



What Companies Considering an Expansion into Canada Need to Know About Unions

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Many of our clients considering a Canadian expansion are wary of the possibility of unionization of their Canadian workforces. Unionization can be perceived by employers as leading to a significant loss of control over their workplaces and, specifically, a loss of flexibility to manage in the efficient and effective manner to which they are accustomed. These clients often express their desire to operate within a jurisdiction in which they are free to manage and negotiate directly with their employees, rather than indirectly through a union that represents the collective interests of those employees.

Following its certification as a bargaining agent, a union is empowered to negotiate various employment terms on behalf of workers, including wages, seniority rights, benefits, vacations and other daily working conditions.

Canadian employees can be attracted to unionization due to a perception that their best interests can best be advanced through collective negotiation with their employer, or at least common representation to formulate broad structures for working conditions based upon an assumption that a union is best positioned to secure those conditions on their behalf (and will look out for their best interests).

This article provides a high-level overview of some of the considerations an employer may wish to consider in respect of unionization when expanding into Canada.

How Common Is Unionization in Canada?

While it may seem that unionization is more frequently discussed in Canadian media, private sector unionization within Canada has been on a steady decline from 1997 to at least 2021.¹ Overall unionization rates in Canada can be skewed due to significant public sector (government) unionization rates. For example, in 1981, Statistics Canada reported 37.6% of all employees being members of a union in their main job.² Meanwhile, as of January 2024, the number of employees covered by a union is at 30.5%, but only 15.05% is attributed to private sector unionization.³

As of 2023, unionization rates were the highest in the following industries: (i) Public Administration at 75.4%; (ii) Educational Services at 72.2%; (iii) Utilities at 61.9%; (iv) Health Care and Social Services at 53.8%; and (v) Transportation and Warehousing at 40.7%.⁴

Notably, within the Professional, Scientific and Technical Services sector, in which many of our technology-based clients operate, rates of unionization (outside of universities, utilities and government) were very low at only 4.2% of employees in 2023. For clarity, this sector includes computer systems design, management, scientific and technical consulting services, and scientific research and development services.

¹ Quality of Employment in Canada: Collective bargaining coverage rate, 1997 to 2021, Statistics Canada: [Collective bargaining coverage rate, 1997 to 2021 \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/75-662-x/2023001/article/00001-eng.htm).

² Unionization in Canada, 1981 to 2022, Statistics Canada: [Unionization in Canada, 1981 to 2022 \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/75-662-x/2023001/article/00001-eng.htm).

³ Union Coverage by Industry, Monthly, Unadjusted for Seasonality, Statistics Canada: [Union coverage by industry, monthly, unadjusted for seasonality \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/75-662-x/2023001/article/00001-eng.htm).

⁴ Union Status by Industry, Statistics Canada: [Union status by industry \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/75-662-x/2023001/article/00001-eng.htm).

At a Glance: Overview of Unionization in Canada

Certification and collective bargaining is governed by labour standards legislation, for each jurisdiction in Canada. Each province and territory within Canada has separate labour processes and procedures to establish a union, the certification process, collective bargaining rights and the negotiation and administration of collective agreements.

For federally regulated employers, the governing legislation is the *Canada Labour Code*, R.S.C. 1985, c. L-2.

Each province and territory within Canada has its own statute; however, there is often considerable overlap in respect of practices, concepts and provisions. In Ontario, for example, the governing legislation is the *Labour Relations Act, 1995*, 1996 SO 1995, c 1, Sch A.

Only approximately 6% of companies operating within Canada are federally regulated and, consequently, most companies expanding into Canada are subject to provincial employment and labour legislation.

Certification Process

The establishment of a union begins with an expression of initial interest from workers by their signing of union membership cards. Once a substantial percentage of employees have signed union cards, unions will then proceed with making an application (called a “certification application”) to the applicable federal/provincial regulatory body (in Ontario, the Ontario Labour Relations Board) to become “certified” as the bargaining agent for a group of employees within a workplace (called a “bargaining unit”).

Employers will be provided with notice of the certification application. In certain jurisdictions, a secret ballot vote will be conducted, but depending on the jurisdiction, this vote can be conducted on a very short timeline, often within a week. In certain Canadian jurisdictions, no vote is necessary if a sufficient number of union membership cards are obtained (a “card-check” system).

In Canada, federal and provincial legislation protects the rights of workers to unionize and participate in lawful union activities. Accordingly, employers are prohibited from interfering with the formation, selection or administration of a union or the representation of employees by such union. In addition, employers are prohibited from penalizing employees (such as terminating or discriminating against any such employees) who participate in unionization efforts.

There are restrictions, but generally, employers are not prevented from lawfully campaigning against unionization. Employers can communicate to employees that unions will charge them union dues and, critically, are required to negotiate with the employer to secure certain employment conditions. Employers often emphasize to their employees that the involvement of a union limits their ability to advocate independently and negotiate the terms of their employment individually with their employer.

Collective Agreements

Once certified, the employer is compelled to recognize the union as the collective bargaining unit for the represented workers. This means that the employer has a duty to bargain with that union in good faith and make reasonable efforts in the course of negotiations to reach a collective agreement outlining the agreed upon and ratified terms and conditions of employment in the workplace. Notably, labour relations legislation requires that a collective agreement have a dispute resolution process in place or imposed by statute.

Once established, the collective agreement also governs the relationship between the employer and the union. Disputes between an employer and a union are resolved in accordance with the process set out in the collective agreement, and any grievance (dispute) can be referred to arbitration for binding resolution.

Conclusion

Companies that are considering a Canadian expansion but are concerned about the possibility of unionization should take comfort in the fact that private sector unionization participation rates have been declining and are typically heavily concentrated in certain historic industries (and among public sector workers).

The Aird & Berlis LLP Workplace Law Group has extensive experience representing employers operating in unionized environments, as well as guiding and advising employers about the certification process. Specifically, the Workplace Law Group has experience in supporting employers prior too and, if necessary, in campaign efforts during and in response to a certification process.

Please contact a member of the group for more information.

Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.

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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.

Fiona is pleased to offer a multitude of resources answering often-asked questions about expanding into Canada, including [this video](#) and [this one-page guide](#).



Michael Horvat

Partner

Michael is a member of the firm's Workplace Law Group. His practice focuses on all aspects of labour and employment law in both the federal and provincial jurisdictions. He advises employers in a number of industries, including manufacturing, transportation, retail, electrical distribution, construction and financial services, on various matters, including employment standards, human rights, discipline, discharge, union certification, grievances, wrongful dismissal, executive employment matters and transactions, as well as general labour and employment law issues.

Michael represents employers before the courts and administrative tribunals, such as the Ontario Labour Relations Board, the Ontario Superior Court of Justice, the Ontario Divisional Court, the Ontario Court of Appeal, the Grievance Settlement Board, the Canadian Railway Office of Arbitration, the Ontario Employment Standards Branch, the Ontario Workplace Safety and Insurance Board and in grievance arbitration and mediation.

Michael is a regular speaker and writer on employment and labour law matters.



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Jessica is a passionate labour and employment law advocate. She is a natural problem solver who uses her strong communication skills to provide clients with efficient legal advice on workplace issues.

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Legal Trainee

Bardia summered at the firm in 2021 and 2022. In connection with his law school's Integrated Practice Curriculum, he also completed a professional placement at the firm in fall 2022.

Bardia recently graduated with Distinction from the Lincoln Alexander School of Law at Toronto Metropolitan University and holds a Bachelor of Arts from the University of Western Ontario.