Major change to the Canada Labour Code with new anti-replacement-worker provisions

August 1, 2024

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Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012,* was passed on June 20, 2024, introducing anti-replacement-worker provisions to the *Canada Labour Code*.

While anti-replacement-worker legislation has existed in Quebec since 1977, nothing of the sort existed for federal jurisdiction employers. Before Bill C-58, federal legislation only stipulated that an employer or a person acting on behalf of an employer could not use replacement workers "for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives." Unions faced a heavy burden of proof to demonstrate that replacement workers were being used for this purpose. As a result, union activists have been pushing for decades for more protection during labour disputes.

New anti-replacement-worker provisions

Bill C-58 adds a new subsection to section 94 of the *Canada Labour Code* on unfair practices, which limits and regulates the use of replacement workers during strikes and lockouts. The new provisions no longer require unions to demonstrate the employer's intention to undermine the union's representational capacity and they prevent federal jurisdiction employers from using the services of any of the following persons to perform the duties of an employee who is in the bargaining unit on strike or locked out:

Any employee hired after the day on which notice to bargain collectively was given.
Any person who performs management functions or who is employed in a confidential capacity in matters related to

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industrial relations, if the person was hired after the day on which notice to bargain collectively was given.
Any contractor, other than a dependent contractor, or any employee of another employer whose services were not being used on the day on which notice to bargain collectively was given. If, before the day on which notice to bargain collectively was given, an employer was using the services of a contractor or an employee of another employer and those services were the same as or substantially similar to the duties of an employee in the bargaining unit, they may continue to use those services during a labour dispute, so long as they do so in the same manner, to the same extent and in the same circumstances as they did before the notice was given.
Any employee whose normal workplace is a workplace other than that at which the strike or lockout is taking place or who was transferred to the workplace at which the strike or lockout is taking place after the day on which notice to bargain collectively was given.
Any volunteer, student or member of the public.
Any employee who is in a bargaining unit on strike or locked out.

However, the new provisions allow employers to use the services of such persons during a strike or lockout as long as the services are used solely to deal with a situation that presents or could reasonably be expected to present one of the following imminent or serious threats:

A threat to the life, health or safety of any person.
A threat of destruction of, or serious damage to, the employer's property or premises.
A threat of serious environmental damage affecting the employer's property or premises.

The use of the services must be necessary in order to deal with the situation because the employer is unable to use the services of the employees on strike or locked out. As in Quebec's *Labour Code*, an employer may only rely on the services of a person referred to above for conservation purposes, and not for the purpose of continuing the supply of services or production of goods by the employer. Finally, the bill specifies that the employer must first offer these conservation duties to the employees who are on strike or locked out.

The bill also includes provisions applicable to employers who contravene the anti-replacement-worker provisions. These offences can result in fines of up to $100,000 per day. The government may also ensure compliance with the new provisions by adopting regulations to establish an administrative framework with financial penalties.

New provisions regarding the maintenance of activities during a strike or lockout

In order to prevent imminent and serious threats to public health and safety, Bill C-58 provides that the union and employer must reach an agreement on the activities to be maintained in the event of a labour dispute. If no activities need to be maintained, the parties must still enter into an agreement to this effect. An employer and a union must enter into this agreement no later than 15 days after the day on which notice to bargain collectively was given to the Minister of Labour and the Canada Industrial Relations Board. If the parties do not reach an agreement, the matter will be brought before the Board at the request of one of the parties.

The 72-hour strike or lockout notices referred to in section 87.2 of the *Canada Labour Code* may be given only once this agreement has been reached and a copy has been filed with the Minister and the Board, or if no agreement has been reached, if the Board has determined an application made by one of the parties.

Coming into force

Bill C-58 will come into force on June 20, 2025. Until then, the new anti-replacement-worker provisions will undoubtedly cause federal jurisdiction employers to seriously consider their bargaining power and level of preparedness for possible labour disputes. Our team is here to help you through this process.

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