

THE LAWS THEY ARE A'CHANGING (AGAIN) - BACKTRACK ON BILL 148: PROPOSED REVERSALS OF KEY EMPLOYMENT LAW CHANGES IN ONTARIO

On October 23, 2018, the Ontario government introduced Bill 47, entitled *Making Ontario Open for Business Act*, which would repeal various sections of the *Fair Workplaces, Better Jobs Act*, 2017 ("Bill 148") that introduced by the previous provincial government.

If Bill 47 passes, many of the amendments made to the *Employment Standards Act*, 2000 (the "ESA") under Bill 148 would be reversed. Below is a summary of the key provisions of the ESA that the Ontario government intends to repeal in the near future.

	Current Status Under the ESA	Proposed Amendments
Minimum Wage	The minimum wage was increased to \$14 per hour as of January 1, 2018 and would increase to \$15 per hour as of January 1, 2019.	The minimum wage would remain at \$14, with a 33-month pause in minimum wage increases. Commencing in 2020, annual increases to the minimum wage would be tied to inflation.
Scheduling Work Hours and Location	Requests for changes: Employees have a right to request changes to their schedule or work location after they have been employed for at least three months.	This provision would be repealed.
	The three hour rule: Employees have a right to receive a minimum of three hours' pay for being on-call if they are available to work but are not called in to work, or work for less than three hours.	Where an employee who regularly works more than three hours a day is required to report to work, but works less than three hours, the employee would be paid for three hours.
	Right to refuse: Employees have a right to refuse requests or demands to work or to be on-call on a day that an employee is not scheduled to work or to be on-call with less than 96 hours' notice.	This provision would be repealed.
	Cancellation: Employees are entitled to three hours' pay in the event of the cancellation of a scheduled shift or an on-call shift within 48 hours before the shift was to begin.	This provision would be repealed.
Leaves of Absence	Personal emergency leave: Employees are entitled to take a total of two days of paid leave and eight days of unpaid leave for any of the following: <ol style="list-style-type: none"> 1. A personal illness, injury or medical emergency; 2. The death, illness, injury or medical emergency of a prescribed family member; and 3. An urgent matter that concerns a prescribed family member. 	Personal emergency leave would be replaced with new leave entitlements for all employees: <ul style="list-style-type: none"> • 3 days for personal illness; • 2 for bereavement; and • 3 for family responsibilities
	Domestic or sexual violence leave: Employees are entitled to paid leave if they or their child have experienced domestic or sexual violence, or the threat of domestic or sexual violence.	The government intends to protect current paid leave provisions for cases of domestic and sexual violence affecting an employee or an employee's child.
	Medical notes: Employers cannot require employees to provide a medical note from a qualified health practitioner as evidence that an employee is entitled to personal emergency leave.	Employers would have the right to require evidence of entitlement to the leave that is reasonable in the circumstances, such as a note from a qualified health practitioner.

	Current Status Under the ESA	Proposed Amendments
Vacation	After five years of employment, employees are entitled to at least three weeks of vacation after each vacation entitlement year. The government intends to preserve the right of every employee to receive three weeks of paid vacation after five years.	The government intends to preserve the right of every employee to receive three weeks of paid vacation after five years.
Public Holiday Pay	An employee's public holiday pay is equal to the total amount of regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that period.	The government intends to repeal the averaging public holiday pay formula prescribed by Bill 148 and return to the previous prorating public holiday pay formula.
Misclassification	If a dispute arises over whether an individual is an employee, the burden of proof that the person is not an employee lies upon the employer or alleged employer.	The government intends to repeal this "reverse onus".
Equal Pay for Equal Work	Employees must be paid equally for equal work on the basis of sex, employment status (part-time, casual, and temporary) and assignment employee status (temporary help agency status).	The government intends to repeal equal pay for equal work on the basis of employment status and assignment employee status. The government intends to maintain the requirement for equal pay on the basis of sex.
Sheltered Workshops	Individuals who perform work in a simulated job or working environment if the primary purpose is the individual's rehabilitation will no longer be excluded from the ESA as of January 1, 2019.	The government intends to delay the January 1, 2019 repeal of the exclusion from the ESA of these individuals.
Penalties for Contravention	Maximum administrative penalties for contraventions of the ESA are currently \$350, \$700, and \$1,500.	The government intends to return to the previous administrative penalties for contraventions of the ESA of \$250, \$500, and \$1,000, respectively.

In addition to the amendments to the ESA that are summarized above, the government has stated that it intends to make various amendments to the *Labour Relations Act, 1995* (the "LRA"), including the following:

- repealing rules that required card-based certification on workers in home care, building services, and temporary help agencies. Instead, the workers will have the right to vote by secret ballot;
- repealing rules requiring an employer to disclose employee lists to a union;
- reinstating the previous test for remedial certification of a union;
- repealing the regulation-making authority to expand successor rights to contract tendering for publicly-funded services such as homecare;
- repealing provisions regarding the structure of bargaining units;
- reinstating a six-month limitation on an employee's right to reinstatement following the start of a strike or lock-out;
- repealing Bill 148 first collective agreement mediation and mediation-arbitration provisions and provisions for educational support; and
- decreasing fines for offences under the LRA from \$5,000 to \$2,000 for individuals, and from \$100,000 to \$25,000 for organizations.

Although the government has announced its intention to repeal several sections of Bill 148, there is still uncertainty surrounding the *Making Ontario Open for Business Act*. If you have questions regarding how the proposed changes to the employment law may affect your business, please contact:



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