

Saskatchewan labour law passes third, final reading

Changes to hours of work, bargaining units

| BY AMANDA SILLIKER |

THE GOVERNMENT of Saskatchewan has passed a bill to overhaul the province's labour legislation.

Bill 85, the Saskatchewan Employment Act, passed third and final reading in the legislative assembly on May 13. The new act consolidates 12 pieces of labour legislation — including the Trade Union Act, Labour Standards Act and Occupational Health and Safety Act — into one updated act.

"The new Saskatchewan Employment Act clearly defines the rights and responsibilities of employees, employers and unions," said Labour Relations and Workplace Safety Minister Don Morgan. "The new act will improve Saskatchewan's labour legislation to better protect workers, promote growth and increase accountability."

Bill 85, which was first introduced in December 2012, has garnered a lot of outcry from unions across the province.

Many of the legislative changes indicate the government is attempting to de-unionize workplaces, said Bob Bymoan, president of the Regina-based Saskatchewan Government and General Employees' Union (SGEU) which represents 19,000 workers.

One of the biggest changes is that the bill restricts a supervisory employee from belonging to the same bargaining unit as those he supervises.

A supervisory employee is defined as an employee whose primary function is to supervise employees and who exercises one or more of the following duties:

- assigning work to employees and monitoring the quality of the work
- assigning hours of work and overtime
- providing an assessment to be used for work appraisals or merit increases
- recommending disciplining employees.

"We're really perplexed about where that came from... it goes farther than other provinces when it comes to removing su-

perisors out of the unit," said Bymoan. "It has the potential to create all kinds of industrial relations problems."

In theory, this change doubles the amount of bargaining units because where there was one unit, now supervisors need to re-organize and create another one, so employers are potentially dealing with two unions, he said.

It's also unclear what collective agreement will go with these supervisors when they leave their current bargaining unit, and whether or not they will maintain their current benefits and rights, according to Barbara Cape, president of the Service Employees' International Union-West (SEIU-West) in Saskatoon, which represents more than 13,000 workers.

'Employee' clarified

The legislation clarifies the definition of "employee" to exclude a person whose primary duties are activities that are confidential in nature in relation to labour relations, business strategic planning, policy advice, and budget implementation or planning that have a direct impact on the bargaining unit. These staff members cannot belong to a union.

"It's going to require litigation because there is no real case law to support this new law in the province," said Bymoan. "It definitely takes a lot of people out."

The legislation streamlines the last offer vote process by removing the requirement for a strike to have taken place for 30 days. Instead, a vote can occur anytime after the parties have engaged in collective bargaining.

If the employer and union are unable to reach an agreement, the parties must observe a 14-day coolingoff period before a strike or lockout can occur. They also cannot strike until a mediator has been appointed by the government.

"It gives the employer more of an upper hand," said Bymoan. "They have to implement a protocol to ensure that all perishable goods are protected, that the

employer's building and infrastructure is protected, and the union can't strike for two weeks, so where's that leverage that the union is supposed to have in order to get the employer to bargain in good faith?"

The legislation requires unions to provide audited financial statements to their members and provide unaudited financial statements for each bargaining unit to the members of the unit.

Employment standards

Two work arrangements are permitted in the legislation: eight hours per day for five days per week; and 10 hours per day for four days per week. An employer would no longer have to seek a special permit to implement the 10-hour day work arrangement. And the employer only needs to give the work schedule on a weekly basis.

"The employer gets to decide if I'm an eight-hour employee one week or a 10-hour employee the next week; the employee is given no choice, no input and that's not good for relationships," said Cape. "The ball is completely in the employer's court."

But employers are welcoming the change, as it reduces the administrative burden and brings the legislation more in line with the world of work today. This is especially true for the construction industry, said Karen Low, executive director of the Merit Contractors Association of Saskatchewan in Prince Albert, which has 200 member organizations representing 4,500 workers.

"Our employees are working all over the province, usually away from home, on projects that require them to take tools to the work site, so it's much more efficient and logical for them to work longer days and then have three days home with their families," she said.

In the current legislation, employers have to give two consecutive days off to employees who work 20 hours per week or more, and one of those days should be a Sunday whenever possible.

But the new act only requires two con-

secutive days off for prescribed workplaces or prescribed categories of employees, to be determined by the government.

“There’s no reference to the weekend, to days off around Sunday and that’s some cause for concern,” said Bymoen. “We don’t expect with the legislation passing that we’re going to wake up tomorrow and the weekend is gone, but what about a generation from now? Where is this going to evolve?”

Overtime

Under the new legislation, employees are entitled to overtime where the daily maximum hours established by their work schedule are exceeded.

Part-time employees are eligible for overtime for all hours worked in excess of eight hours in a day. This is in recognition that part-time workers do not enjoy the benefits of a modified work arrangement, such as days off, said the provincial government.

The legislation allows for the establishment of time banks for overtime hours on agreement of the employer and employee.

“This was an area that was lacking in terms of our ‘getting with the times,’” said Keith Moen, executive director of the North Saskatoon Business Association, which has 800 member organizations. “It’s been done in other jurisdictions, it’s been done unofficially in some workplaces and it’s a way of providing another level of terms for keeping a satisfied workplace.”

Unpaid leaves

The act adds five new unpaid leaves:

- leave to attend citizenship ceremonies (one day)
- compassionate care leave (eight weeks)
- organ donation (maximum 26 weeks)
- critically ill child-care leave (37 weeks)
- crime-related child death and disappearance leave (104 weeks for death or 52 weeks for disappearance).

“It’s more of a reflection of the contemporary times we’re in in terms of the employee-employer relationship,” said Moen. “And now that it’s in law, it’s a good thing... there aren’t any grey areas.”

The qualifying period for maternity, parental and adoption leave has been lowered from 20 to 13 weeks.

Other changes

The new act stipulates employees will be required to provide two weeks written notice of their intention to leave their jobs. There are situations listed in the legislation where an employee is not required to provide this notice, such as when there is a different industry standard or due to personal health or safety.

The act increases the maximum employment standards fine from \$10,000 to \$50,000 and occupational health and safety penalties to \$500,000 for individuals and \$1.5 million for corporations.

It also removes the ability for employers to have a lower minimum wage for persons

with a disability.

The new act will also have regulations to index the minimum wage. This would be based on a formula that gives equal weight to the annual change in the average hourly wage and the consumer price index, said the government. All changes would be subject to cabinet approval.

Impact on employers

The new legislation will help the province and employers become more globally competitive, said Low.

“When you come to an environment to open up a business, you’re going to consider if it’s a kind of environment that promotes business and allows you to do your job efficiently or if it’s one that strangles you with red tape and legislation,” she said. “The more we can make Saskatchewan attractive to employers — and employees — the stronger our economy will be.”

The new legislation will give employers fairer representation in “the laws of the land” and will level the playing field between employers and employees, said Moen.

“The way the labour laws have been in the province have been skewed toward the employee rather than the employer,” he said. “It was high-time for a renewal in labour laws... times have changed and things have become far more modern and it was time to review and modernize the laws.”