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Canadian Government Introduces Bill That Would Ban Use of Replacement Workers During Strikes or Lockouts

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The federal government of Canada recently introduced legislation that would ban using replacement workers during strikes or lockouts.

Quick Hits

- Canada's minister of labour introduced a bill that would prohibit using workers to replace striking or locked-out employees.
- The prohibition would be subject to exceptions for emergency situations involving the safety of persons, property damage, or environmental damage.
- Fines for noncompliance would be up to $100,000 per day.

On November 9, 2023, Minister of Labour Seamus O'Regan Jr. introduced in the House of Commons Bill C-58, An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012, the purpose of which is said to be the promotion of free and fair collective bargaining.

This legislation would prohibit an "employer or person acting on behalf of an employer" from using workers (including "any employee or any person who performs management functions or who is employed in a confidential capacity in matters related to industrial relations") to replace striking or locked-out employees if the replacement workers were hired any time after the notice to bargain collectively was given. The prohibition would also include contractors. Existing employees outside of the bargaining unit would still be able to take on replacement roles, but bargaining unit employees would be prohibited from crossing picket lines or working.

This prohibition would be subject to exceptions for emergency situations involving the safety of persons, property damage, or environmental damage.

The bill aims to create a regulatory authority and make offences for noncompliance punishable by a fine of up to $100,000 per day.

The provincial governments of British Columbia and Quebec have each implemented so-called “anti-scab” legislation, and some critics have found that this protocol results in longer and more frequent labour disputes and work stoppages.

Also of note, the bill includes a provision that would require parties to reach agreement on a maintenance of activities arrangement within fifteen days of the notice to bargain. Commonly thought of as an “essential services” agreement, this maintenance of activities arrangement would require parties performing essential work to address how—in the face of a potential work stoppage—activities would be carried out to avoid immediate and serious danger to safety or health of the public. Ultimately, this would set the scope of which workers would and would not be permitted to participate in any strikes or lockouts.

Ogletree Deakins will continue to monitor developments and will provide updates on the Cross-Border blog as additional information becomes available.

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