

Major Changes to Manitoba's Labour Relations Act: Union Certification, Replacement Workers, and Essential Services

Authors: Kali Faingold

published 11/21/2024

On November 7, 2024, the Manitoba government passed Bill 37, officially known as *The Budget Implementation and Tax Statutes Amendment Act, 2024*. This legislation introduces significant updates to *The Labour Relations Act* ("LRA"), bringing major changes to three critical areas of labour relations: union organizing, replacement worker restrictions and essential services during strikes or lockouts.



This article provides a detailed overview of these changes and their implications.

1. **Union organizing: Automatic certification based on card support**

One of the most significant amendments involves union certification. Under the previous system, a union was required to secure at least 40% support from employees in a bargaining unit to prompt a secret ballot vote, with certification granted if more than 50% of employees voted in favour of union certification.

The new amendments introduce a process that eliminates the need for secret ballots in many cases.

- **Automatic certification:** If a union demonstrates support from more than 50% of employees in the proposed bargaining unit through signed membership cards, the Manitoba Labour Board ("Board") must automatically certify the union as the bargaining agent. No secret ballot vote is needed.
- **Threshold for representation votes:** If union support is between 40% and 50%, a secret ballot vote will still be conducted.
- **Dismissal of applications:** Applications with support from fewer than 40% of employees will be dismissed outright.

Potential implications of the changes to union certification

- We may see an increase in union certification applications based on similar trends in British Columbia, where applications for certification increased after comparable legislation was passed.
- Legal disputes over bargaining unit scope and employee eligibility could rise.

2. **Prohibition of replacement workers**

Another significant amendment is the complete ban on replacement workers during strikes or lockouts. The LRA now prohibits employers from engaging individuals to perform the duties of striking or locked-out employees. Replacement workers include:

- external hires after notice to bargain is given.
- employees from other workplaces of the employer or non-striking bargaining units within the same workplace.
- contractors or third-party individuals.

Employers that violate the ban could face complaints of unfair labour practices and potential penalties.

The prohibition allows for limited exceptions in situations involving threats to life, health, safety, property or the environment, provided that the employer can demonstrate there are no other means to address these issues. Employers may also continue using individuals who were performing essential tasks prior to the strike or lockout, provided their duties remain unchanged.

3. **New framework for essential services**

During a lockout or strike, the employer, the bargaining unit and the employees must continue to supply essential services. The definition of “essential services” has been expanded to include services necessary to:

- prevent threats to the health, safety or welfare of Manitoba residents.
- maintain the administration of justice.
- prevent a threat of serious environmental damage.

Unlike previous legislation that applied primarily to health care and government sectors, every unionized workplace will need to consider whether they fall under the new definition of “essential services”. The only exception from compliance with the essential services sections of the LRA are for employee units that are prohibited from striking, such as police and firefighters.

Mandating Essential Services Agreements

Under the new framework, unionized workplaces providing essential services must negotiate Essential Services Agreements (“ESAs”) and cannot strike or lock out without an ESA filed with the Manitoba Labour Board. These agreements must detail:

- the specific services or operations to continue during a strike or lockout.
- the number and roles of employees required to maintain these services.
- how employees capable of performing essential services will be assigned during a strike or lockout.
- procedures for responding to emergencies or foreseeable changes in essential services needs.

If the parties cannot agree, either side may apply to the Board for intervention to determine

essential services or finalize the ESA.

Timelines for compliance

- **180 days before expiry of the collective agreement:** The parties must decide whether essential services are required and file this determination with the Manitoba Labour Board. This is the first step for all parties, as determining whether the workplace performs essential services triggers the need for an ESA.
- **90 days before expiry:** If essential services are necessary, an ESA must be negotiated and filed with the Board.
- **Three days prior to strike or lockout:** Notice must be provided, allowing time to manage essential services requirements.

In cases where the parties determine that there are no essential services being performed, the LRA still requires that an ESA determination be filed. In other words, all unionized workplaces will need to consider the scope of their services and take appropriate action with the Board.

The amended LRA contains transitional provisions that allow parties to a collective agreement who are already within the timelines specified for essential services determinations to proceed immediately and have the matters settled by application to the Board.

Implications of the essential services amendments

While the essential services amendments aim to provide clarity and consistency in ensuring that critical services are maintained during labour disputes, they also present challenges.

1. For employers and unions

Both employers and unions may need to engage in detailed negotiations to establish ESAs and ensure compliance. Employers must identify which services are critical and plan how these services will be maintained during a strike or lockout. This task requires careful planning and collaboration with unions.

2. For the Manitoba Labour Board

The Manitoba Labour Board plays a central role in implementing and enforcing the essential services framework.

- It can determine whether essential services are necessary if parties cannot agree.
- It can impose the terms of an ESA if negotiations fail.
- Any non-compliance with an ESA constitutes an unfair labour practice, enforceable through Board action.

Conclusion

The passage of Bill 37 brings significant changes to Manitoba's LRA, reshaping the landscape of union certification, replacement workers and essential services. These changes present both challenges and opportunities. Employers and unions must navigate additional responsibilities, comply with the new requirements and prepare for potential disputes over implementation. All parties will need to adapt quickly, with the Manitoba Labour Board set to play a central role in resolving disputes and ensuring compliance.

Learn more about how TDS can support you with your legal needs. If you need assistance with any legal matters, please complete the Client Intake Form on our website at www.tdslaw.com/intake-form/.

DISCLAIMER: *This article is presented for informational purposes only. The content does not constitute legal advice or solicitation and does not create a solicitor-client relationship. The views expressed are solely the authors' and should not be attributed to any other party, including Thompson Dorfman Sweatman LLP (TDS), its affiliate companies or its clients. The authors make no guarantees regarding the accuracy or adequacy of the information contained herein or linked to via this article. The authors are not able to provide free legal advice. If you are seeking advice on specific matters, please contact Keith LaBossiere, CEO & Managing Partner at kdl@tdslaw.com, or 204.934.2587. Please be aware that any unsolicited information sent to the author(s) cannot be considered to be solicitor-client privileged.*

While care is taken to ensure the accuracy for the purposes stated, before relying upon these articles, you should seek and be guided by legal advice based on your specific circumstances. We would be pleased to provide you with our assistance on any of the issues raised in these articles.