

Major Changes to Employment Law in Ontario...Again

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Employment Standards Act, 2000

Key Features of Fair Workplaces, Better Jobs Act, 2017 (Bill 148)

- Increased minimum wage
- Increased minimum paid vacation entitlement from two weeks to three weeks per year, after 5 years of service
- Extended leaves of absence for pregnancy leave and parental leave
- Permitting employees to request changes to their work schedule and or work location
- Simplification of public holiday pay
- Elimination of employer ability to pay lower rates to part-time, temporary, seasonal or casual employees
- Extended personal emergency leave of up to 10 days per year to all workers

- Introduced a new requirement that the first two days of personal emergency leave must be paid days
- Introduced changes that affect pay rates and notice periods for temporary help agency employees and employers, with anticipated impacts upon business that use the services of such agencies
- Employee rights relating to shift scheduling and cancellation

Key Features of Making Ontario Open For Business Act, 2018

- Four main changes:
 - Minimum Wage
 - Three Hour Rule
 - Personal Emergency Leave
 - Equal Work for Equal Pay

Minimum Wage

- Fair Workplaces, Better Jobs Act, 2017:
 - minimum wage was to rise to \$15 per hour effective January 1, 2019
- Making Ontario Open for Business Act, 2018:
 - minimum wage will remain frozen at \$14 per hour until 2020
 - As of 2020 minimum wage will be subject to annual inflation adjustment effective October 1 of each year.

Shift Scheduling/Three Hour Rule

- Fair Workplaces, Better Jobs Act, 2017:
 - employees had the right to:
 - request scheduling changes
 - refuse shifts assigned with less than four days' notice;
 - receive a minimum of three hours' pay:
 - for shifts that are less than three hours long when the employee regularly works more than three hours;
 - for being on call when not called in for at least three hours;
 - for shift cancellations on less than 48 hours' notice

Three Hour Rule

- Making Ontario Open for Business Act, 2018:
 - an employee who regularly works more than three hours a day (and who shows up for work but works less than three hours despite being able to work longer) receives the greater of:
 - 1. The sum of,
 - i. the amount the employee earned for the time worked, and
 - ii. wages equal to the employee's regular rate for the remainder of the time.
 - 2. Wages equal to the employee's regular rate for three hours of work.

Shift Scheduling/Three Hour Rule

- All other provisions from the Fair Workplaces, Better Jobs Act, 2017 have been repealed.

Personal Emergency Leave

- Fair Workplaces, Better Jobs Act, 2017:
 - After one week of employment, each employee was entitled to 10 days of personal emergency leave, with first two days paid
 - 50-employee threshold was eliminated so that personal emergency leaves applied in all workplaces
 - Coverage was expanded to include domestic or sexual violence or the threat of such violence.

Personal Emergency Leave

- Making Ontario Open for Business Act, 2018:
 - Fair Workplaces, Better Jobs Act, 2017 amendments are repealed
 - New proposals:
 - 3 days off for personal illness, injury or medical emergency
 - 3 days off for family responsibility leave
 - 2 days for bereavement leave
 - ALL ABSENCES ARE UNPAID
 - Employer is entitled to request evidence to substantiate the leave request

Equal Pay for Equal Work

- Fair Workplaces, Better Jobs Act, 2017:
 - Part-time, temporary seasonal and casual employees (“Non-Full Time Employees”) were entitled to be paid on an equal basis to full-time employees when performing substantially the same, but not necessarily an identical, job for the same employer
 - Assignment (temporary) employees were to be paid on an equal basis to employees of the agency’s client (assuming certain basic conditions were met)

Equal Pay for Equal Work

- Making Ontario Open for Business Act, 2018:
 - prohibition of unequal pay on the basis of employment status and assignment employee status will be removed

What Stays the Same?

- vacation time increases to three weeks per year after five years of service
- vacation pay increases to 6% of wages after five years of service

Ontario *Labour Relations Act, 1995*

Bill 47 - key proposed changes

- Union access to employee information
- Card-based certification
- Successor rights in building services industry
- Remedial certification
- First collective agreements

Union access to employee information

- Bill 148 - Unions that can establish at least 20% support of the non-unionized employees they are attempting to organize will be entitled to access a list of employees and certain contact information
 - Employee names, phone numbers and personal email addresses
- Bill 47 – Amendments repealed
 - Existing applications for employee information to be terminated
 - Employee lists obtained by a union under Bill 148 must be destroyed

Card-based certification in certain industries

- Bill 148 - Card-based union certification will be introduced for certain industries: (i) home care and community services, (ii) building services, and (iii) temporary help agencies
- Bill 47 – Amendments repealed
 - Existing applications will proceed under Bill 148 rules
 - Applications after Royal Assent will proceed by secret ballot

Successor rights in building services industry

- Bill 148
 - Successor rights will be extended to building services contracts
 - A change in building services providers at a facility with unionized employees will be treated as a “sale of business” for purposes of the LRA
 - Government will also be able to apply expanded successor rights to the retendering of other services that are publicly funded
- Bill 47
 - Rare case where amendments under Bill 148 remain unchanged
 - Except for tendering for publicly-funded services

Remedial certification

- If an employer contravenes the LRA in a manner that prevents the true wishes of employees from being reflected in a representation vote or organizing campaign, the union can seek remedial (i.e. automatic) certification from the OLRB
- Bill 148
 - Remedial certification is “presumptive remedy” in case of unfair labour practices
- Bill 47
 - Amendments repealed – now just one possible remedy

Other changes

- Bill 148 amendments repealed by Bill 47
 - Changes to “first collective agreement” provisions
 - OLRB’s expanded bargaining unit structure review / consolidation powers
 - Return to work requirements following strike
 - Increased fines
- Bill 148 amendments that are unchanged
 - “Just cause” protections while certification application is processed / litigated
 - Expanded voting methods (telephone / electronic voting)

Ontario *Pay Transparency Act, 2018*

Pay Transparency Act, 2018

- Key dates:
 - April 26, 2018: Passed by Liberal government
 - January 1, 2019: Scheduled to come into force
- Purpose:
 - Increase transparency in hiring processes
 - Give women more information when negotiating compensation that is equal to their male peers
- BUT:
 - Laurie Scott, Minister of Labour: “Committed to principle of pay transparency” but looking at “timing”

New obligations

- Job posting requirements
 - Include information about expected compensation in publicly advertised job postings
- Pay transparency reports
 - Phased in schedule
 - May 15, 2020: Employers with 250 or more employees
 - May 15, 2021: Employers with between 100 and 250 employees
 - Workforce composition and differences in workforce compensation
 - Post reports online

New prohibitions

- Seeking compensation history
 - Employers prohibited from asking job applicants about compensation history
 - “Benchmarking” still permitted
- Anti-reprisal
 - Employers prohibited from penalizing employees who:
 - Make compensation inquiries
 - Disclose compensation to other employees
 - Inquire about pay transparency reports

Ontario
Police Record Checks Reform
Act 2015

Purpose

- Key dates:
 - December 3, 2015: Passed
 - November 1, 2018: Proclaimed into force
- Standardizes police record check process across Ontario
 - Limits disclosure of “non-conviction” information
 - Sensitive information (suicide attempts where police were called)
 - Mental health detentions
 - Complaints with no charges, withdrawn charges and acquittals
- Applies to employment-related police record checks

Types of police record checks

- Criminal record check
 - Criminal convictions
 - Most common employment-related check
- Criminal record and judicial matters check
 - Above PLUS absolute and conditional discharges, outstanding charges, arrest warrants and certain judicial orders
 - Employment where public safety in issue
- Vulnerable sector check
 - Above PLUS findings where not criminally responsible on account of mental disorder, plus non-conviction information related to vulnerable persons

New requirements

- Prohibition on using or disclosing information in police record check other than for purpose for which it was requested or as authorized by law
- Consent requirements
 - Individual must consent to police record check being conducted
 - Individual must also consent to information being disclosed to third party (e.g. employer)

Ontario *Human Rights Code*

Bill 40 – Genetic Characteristics

- Passed second reading on October 18, 2018
- Would add “genetic characteristics” as prohibited ground of discrimination (as is currently the case with race, disability, family status, etc.)
- Examples:
 - Requiring employees to undergo genetic test
 - Potentially predicting disease risks

Federal *Canada Labour Code*

Bill C-86

- Federally-regulated employers only
- First reading on October 29, 2018
- Proposed major changes:
 - Vacation: 3 weeks after 5 years / 4 weeks after 10 years
 - Personal leave: 5 days per year, 3 of which are paid
 - Unpaid leaves: pregnant / nursing women and jury duty
 - Scheduling: 96 hour rule
 - Notice of termination: approximately 1 week per year to a maximum of 8 weeks
 - Equal pay for part-time versus full-time
 - Employment status requirements

Questions?