

Unravelling Bill 148 - The *Making Ontario Open for Business Act* Has Arrived

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Significant changes to labour and employment laws in Ontario may again be on the horizon.

Background

Following the *Fair Workplaces, Better Jobs Act, 2017* (Bill 148), which came into force under the previous provincial government, and made significant changes to Ontario's *Employment Standards Act, 2000* (ESA) and *Labour Relations Act, 1995* (LRA), Ontario's recently elected provincial government announced today that it will introduce the *Making Ontario Open for Business Act* (the Legislation) to the Legislative Assembly.

The Legislation, as it is currently proposed, seeks to repeal many of the amendments to the ESA and LRA that were enacted under Bill 148. The Legislation also proposes changes to Ontario's skilled trades and apprenticeship system, and the Ontario College of Trades.

Highlights of the Proposed Changes

If the Legislation passes in its current form, some of the more significant changes would be as follows:

Changes to the ESA

1. Minimum Wage:

- Keeping the minimum wage at \$14 on January 1, 2019.
- Establishing a 33-month pause in minimum wage increases.

2. Scheduling:

- Repealing the following scheduling provisions that were to come into force on January 1, 2019, including:

o the employee's right to request changes to schedule or work location after they have been employed for at least three months;

o providing a minimum of three hours' pay for being on-call if the employee is available to work but is not

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called in to work;

o the employee's right to refuse requests or demands to work or to be on-call with less than 96 hours' notice; and

o three hours' pay in the event of cancellation of a scheduled shift or an on-call shift within 48 hours before the shift was to begin.

3. Three Hour Rule:

- In its press release, the government indicated that it would be modifying the existing three hour rule but not eliminating it. We do not have details yet but expect that employees who regularly work more than three hours a day will be entitled to a three hour minimum if they are called into work.

4. Leaves of Absence:

- Establishing a right for workers to take up to three days for personal illness, two for bereavement and three for family responsibilities. We currently do not have any indication as to whether or not these days will be paid or if they will supplement or replace the existing personal emergency leave entitlements.
- Protecting current paid leave provisions for cases of domestic and sexual violence affecting an employee or an employee's child.
- Repealing the provision that prohibits employers from requiring an employee to provide a medical note from a qualified health practitioner.

5. Vacation:

- Preserving the right of workers to receive three weeks of paid vacation after five years.

6. Public Holiday Pay:

- Repealing the averaging public holiday pay formula prescribed by Bill 148 and returning to the previous prorating public holiday pay formula. As we noted in a previous post, the calculation of public holiday pay under Bill 148 was hotly debated and eventually revisited by the then Liberal government.

7. Misclassification:

- Repealing the reverse onus requirement for the employer to prove that an individual is not an employee where there is a dispute over whether or not the individual has been misclassified.

8. Equal Pay for Equal Work:

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- Repealing equal pay for equal work on the basis of employment status and temporary help agency status. The requirement to provide equal pay for equal work on the basis of sex would remain in place.

9. Penalties:

- Decreasing the maximum penalties from \$350/\$700/\$1500 to \$250/\$500/\$1000.

Changes to the LRA

1. Card-based Certification:

- Repeal card-based certification for workers in home care, building services, and temporary help agencies.

2. Employee Lists:

- Remove the requirement that employers provide employees' personal information to unions.

3. Remedial Certification:

Reinstate the pre-Bill 148 conditions for the Ontario Labour Relations Board (the OLRB) to certify a union as remedy for employer misconduct, making it more difficult for unions to obtain automatic certification following alleged unfair labour practices

4. Determining Appropriate Bargaining Units:

- Remove the power of the OLRB to review and consolidate newly certified bargaining units with existing bargaining units. However, the OLRB would retain the discretion to review the structure of bargaining units where the existing bargaining units are no longer appropriate for collective bargaining.

5. Return-to-Work Rights:

- Reinstitute the six month limitation on an employee's right to reinstatement following the start of a strike or lock-out.

6. First Collective Agreement Mediation and Mediation-Arbitration:

- Repeal the special provisions and supports that Bill 148 introduced for first collective agreements,

including mediation, mediation/arbitration, educational services and easier access to first agreement arbitration.

7. Fines:

- Decrease the fines from \$5,000 to \$2,000 for individuals and from \$100,000 to \$25,000 for organizations.

Take Away

Once again, Ontario employers are faced with the prospect of revising and updating their policies. If passed, the Legislation will require Ontario employers to go back and revisit the recent policy amendments to determine which ones are still relevant to the new regime.

Employers who have already implemented certain benefits and entitlements may find it difficult to roll them back based only on the changes to the legislation, particularly if they have been captured in employment agreements and collective agreements.

Although the legislation still needs to make its way through the legislative process before it is proclaimed into law, we recommend that employers begin turning their minds to how these proposed changes may impact their business. Further details will be provided as they become available.

If you would like further information or support regard this or any other matter, please consult Laurie Jessome 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.