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PUBLICATION

Bill 47 update - changes to the Employment Standards Act, 2000 receive Royal Assent

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On November 21, 2018, Bill 47, the *Making Ontario Open for Business Act*, passed third reading and received Royal Assent.

With respect to the *Employment Standards Act, 2000*, there were no further changes to the version of Bill 47 that was introduced in the Legislature on October 23, 2017. The only item that has now been clarified is that many of the changes will take effect on January 1, 2019, as was anticipated. This date is significant for a number of reasons:

- **Bill 148 changes:** Although Bill 148 was passed almost exactly a year ago on November 22, 2017, it included provisions that had a delayed implementation date of January 1, 2019, including provisions relating to scheduling (e.g. the 96-hour rule, on-call pay, etc.). Due to the passage of Bill 47, those provisions will never come into force.
- **New leaves:** The new unpaid leave provisions introduced through Bill 47, which include sick leave, family responsibility leave and bereavement leave, provide employees with a certain number of leave days per calendar year. Employees will therefore have the full 2019 calendar year to use their new leave days.
- **Interim period:** Between now and January 1, 2019, the existing Bill 148 provisions remain in effect. Employers should be aware that employees may seek to claim their Bill 148 entitlements before the changes take effect at the beginning of 2019. This may particularly be the case with the two (2) days of paid Personal Emergency Leave, which effectively "expire" on December 31, 2018 if not taken prior to that date.

In the chart below we summarize how Bill 47 will impact the changes previously made to the *Employment Standards Act, 2000* through Bill 148. While the changes are extensive, some aspects of Bill 148 are being maintained, including the $14 minimum wage, the increase to 3 weeks of vacation after 5 years, and the majority of the new and expanded statutory leaves of absence (including Domestic of Sexual Violence Leave).

	REPEALED AND REPLACED		
	Repealed Bill 148 provision	**New Bill 47 provision**	**Effective date**
Minimum wage of $15 per hour	• *General minimum wage increases to $15.00 per hour (from rate of $14.00 per hour in place as of January 1, 2018)* • *Special minimum wages for students ($14.10), liquor servers ($13.05) and homeworkers ($16.50) also increase*	• Beginning on October 1, 2020, the $14 per hour minimum wage will be subject to an annual inflation adjustment on October 1 of every year	N/A
Sick leave, family responsibility leave and bereavement leave *replaces* **Expanded Personal Emergency Leave (PEL)**	• *All employers must provide 10 days of PEL per calendar year, the first two of which must be **paid*** • *Employees cannot require employee to provide medical note as a condition of receiving PEL*	• All employees will be entitled to the following leaves in each calendar year, all of which are **unpaid**: • up to 3 days of unpaid "sick leave" (personal illness, injury or medical emergency) • up to 3 days of unpaid "family responsibility leave" (illness, injury, medical emergency or "urgent matter" relating to certain family members) • up to 2 days of unpaid "bereavement leave" (death of certain family members) • Certain restrictions apply (e.g. must have been employed for at least 2 weeks, leave to be taken in entire days, no duplication if employment contract already provides for similar paid or unpaid leave) • Employer may require reasonable evidence that employee is entitled to leave, with no express restriction on requesting medical note	January 1, 2019
	AMENDMENTS		

	Current Bill 148 provision	New Bill 47 amendment	Effective date
Classification as contractor	• Employers are prohibited from treating person who is an employee as if not an employee (i.e. as a contractor) • *Onus of proof that person is not an employee is on employer* • Prosecution and monetary penalties under *ESA* for misclassification	• The prohibition on treating employees as contractors remains • The "reverse onus" in s. 5.1(2) is repealed	N/A January 1, 2019
Holiday pay	• Holiday pay calculation will be based on *number of days actually worked* • Employees that work on the public holiday and receive a substitute day off must also be provided with written notice of the day of the substitute holiday	• Previous prorated public holiday pay formula reinstated	January 1, 2019 *Note: this change had already been implemented on an interim basis by regulation as of July 1, 2018*
Equal pay for equal work - sex	• Prohibition on basing differences in pay on sex remains the same • *Employees have new right to request a "review" of their rate of pay and to receive a substantive written response from their employer*	• The prohibition on basing differences in pay on sex remains the same • The right of an employee to request a written "review" and receive a substantive written response is repealed	N/A January 1, 2019
	REPEALED AND NOT REPLACED		
	Repealed Bill 148 provision *Currently in effect*	**New Bill 47 provision**	**Effective date**
Equal pay for equal work - employment status	• *Employers cannot base differences in pay on employment status (e.g. whether the employee is full-time / part-time / casual / temporary / seasonal)* • *Employees have new right*	• Repealed - no remaining obligation or entitlement	January 1, 2019

	to request a "review" of their rate of pay and to receive a substantive written response from their employer		
Equal pay for equal work - assignment employee status	• *Temporary help agencies cannot base differences in pay on assignment employee status* • *Employees have new right to request a "review" of their rate of pay and to receive a substantive written response from their employer*	• Repealed - no remaining no obligation or entitlement	January 1, 2019
	Repealed Bill 148 provision *Would have taken effect January 1, 2019*	**New Bill 47 provision**	
Changes to schedule or work location	• Employees with at least three months of service may submit a written request to change their schedule or work location. .	• Repealed - no remaining obligation or entitlement	Will not come into effect
On-call employees - guaranteed three paid hours	• If "on call" employees are not called into work, or are called in but work less than three hours despite being available to work longer, then they must be paid three hours at their regular pay rate	• Repealed - no remaining obligation or entitlement	Will not come into effect
Right to refuse - 96 hour rule	• An employee can refuse to work or to be on-call on a day that they were not scheduled to work or be on-call if the employer does not provide 96 hours' notice	• Repealed - no remaining obligation or entitlement	Will not come into effect
Cancellation pay - guaranteed three paid hours	• If a scheduled shift or scheduled on-call assignment is cancelled within 48 hours of the scheduled start time, employees must be paid three hours at their regular pay rate	• Repealed - no remaining obligation or entitlement	Will not come into effect

	MAINTAINED
	Bill 148 provision currently in effect that will not be impacted by Bill 47
Minimum wage of $14 per hour	• General minimum wage increases to $14.00 per hour (from rate of $11.60 per hour in place as of October 1, 2017) • Special minimum wages for students ($13.15), liquor servers ($12.20) and homeworkers ($15.40) also increase
Vacation with pay	• Vacation time increases from 2 weeks to 3 weeks after 5 years of service • Vacation pay increases from 4% of wages to 6% of wages after 5 years of service
Extended parental leave	• Increases to 61 weeks (from 35 weeks) for employees who take pregnancy leave • Increases to 63 weeks (from 37 weeks) otherwise
Extended pregnancy leave	• Increases from 6 weeks to 12 weeks for employees who experience a still-birth or miscarriage
Expanded critical illness leave	• Up to 17 weeks to provide care and support to a critically ill adult family member • In addition to existing critically ill child care leave of up to 37 weeks)
New 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 domestic or sexual violence • The length of the leave can be up to 10 days (if taken as days) or 15 weeks (if taken as full weeks) • The first five days of the leave must be **paid**
Extended Family Medical Leave	• Increases from 8 weeks to 28 weeks per 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
	Bill 148 provision that would have taken effect on January 1, 2019 that will not be impacted by Bill 47
Three hour rule	• Employees who regularly work more than three hours each day must be paid three hours at their regular pay rate if they are required to work and work for less than three hours despite being available to work longer