



Understanding Bill 148 Fair Workplaces, Better Jobs Act 2017

New Employment & Labour Standards

The Changing Workplaces Review

- Special Advisors were tasked by the Ontario Government to examine the Employment Standards Act, 2000 (ESA) and the Labour Relations Act, 1995 (LRA)
 - Tasked to complete a set of recommendations
 - Address precarious employment
 - issues affecting vulnerable employees in Ontario's changing modern economy
 - create a culture of compliance
 - Address ever changing workforce driven by the likes of technology
- Consultations and reports
- Minimum Wage was not part of the review

Ontario Passes Bill 148, Fair Workplaces Better Jobs Act 2017

Royal Assent Received: November 27th, 2017 and Becomes Law

- Much attention was focused on the increase to the minimum wage
 - \$14.00 per hour as of January 1, 2018
 - \$15.00 per hour as of January 1, 2019
- Bill 148 introduced many other major amendments that will be presented in this document.

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 of Bill 148

Certain provisions of Bill 148 that amend the ESA come into force **prior to** January 1, 2018:

- The **Employee Classification requirements** (i.e. the prohibition on misclassification and reverse onus to prove an individual is not an employee) came into force immediately with Royal Assent (**November 27, 2017**)
- The **Extended Parental Leave** provisions come into force on **December 3, 2017**
- the new **Critical Illness Leave** and consequential record-keeping amendments come into force on **December 3, 2017**.

Changes to Part XII of the ESA (**Equal Pay for Equal Work**) will come into force on **April 1, 2018**. Among other things, these amendments will:

- amend the existing equal pay for equal work provisions
- add a requirement that provides for equal pay for equal work, regardless of difference in employment status or assignment employee status, applicable to both employers and temporary help agencies, with corresponding provisions protecting employees from reprisals.

The new **Scheduling Provisions** of the ESA will come into force on **January 1, 2019**. This includes the new minimum on call pay and minimum cancellation pay, the new right to refuse work or on call status, and the new right to request changes to work schedules or locations. The new provisions also include a revised three-hour rule (though note that the existing three-hour rule will remain in force until the new provision takes effect in 2019).

The amendments to the OHSA (generally prohibiting a requirement for elevated heels, subject to limited exceptions) came into force on Royal Assent (November 27, 2017).

Information can be found at <http://www.orhma.com/GovernmentRelations/Bill148FairWorkplacesBetterJobsAct2017/Dates.aspx>

No more mandatory high heels

Comes Into Force: November 27th, 2017

- **Current:** None
- **New:** Bill 148 includes a section to the Province's Occupational Health and Safety Act that blocks employers from forcing workers to wear high heels
- “unless it is required for the worker to perform his or her work safely.”
- An exception will be made for employers looking for a “performer” in the entertainment and advertising industries, the law says.

Contractor Classification

Comes Into Force: November 27th, 2017

- **Current:** None
- **New:** Added measures to ensure that employees are not misclassified as independent contractors
- Upon receiving a complaint, employers are responsible for establishing that contractor is not an employee
- Ensuring they receive benefits and protections such as the ESA

Minimum Wage Increases

Minimum Wage Categories	Current (as of 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

Electronic Agreements

Comes Into Force: January 1st, 2018

- Employer / Employee agreements permitted

Public Holiday

Comes Into Force: January 1st, 2018

- **Current** –Employees working on a statutory holiday are entitled to substitute a day off or receive additional pay for the public holiday.
- This is calculated by dividing regular wages earned four weeks prior to holiday by 20.
- **New** -The rules for the calculation of public holiday pay would be amended to be based on the number of days actually worked in the pay period immediately preceding the public holiday.
- Regular wages divided by number of days 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.
- New formula will increase pay entitlement for some employees

Vacation Time

Comes Into Force: January 1st, 2018

- **Current-** Two weeks paid or two weeks of unpaid time off with 4% vacation pay
- **New-** Three weeks vacation or 6% vacation pay after five years with the same employer

Leaves: Pregnancy and Parental

Pregnancy – when suffering miscarriage or stillbirth

- **Current** – allowed 6 weeks
- **New-** allowed 12 weeks

Parental Leave (comes into law **December 3rd, 2017**)

- **Current** –allowed 35 weeks if pregnancy leave has been taken or 37 weeks if not
- **New** – 61 weeks if pregnancy leave has been taken or 63 weeks if not

Leaves: Family Medical and Critical Illness

Family Medical Leave— providing care for a family member with a medical condition and significant risk of death within 26 weeks

- **Current** – allowed 8 weeks per year
- **New**- allowed 28 weeks per year
 - certified by a qualified health practitioner for leave to be engaged
 - 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 law **December 3rd, 2018**)

- **Current** –allowed 37 weeks for care to critically-ill child
- **New** – allowed 37 weeks to care for care to critically-ill child and, in addition, 17 weeks leave to care for a critically-ill family member
 - After six weeks of employment

Leaves: Crime Related Child Disappearance and Paid Domestic Sexual Violence Leave

Crime Related Child Disappearance Leave

- **Current-** 104 weeks allowed where a child of an employee dies due to a crime
- **New-** 104 weeks allowed where a child of an employee dies due to any reason

Paid Domestic Sexual Violence Leave

- **Current-** None
- **New-** 15 weeks leave if employee or their child experiences domestic or sexual violence when leave is necessary for medical attention, counselor aid, to relocate or seek legal assistance with first 5 days paid
 - Employed for 13 weeks

Paid Leaves: Holiday Pay

- 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

Expand Personal Emergency Leave (PEL)

Comes Into Force: January 1st, 2018

- **Current** -Employers with less than 50 employees are required to provide unpaid PEL up to 10 days per calendar year
- **New** –All employers 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

Personal Emergency Leave (PEL) Entitlement

- 10 full days
 - No carry over to next year
 - Part days or full days or multiple days
 - Entitled to more than one leave for the same event
 - Each leave is separate and independent of any right an employee may have to the other leave(s).

Physician's Note for Absences

Comes Into Force: January 1st, 2018

- **Current-** Allowed on an employer's request.
- **New -** Bans employers from requiring a doctor's sick note from an employee who is taking personal emergency leave
- Based on the situation the employer can ask only for:
 - Duration or expected duration of the absence
 - Date the employee had seen a health care professional
 - Whether the patient 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

Equal Pay for Equal Work

Comes Into Force: April 1st, 2018

- **Current-** None
- **New** - Applies to part-time, temporary, casual and seasonal employees who are performing the same job as full-time employees
 - Equal pay for temporary help agency employees
 - Performing the same job as employees at the agencies' client companies
- Note: “‘substantially the same’ means substantially the same but not necessarily identical.”
- Employees would 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
 - Reprisals are prohibited
- **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 or
 - any other factor other than sex

Scheduling

Comes Into Force: January 1st, 2019

- **Current** – Employee requests for changes or work location not required
- **New**- Employees would have the right to request schedule or location changes after having been employed for three months, without fear of reprisal.
- 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.
- Employees can refuse to accept shifts without repercussion if their employer asks them to work with less than 96 hours notice
- If a shift is cancelled within 48 hours of its start, employees must be paid for three hours.
- When employees are "on-call" and not called in to work, they must be paid for three hours.
 - required for each 24 hour period that employees are on-call.

Three Hour Rule: New Pay Calculation

- 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 payed at the o/t rate
 - $(2 \text{ hours} \times 1.5) + 1 \text{ hour} = 4 \text{ hours at the regular rate}$

Requests for Changes to Schedule or Work Location

- Must be employed three months
- Must be in writing
- Employer must discuss and respond in a “reasonable” time
- If granted, then start date in writing
- Ensures employer transparency in providing rationale for refusal
- If denied, the reasons must be provided in writing

Scheduling

Exception

- If the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work;
 - the nature of the employee's work is weather-dependent and the employer is unable to provide work for the employee for weather-related reasons; or
 - the employer is unable to provide work for the employee for **such other reasons as may be prescribed**.

Exemption Review Taking Place:

Submission Deadline 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 Domestic

Collective Agreements

- Do not have to come into compliance with the new labour standards until the agreements expire or Jan. 1, 2020 (whichever comes first).

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.

Enforcement

- 175 more employment standards officers
- Higher penalties – **January 1, 2018**
- Prosecutions
- Launching a program to educate both employees and businesses about their rights and obligations under the Employment Standards Act, 2000.

Labour Relations Act (LRA)

- All Amendments come into force on **January 1st, 2018**

The 20% Employee List

- 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 issues

Return to Work Obligations

- **Current-** an employee must apply to return to work within 6 months of the strike commencing in order to be reinstated.
- **New-** 6 month time limit removed
 - Exception for insufficient work; bumping rights
- Right may be enforced through the grievance and arbitration procedure.

Card-based Certification - Industries

- Services related to servicing a building
- Includes:
 - 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

Bill 148There will be a cost !

Ontario Businesses Have to Behave Differently

- Reduction of costs through employment changes
- Offsets through technology
- Offsets through operational changes
- Price increases passed to consumers
- Absorbed by business

Understanding Bill 148

The document “Understanding Bill 148: Fair Workplaces, Better Jobs Act 2017” provides members of the Ontario Restaurant Hotel & Motel Association (ORHMA) with general information and should not be relied on as legal advice or opinion. Should you require further assistance, please contact the ORHMA office. ©

- For more information:
 - [ORHMA: Bill 148: Fair Workplaces, Better Jobs Act](#)
 - [Bill 148: Fair Workplaces, Better Jobs Act](#)

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