

# Backtrack on Bill 148: Changes to Calculating Public Holiday Pay for Employers in Ontario

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On May 7, 2018, the Ontario government announced that the Ontario Ministry of Labour will conduct a review of the public holiday system under Part X of the *Employment Standards Act, 2000* following feedback and discussions with stakeholders about the changes pursuant to Bill 148.

As an interim measure, the Ontario government will reinstate the formula for calculating public holiday pay that applied prior to Bill 148 coming into force. O. Reg. 375/18, the regulation that reinstates the previous formula, will come into effect on July 1, 2018.

## Calculating Public Holiday Pay Prior to Bill 148

Prior to the introduction of Bill 148, an employee's public holiday pay was pro-rated, based on the regular wages earned in the four weeks immediately before the public holiday, divided by 20.

For example, if an employee worked four shifts per week and earned \$100 in regular wages per shift, his or her public holiday pay would be calculated as follows:

16 shifts  $\times$  \$100 per shift = \$1,600 wages in the four weeks before the holiday

$$\$1,600 \text{ wages} \div 20 \text{ days} = \$80 \text{ public holiday pay}$$

## Calculating Public Holiday Pay Under Bill 148

Under Bill 148, public holiday pay is based on the total amount of regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days worked in that pay period. The new formula effectively increased public holiday pay for part-time, temporary and casual employees.

For example, if an employee worked four shifts per week, earned \$100 in regular wages per shift, and was subject to a standard two-week pay period, his or her public holiday pay would be calculated as follows:

8 shifts  $\times$  \$100 per shift = \$800 wages in the pay period before the holiday

\$800 wages ÷ 8 shifts = \$100 public holiday pay

## What Employers in Ontario Need to Know

Employers in Ontario should be aware that the public holiday pay for the upcoming Victoria Day public holiday on May 21, 2018, must still be calculated by the formula under Bill 148.

However, under the new regulation that comes into effect on July 1, 2018 and is to be revoked on December 31, 2019, employers in Ontario will be permitted to revert to the previous formula for calculating public holiday pay, starting with the Canada Day public holiday.

The calculation of public holiday pay is one of many changes that were implemented from November 2017 through April 2018 with the introduction of Bill 148. In addition to changes to the Labour Relations Act, 1995, and the Occupational Health and Safety Act, Bill 148 made, and will make, a number of significant changes to the Employment Standards Act, 2000 including:

- raising the minimum wage;
- increasing vacation and various job-protected leave entitlements;
- enforcing penalties for the misclassification of employees as independent contractors;
- providing equal pay for casual, part-time, temporary and seasonal workers; and
- varying the rules regarding employee scheduling (effective January 1, 2019).

Employers in Ontario should be aware that the Ministry of Labour will be stepping up its enforcement activities by, among other things, hiring up to 175 more employment standards enforcement officers and increasing inspections of Ontario workplaces. Employers should also be aware that the consequences for failing to comply with these new requirements include increased financial penalties and public identification of their contravention of the employment standards legislation.

For further information about the changes implemented under Bill 148, or to ensure that you are in compliance with the new requirements, please feel free to contact WeirFoulds' Employment and Labour Law Group.

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