

NEWSFLASH

LEGISLATIVE UPDATE OCTOBER 2018

Summary of Bill 47 Changes

On October 23, 2018, the new PC government introduced the *Making Ontario Open for Business Act*, Bill 47, which claims to “remove the worst burdens that prevent Ontario businesses from creating jobs while expanding opportunities for workers.” In reality, if passed, this *Act* will set Ontario workers back by not only repealing almost all of Bill 148 (the *Fair Workplaces, Better Jobs Act, 2017*) but also removing protections for workers that were previously well-established in Ontario.

This legislation was crafted and introduced without any public consultation.

It is expected that the PC government will rush the passage of this legislation before the end of the fall sitting of the legislature. It has already passed First Reading. Considering the large majority the PC government holds in the legislature, it is expected that the following proposed changes will become law by the end of 2018.

Employment Standards Act, 2000 (ESA)

Minimum Wage

- The PC government has proposed to freeze the minimum wage at \$14 per hour until 2020. This means that if this legislation passes, the scheduled increase of minimum wage to \$15 per hour will not take place on January 1, 2019. The government has also proposed that after 2020, minimum wage increases will go back to being tied to the rate of inflation.

Scheduling

- Bill 148 established changes to the way in which employers could schedule shifts including the amount of notice and minimum hours of work. These changes were aimed at assisting employees in precarious jobs by giving them predictability and stability. If passed, the following would come into place on January 1, 2019:

- Employees would no longer be entitled to request changes to their schedules or work locations after they have been employed for at least three months.
- The “on-call” changes from Bill 148 will be repealed. Bill 148 provided for a minimum of three hours’ pay for employees who are required to be on-call but were not called into work. It also provided for a minimum of three hours’ pay for employees who were on call and were called in, but worked fewer than three hours.
- Employees would no longer be granted the right to refuse their employer’s requests to work or to be on-call on a day that they are not scheduled to work. Additionally, the right of employees to refuse to be on-call with less than 96 hours’ notice would also be repealed.
- Employers would be able to cancel a scheduled shift or an on-call shift within 48 hours of the beginning of the shift without having to pay the affected employee three hours’ pay.
- Additionally, there would no longer be record-keeping requirements for employers relating to the above scheduling changes.

Personal Emergency Leave

- If this legislation is passed, there will no longer be “personal emergency leave” days. Instead of reverting back to the pre-Bill 148 system of 10 unpaid personal emergency leave days, Bill 47 goes farther and proposes changes similar to Alberta’s legislation: **eight (8) unpaid days**, distributed as three (3) unpaid personal illness days, two (2) unpaid bereavement leave days and three (3) unpaid family responsibility days.
- Furthermore, employers will again be able to require employees to provide medical notes for sick leave, despite evidence that this causes a burden on our healthcare system and is incompatible with employees’ ability to heal.

Public Holiday Pay

- Bill 47 would also repeal the current averaging public holiday pay formula and return to the previous prorating public holiday pay formula used before Bill 148.

Definition of Employee

- Bill 148 introduced changes to the way in which an individual was determined to be an “employee” for the purposes of the *Employment Standards Act*, including the imposition of a reverse onus which required an employer to prove that a person was not an employee. Bill 47 would repeal these changes.

Equal Pay for Equal Work

- If Bill 47 passes, employers will no longer be required to provide equal pay for equal work on the basis of employment status (part-time, casual, and temporary), or for employees employed through agencies. The requirement for equal pay on the basis of sex will remain in place.

Penalties for Contravention

- Due to the rise in the amount of *ESA* violations found through inspections, complaints, and blitzes, Bill 148 increased the amount of administrative penalties. Bill 47 would decrease the maximum penalties to \$250/\$500/\$1000 (from \$350/\$700/\$1500, respectively).

What remains in the *ESA* from Bill 148:

- Employees are still entitled to three weeks' vacation after completing 5 years of service.
- Employees are still entitled to domestic and sexual violence paid leave.

Labour Relations Act (*LRA*)

Card-based Certification

- Card-based certification will no longer apply to employees in home care, building services, and temporary help agencies. Card-based certification remains only in the construction industry, as it did prior to Bill 148.

Employee Lists

- Unions will no longer be able to apply to the Ontario Labour Relations Board ("OLRB") for employee lists which Bill 148 made available if a union could demonstrate support of at least 20% of the employees in a proposed bargaining unit.

Remedial Certification

- Bill 47 would revert back to the old test used by the OLRB to determine whether to certify a union as a remedy for employer misconduct. That is, the OLRB would determine whether a vote (or a new vote) would be a sufficient remedy, or whether the only sufficient remedy would be to certify the union.

Successor Rights

- Bill 47 would repeal the regulation-making authority to expand successor rights to contract tendering for publicly-funded services, including homecare.

Structure of Bargaining Units

- Bill 47 would repeal the changes from Bill 148 which gave the OLRB the power to review and consolidate newly certified bargaining units with existing bargaining units.
- Instead, Bill 47 would only have the OLRB review the structure of bargaining units where the OLRB is of the view that the existing bargaining units are no longer appropriate for collective bargaining.

Return-to-work Rights

- Bill 47 would reintroduce the six-month limitation on an employee's right to reinstatement following the start of a strike or lock-out. Bill 148 had removed this limitation.

First Collective Agreement Mediation and Mediation-Arbitration

- Bill 47 proposes to remove the first collective agreement mediation and mediation-arbitration provisions, or provisions for educational support, which had been introduced through Bill 148.
- Bill 47 would reinstate the narrow pre-Bill 148 conditions for access to first agreement arbitration (that is, where it appears to the OLRB that collective bargaining has been unsuccessful for specified reasons).

Fines

- Bill 47 would change the maximum fines for offences under the *LRA* by decreasing the fines from \$5,000 to \$2,000 for individuals and from \$100,000 to \$25,000 for organizations.

Streamline Efficiencies

- Bill 47 repeals sections 122(1) and (2) of the *LRA* and instead states that any proceeding under the *Act* and any notice or communication can be sent by mail, courier, fax, email or any other method prescribed.
- Similarly, Bill 47 removes the reference in section 122(3) to documents being "sent by mail" and instead simply states "sent", which allows for more than one method of communication.

Ontario College of Trades and Apprenticeship Act, 2009

Finally, Bill 47 also proposes the following changes to the *OCOTAA*:

- It sets all journeyman-to-apprentice ratios at one-to-one.

- It introduces a moratorium on the recognition of new trade classifications and reclassifications.
- It begins a process of “winding down” the Ontario Colleges of Trades. That is, the government proposes to wind down the College of Trades while transitioning to a replacement model for early 2019.

The foregoing is a summary of the major Bill 47 changes only, and by no means is exhaustive of the changes proposed, nor does it describe the changes in detail.

As always, our lawyers are available to assist with particular questions or concerns regarding specific cases and facts.

Note: *The information contained in this Newsflash is not intended to constitute legal advice. If you have any questions concerning any particular fact situation, we invite you to contact one of our lawyers.*

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