

Changes to Bill 148: More Obligations for Ontario Employers

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On June 1, 2017, the government introduced Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*. As we have previously reported, if passed, Bill 148 will significantly alter the employment and labour landscape in Ontario. For an overview of the proposed changes to the *Employment Standards Act, 2000* (ESA) and the *Labour Relations Act* (LRA) found in the original version of Bill 148, see our previous posts on changes to the ESA and changes to the LRA.

Over the summer, the Standing Committee on Finance and Economic Affairs (the Committee) held consultations on Bill 148. In these consultations, the Committee sought feedback from industry stakeholders and the public. On August 21, 2017, following the consultations, the Committee adopted certain amendments to Bill 148. The amendments were reported to the Ontario Legislature on September 11, 2017, where the Bill was ordered for a Second Reading.

Although the amendments include some helpful clarifications for employers (particularly with respect to the new scheduling rules) most of the changes requested by employer groups in the consultation process were not adopted by the Committee. Instead, the changes leave in place or expand upon employee entitlements provided under the original version of Bill 148 and add additional obligations on employers. The most controversial aspects of the new legislation – including the increase in minimum wage – have not been amended.

Some of the notable changes made by the Committee are set out below:

- 1. New Leave of Absence for Domestic or Sexual Violence:** The amendments introduce a new unpaid leave of absence where an employee or the employee's child has experienced domestic or sexual violence. This new leave replaces the original proposal under Bill 148 which would have only expanded the grounds for claiming personal emergency leave to include domestic or sexual violence.
- 2. Extensions to Pregnancy and Parental Leave:** Under the revised Bill 148, pregnancy leave will be extended from 6 weeks to 12 weeks for employees after a miscarriage or stillbirth. Additionally, the length of parental leave will be extended by 26 weeks – 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.
- 3. Record Keeping Obligations:** Under the revised Bill 148, employers will be faced with more onerous record keeping requirements. Employers will now be required to keep records of the dates and times an employee was scheduled to work or be on call, records of any cancellations of a scheduled day of work, and

the dates and times an employee worked. Additional record keeping obligations are being added with respect to overtime pay, public holidays and vacation pay.

4. Scheduling Changes: The Committee adopted amendments to the original scheduling rules proposed under Bill 148 that will provide some relief for certain employers. In particular:

a. Under Bill 148, employees will have a right to refuse work requests where the request is made within 96 hours of the start of the shift. The amendments clarify that this will not apply where the work is to deal with an emergency, to remedy or reduce a threat to public safety, or for other prescribed reasons.

b. Under Bill 148, employees will be entitled to payment of a minimum of three hours of work if their shift is cancelled on less than 48 hours of notice. The amendments clarify that this will not apply where the nature of the employee's work is weather-dependent and the employer cannot provide work for weather-related reasons.

c. Under Bill 148, employees will be entitled to payment of a minimum of three hours of work if they are asked to be "on-call." The amendments clarify that this will not apply where the employee was not available to work for at least three hours at the relevant time.

5. Collective Bargaining Agreements: The original version of Bill 148 provided that where the terms of a collective agreement conflicted with the new scheduling provisions, the collective agreement prevailed. The amendments adopted by the Committee limit this provision to provide that the collective agreement will only prevail if the agreement is in place on January 1, 2019. Further, any provision in a collective agreement that conflicts with the new legislation will cease to apply upon the expiry of that agreement or January 1, 2020, whichever is earlier.

6. Public Holiday Statements: The revised Bill 148 restores the right for employees to take a substitute day off with public holiday pay where employees work on a public holiday – a provision that was removed under the original version of Bill 148. However, under the amendments, where an employee agrees to work on a public holiday, employers will be required to provide the employee with a written statement setting out the public holiday the employee will work and the day that is designated to be the substitute holiday.

7. Paid Emergency Leave – Bill 148 will require all employers to provide 10 days of personal emergency leave, two of which must be paid. The amendments slightly limit the entitlement to paid leave to apply only to employees who have been employed for at least one week.

After the Second Reading, it is expected that Bill 148 will be referred back to the Committee and may undergo further amendments. However, of note for employers is that the Committee rejected a proposal made by the Progressive Conservative members of the Committee which would have required the government to commit to an economic impact analysis of Bill 148 and its effects, as conducted by an

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independent financial analyst. Given the rejection of this proposal, we expect that the Ontario government plans to move relatively quickly to pass the bill into law.

We will continue to track the legislation and will provide you with updates as they become available.

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