Cassels

Bill 148 is Officially Unravelled as Bill 47, the *Making Ontario Open for Business Act, 2018* Becomes Law

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On November 21, 2018, Bill 47, the *Making Ontario Open for Business Act, 2018*, quickly passed third reading and received royal assent.

The newly-elected Ontario government tabled Bill 47 on October 23, 2018 as a response to the numerous labour and employment reforms introduced by the previous provincial government under Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*. Although Bill 47 preserves certain Bill 148 amendments (including the right to three weeks of paid vacation after five consecutive years of employment, extended parental and pregnancy leave, and the introduction of domestic or sexual violence leave), it repeals many Bill 148 reforms, including those respecting paid personal emergency leave, planned increases to the minimum wage, and enhanced employee rights with respect to shift scheduling.

Bill 47's amendments to the *Employment Standards Act, 2000* (the ESA) will come into force on January 1, 2019, while the changes to the *Labour Relations Act, 1995* (the LRA) take effect immediately.

CHANGES TO THE ESA

1. Minimum Wage Freeze

The minimum wage in Ontario will remain at $14.00 per hour. Annual inflation adjustments will not restart until October 1, 2020.

2. Repeal of Personal Emergency Leave Provisions

Ontario employees will no longer be entitled to two paid and eight unpaid days of personal emergency leave per year. Instead, each calendar year, after two weeks of service, employees will be entitled to up to three unpaid days of sick leave, two unpaid days of bereavement leave (for the death of certain family members), and three unpaid days of family responsibility leave (in the event of an illness, injury, medical emergency or other urgent matter relating to certain family members). These leaves must be taken in entire days. In addition, a single day of leave will be counted against both contractual and statutory leave entitlements.

Employers will again be permitted to request “reasonable evidence” that an employee is entitled to sick leave, bereavement leave or family responsibility leave, including a medical note to justify sick leave.

3. Worker Misclassification

While Ontario employers continue to be prohibited from treating workers who are really employees as independent contractors, Bill 47 repeals the “reverse onus” which presumed employment relationships unless the employer proved otherwise.

4. Holiday Pay Calculation

Bill 47 formally restores the previous prorated public holiday pay formula. Public holiday pay equals the total amount of regular wages earned and vacation pay payable to an employee in the four work weeks before the work week in which the public holiday occurs, divided by 20.

5. Equal Pay for Equal Work

Employers will still be prohibited from providing employees with different rates of pay based on sex, but the prohibition on different rates of pay based on employment status (part-time, temporary or seasonal) has

been repealed. Also repealed is an employee's right to request a pay rate review and to require a substantive written response from their employer.

6. Scheduling

Bill 47 repeals most of the reforms relating to scheduling introduced by Bill 148 that had been scheduled to come into force on January 1, 2019. Employees will not become be entitled to:

- Receive three hours of pay for being on-call if an employee is available for work but not called in, or called in for fewer than three hours;
- Receive three hours of pay in the event of a shift cancellation on less than 96 hours' notice;
- Refuse requests to work or be on-call for work that are made on less than 96 hours' notice; or
- Request changes in work schedule or location after three months of employment.

The "three-hour rule," however, has been maintained. If an employee is regularly scheduled to work more than three hours, attends at work but works fewer than three hours, the employee is entitled to the greater of: (1) the amount earned for the time worked plus the employee's regular rate for the remainder of the three hours, and (2) the employee's regular rate for three hours of work.

CHANGES TO THE LRA

1. Card-Based Certification

Bill 47 repeals card-based certification for workers in home care and community services, building services and temporary help agencies. A vote will be required in all of these industries.

2. Employee Lists

Bill 148 had amended the LRA to require employers to provide a union with a list of employee names and contact information if the union had obtained membership cards from 20 percent of their proposed bargaining unit. Bill 47 has repealed this amendment, and unions must immediately destroy any names and contact information obtained under Bill 148.

3. Remedial Certification

Bill 47 has reinstated the pre-Bill 148 test and preconditions to certify a union as a remedy for employer misconduct. The Ontario Labour Relations Board (the OLRB) will now have the power to award alternative remedies, and certification in the event of employer contraventions will only be available if no other remedy would suffice to counter the effects of the contravention.

4. Review of Bargaining Unit Structure

Currently, there are limited circumstances in which an employer or union can apply to the OLRB for a review of the structure of bargaining units with a view to consolidating a bargaining unit with another bargaining unit that is already certified and represented by the same union. Such an application can only be made before the employer enters into a collective agreement.

Bill 47 repeals this restriction and provides greater flexibility to employers and unions to apply for a review of bargaining units. The OLRB will be able to review the structure of a bargaining unit upon application by a union or employer where it is satisfied the bargaining units are no longer appropriate for collective bargaining.

5. Return-to-Work Rights

Bill 47 reinstates the six-month limit on an employee's right to reinstatement following the start of a strike or lock-out.

6. First Collective Agreement Mediation and Mediation-Arbitration

The provisions of the LRA introduced under Bill 148 that require first collective agreement mediation and mediation-arbitration where negotiating parties have been unable to effect a first collective agreement have been repealed.

7. Communications

Bill 47 modernizes the permissible means of communication with the OLRB. Parties are now permitted to send any notice or communication by a variety of means, including email, courier, mail, fax, or any other method that may be prescribed by regulation.

8. Penalties

Bill 47 restores the maximum penalties for a contravention of the LRA that had been increased by Bill 148 ($2,000 for individuals and $25,000 for organizations).

TAKEAWAY

It has been just under one year since the labour and employment law reforms introduced through Bill 148 came into force, and Ontario employers now have the opportunity to further review and revise their policies

and practices in light of these further amendments to the ESA and LRA. Although the new LRA reforms come into effect immediately, there is still time to prepare for the amendments to the ESA, which do not come into force until January 1, 2019.

If you require further information or support in preparing for the impact of Bill 47, please contact Kristin Taylor, Maria Constantine or any member of the Cassels Employment & Labour Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.