

---

# Ontario's *Changing Workplaces Review*

---

Presented by: Erin Kuzz

For: Home Care Ontario

Date: March 28, 2017



# Agenda

- Overview of the *Changing Workplaces Review* Interim Report
- The “Relevant Menu” of Potential Changes
  - *Labour Relations Act, 1995*
  - *Employment Standards Act, 2000*
- PEL Pilot Project
- Next Steps and opportunities

# Overview

- Two Special Advisors appointed to lead public consultations on the changing workplace:
  - C. Michael Mitchell, Honorable John C. Murray
- Initial public engagement sessions gathered input from Ontarians
- Interim Report released July 27, 2016 which identified over 50 different issues and over 225 options
  - Further public submissions accepted until October 14, 2016
  - Recommendations in a Final Report to be released...any minute now

# Overview

- 100's of submissions made by:
  - ❑ Trade Unions & Employee Associations
  - ❑ Workers' Advocacy Groups
  - ❑ Legal Aid Clinics
  - ❑ Employer Associations (including HCO)
  - ❑ Individual Employers
  - ❑ Chambers of Commerce
  - ❑ Government Agencies & Tribunals

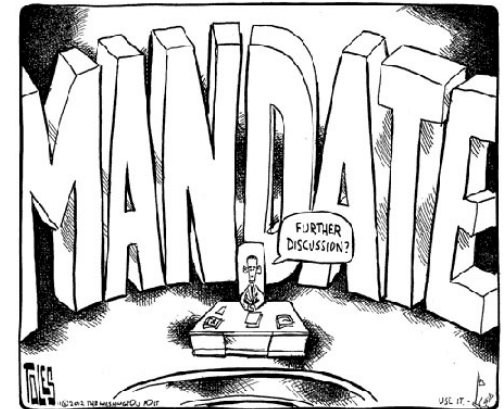
# Mandate & Scope of Review

- The Special Advisors have been asked to determine how the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995* can be reformed to **better protect workers while supporting business** in our changing economy



# Intended to Address

- Rising prominence of public sector
- Increase in non-standard working relationships, some of which result in ‘precarious employment’
- Accelerating technological change
- Greater workforce diversity



# Non-standard Employment

- **“Non-standard Employment”** includes:
  - Temporary employment
  - Self-employment without paid help
  - Part-time employment where workers want more hours
  - Employment characterized by workers who hold multiple jobs but whose total earnings fall below the median wage
- Non-standard employment is on the rise due to a significant increase in temporary and involuntary part-time employment
  - ‘fissured employment’

# The “Menu of Changes”

- Interim Report issued July 27, 2016
- Provided ‘menu’ of potential changes and positions taken by various parties in relations to those items in their submissions
  - *Labour Relations Act, 1995*
  - *Employment Standards Act, 2000*
- Home Care Ontario provided substantive written submissions



---

# *LABOUR RELATIONS ACT, 1995*



---

# Overview

*“If we can increase trade union density in the province of Ontario we will surely improve the lives of the vulnerable workers who toil in precarious employment working below the poverty line.”*

# Decline in Union Representation

- Providing the ‘precarious worker’ with easier access to unionization
- From the *Changing Workplaces Review* “Guide to Consultations”
  - Long term decline in unionization
  - Unionization rate fallen in all provinces
  - Young workers least likely to be unionized



---

# The “Menu” of Potential Changes

## ■ *Labour Relations Act, 1995*

- Scope and Coverage
- Certification Process
- Collective Bargaining
- Sectoral Bargaining
- Sale of Business and/or Related Employer
- Labour Board

---

# Scope and Coverage

## ■ *Revisiting Exemptions:*

- Supervisors and Jr. Managerial employees
- Independent Operators
- Professionals

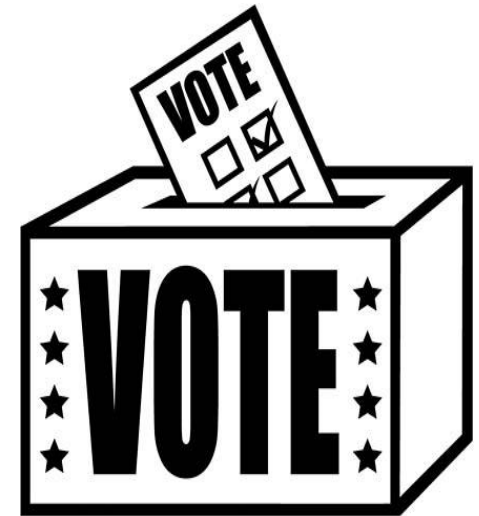
# The Certification Process

- Theme: if we increase unionization = improved working conditions
- Current process: cards + vote = certification
- Most common suggestion in consultations is to change to card based only (no vote)



# The Certification Process

- Maybe not quite card based certification but changes to make unionization more accessible
  - Employee lists at 20% support
  - Off site or neutral site voting
  - Electronic membership



# Collective Bargaining

- Micro units v. broader based bargaining structures
- Labour Board power to amend bargaining unit structures:
  - '93 combination of bargaining units
  - Federal power to amend the bargaining unit
- Automatic access to interest arbitration
- Ban of replacement workers



# “New Models” of Bargaining

## ■ Sectoral Bargaining

- Based on Ontario’s construction sector

## ■ Service

- Quick service restaurant

- Hotel

- Domestic

- Janitorial

- **Home Care**



# “Related Employers” Under OLRA

- Two or more employers can be considered ‘joint’ for OLRA purposes
  - Obligation to bargain jointly
  - Joint and several liability for collective agreement compliance
- Largely depends on joint control over working terms and conditions

# Related Employer Expansion – Joint Employer

- Special Advisors view the franchise relationship the same as temporary agencies and subcontracting
- Cite David Weil book on how fissuring is a deliberate strategy to avoid employer liability, and franchising is a form of fissuring
- Section 4.2.2 – Franchisor as joint employer will facilitate growth in unionization

---

# *EMPLOYMENT STANDARDS ACT, 2000*



# The “Menu” of Potential Changes

- Some key *ESA* Issues in Interim Report:
  - Definition of “employee”
  - Exemption categories and exclusions
  - Who is the “employee” and scope of liability
  - Hours of work and overtime
  - Scheduling
  - Paid sick days
  - Part-time and temporary work-wages and benefits
  - Temporary help agencies
  - Just cause termination

---

# Who is the Employer?

- Two main issues:

- Misclassification of too many “self-employed” persons
- Expand definition of employee to include “dependent contractors”

# Exemption Categories and Exclusions

## ■ Increase or narrow the exemptions?

IT professionals

Managers and supervisors

Pharmacists

Residential care workers

Residential building supers, janitors, caretakers

Students under 18

Liquor servers

Home makers

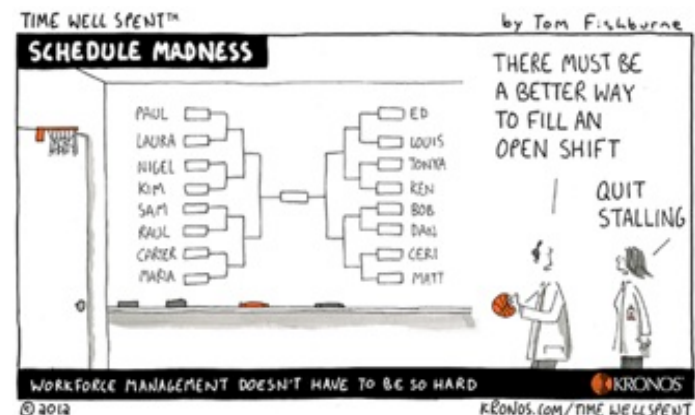
# Hours of Work and Overtime Hours

- Relaxing Hours of Work Rules:
  - Eliminate Director's approval for excess weekly hours beyond 48
  - Eliminate individual agreements for excess hours
  - Eliminate excess daily hour agreement
- Changing Overtime Rules:
  - Reduce overtime threshold from 44 to 40
  - Cap on overtime averaging periods



# Scheduling

- Scheduling changes are afoot:
  - Reporting pay obligations if shift cancelled
  - Job protected right to request schedule changes
  - Requiring advance notice of schedule changes
  - Preference to PT employees for extra hours
  - Eliminate on-call employees (*i.e.* casual)



# Vacation

Special Advisors note that Ontario has least generous vacation entitlement in Canada

- Two weeks per year after first year of work
- It appears the question is not whether it should be increased, but by how much?



---

# Sick Days

- Options considered:
  - Paid sick days (3, 6, more ...)
  - Qualifying period for paid sick days
  - Requiring employees to pay for doctor's notes

---

# Part-time and Temporary Employees

The Report concludes this is a vulnerable low wage/few benefits, non-unionized group in need of protection

- Same pay as FT employees
- Same benefits as FT employees or pro rata treatment
- Limit duration of number of successive fixed term contracts

---

# Temporary Help Agencies

- A wide range of options tabled to correct perceived flaws in the business model:
  - Expanding joint liability of clients
  - Making the client the *ESA* employer of record
  - Limit percent of temporary agency employees in a workplace
  - Deeming permanent employment after a period of time

# Termination and Just Cause

- Severance pay targeted: Decrease or eliminate 5 year and/or \$2.5 million payroll threshold
- Terminations:
  - Currently may terminate any non-union employee (provided no unlawful reason) upon providing appropriate notice
  - Contemplated: introduce just cause protection for non-union employees

---

# Personal Emergency Leave

- Advisors and Government looking for ‘quick win’
- After limited submissions launched PEL ‘pilot project’
  - Applies only to automobile manufacturing, automobile parts manufacturing, automobile parts warehousing and automobile marshalling

# Personal Emergency Leave Pilot

- Where more than 50 employees, each will receive:
- Seven (7) unpaid Personal Emergency Leave days each calendar year
  - Can be used for time off related to an injury, illness or medical emergency of the employee or a prescribed family member, or for an urgent matter concerning a prescribed family member
- Up to three (3) unpaid days for the death of a prescribed family member
  - No limit to bereavement leaves
- Subject to reasonable proof if requested



---

# NEXT STEPS



---

# Next Steps

- Final report submitted to government but not yet released
- Expected any time
- While expected many (all?) recommendations will be followed, report is not law
- Opportunities to make positions known to Ontario government between report and legislation

- 
- The information contained in this presentation is provided for general information purposes only and does not constitute legal or other professional advice.
  - Reading this presentation does not create a lawyer-client relationship .
  - Readers are advised to seek specific legal advice from members of your legal team or the CFA in relation to any decision or course of action contemplated.