in rate of pay is permissible.

#### Lien Rights to Secure Unpaid Wages

The ESA will also have new enforcement powers regarding any order to pay wages made under the Act. The Director of Employment Standards will now have the ability to register a lien on real property (which would include a condominium unit). The lien will have priority over all subsequent registrations. This could mean that a lien registered under the ESA has priority over a condominium lien if the condominium's lien is registered after the ESA lien. Currently, condominium liens take priority over all prior or subsequent encumbrances, except for claims by the Crown or claims for taxes.

What does all of this mean for condominium corporations? Corporations who employ staff directly will need to be aware of and budget for the new minimum wage, increased vacation pay for some employees and increased paid and unpaid leaves. Corporations with part-time or seasonal staff may need to ensure that they are not paid less than regular full-time staff who perform the same work (unless the difference is due to a pay grid based, for example, on a seniority system). Even those corporations that do not employ staff directly may see an impact as staff members make use of the longer leave provisions and contractors begin to pass on their increased labour costs. **CV**





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