

Labour & Employment**Where Ford government's Bill 47, a.k.a. Bill 148 repeal, is taking us**By **Tara Vasdani**

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(October 30, 2018, 1:52 PM EDT) -- On Oct. 23, 2018, Ontario Premier Doug Ford tabled Bill 47, the *Making Ontario Open for Business Act*, set to repeal a large portion of Bill 148, the *Fair Workplaces, Better Jobs Act*, which was passed into law by the previous provincial government just 11 months ago.

Highlights of the proposed changes found in Bill 47, include:

Minimum wage: Minimum wage will remain at \$14 an hour, at least until October 2020. Further increases in minimum wage are set to begin on October 2020 and will be tied to inflation.

Scheduling: Most of the new scheduling provisions in Bill 148 will be repealed, including the right of an employee to request changes to their schedule or work location after they have successfully been employed for three months; the right for an employee to receive a minimum of three hours' wages while on-call even if the employee is not called in, but remains available to work, or works for less than three hours; the right to refuse requests or demands to work or to be on-call on a day that the employee is not scheduled to work as well as the right to refuse work if called in with less than 96 hours' notice; the right to receive three hours' pay if a scheduled shift or an on-call shift is cancelled within 48 hours of the scheduled shift; and the obligation to keep records relating to these issues.

Three hour rule: The "three hour rule" will be modified to reflect three hours' pay for an employee who regularly works more than three hours per day and works less than three hours.

Personal emergency leave: The right to 10 personal emergency leave (PEL) days, two of which are paid, will be replaced with a package of eight unpaid annual leave days, consisting of three unpaid days for personal illness; two unpaid bereavement leave days; and three unpaid days for family responsibilities.

Medical notes: Employers are again permitted to request medical notes from a qualified health practitioner to establish an employee's entitlement to PEL.

Vacation: The vacation entitlement provisions will remain. An employee will still be entitled to three weeks' paid vacation after five years of service.

Domestic and sexual violence leave: The paid leave provisions dealing with domestic and sexual violence will remain.

Public holiday pay: The public holiday pay formula prescribed by Bill 148 will be repealed and replaced by the pre-Bill 148 formula.

Misclassification: The reverse onus will be eliminated requiring an employer to prove that an individual is not an employee in light of a dispute between a worker's status as employee or independent contractor.

Equal pay for equal work: Certain parts of the equal pay for equal work provision of Bill 148 will be repealed, allowing employers to differentiate pay on the basis of employment status and assignment employee status. The requirement for equal pay based on sex remains.

Sheltered workshops: Delayed.

Penalties for contravention: The section will be repealed in its entirety, returning to the pre-Bill 148 penalties. The maximum penalties will decrease from \$350, \$700 and \$1,500 to \$250, \$500 and \$1,000, respectively.

Over the course of the previous two years, two special advisers commissioned numerous expert research reports and conducted extensive consultations which eventually culminated into the 419-page *Final Report of the Changing Workplaces Review*. The report made several recommendations to the Ontario government's legislation, including urging a significant overhaul of Ontario's employment and labour legislation.

In response, the Liberal government tabled Bill 148, which made the largest set of amendments to Ontario's labour and employment legislation since the 1990s. In the months that followed, the Legislative Assembly engaged in even further consultations and debates including conducting committee hearings across Ontario after both the first and second reading of the bill. Bill 148 passed into law in November 2017.

The bill itself introduced significant protections for Ontario's workers. The amendments included, among many: equal pay for equal work, regardless of employment status; consistency in scheduling and work protections for on-call staff; changes to vacation entitlements for long-term employees; protections for victims of domestic and sexual abuse; expanded personal emergency leave days; unpaid leave for care of a critically ill family member; and paid sick leave, among others.

As compared with the sustained, extensive consultations and expert research which preceded Bill 148, Bill 47, as with Toronto's cuts to city council made back in September, appears to be a roughly drafted legislation that strips important protections from workers — particularly minimum wage and steady income earners — to the benefit of employers.

So, what are we accomplishing? Currently, the highest human rights damage award at the Human Rights Tribunal of Ontario for discrimination based on disability, is \$240,000. Today, employers have a higher accommodation onus than before — and are penalized in a greater way when seeking to terminate or discipline employees who are in situations, where sometimes, they are unable to work and further unable to speak with doctors in time.

By eliminating paid sick leave and overhauling many of the protections granted to Ontario's workers under Bill 148, we have further opened the door to lawsuits against employers for breach of basic human rights protections, and claims based on violation of the Charter. Today, an employer is already penalized for poor accommodation practices where an employee has expressed certain illnesses present in their lives — be it depression based on a psychiatrist's recommendation, or dealing with emergency family health issues — and Bill 148 eliminates many of these issues, by requiring employers to comply with its provisions.

Therefore, in an era where we are battling with uncharted waters, such as mental illnesses not clinically diagnosed, cannabis addictions, etc., a rewind-button on legislation that took years to draft, may not be the answer. In addition, provided employers have already gone the lengths to reformulate their policies as well as employment contracts to comply with Bill 148's provisions, it appears that the only profession becoming "gainfully employed" from the government's repeal is — ours.

Bring on the increased lawyers' work.

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