

Meet Bill 148: Are you in compliance with Ontario's "Fair Workplaces, Better Jobs Act, 2017"

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In the face of a changing economy, full time and permanent work is no longer the norm and employment is increasing less secure. Many people are unable to support their families on part-time, contract or minimum-wage jobs and many more don't have access to time off due to illness.

Accordingly, Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, was introduced with a view of trying to create a more opportunity and security for workers in Ontario. While Bill 148 has implemented changes to various employment legislations, most of the amendments have been made to the *Employment Standards Act, 2000*.

Below is an overview of the amendments that have been made to the *Employment Standards Act, 2000* and are currently in effect, with the exception of the Equal Pay for Equal Work provisions coming into effect on April 1, 2018.

Following the overview of the amendments is a non-exhaustive guideline to start adjusting your practices toward compliance with the new provisions of the *Employment Standards Act, 2000*. It may be a prudent and economic business decision to seek legal advice on these changes to ensuring you and your business are in compliance with the current employment laws to avoid potential risks, including cost consequences, of non-compliance in the future.

Bill 148 – Changes to the Employment Standards Act, 2000 (ESA)

- Misclassification (s. 4 and 5.1)
 - Independent contractors may be considered employees based on their role and exclusivity to their employer and accordingly afforded the protections under the ESA
- Record Keeping (s.15)
 - You must record the dates and times your employees worked, including rates of pay for your employees if they are entitled to overtime pay or work on shifts or on call

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- Changes to Schedule or Work Location & Scheduling (s. 21.2 – 21.7) (new)
 - Employees may now submit a request for a change to their work schedule and location of work after being employed for at least three months and employers must consider the request carefully and seriously.
 - In addition, there is three hour rule with respect to employees who regularly work more than three hours. They are entitled to a minimum of three hours worth of wages if they are required to work less than three hours or if their shift is cancelled without sufficient notice.
- Overtime Pay & Minimum Wage (s.23-23.1)
 - Employees who work more than 44 hours a week are entitled to overtime pay which is 1.5 times their regular weekly wage. An agreement can be struck between the parties to take time off in lieu of overtime pay to be calculated at the rate of overtime pay.
 - Minimum wage is now generally \$14.00 (for students under 18 who work less than 28 hours a week or on a school holiday, it is \$13.15; for homeworkers it's \$15.40). As of January 1, 2019, minimum wage will be generally \$15.00 (for students under 18 who work less than 28 hours a week or on a school holiday, it will be \$14.10; for homeworkers it will be \$16.50).
- Public Holidays (s.24, 27, 28, 29, 30)
 - Where employees are required to work during a public holiday, employers will provide a statement in writing which day it is and which substitute working day the employee will receive off in lieu
- Vacation with Pay (s. 33, 34, 35)
 - Vacation time with pay (calculated at 4% of the employee's wages) is two weeks for employees with between three months and less than five years of employment with the same employer
 - The new addition is vacation time with pay (calculated at 6% of the employee's wages) which is three weeks for employees with five years or more of employment with the same employer.
 - Both active and inactive employment are included for the purposes of calculating vacation time entitlements.

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- Equal Pay for Equal Work (s. 41.2 – 42.3) (effective April 1, 2018)
 - The current provision of the ESA under this category prohibits employers from distinguishing pay rates of employees doing substantially the same work on the ground of sex.
 - This new provision of the ESA will also limit an employer's ability to vary employees' pay based on employment status (ie: term of employment, including permanent, temporary, seasonal or casual status).
 - Employees of varying employment statuses doing substantially the same work (not necessarily identical) are entitled to the same rate of pay subject to certain exceptions (ie: rates of pay based on a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or any other factor other than sex or employment status), as identified by the ESA.
 - NOTE: Two or more full-time employees who are doing substantially the same work will not have the right to request a pay review based on this provision unless they believe the difference in pay is based on gender or "a difference in the term of employment, including a difference in permanent, temporary, seasonal or casual status".
 - As of the effective date, employees are entitled to request an adjustment to their respective pay if they believe they are receiving a lower wage than their colleague for performing substantially the same duties on the grounds of sex or a difference in employment status.
 - You have an obligation to respond to your employee's request by either adjusting their pay upward or providing your reasons for refusal in writing.
 - NOTE: There are limited number of positions that are exempt from these provisions, including an employee who is a student under 18 years of age and who does not work more than 28 hours a week.
- Leaves of Absences (s.45-53)
 - Pregnancy Leave: Ends 17 weeks after leave began or 12 weeks (previously 6 weeks) after the birth or miscarriage, whichever is later

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- Parental Leave: Commences no later than 78 weeks (previously 52 weeks) after the child is born or in the parent's custody & ends 61 weeks (previously 35 weeks) after leave began, if the employee took Pregnancy Leave, and 63 weeks (previously 37 weeks) after it began
- Family Medical Leave: Leave is up to 28 weeks (previously 8 weeks) without pay and employers are entitled to a certificate from a qualified health practitioner stating the family member is facing a serious risk of death
- Family Caregiver Leave: Leave is up to 8 weeks (same) however an employee who takes part of a week off under this provision may be deemed to have taken a full week off
- Critical Illness Leave: Leave is 37 weeks (same) if it's a critically ill minor child and 17 weeks if it's a critically ill adult (previously not in the ESA)
- Child Death Leave (previously Crime-Related Child Death or Disappearance Leave): Leave is up to 104 weeks
- Crime-Related Child Disappearance Leave (new): Leave is up to 104 weeks (until child is found at which time leave will end 14 days after child is found)
- Domestic or Sexual Violence Leave (new): Leave is up to 10 days and 15 weeks in a calendar year with the first 5 days being paid leave
- Personal Emergency Leave: Leave is for all employees now, not only employees of employers with 50 or more employees and leave is for 10 days with 2 being paid days (new) and the balance remaining as unpaid days. Employers can no longer require employees to provide a medical certificate from a qualified health practitioner as evidence for the leave but may request evidence of the reason for leave
- Reprisal Prohibited (s. 74) (April 1, 2018)
 - Reprisal is prohibited against employees who inquire about their rights under the ESA including the Equal Pay for Equal Work provisions.
- Temporary Help Agencies (s.74.2.1-74.18)
 - Agencies now have obligations to their assignment employees including compensation for terminating assignments not related to the assignment

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employee and ensuring the equal pay for equal work provisions are complied with

- Penalties (s.84-95)
 - These may now include publication of notices of contravention against employers on various mediums including the internet
- Collection (s. 125-130)
 - Warrants may now be directed to the Sherriff for enforcement and liens registered against real and personal property of individuals and businesses

Bill 148 – A basic guideline to start adjusting your practices toward compliance

- Revisit your independent contractor agreements and relationship to ensure they are not misclassified and your independent contractors are not employees;
- Review current employment contracts with a view to ensure its provisions are in compliance with the current and future changes at minimum;
- Amend new employment contracts to ensure provisions are in compliance with the changes and future changes that are scheduled to come into force;
- Examine and adjust current workplace policies on statute protected leaves of absences, including any top-up considerations for employees on pregnancy/parental leave, requirements for employees to provide medical certificates for personal emergency or sick leaves, etc.;

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- Engage in advance planning for staffing and coverage of duties during times of staff leaves (short absences and lengthier absences);
- Ensure records are maintained to monitor wages, vacation time, overtime pay (if applicable), as well as leaves of absences for your employees;
- Print and post the ESA Version 7.0 Poster at a visible spot in your place of business/clinic(s);
- Consider your current pay scales and job descriptions for positions within your business/clinic(s) to ensure they comply with the Equal Pay for Equal Work provisions and your business is not exposed to liability for failing to comply with those provisions;
- Implement safeguard measures and ensure your managers and supervisors are trained on the changes to promote collaborative strategies toward compliance;
- If in doubt as to whether Bill 148 affects you and your practices or how to adjust your practices toward compliance, seek legal advice as soon as possible!