Acoustical Association Ontario

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Executive Director's Report

Prompt Payment Ontario

Update

The Council of Ontario Construction Associations (COCA) has been in contact with officials in the Ministry of the Attorney General (MAG). COCA's feels the following is likely to happen:

- Briefing materials will be developed by MAG staff that will be provided to the new Attorney General (AG), Minister Mulroney, and her political staff for their review;
- Ministry staff will brief the AG and her political staff with regard to provisions of the Construction Act that are scheduled to come into force in October 2019, namely, the payment regime and adjudication scheme; they will brief her on the work that that remains to be done which includes policy development, the creation of the Authorized Nominating Authority (ANA), the development of a construction disputes adjudication training program by the ANA, the creation of a roster of adjudicators by the ANA;
- The Attorney General and her political staff will consider the briefing information before giving ministry staff the green light to proceed

The provisions of the Construction Act that modernize the Construction Lien Act came into force as scheduled on July 1, 2018, after the general election. Prompt payment is still expected October 1, 2019.

Because the new Construction Act is not believed to be among MAG's highest priorities, it may be a while before ministry staff has the opportunity to brief the Attorney General and get the process moving forward. COCA will be meeting the Minister in September to get an update from the Minister.

Fair Workplaces, Better Jobs Act

Bill 148 Update

On July 2, 2018, a coalition of construction employers, COCA, the Construction Employer Coordination Council of Ontario (CECCO), the Electrical Power Systems Construction Association (EPSCA) and the Residential Construction Council of Ontario (RESCON) jointly submitted letters to Premier Ford and Labour Minister Scott to seek exemption from the former government's Fair Workplaces, Better Jobs act, 2017. The letter pointed out that the coalition had assurances from the previous government that construction would receive an exclusion similar to four other industry groups but in the final writing of the regulations the exemption for construction was not there.

The letter requesting a meeting has been brought to the attention of Labour Minister Scott and her Chief of Staff. Although Minister Scott has recently had her plate full with ending the strike at York University among other things, we expect amendments to Bill 148 in the future such as repeal of the $15/hour increase come January 1, 2019 and others – either during the remaining 2 to 3 weeks of summer session or in the fall before the end of the fall session this year.

Mathews Minute

Personal Emergency Leave

This month, we want to highlight a new decision of the Ontario Labour Relations Board (the "Board") of significant interest to construction employers in Ontario dealing with construction employees' entitlement to personal emergency leave under the *Employment Standards Act, 2000* (the "ESA") and its regulations.

As we informed you last October, most employees in Ontario with one or more week of service are now entitled to two (2) days of paid personal emergency leave ("PEL") as a result of amendments to the ESA made by Bill 148, the *Fair Workplaces, Better Jobs Act*. However, as a result of amendments made to the ESA regulations coinciding with the coming into force of Bill 148, a construction employee who receives 0.8% or more of his/her hourly wages for "personal emergency pay" is not entitled to the two (2) paid PEL days under the ESA, and will instead continue to be entitled to ten (10) unpaid PEL days in each calendar year.

In ***IBEW Electrical Power Council Of Ontario v Electrical Power Systems Construction Association***, two unions brought grievances against EPSCA after it issued a notice requiring its member employers to pay out an additional 0.8% of employees' base hourly rate on all hours worked (excluding overtime hours) commencing May 1, 2018 as "personal emergency pay", pursuant to the construction industry PEL exemption under the ESA regulations. EPSCA took the position that, by making such payments, its member contractors would not have to also provide their employees with two (2) paid PEL days.

The OLRB made the following important findings with respect to paid PEL in the construction industry:

- <u>No need for Union Agreement</u> – agreement from the unions was not required to implement the payment of an additional 0.8% as personal emergency pay.

- <u>Calculation of Payment</u> - In order to satisfy the construction exemption, the 0.8% payment was required to **include** holiday pay, vacation pay, overtime, and other premiums, but **did not include** employer contributions to union benefits funds.

- <u>Retroactivity of Payment</u> – The 0.8% payment was required to be **retroactive to January 1, 2018** when the paid PEL provisions of the ESA, and the construction industry PEL exemption, came into force.

- <u>No Overlapping Entitlement</u> – Construction employees are not entitled to **both** 0.8% as personal emergency pay and two (2) paid PEL days. Accordingly, if a construction employee had already claimed one (1) paid PEL day in 2018, an EPSCA employer could elect to either pay the employee an additional 0.8% as personal emergency pay retroactive to January 1, 2018 **OR** grant the employee a second paid PEL day upon request.

This decision provides much-needed guidance to construction employers on how to properly engage the construction exemption from the new statutory obligation to provide paid PEL that should be carefully considered when weighing your options for compliance.

WSIB

UFL to be fully funded by 2019

The unfunded liability (UFL) represents the shortfall between the money needed to pay the future benefits to workers for all established claims, and the money that is in the accident fund.

The past government recognized that the elimination of the UFL was an important goal and legislated a three stage plan for achieving full funding. The WSIB must reach at least 60% funding by 2017, 80% funding by 2022 and 100% funding by 2027. Construction has paid more than their fair share in funding and many would argue we have over paid.

However, recent projections indicate the UFL may be fully funded by 2019, retiring the fund. The question now is can we expect significant premium reductions coming in 2019? The 2019 rates have not been announced yet but we expect them shortly and will advise when announced.

AUGUST 2018

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If you have any questions, please call me at 519-671-5930.

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