

BILL 148 – QUICK REFERENCE GUIDE

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Bill 148 – Quick Reference Guide

On November 22, 2017, the Ontario government passed Bill 148, *the Fair Workplaces, Better Jobs Act, 2017*. The bill makes sweeping changes to the *Employment Standards Act, 2000* (“ESA”), *Labour Relations Act, 1995* (“LRA”) and the *Occupational Health and Safety Act* (“OHS”).

The Ontario government has announced it intends on hiring up to 175 additional employment standards officers to enforce the legislation and will be launching a program to educate both employees and employers on the changes.

To respond to these changes, Ontario employers should:

- Assess which employees may be impacted by the changes and how changes will be communicated to them
- Review your existing policies to ensure they are updated to reflect the new changes
- Review your employment contracts to see if any changes need to be made, e.g., to vacation and overtime entitlements
- Review existing collective agreements to determine the impact, if any, the proposed changes will have, particularly as it relates to leaves, scheduling and increased vacation.

To help you track the changes we have listed the implementation dates and information regarding the pertinent changes.

In Force Now

**The provisions are not retroactive. Accordingly, if a leave under the Act began before the new provisions took effect, the former provisions of the Act apply to that leave.*

Employment Standards Act

Change	Details
<i>Pregnancy and Parental Leave</i>	<p>Pregnancy leave extended from 6 weeks to 12 weeks for employees after a miscarriage or stillbirth</p> <p>Parental leave increases from 35 weeks to 61 weeks for employees who take pregnancy leave</p> <p>Total combined pregnancy leave is 18 months</p> <p>Total for parental leave only (if pregnancy leave not taken) is 63 weeks or approximately 14 ½ months</p>
<i>Critical Illness Leave</i>	<p>Replaces the critically ill child care leave</p> <p>Dual leaves:</p> <ul style="list-style-type: none"> ○ Up to 37 weeks (in 52-week period) to care for a critically ill child <18 ○ Up to 17 weeks to care/support a critically ill family member >18 <p>Expanded list of family members</p>
<i>Vacation</i>	<p>Minimum vacation entitlement increases to 3 weeks' vacation <i>time</i> and 6% vacation pay after 5 years of service with the employer.</p>
<i>Overtime pay</i>	<p>If an employee has two or more different rates of pay, they are entitled to overtime pay at the rate applicable to the period of overtime.</p>
<i>Public holiday Pay</i>	<p>New formula to calculate public holiday pay:</p> <ul style="list-style-type: none"> ○ wages earned in pay period immediately preceding public holiday ○ divided by the number of days worked in that pay period.
<i>Ban on misclassification of independent contractors</i>	<p>Prohibits misclassifying employees as independent contractors.</p>

	<p>Onus on employers to prove employment status.</p> <p>Misclassification may result in penalties, prosecution, and public disclosure</p>
<i>Employer status</i>	<p>The “intent or effect” condition in the related employer test is removed.</p> <p>Expanded definition of employer, which may cover franchises and parent/subsidiary organizations.</p>
<i>Temporary agency employees (“assignment employees”)</i>	<p>Assignment employees to be paid equally to employees of agency’s client if:</p> <ul style="list-style-type: none"> ○ they perform substantially same work for same organization; ○ utilize same skill set; and ○ work is done under similar circumstances. <p>Assignment employees have the right to inquire about their rate of pay without fear of reprisal.</p>
<i>Family medical leave</i>	<p>Extended from 8 weeks in a 26-week period to 28 weeks in a 52-week period.</p>
<i>Personal emergency leave</i>	<p>Applies to all employers regardless of size.</p> <p>10 days per year, two of which must be paid as long as employee has worked for at least a week.</p> <p>Paid days must be taken before unpaid days.</p> <p>Employers may not request a medical note to substantiate claim for personal emergency leave but can require other evidence of entitlement.</p> <p>Can request a medical note for any time after the 10 personal emergency leave days.</p>
<i>Domestic or sexual violence leave</i>	<p>Employee who has been employed for at least 13 consecutive weeks entitled to:</p> <ul style="list-style-type: none"> ○ 10 days’ unpaid; and ○ up to 15 weeks unpaid ○ the first 5 days are paid

Entitled if the employee or employee’s child experiences domestic or sexual violence or threat of domestic or sexual violence.

Purpose of leave:

- To seek medical attention
- To obtain services from a victim services organization
- To obtain counselling
- To relocate
- To seek legal or law enforcement assistance

Employer may make reasonable request for evidence of necessity but must also safeguard confidentiality.

<i>Child death leave</i>	Up to 104 weeks (2 years) of unpaid leave if employee’s child dies for any reason.
<i>Crime-related child disappearance leave</i>	Up to 104 weeks (2 years) of unpaid leave.
<i>Increase to Minimum Wage</i>	<p>\$14.00 per hour: Jan 1, 2018</p> <p>\$15.00 per hour: Jan 1, 2019</p> <p>Thereafter adjusted for inflation each Oct 1 as in current ESA.</p>
<i>Record Keeping Obligations</i>	<p>Several new record-keeping requirements required by employers. Such changes include keeping records of the dates and times an employee was scheduled to work or be on call; records of any cancellations of scheduled days of work and dates and times an employee worked.</p> <p>Additional record keeping obligations added with respect to overtime pay, public holidays and vacation pay, including increasing the retention period of records of vacation time and vacation pay from 3 years to 5 years.</p> <p>Records need to be kept related to employee taking new domestic or sexual violence leave.</p>
<i>Enforcement</i>	<p>Increased penalties for non-compliance.</p> <p>Employees no longer have to raise issues with employer before submitting MOL complaint.</p>

Labour Relations Act

Change	Details
<i>Card based certification</i>	<p>Establishes card-based union certification without a vote in various industries, including: temporary help agency; building services; and home care and community services industry.</p> <p>Unions can now elect certification under this process or representation vote.</p>
<i>First-Contract Mediation</i>	<p>Instead of the current system of proceeding to first-contract arbitration after a “No-Board” report has been issued, the parties can now access first-contract mediation and first collective agreement mediation-arbitration where the mediation has failed.</p>
<i>Access to Employee Information</i>	<p>Union may apply to the Board for an order directing an employer to provide the trade union with a list of employees of the employer and certain contact information, if the union can establish 20% employee support.</p>
<i>No Discharge or Discipline during Strike or Lockout</i>	<p>Employees can’t be disciplined or discharged without just cause:</p> <ul style="list-style-type: none"> ○ between date of certification and date on which first collective agreement is entered into; and ○ between date employees are in legal strike or lock-out position and new collective agreement.
<i>Structure of Bargaining Units</i>	<p>The Board can review and restructure the bargaining unit in certain circumstances.</p> <p>The parties may by agreement and with the consent of the Board make changes to the structure of bargaining units.</p>
<i>Successor Rights for Building Services</i>	<p>Successor rights extended to re-tendering of building cleaning services, food services and security services.</p>
<i>Remedial Certification</i>	<p>Eliminates certain conditions for union certification, allowing unions to be more easily certified (such as automatic certification) when employer engages in misconduct that contravenes the LRA.</p>

<i>Return to Work</i>	<p>Employees may be reinstated at the end of a lawful strike or lockout.</p> <p>Removes the 6-month limitation for employees to request to return to work.</p>
<i>Votes Outside the Workplace</i>	The Board can conduct votes outside the workplace, including electronically and by telephone.

Occupational Health and Safety Act

Change	Details
<i>Footwear</i>	Employers cannot require a worker to wear footwear with an elevated heel, subject to qualifications.

Effective April 1, 2018

Employment Standards Act

Change	Details
<i>Termination of contract employees</i>	<p>One week's notice of termination of contract that was scheduled to last more than 3 months that is ended early unless employer offers a reasonable alternate assignment of at least a week.</p>
<i>Equal Pay for Part-time, Casual, Temporary and Seasonal Employees</i>	<p>Equal pay regardless of a difference in employment status and an entitlement for equal pay for assignment employees of a temporary help agency who perform substantially the same work as an employee of the temporary help agency's client. Some exceptions apply.</p> <p>Prohibits reprisals against employees who inquire about rates of pay or who disclose their rate of pay to determine or assist in determining compliance with the equal pay for equal work provisions.</p> <p><i>Note: Pursuant to Ontario Regulation 285/01, students under age 18 are exempt from equal pay if they work 28 hours or less weekly or if working during a school holiday.</i></p>

Equal pay for equal work provisions in collective agreements that conflict with the new provisions in the ESA continue to apply until the earlier of the expiry of the collective agreement or January 1, 2020.

Effective January 1, 2019

Employment Standards Act

Change	Details
<i>Requests to Change Schedule or Work Location</i>	<p>Employees may request changes to their schedule or work location after 3 months of service.</p> <p>Employers must discuss these requests and either grant them or provide reasons for denial.</p>
<i>Scheduling (“three hour rule”)</i>	<p>Employees who regularly work more than 3 hours per day, but upon reporting to work are given less than 3 hours of work, must be paid for 3 hours equal to the greater of:</p> <ul style="list-style-type: none"> ○ 3 hours of pay at regular rate; or ○ Pay for time worked + wages equal to regular rate for the remainder of the 3 hours
<i>On-Call Pay</i>	<p>The three-hour rule also applies if an on-call employee is available but not called in (or called in for fewer than 3 hours).</p> <p>Only required to pay for three hours in 24-hour period commencing with beginning of on-call period.</p> <p>Requirement does not apply to employees who are on-call to ensure continuous delivery of essential public services.</p>
<i>Right to Refuse Shifts</i>	<p>Employees can refuse to work if they were not scheduled to work and given less than 96 hours notice of schedule change.</p>
<i>Shifts Cancelled within 48 Hours</i>	<p>If employee’s shift or on-call period is cancelled within 48 hours of start time, employee is entitled to three hours of pay.</p> <p>Does not apply:</p> <ul style="list-style-type: none"> ○ If shift is merely shortened or extended

- o Shift is cancelled for circumstances outside employer’s control, e.g., weather, fire or power outage

Removal of the Work Hardening Exemption The exemption for work hardening in a simulated job or working environment is removed.

Employment Standards Act

Change	Details
<i>Scheduling</i>	Scheduling provisions in collective agreements continue to apply if they conflict with the new provisions in the ESA until the earlier of the expiry of the collective agreement and January 1, 2020.

Key Dates at a Glance

<i>In Force Now</i>		
ESA	LRA	OHSA
Pregnancy and parental leave Critical illness leave		Ban on requiring high heels
Vacation entitlement Overtime pay Public holiday pay Ban on misclassification of independent contractors Personal emergency leave Family medical leave Child death leave Domestic or sexual violence leave Temporary help agencies Enforcement	Card based certification First contract mediation Access to employee information No discharge or discipline during strike or lockout Structure of bargaining units Successor rights for building services Return to work Vote outside workplace	

<i>Effective April 1, 2018</i>		
ESA	LRA	OHSA
Equal pay for equal work		
<i>Effective January 1, 2019</i>		
ESA	LRA	OHSA
Request to change schedule or work location Scheduling employees		