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Workplace Trends to Watch, Ask Anne

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Agenda

1. BILL 148

2. DRUG & ALCOHOL POLICY UPHELD

3. ASK ANNE!

1. ***THE FAIR WORKPLACES, BETTER JOBS ACT, 2017 – BILL 148***

- Changing Workplaces Review – Reviewed the ESA and the LRA, and provided 173 recommendations
- Bill 148 introduced just 2 days before summer break
- Government is proposing a “broad consultation process”
- If passed, some of the proposals would come into effect as early as January 1, 2018

1. ESA PROPOSALS

■ **Minimum Wage (Generally)**

- \$14 per hour – January 1, 2018
- \$15 per hour – January 1, 2019
- Thereafter, increases at the rate of inflation

- **Exceptions:** students under 18
liquor servers
hunting and fishing guides
homeworkers

1. ESA PROPOSALS

■ Equal Pay for Equal Work

- Part-time, casual, temporary and seasonal worker doing the same job as full-time employee would be paid equally to the full-time employee
- Exceptions: difference is based (a) seniority system; (b) merit system; (c) quantity or quality of production; or (d) other factors justifying a difference.

1. ESA PROPOSALS

▪ **Scheduling**

- Employees permitted to refuse shifts if asked with less than 4 days' notice
- On-call employees to be paid 3 hours at regular rate for each 24 hours on call
- Employees to be paid 3 hours at regular rate if shift cancelled within 48 hours of its start

▪ **Employee Misclassification**

- If status challenged, onus on employer to prove individual is an independent contractor
- Definition of employee will not include “dependent contractor”

1. ESA PROPOSALS

- **Paid Vacation**

- Increases to 3 weeks after 5 years of service

- **Personal Emergency Leave**

- Eliminate the need for 50+ employees
- 2 of 10 PEL days are paid
- Reasons for PEL expanded
- Prohibits request for sick note

1. LRA PROPOSALS

■ Union Certification

- Card based certification for temp agencies, building services industry, home care and community services industries
- Employer to disclose employee lists and certain contact info once union achieves 20% of the employees involved
- Easier certification in the event of employee misconduct
- Adding intensive mediation component to the first contract arbitration process

1. LRA

- Successor rights in the event of retendering of building services contracts and available to government upon retendering of publicly funded contracted services
- OLRB to change structure of bargaining units within a single employer, when existing units no longer appropriate for collective bargaining
- OLRB to consolidate newly certified bargaining units under a single employer, where those units are represented by some bargaining agent

1. ***THE FAIR WORKPLACES, BETTER JOBS ACT, 2017 – BILL 148***

- Opportunities to provide input:
 - Notice of Public Hearings on Bill 148 to be held:
 - The week of July 10, 2017 in Thunder Bay, North Bay, Ottawa, Kingston and Windsor-Essex
 - The week of July 17, 2017 in London, Kitchener-Waterloo, Niagara, Hamilton and Toronto
 - Written submissions may be sent to the Special Committee by 5:30 p.m. on July 21, 2017

2. *STEWART v. ELK VALLEY COAL CORP.*

- SCC upheld termination pursuant to a drug and alcohol policy
- **Policy:**
 - Employee required to disclose dependency or addiction issues. If disclosed, employees offered treatment
 - Employee to be terminated if employee (i) failed to disclose dependency/addiction; (ii) employee involved in an incident; and (iii) employee tests positive for drugs after the incident

2. *STEWART v. ELK VALLEY COAL CORP.*

- Stewart tested positive for cocaine after accident; terminated
- Filed a human rights complaint – discrimination on the basis of disability. Only “realized” addicted after accident
- Complaint denied by AHRT – termination was for breach of policy
- Tribunal’s decision upheld by all 3 courts to review it
- Policy was reasonable: worksite was safety sensitive; employee breached policy; addiction did not prevent him from complying with policy

3. ASK ANNE!

(Stump the Chump?)

The logo for Norton Rose Fulbright, featuring a gold chevron icon above the text "NORTON ROSE FULBRIGHT" in red, uppercase, sans-serif font.

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