

Fair Workplaces, Better Jobs Act, 2017 (aka Bill 148) and Changes to the *Employment Standards Act*

- 1) The growth of non-standard work has put many workers in more precarious circumstances.
- 2) Protection of vulnerable workers.

Bill 148 is an effort by the Ontario government to support precarious workers.

Overview of 19 Changes in Bill 148

1. **Minimum Wage** – Section 23.1(1) of the ESA is amended to increase the minimum wage to \$14.00 for most employees on January 1, 2018 and to \$15.00 for most employees on January 1, 2019, and is subject to an annual inflation adjustment on October 1 of every year, starting in October of 2019.

2. Independent Contractors – The new section 5.1 prohibits employers from treating a person who is their employee as if the person were not an employee, targeting independent contractor relationships. Further, the new section 5.1(2) places the onus on the employer to prove that a person is not an employee.

- 3. Requests for Changes to Schedule or Work Location** – Allows employees to request changes to their schedule or work location, and employers must discuss the changes with the employee and either grant them or provide reasons for the denial.

4. **Scheduling** – Requires employers to provide a minimum three hours' pay for shifts that are under three hours, and three hours pay if the employer cancels their shift within 48 hours of its start time.

- Employers must also pay three hours to employees for being on call, if they are not called in to work while on call.
- Employees have a right to refuse requests or demands to work made within four days of the request.

However, a new exception has been added: the provision does not apply to employees required to be on call to ensure the "continued delivery of essential public services", if they were not actually called in to work (s. 21.4).

5. Temporary Help Agencies – Temporary help agencies are required to provide an assignment employee with one week's written notice or pay in lieu if an assignment that was estimated to last for three months or more is terminated before the end of its estimated term unless another assignment lasting at least one week is offered to the employee.

6. **Equal Pay for Equal Work (April 1, 2018)** – Part XII is amended to add provisions 42.1 and 42.2. Subject to certain exceptions (e.g. pay differential based on seniority), these provisions entitle employees to equal pay from an employer regardless of employment status. Amendments are also proposed to the reprisal provisions to prohibit reprisals against employees who make inquiries about rates of pay, or who disclose their rate of pay to determine whether the employer is complying with this part.

For the purposes of the equal pay provisions “substantially the same” means "substantially the same but not necessarily identical" (s. 41.2).

7. Enhanced Pregnancy and Parental Leave - Under the amended section 47(1)(b)(ii):

- employees who give birth are entitled to start parental leave 12 weeks after birth, an increase from six weeks.
- employees who experience still-birth or miscarriage are entitled to 12 weeks leave, up from six.
- employees are entitled to commence parental leave up to 78 weeks after the child is born, an increase from 52 weeks.
- parental leave is extended from 35 weeks to 61 weeks, or 63 weeks if the employee also took pregnancy leave (up from 37 weeks).

8. **Personal Emergency Leave** – All employees are entitled to 10 days' personal emergency leave, not just those at an employer with 50 employees or greater, as was previously the case. Further, if the employee has been employed by the employer for one week or longer, two days of the leave are required to be paid days. Employers have a right to request evidence of entitlement to these days, but do not have the right to request a certificate from a health practitioner.

9. **Domestic or Sexual Violence Leave** – The new section 49.7 allows an employee employed by an employer for at least 13 consecutive weeks to take up to 10 days and up to 15 weeks leave, all without pay, if the employee or child of the employee experiences domestic or sexual violence, or the threat thereof, and the leave is taken for one of the enumerated purposes, which include seeking medical attention relating to the violence, obtaining services from a victim services organization, obtaining counselling, to relocate, or to seek legal or law enforcement assistance. The amount of the leave (10 days and 15 weeks) is ambiguously worded, but seems to indicate that employees have the flexibility of taking up to 10 days on an ad hoc basis, or longer portions of leave as needed.

The new Domestic or Sexual Violence Leave provides that the employee's first five days of leave are paid (s. 49.7).

10. Family Medical Leaves – Part XIV is amended to provide increased leaves. Family medical leave is increased from eight to 28 weeks (section 49.1). The new section 49.5 entitles employees to 104 weeks of unpaid leave if their child dies for any reason. New section 49.6 retains entitlement to crime-related child disappearance leave but increases the leave from up to 52 weeks to up to 104 weeks.

Section 49.1(3) significantly expands the family relationships that qualify for family medical leave beyond simply what would traditionally be thought of as immediate family. The following relationships will qualify the employee for leave:

- a. The employee's spouse.
- b. Parent, step-parent or foster parent of the employee or the employee's spouse.
- c. A child, step-child or foster child of the employee or the employee's spouse.
- d. A child who is under legal guardianship of the employee or the employee's spouse.
- e. A brother, step-brother, sister or step-sister of the employee.
- f. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
- g. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- h. A son-in-law or daughter-in-law of the employee or the employee's spouse.
- i. An uncle or aunt of the employee or the employee's spouse.
- j. A nephew or niece of the employee or the employee's spouse.
- k. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- l. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- m. Any individual prescribed as a family member for the purposes of this section.

11. Overtime Pay – Part VIII is amended such that employees who have two or more regular rates performed for the same employer will no longer have rates blended for overtime calculation purposes.

12. Public Holidays – Section 24 is amended to be based on the number of days actually worked in the pay period immediately preceding the public holiday. Further, while employers are still required to provide a day off in lieu if the employee is required to work on the public holiday, new subsections in sections 27 to 30 require the employer to provide a dated written statement setting out the public holiday the employee is required to work, and the substitute day.

13. Vacation with Pay – The new sections 33 to 35 entitle employees whose period of employment is 5 years or more to a minimum of three weeks of vacation.

14. Interest – Section 88(5) is amended to allow the Director to calculate rates of interest for amounts owing under the ESA, and allows money to be held by the Director in trust.

15. Steps Required before Complaint Assigned –

The requirement in section 96.1 for an employee to take certain steps specified by the Director before the Director assigns a complaint for investigation is repealed.

16. Order to Pay Wages – Section 103(1) is amended to allow employment standards officers to order employers to pay wages directly to employees. Under the current section 103(1), employment standards officers may only "arrange" with the employer that they pay wages directly to the employee, or order the employer to pay wages to the Director in trust. Sections 104(3) and 105(1) are also amended and provide the terms required for an employment standards officer order, as well as requirements should an employer be unable to locate an employee to whom wages are owed.

17. Notice of Contravention – The amended section 113(1) allows an employment standards officer to issue a notice to a person they believe to have contravened a provision of the ESA. Further, the new subsection 113(6.2) allows the Director to publish the name of a person who has been found to have contravened the ESA and received a notice under section 113(1), as well as a description of the contravention, the date of the deemed contravention, and the penalty for same. This would be available publically.

18. Collection – New provisions are added to Part XXIV strengthening enforcement of orders under the ESA. Section 125.1 allows the Director to accept security for amounts owing under the ESA; section 125.2 allows the Director to issue warrants to enforce payment; and section 125.3 allows the Director to claim a lien on real or personal property.

19. Binding the Crown – The new section 3.1 provides that the ESA will bind the Crown, subject to an exception in section 4 of the ESA, which allows separate persons to be treated as one employer under the ESA in certain circumstances.

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