

Are You Prepared? Discussing the Ontario Government Changes to the *Employment Standards Act*

PRESENTED BY:

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INTRODUCTION

- **Bill 148: *Fair Workplaces, Better Jobs Act, 2017***
 - Introduced June 1, 2017
- **Government Messaging:**
 - “help vulnerable works in a changing economy”
 - strengthen protections for “precarious workers”
 - ensure a “living wage”
- **Conspicuously absent:**
 - “support businesses in today’s evolving economy”

WHAT DOES BILL 148 MEAN FOR YOUR BUSINESS?

- Significant changes that will directly or indirectly affect your operations lay ahead

AGENDA

- ↪ Scheduling
- ↪ Overtime
- ↪ Minimum Wage
- ↪ Public Holidays
- ↪ Vacation Days
- ↪ Equal Pay for Equal Work
- ↪ Leaves of Absence
- ↪ Personal Emergency Leave
- ↪ Other Changes:
 - ↪ Misclassification
 - ↪ Temporary Help Agencies
 - ↪ Joint Liability

SCHEDULING:

- Minimum of Three (3) Hours Pay:
 - If work less than three hours;
 - If on-call and not called-in; and
 - If shift (or on-call period) cancelled with less than 48 hours' notice.
- Right to Refuse Shifts
 - If less than 96 hours' (4 days) notice
- Right to Request Schedule Changes
 - Employee must have three months' service
 - Applies to hours of work, days of week and location;
 - Employer required to respond

OVERTIME PAY

Removal of the “blended rate”

- Applies to employees with two or more regular rates of pay for different types of work performed
 - Employee now entitled to overtime pay (1.5x) the regular rate of the work being performed in overtime

INCREASING THE MINIMUM WAGE

- “Minimum Wage” rate now added to ESA
- Increased significantly:
 - \$14.00 per hour on January 1, 2018
 - Students (under 18) : \$13.15;
 - Liquor Servers: \$12.20;
 - \$15.00 per hour on January 1, 2019
 - Students (under 18) : \$14.10;
 - Liquor Servers: \$13.05;
- Subsequent increases, annually, based on CPI

PUBLIC HOLIDAYS

- “Simplified formula” to calculate “public holiday pay”
- **The New Formula:**

Regular Wages earned in pay period
immediately preceding public holiday

Number of Days actually worked in pay
period

- Very different from current formula
 - i.e. wages earned in 4 weeks, divided by 20
- Effectively pro-rates public holiday pay for part-time and non-standard work

PUBLIC HOLIDAYS CONT'D

- **What if Employee works on Public Holiday:**
 - “premium pay” (i.e. 1.5x regular rate) for each hour worked plus Public Holiday Pay
 - Removal of option to provide substitute day off

PUBLIC HOLIDAY PAY

Not ordinarily a working day

- Removes flexibility when substituting a day off:
 - First working day immediately before or after the public holiday
 - Current requirement is within 3 months (12 months if employee agrees)

VACATION AND YEARS OF EMPLOYMENT

- Less than five (5) years = 2 weeks and 4%;
- Over five (5) years = 3 weeks and 6%

EQUAL PAY FOR EQUAL WORK

- Impacts both employees and temporary help workers
 - Part-time, casual, temporary and seasonal employees
 - Workers employed by Temporary Help Agencies
- Same Rate of Pay, if:
 - They perform substantially the same kind of work in the same establishment;
 - The performance requires substantially the same skill, effort & responsibility; and
 - The work is performed under similar working conditions.

EQUAL PAY FOR EQUAL WORK

Cont'd

- Can only differentiate, if:
 - Part-Time Employees (etc.)
 - Seniority, merit, quality/quantity of production; or
 - Any objective factor other than sex or employment status;
 - Temporary Help Worker
 - Objective factors, but not sex or employment status
- Right to request pay review
 - Pay information accessible to employees and temporary help agency workers
 - Employer required to provide written response

LEAVES OF ABSENCE

– **Family Medical Leave:**

- Increased from 8 weeks in 26 week period to **27 weeks** in 52 week-period
- In line with recent increase to EI Compassionate Care benefits

– **Leave related to Death of a Child:**

- Up to two years of unpaid leave if child dies for any reason
- No longer limited to “crime-related death or disappearance”

PERSONAL EMERGENCY LEAVE

- Applies to **all employers**
 - Including employers with less than 50 employees
- 10 days of PEL
 - **2 days are paid**
 - 8 unpaid
- Can be used if employee experienced domestic or sexual violence
- **Cannot require medical notes**
 - But can still require “evidence reasonable in the circumstances”

OTHER CHANGES

Employee Misclassification

- **Explicit ban on mislabeling “independent contractors”**
 - A new provision will prohibit employers from treating, for the purposes of the ESA, a person who is their employee as if the person were not an employee under the Act
 - Penalties:
 - Prosecution;
 - Public disclosure of a conviction; and
 - Monetary penalties

OTHER CHANGES:

Temporary Help Agencies

- **Notice of Termination now required, if:**
 - Assignment was to last more than three months; and
 - Is terminated before the estimate end date.
- One week's notice or pay in lieu (unless another assignment lasting at least one week is offered)

OTHER:

Joint liability for “related employers”

- Separate legal entities may currently to be treated as one employer under ESA if
 - (a) associated or related business activities are carried on by one or more employers; and
 - (b) *the intent or effect* of their doing so has been to directly or indirectly defeat the intent and purpose of the ESA.
- Requirement for “*intent or effect*” would be removed
 - May impact franchisor/franchisee relationships; or
 - Parent-subsidary relationships

WHAT IS NEXT?

→ Public Consultations

- Standing Committee on Finance and Economic Affairs will hold public hearings:

| Week 1 | | Week 2 | |
|---------|---------------|---------|--------------------|
| July 10 | Thunder Bay | July 17 | London |
| July 11 | North Bay | July 18 | Kitchener-Waterloo |
| July 12 | Ottawa | July 19 | Niagara |
| July 13 | Kingston | July 20 | Hamilton |
| July 14 | Windsor-Essex | July 21 | Toronto |

→ Written Submissions:

- **Due:** Friday, July 21, 2017 at 5:30PM
- **Employer Advocacy:** www.keepontarioworking.ca

WHAT IS NEXT?

→ **Part 2: Focus on the *Labour Relations Act***

- A return to card-check certification, disclosure of employee lists to unions seeking to represent employees, broader-based bargaining units, first contract arbitration - these are a few of the many amendments being proposed to the Ontario Labour Relations Act, 1995. The implication is clear: the current balance in labour relations will tilt in favour of trade unions with facilitated organizing and certification, and larger bargaining units.

Date: Wednesday, July 12, 2017

Time: 12:00 p.m.– 1:00 p.m.

QUESTIONS?

