



# Recent developments in provincial and federal employment-related legislation

November 1, 2005

The following is a brief update on legislative developments of interest to Ontario employers.

## **ONTARIO BILLS AFFECTING THE WORK PLACE RECEIVE ROYAL ASSENT**

Bill 144, the *Labour Relations Statute Law Amendment Act, 2005*, received Royal Assent on June 13, 2005. No changes were made to the Bill on third reading. For an overview of the amendments to Ontario's *Labour Relations Act* see our previous *FOCUS* article, "[Workplace stability](#)" goal of amendments to *Labour Relations Act*.

Also on June 13, 2005, Bill 118, the *Accessibility for Ontarians with Disabilities Act, 2005*, received Royal Assent. Between the second and the third reading, the legislature made no modifications to the Act. A description of the legislation can be found in our previous *Focus* article, [Government introduces Accessibility for Ontarians with Disabilities Act, 2004](#)

## **SMOKE-FREE ONTARIO ACT**

The third Bill to receive Royal Assent on June 13, 2005 was Bill 164, the *Tobacco Control Statute Law Amendment Act, 2005*. Bill 164 renames the *Tobacco Control Act, 1994* the *Smoke-Free Ontario Act* and brings significant changes to how smoking is treated in public areas and workplaces, including the repealing of the *Smoking in the Workplace Act* which had allowed employers to designate an enclosed smoking area for use by its employees. The new amendments, which come into force on May 31, 2006, remove this privilege and will require employers to prohibit smoking in any enclosed workplace area including elevators, hallways, lobbies, and parking garages.

Exceptions to the prohibition of workplace smoking include patients and residents of residential care, psychiatric and veterans' facilities in rooms designated as controlled smoking areas, provided that the individual can smoke without assistance and provided that the smoking area is enclosed, clearly identified as a smoking area, and properly ventilated. Employees of these facilities who do not desire to enter the designated rooms cannot be compelled to do so.

The amendments also permit hotels to retain smoking guest rooms provided that the room is for sleeping accommodation, that it is designated as a smoking room, and that it is enclosed from any adjacent area. Aboriginals who wish to use tobacco for traditional spiritual or cultural rituals in health care facilities may do so and the facility must set aside an indoor area separate from any area where smoking is otherwise permitted for such use.



The new legislation will also provide protection to employees providing home health care arranged by a Community Care Access Corporation or an organization funded by the Ministry of Health and Long-Term Care. These employees have the right to request that a person not smoke in their presence while they are providing care and, where the request is not complied with, may leave the home without providing further services unless to do so would present an immediate serious danger to the health of any person.

### **GOOD GOVERNMENT ACT, 2005**

Bill 190, the *Good Government Act, 2005* received first reading in the legislature on April 27, 2005. The Bill would amend numerous Acts to promote good government. Proposed changes have been made to the *Employment Standards Act, 2000*, the *Labour Relations Act, 1995*, the *Occupational Health and Safety Act*, the *Pay Equity Act*, and the *Workplace Health and Safety Act, 1997*. Although most of the changes are housekeeping related, an important change to the *Occupational Health and Safety Act* is proposed section 68.1 which will allow the Director to publicly disclose the name of a person convicted under the *OHS Act* along with a description of the offence, the date of the conviction, and the sentence given. The provision expressly permits publication of this information on the Internet. If the Bill becomes law, publication of this information would no longer be considered a privacy breach under the *Freedom of Information and Protection of Privacy Act*.

### **FEDERAL GOVERNMENT INTRODUCES PROTECTION FOR EMPLOYEES OF BANKRUPT EMPLOYERS WITH THE WAGE EARNER PROTECTION PROGRAM ACT**

On June 3, 2005, the federal government introduced Bill C-55. The Bill would enact the *Wage Earner Protection Program Act* which will provide for payment of wages to employees of bankrupt employers or employers in receivership. The Act would establish the Wage Earner Protection Program and sets out the conditions of eligibility for payments and the maximum amount covered by the Program, as well as the Program's application, review and appeal process.

The maximum amount payable to an eligible individual is the greater of \$3000 and four times the maximum weekly insurable earnings under the *Employment Insurance Act*. In order to be eligible, the individual's employment must have been terminated by an employer in bankruptcy or receivership, and the individual must be owed wages by the former employer earned during the six months immediately preceding the bankruptcy or receivership.

Officers, directors, those holding controlling interests, and managers are not eligible for the wage protection, as are those who were employed three months or less by the bankrupt employer. To receive payment, an employee must apply to the Minister who then approves or disapproves the request. An appeal can be made to an adjudicator for a final and binding determination if there is any dispute over the Minister's decision.

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