

Changing Workplaces Review: Ontario Government Announces Significant Changes to Employment Standards Act

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Following the release of the final Changing Workplaces Review report last week, Ontario employers and (and their lawyers) have been anxiously awaiting the government's response. In press conference held today Premier Kathleen Wynne announced that her government would be introducing proposed legislation, *The Fair Workplaces, Better Jobs Act, 2017*, which will amend both the *Employment Standards Act* (ESA) and the *Labour Relations Act* (LRA). [Click here](#) for our update on the changes to the LRA.

The most significant changes being proposed to the ESA are as follows:

- Major increase to the general minimum wage to \$14.00 per hour as of January 1, 2018, and then \$15.00 an hour on January 1, 2019.
- Equal pay for equal work provisions that would see casual, part-time, temporary and seasonal workers become entitled to be paid equally to full-time employees when performing the same job for the same employer. This provision would 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.
- Temporary help agency (THA) employees would also receive the right to be paid equally to permanent employees who are performing the same job. They would also be protected from reprisal if they seek information about their wage rate or the wages paid to permanent employees.
- THA employees would have the right to receive one week of notice if an assignment that was scheduled to last longer than 3 months is terminated early.
- Employees will have the right to request schedule or location changes after three months of employment.
- Employees will be entitled to a three hour minimum upon reporting for work, as well as if their shift is cancelled on less than 48 hours of notice or if they are asked to be "on-call."
- Employees can refuse shift assignments without repercussions if the employer assigns the shift on less than 4 days of notice.
- Employers will be prohibited from "misclassifying" employees as independent contractors and could be subject to prosecution and potentially monetary penalties as well as a conviction under the legislation. 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.

- The new legislation will make it easier to find that two businesses are jointly liable under the ESA. Employees seeking a declaration of joint liability no longer need to prove that the alleged employers acted in such a way that they exhibited an intent to defeat the purpose of the ESA.
- Paid vacation would increase to 3 weeks per year after 5 years of service.
- Employers of all sizes will need to provide 10 days of personal emergency leave and two of those days must be paid. Employers would also be prohibited from requiring an employee to provide a doctor's note to support a personal emergency leave.
- The new legislation would create a 104 week job-protected leave to apply when an employee's child dies or disappears in a crime-related incident.
- Family Medical Leave will increase to up to 27 weeks in a 52 week period.
- Employees will no longer have to show that they attempted to resolve their issue directly with their employer before being permitted to proceed with a complaint under the ESA.
- 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.
- Employment Standards Officers will be able to award interest on unpaid wages.

The government has indicated that it will release draft legislation shortly and then use the summer months to engage in public consultation on the draft laws and their potential impacts on provincial workplaces. If the legislation tracks the announcement today, it may materially change how part-time and contract employees are used in the province and could also present serious operational challenges for employers who rely on shift workers to deliver goods and services on an irregular or demand-driven basis.

We will provide a full analysis of the proposed changes once the draft legislation is released.

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