

## Bill 148 Receives Royal Assent, Significantly Altering Labour and Employment Laws in Ontario

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On November 27, 2017, Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, received Royal Assent. Bill 148 makes significant amendments to Ontario's *Employment Standards Act, 2000* (the ESA), *Labour Relations Act, 1995* (the LRA), and *Occupational Health and Safety Act* (OHSA). Certain amendments under Bill 148 will come into force effective immediately, with other amendments coming into force on December 3, 2017, January 1, 2018, and throughout 2018 and 2019.

### Background

Bill 148 was first introduced on June 1, 2017, in response to the recommendations of the Special Advisors in the Final Report of the Changing Workplaces Review (the Review). The goal of the Review was to address changes imposed by globalization, the increased use of technology, growth in the service sector and trade liberalization. The Review focused on addressing the increased use of temporary work, the misuse of independent contractors and the lack of predictability and structure in employment scheduling.

Since its introduction earlier this year, we have tracked the progress of Bill 148 through the Legislative Assembly. For further background on Bill 148, see our posts on the *Changing Workplace Review*, the initial proposed changes to the *Employment Standards Act* and the *Labour Relations Act*, changes to Bill 148 following the [first review](#) by the Committee on Finance and Economic Affairs, and passage of Bill 148 after its [second reading](#).

Prior to the third reading, Bill 148 underwent further changes. An overview of the final, and most significant amendments to the ESA, LRA and OHSA, along with implementation dates, are outlined below.

### Changes to the ESA

**1. Minimum Wage:** The general minimum wage will increase to \$14.00 per hour as of January 1, 2018, and then \$15.00 an hour on January 1, 2019.

**2. Vacation and Statutory Holidays:** Effective January 1, 2018:

- a. Paid vacation will increase to 3 weeks per year after 5 years of service.
- b. A new formula for calculating holiday pay will be implemented entitling an employee to holiday pay based

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on the wages paid to the employee in the pay period prior to the holiday, divided by the days worked in that period. The new formula will result in an increased entitlement for certain employees.

**3. Equal Pay for Equal Work:** Effective April 1, 2018, part-time, temporary and seasonal workers will be entitled to be paid equally to full-time employees when performing “substantially the same” job for the same employer. A distinction in rate of pay will only be permitted based on (a) a seniority system, (b) a merit system, (c) quantity or quality of production or (d) some other objective factor. This provision will also give employees the right to request that the employer review their wages if they believe they are not receiving equal pay for equal work and would protect those employees from reprisal if they inquire about their own wage rate or the wages paid to other employees.

**4. Scheduling Changes:** Effective January 1, 2019:

- a. Employees will have the right to request schedule or location changes after 3 months of employment.
- b. Employees can refuse shift assignments without repercussions if the employer assigns the shift on less than 96 hours of notice.
- c. Employees will be entitled to “wages for three hours” upon reporting for work and working less than 3 hours, as well as if their shift is cancelled on less than 48 hours of notice or if they are asked to be on-call. “Wages for three hours” is now defined as the greater of (a) 3 hours of pay at the employee’s regular rate; or (b) the sum of (i) the amount that the employee earned while working, plus (ii) the remaining time calculated at the employee’s regular rate. The “on call” rule will not apply to employees performing essential public services.
- d. Employers will be required to keep records of the dates and times employees were scheduled to work or be on call and any changes made to the schedule.

**5. Independent Contractors:** Effective immediately, employers will be explicitly prohibited from “misclassifying” employees as independent contractors and could be subject to prosecution and potentially monetary penalties as well as conviction under the ESA. In the event of a dispute regarding an individual’s employment status, employers will bear the onus of proving that the individual is not an employee.

**6. Leaves of Absence:**

- a. *Expanded Personal Emergency Leave* - Employers of all sizes will need to provide 10 days of personal emergency leave and 2 of those days must be **paid**. Employers are prohibited from requiring that an employee provide a doctor’s note to support a personal emergency leave. The new leave is effective January 1, 2018.
- b. *Extended Family Medical Leave* - Family Medical Leave will increase from 8 weeks to up to 28 weeks in a 52 week period to provide care or support to a family member who has a serious medical condition with a significant risk of death within 26 weeks. The new leave is effective January 1, 2018.
- c. *Extended Pregnancy Leave* - Pregnancy leave will be increased for employees who experience a still

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birth or miscarriage from 6 to 12 weeks. The new leave is effective January 1, 2018.

d. *Extended Parental Leave* – Parental leave will be extended from 35 weeks to 61 weeks for employees who have taken a pregnancy leave, and from 37 weeks to 63 weeks for employees who have not. The new leave is effective December 3, 2017.

e. *New Child Death Leave* – In place of the previous Crime-Related Child Death or Disappearance Leave, employees will be entitled to a leave of up to 104 weeks following the death of a child, regardless of whether the death was crime-related. The new leave is effective January 1, 2018.

f. *Extended Crime-Related Child Disappearance Leave* - Crime-Related Child Disappearance Leave will increase from 52 weeks to 104 weeks. The new leave is effective January 1, 2018.

g. *New Critical Illness Leave* – In place of the previous “Critically Ill Child Care Leave”, employees will be entitled to: (i) a leave of up to 37 weeks in a 52-week period for an employee to provide care or support to a critically ill minor child who is a family member of the employee; and (ii) a leave of up to 17 weeks in a 52-week period for an employee to provide care or support to a critically ill adult who is a family member. The new leave is effective December 3, 2017.

h. *New Paid Domestic or Sexual Violence Leave* – Employees will be entitled to a leave of absence where the employee or the employee’s child experiences domestic or sexual violence or the threat of sexual or domestic violence. The new leave will be structured as a dual entitlement. In each calendar year, an employee may take up to 10 days of leave and up to 15 weeks of leave. The first 5 days of the leave will be **paid** with “domestic or sexual violence leave pay” which will generally be equal to the wages that the employee would have earned had they not taken the leave. The new leave is effective January 1, 2018.

## **7. Enforcement:** Effective January 1, 2018:

a. Employees will no longer have to show that they attempted to resolve their issue with their employer before proceeding with a complaint under the ESA.

b. Penalties for violations under the ESA will increase and the Director of Employment Standards will be allowed to publish the names of individuals who have been issued a penalty, along with a description of the circumstances leading to the penalty and the amount of the fine.

c. Employment Standards Officers will be able to award interest on unpaid wages.

## **Changes to the LRA**

Every amendment to the LRA will come into force on January 1, 2018.

**1. Card Based Certification in Specified Industries:** A card-based union certification process will be introduced for workers in the temporary help agency industry, the building services sector, and the home care and community services industry.

**2. Secret Ballot Certification:** Amendments will be made to the current secret ballot certification process, including the following:

- a. Certain conditions required for the Ontario Labour Relations Board (the OLRB) to order remedial union certification where an employer is found to have engaged in misconduct will be eliminated, allowing unions to obtain certification more easily in such cases.
- b. Access to first contract arbitration would be made easier, and an “intensive mediation component” will be added to the first contract arbitration process.
- c. Unions will be provided with access to employee lists and employee contact information in cases where the union can demonstrate that it has garnered support from 20% of the employees involved. Disclosure of an employee’s name, phone number and personal email will be mandatory. The OLRB will also have discretion to order the disclosure of other information, including job titles, business address and other means of contacting the employee.
- d. The OLRB will be empowered to conduct votes outside of the workplace, including electronic and telephone voting.

**3. New Successor Rights Provisions:** The successor rights provisions will be applied to the retendering of building services contracts. In addition, Bill 148 will enable the government to enact regulations applying the successor rights provisions to the retendering of other publicly-funded contracted services.

**4. OLRB Powers:** The OLRB will be provided with the authority to: (a) change bargaining unit structures within a single employer, where the existing bargaining units are no longer appropriate for collective bargaining; and (b) consolidate newly certified bargaining units with other existing bargaining units represented by the same bargaining agent, under a single employer.

**5. Right of Striking Employees to Return to Work:** The six-month limitation on an employee’s right to be reinstated at the conclusion of a legal strike or lock-out will be removed. An employee would have the right to reinstatement at the conclusion of a legal strike or lock-out (subject to certain conditions), and the legislation will provide access to grievance arbitration with respect to that right.

**6. Added Just Cause Protection:** Protects employees from discharge or discipline without just cause during the period between certification and the conclusion of a first collective agreement, and between the date employees are in a legal strike or lock-out position and the new collective agreement.

**7. Expanded Remedial Powers and Fines:** Maximum fines under the LRA will increase from \$2,000 to \$5,000 for individuals, and from \$25,000 to \$100,000 for organizations.

## Changes to the OHSA

Effective immediately, employers will be prohibited from requiring a worker to wear footwear with an elevated heel unless it is required to perform the work safely. Workers employed as performers in the entertainment and advertising industry will be exempted from this change.

## Take Away

Bill 148 will require Ontario employers to undertake a review of their employment policies and practices to ensure they are compliant with the portions of Bill 148 that are taking effect immediately and in the next few weeks. We also recommend that employers begin to prepare now for the scheduling changes, which are effective January 2019.

Please contact Caitlin Russell or any member of the Cassels Employment & Labour Group if you would like further information or support in preparing for the impact of Bill 148.

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