

Labour & Employment**Doug Ford's disruptive repeal of Bill 148**By **Tara Vasdani**

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(October 4, 2018, 12:48 PM EDT) -- As if the tumult surrounding the invocation of the notwithstanding clause by Premier Doug Ford's government a few weeks ago was not enough, less than one year into its inception, Ford has announced the Ontario government's proposed repeal of Bill 148, the *Fair Workplaces, Better Jobs Act*.

Bill 148 was introduced into legislation in 2017 — causing employers to find their heads and dig deep into the vaults of ancient policies to ensure they withstood the new requirements under the legislation.

Essentially, the bill, while recognized as that which raised Ontario's minimum wage significantly, provides many more protections for employees: for example, equal pay for equal work; consistency in scheduling and wage protections for on-call staff; increased vacation time; expanded personal emergency leave days; unpaid leave for care of a critically ill family member; protected leave for employees who have been threatened with domestic or sexual violence; and changes to temporary

help agencies among many more.

While the bill's protections have been met with some criticism, namely for lack of an effective regulatory framework to assist in enforcement (cannabis, anyone?), in an era where employee protections are on the rise, and the *Employment Standards Act* (ESA) is severely outdated, the Ontario government's announcement is troublesome at best.

At present, we are in the age of increased litigation with respect to breaches of human rights, escalating reasonable notice period rulings and successful punitive damage claims — the bill therefore accomplishing what the Conservative government believes it does not — allowing employers to avoid litigation. It is currently the era of the employee.

Our Constitution itself has been considered a "living tree" — meaning, the Constitution is organic and should be read in a broad and progressive manner so as to adapt it to changing times. The real purpose behind this interpretation: the fact that the legislation is so difficult to change, it should be interpreted in accordance with our economic and social era, and adapted accordingly.

To date, our Constitution doesn't name the prime minister of Canada — but constitutional conventions such as responsible government ensure that our prime minister has all of the power.

Bill 148 therefore provides protections to employees that are needed in 2018. While minimum wage hikes have had an impact on small businesses, other protections offered by the legislation protect the worker and ensure longevity, consistency and believe it or not — fewer lawsuits.

The Ontario government's announcement is disruptive.

Employers have spent the past year scrounging their policies and updating their employment contracts to reflect the protections offered by the bill — and while on the surface, these protections have seemingly placed the employer in a position where "too much" has been provided — it has done exactly what employers have needed: Protections for the employees that ensure, in 2018, they are happier, healthier and less likely to be on the plaintiff end of an employment lawsuit.

Premier Ford has stated that, “[the Conservative government is] going to create more jobs so we can hire more people, unlike the Liberals, who destroyed this province.”

In the front-page story of the *Toronto Star*, interestingly enough, we’ve determined that “on a year-over-year basis, employment increased by 1.1 per cent, or 79,000 jobs, in Ontario in August, according to Statistics Canada. Total hours worked across the province also increased after much of Bill 148 took effect in January.”

Careful what you preach, Premier Ford.

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