



Understanding Bill 148: Fair Workplaces, Better Jobs Act 2017

Ontario Restaurant Hotel & Motel Association

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Bill 148: Fair Workplaces, Better Jobs Act 2017

Royal Assent: November 27, 2017

Background:

The Changing Workplaces Review

In February 2015, the Ministry of Labour tasked Special Advisors to examine the Employment Standards Act, 2000 (ESA) and the Labour Relations Act, 1995 (LRA) to complete a set of recommendations after reviewing the broader issues affecting the workplace. The Special Advisors addressed precarious employment and “vulnerable” employees and determined a number of changes made to the legislations in light of Ontario’s changing nature of the workforce, workplace and modern economy. Minimum wage was **not** to be included in this review. In May 2017, the final report of the [Changing Workplaces Review](#) was released.

Bill 148: Fair Workplaces, Better Jobs Act 2017

On May 30th, 2017, Ontario’s hospitality industry was in disbelief when the Provincial Government announced the proposed legislation of Bill 148, which included a raise in minimum wage to \$14 per hour come January 1, 2018 and \$15 per hour on January 1, 2019. This 32% increase within an 18 month period left the industry in panic and many feared their doors would permanently close. Minimum wage was not reviewed in the Changing Workplaces Review and took many industries and businesses by surprise.

ORHMA’s Advocacy

The Ontario Restaurant Hotel & Motel Association (ORHMA) had tirelessly advocated on behalf of the hospitality industry for fairness as this bill would have serious impacts to many businesses. Countless meetings and presentations had been held in order to educate the government on the repercussions and intense cost increases that Bill 148 will have on our unique industry. [ORHMA’s advocacy](#) and the advocacy of other like-minded businesses and associations fell in deaf ears.

Royal Assent:

Ontario Passes Bill 148: Fair Workplaces, Better Jobs Act 2017

On November 27th, 2017, [Bill 148: Fair Workplaces, Better Jobs Act, 2017](#) received Royal Assent, making extensive changes to Ontario’s ESA, LRA and Occupational Health and Safety Act. Although much attention is focused on the increase to the provincial minimum wage, it is important to note that Bill 148 introduced many additional amendments, that will be thoroughly outlined in this document.

This document members of the Ontario Restaurant Hotel & Motel Association with general information and should not be relied on as legal advice or opinion. Should you require further assistance, please contact the ORHMA office.



Bill 148: Fair Workplaces, Better Jobs Act 2017

Royal Assent: November 27, 2017

Although most provisions of Bill 148 come into force on January 1, 2018, employers must be prepared to comply with the new legislative requirements as many provisions of Bill 148 are **now in effect**.

Employers must:

- ✓ Undergo a review and revision process of all employment policies
- ✓ Review employee job offers and employment contracts
- ✓ Evaluate current practices
- ✓ Evaluate training for management on new amendments
- ✓ Communicate the changes of the legislation with employees
- ✓ Ensure record keeping is in place as required

Provisions Come Into Force Prior to January 1, 2018: Consequences for Employee Misclassification

Effective: November 27th, 2017

The ESA prohibits employers from misclassifying employees as independent contractors. In the event of a dispute, the legislation outlines that the employer is responsible for proving that an individual is not an employee. Upon receiving a complaint, employers are responsible for establishing that contractor is not an employee and ensuring that they are receiving benefits and protections (such as ESA).

No “High Heel” Requirements

Effective: November 27th, 2017

Ontario’s Occupational Health & Safety Act (OHSA) now prohibits employers from requiring a worker to wear footwear with high heels “unless that heel is required for the worker to perform his/her job safely”. An exception to this restriction will be made for employers looking for a “performer” in the entertainment and advertising industries.

Critical Illness Leave

Effective: December 3rd, 2017

The previous “Critical Illness Childcare Leave” has now been changed to “Critical Illness Leave” and has expanded to allow employees to take leave to care for a critically ill adult family member or an individual who is “like a family member” for up to 17 weeks for critically ill adults and 37 weeks for critically ill children. Employee must be employed for six (6) weeks.

Parental Leave Extensions

Effective: December 3rd, 2017

Job-protected parental leave will be extended from the current 35 weeks, increasing parental-leave to 61 weeks for employees who took a pregnancy leave and 63 weeks for employees who did not take a pregnancy leave.

Employment Standards Act:

Minimum Wage Increases

General minimum wage rate will increase to \$14 per hour on **January 1st, 2018** and to \$15 per hour on January 1, 2019. Special minimum wage rates for liquor servers and students under 18 will also be increased by the same percentage.

Minimum Wage Categories	Oct. 1, 2017 to Dec. 31, 2017	Jan. 1, 2018 to Dec 31, 2018	Jan 1 2019 to Sept. 30, 2019
General Minimum Wage	\$11.60	\$14.00	\$15.00
Students under 18 who work not more than 28 hours per week when school is in session, or work during a school break or summer holidays	\$10.90	\$13.15	\$14.10
Liquor Servers	\$10.10	\$12.20	\$13.05

Equal Pay for Equal Work

Comes Into Force: April 1st, 2018

The legislation requires employers, including Temporary Help Agencies, to pay casual, part-time, temporary and seasonal employees the same amount as full-time employees who perform **substantially the same** (but not necessarily identical) kind of work in the same establishment; whose performance requires substantially the same skill, effort and responsibility; and who perform work under similar working conditions. Employees will have the right to request a review of their rates of pay which the employer would have to respond to with either an adjustment in pay or a written explanation. Employers are prohibited from reducing an employees pay in order to comply with this requirement.

“Equal Pay for Equal Work” does not apply when the difference in the rate of pay is based on:

- A Seniority System: “Seniority System” is not defined to include those that base seniority on accumulated hours worked
- A Merit System
- A system that measures earnings by quantity or quality of production
- Any other factor other than sex



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Electronic Agreements

Comes Into Force: January 1, 2018

Electronic agreements between employers and employees, such as agreements to work excess hours, can serve as agreements in writing.

Overtime Pay

Comes Into Force: January 1, 2018

If an employee holds more than one position with a company and works overtime, the legislation requires that overtime be calculated based on the hourly rate for the position in which the employee is working during the overtime period.

Paid Vacation

Comes Into Force: January 1, 2018

Employees with five (5) years of employment within the same establishment will be entitled to three (3) weeks of paid vacation or three (3) weeks unpaid time off with 6% vacation pay. This is an increase from the current two (2) weeks paid vacation or two (2) weeks unpaid time off with 4% vacation pay.

Public Holiday Pay

Comes Into Force: January 1, 2018

The formula for calculating public holiday day will change to use the total amount of regular wages the employee earned in the preceding pay period divided by the number of days the employee worked in that period. Employers would be required to give employees who are entitled to a substitute holiday a written statement setting out the public holiday, the day that is designated to be the substitute holiday, and the date the statement is provided to the employee. The new formula will increase pay entitlement for some employees. If a paid day of leave under this section falls on a public holiday, the employee is not entitled to premium pay for any leave taken.

Employment Standards Act: Leave Provisions

Personal Emergency Leave (PEL)

Comes Into Force: January 1, 2018

All employers will be required to provide up to 10 days PEL per calendar year to employees with at least **two paid days** per year for employees who have been employed for at least a week. It is required that the paid days be used first. These days can be taken in part, full or multiple days and cannot be carried over to the following year. Employees are entitled to more than one leave for the same event. Each leave is separate and independent of any right an employee may have to any other leave(s).

Physician's Notes for Absences

Comes Into Force: January 1, 2018

Bill 148 prohibits employers from requiring notes from qualified health practitioner as evidence for taking PEL. Based on the situation, an employee may only ask for the duration or expected duration of absence, the date the employee had seen a health care professional and whether the employee was examined in person by the health care professional issuing the certificate. Employers are not to ask about the diagnosis or treatment of the medical condition of the employee.

Child Death Leave and Crime-Related Child Disappearance Leave

Comes Into Force: January 1, 2018

Bill 148 introduces a new leave for the death of a child for **any reason**. This provision removes the previous restriction to the death only related to crime. There is a separate new leave for crime-related disappearance of a child. Both leaves provide employees with up to 104 weeks.

Domestic or Sexual Violence Leave

Comes Into Force: January 1, 2018

Up to fifteen (15) weeks leave is available for employees if they or their children experience domestic or sexual violence, or the threat of domestic or sexual violence. The first five (5) days of leave are to be paid and the remainder is unpaid. The employee must be employed for 13 weeks.

Family Medical

Comes Into Force: January 1, 2018

Bill 148 increases family medical leave from eight (8) weeks in a 26 week period to **28 weeks per year**. Employees can use this leave to care for a person who is a family member or "like a family member" to the employee. Family Medical Leave must be certified by a qualified health practitioner for leave to be engaged. The definition of "qualified health practitioner" now includes physicians, registered nurses with an extended certificate of registration (or an individual with equivalent qualifications) and prescribed health practitioners.

Critical Illness Leave

Comes Into Force: December 3, 2017

The previous "Critical Illness Childcare Leave" has now been changed to "Critical Illness Leave" and has expanded to allow employees to take leave to care for a critically ill adult family member or an individual who is "like a family member" for up to 17 weeks for critically ill adults and 37 weeks for critically ill children. Employee must be employed for six (6) weeks.



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Leave for Still-Birth or Miscarriage

Comes Into Force: January 1, 2018

Bill 148 increases the length of leave for women who experience a still-birth or miscarriage from six (6) weeks to twelve (12) weeks.

Parental Leave Extensions

Effective: December 3rd, 2017

Job-protected parental leave will be extended from the current 35 weeks, increasing parental-leave to 61 weeks for employees who took a pregnancy leave and 63 weeks for employees who did not take a pregnancy leave.

Employment Standards Act: Scheduling Provisions

Scheduling provisions come into force on January 1, 2019

Right to Request Changes

Comes Into Force: January 1, 2019

Employees have the right to request schedule or location changes after having been employed for three (3) or more months without the fear of reprisal. The employer must discuss and respond within a reasonable time. This provision does not provide employees with the right for their requests to be granted but ensures employer transparency for providing rationale for refusal and written reason.

Right to Refuse Work

Comes Into Force: January 1, 2019

Employees can refuse to accept shifts without repercussions if their employer asks them to work with less than 96 hours notice.

Minimum “Three-Hour” Pay Rule

Comes Into Force: January 1, 2019

Employees who regularly work more than three hours per day, but upon reporting to work are given less than three hours, must be paid for three hours.

- New revised as the highest of two amounts
 - three hours of pay at the employee’s regular rate or
 - total amount the employee earned working plus the remaining time calculated at employee’s regular rate
- The change entitles employee to be paid to a premium pay if employee works at that pay
 - i.e. employee works 2 hours and if these hours are overtime employee is entitled to be paid at the o/t rate
 - (2 hours x 1.5) + 1 hour = 4 hours at the regular rate



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Minimum Pay for On-Call Employees

Comes Into Force: January 1, 2019

Employees will be entitled to three (3) hours of pay if they are required to be on call and are not called into work within 24 hours, or are required to work less than three (3) hours.

Cancellation Pay for Cancelled Shifts

Comes Into Force: January 1, 2019

Employees will be entitled to three (3) hours of pay if an employer cancels a shift with less than 48 hours of notice.

Scheduling Provision Exception

This provision will not apply if the employer is unable to provide work for the employee in circumstances outside of the employer's control such as fire, lighting, power failure, storms, or similar causes and the nature of the employees' work is dependent of these reasons. Review of Exemption will be taking place and the deadline for submission is January 8th, 2018.

Phase 1 of this review includes:

- Pharmacists;
- Managerial and Supervisory Employees Residential Building Superintendents, Janitors and
- Caretakers;
- Architects;
- Information Technology Professionals;
- Residential Care Workers, Homeworkers and Domestics

Collective Agreements

If an existing collective agreement provision conflicts with any of the new scheduling provisions (with the exception of the right to request changes), then the collective agreement will prevail until the earlier of its expiration, or January 1, 2020 (whichever comes first).

Enforcement

The government intends to hire up to 175 more employment standards officers and to launch a program to educate both employees in small and medium size businesses about their rights and obligations under the ESA.

Greater Contractual or Statutory Right

If one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply.

Labour Relations Act:

Card-Based Certification for some Industries

Comes Into Force: January 1, 2018

Bill 148 establishes a card-based union certification process for services that are related to servicing a building. Industries include:

- Building cleaning services
- Food services
- Security services
- Home care and community services industry
- *Grey areas & seeking answers: parking & others*
- Providing community services under the Home Care and Community Services Act, 1994
- Community support services
- Homemaking services
- Personal support services
- Professional services
- Temporary help agency industry & employing persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer

20% Employee Lists

Comes Into Force: January 1, 2018

- Union
 - needs 20% card-based support
 - proposed appropriate bargaining unit
- Employer
 - 2 day response time
 - argument re: appropriate bargaining unit
 - “Statutory declaration” with number of employees
- Labour Board
 - Order employer to give all employee list to union
 - Privacy issued

Return to Work Obligations

Comes Into Force: January 1, 2018

Bill 148 removes the 6 month time limit to apply to return to work within a strike commencing in order to be reinstated. There is an exception for insufficient work and bumping rights. The right may be enforced through the grievance and arbitration procedure.



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There will be a cost

Ontario Businesses Will Have to Behave Differently

Bill 148 will inflict employment changes to assist in the reduction of higher costs. Businesses will look for offsets through technologies, operational changes, price increases for consumers and other costs absorbed by business.

For Questions & Concerns

Ask ORHMA

This document is an opportunity for members to recognize concerns and ask questions. We encourage members to communicate any concerns and ask any questions by emailing info@orhma.com or calling the ORHMA office at 905-361-0268 or toll free 1-800-668-8906.

Related Documents & Helpful Material

- [Bill 148: Fair Workplaces, Better Jobs Act 2017 – ORHMA Webpage](#)
- [Frequently Asked Questions \(ORHMA\)](#)
- [Provision Dates](#)
- [Bill 148: Fair Workplaces, Better Jobs Act 2017 – PDF Download](#)