



***The Fair Workplaces,  
Better Jobs Act, 2017***

# Introduction

- Today, we are going to talk to you about the major changes found in Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, and what it will mean for your workplace.
- Bill 148 comes on the heels of the Changing Workplaces Review, which recommended a number of changes to the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*.
- Like in the Changing Workplaces Review itself, today we will bring both the employee and employer perspective to the table.

# Minimum Wage

- Increase of the Minimum Wage
  - \$14.00 as of January 1, 2018
  - \$15.00 as of January 1, 2019
  - Adjusted for inflation thereafter every October 1<sup>st</sup>.
  - Special rates (e.g. students and liquor servers) are increased more or less proportionally.

# Vacation

- New vacation minimum:
  - Entitlement will be increased to 3 weeks' vacation per year (and 6% vacation pay) for any employee whose period of employment is 5 years or more.
- Effective January 1, 2018.

# Holiday Pay Changes

- Significant changes include:
  - New formula that provides that holiday pay is calculated by dividing the wages earned in the pay period immediately preceding the public holiday by the number of days actually worked.
  - Can no longer impose a substitute day as a holiday when the employee works on a holiday.
  - When holiday falls on a day that is not a working day, the substitute day to be given must be the work day before or after the actual holiday.
- Effective January 1, 2018.

# Requests for Changes to Schedule or Work Location

- Employees with 3 months' service will have the right to submit a request in writing to the employer asking for a change in schedule or work location.
- Employer is obligated to discuss the request with employee and notify the employee of its decision "within a reasonable time".

# Three Hour Rule

**21.3 (1)** An employer shall pay an employee wages equal to the employee's regular rate for three hours of work if the employee,

- (a) regularly works more than three hours a day;
- (b) is required to present themselves for work; and
- (c) works less than three hours.

## **Exception**

(2) Subsection (1) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work.

# Minimum Pay For Being On Call

**21.4 (1)** If an employee is on call to work and is either not called to work or is called to work but works less than three hours, the employer shall pay to the employee wages equal to the employee's regular rate for three hours of work.

## **Limit**

(2) Subsection (1) only requires an employer to pay an employee a minimum of three hours of pay during a twenty-four hour period beginning at the start of the first time during that period that the employee is on call, even if the employee is on call multiple times during those twenty-four hours.

## **Collective agreement prevails**

(3) If a collective agreement contains a provision that addresses payment for being on call and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

# Right to Refuse Shifts

**21.5 (1)** An employee has the right to refuse an employer's request or demand to work or be on call on a day that they were not scheduled to work or be on call if the request or demand is made less than 96 hours before the time he or she would commence work or commence being on call, as applicable.

## **Notice to be provided**

(2) An employee who refuses an employer's request or demand to work or be on call under subsection (1) shall notify the employer of the refusal as soon as possible.

## **Collective agreement prevails**

(3) If a collective agreement contains a provision that addresses an employee's ability to refuse the employer's request or demand to perform work or be on call on a day they are not scheduled to work or be on call and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

# Cancellation of Shifts

**21.6 (1)** An employer shall pay an employee wages equal to the employee's regular rate for three hours of work if the employer cancels the employee's scheduled day of work or scheduled on call period within 48 hours before the time the employee was to commence work or commence being on call, as applicable.

## **Meaning of cancellation**

(2) For the purposes of subsection (1), a scheduled day of work or scheduled on call period is cancelled if the entire day of work or on call period is cancelled but not if the day of work or on call period is shortened or extended.

## **Exception**

(3) Subsection (1) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work.

## **Collective agreement prevails**

(4) If a collective agreement contains a provision that addresses payment when the employer cancels the employee's scheduled day of work or on call period and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

# Temporary Help Agency Employees

- Expansion of Part XII “Equal pay for equal work” will require temp agency employers to pay assignment employees the same wage rate as employees of the agency’s client where:
  - they perform substantially the same work in the same establishment,
  - they utilize substantially the same skill, effort and responsibility, and
  - the work is performed under similar working conditions.
- Reprisal language expanded to protect a temp agency employee’s inquiries regarding pay rates.
- Assignment employees must be given **1** week’s notice of early termination of work assignment that was intended to last more than **3** months.

# Part-Time/Casual Employees to be Paid the Same as Fulltime Employees

- New prohibition on offering different rates of pay based on “difference in employment status”. Part-time / casual employees will now be entitled to the same wage rate as an employer’s regular employees when:
  - they perform substantially the same work in the same establishment,
  - they utilize substantially the same skill, effort and responsibility, and
  - the work is performed under similar working conditions.
- Not applicable where difference in pay based on:
  - A seniority system;
  - A merit system;
  - A system that measures earnings by quantity or quality of production;
  - Any other factor other than sex or employment status.
- CAs in effect prior to April 1, 2018 that permits different rates of pay based on employment status prevail until CA renewed

# Personal Emergency Leave

- **Four significant changes as of January 1, 2018:**
  - Elimination of the 50 employee threshold.
  - Formal expansion of justifications to capture incidents (or threats of) domestic and sexual violence.
  - The first 2 of an employee's 10 PEL days must be paid.
  - The employer no longer has a right to ask for a medical certificate.

## Other Changes to Leave Provisions

- Expansion of Family Medical Leave from 8 weeks to 27 weeks.
- Replacement of existing Crime-Related Death or Disappearance Leave with two separate leaves:
  - A general Child Death Leave for up to 104 Weeks; and
  - Crime-related Child Disappearance Leave for up to 104 weeks.
- Effective January 1, 2018.

# Impact on Existing Collective Agreements

- **Bill 148 recognizes that some Collective Agreements may already have language that covers the same ground as Bill 148's amendments.**
- **Deals with this in one of three general ways:**
  - **The greater benefit applies;**
  - **Transition language that provides that the Collective Agreement applies until next round of bargaining; or**
  - **Collective Agreement applies despite ESA.**

# Labour Relations Act, 1995 Changes

- **Union's Right to Employee List and Contact Info. During organizing campaign**
  - New Labour Board Application available to unions trying to unionize an employer
  - Must present evidence of 20% membership in the proposed bargaining unit.
  - If Labour Board is satisfied that the union has 20% or more support, employer will be ordered to provide the union with employee names, phone number and email address on record

# Labour Relations Act, 1995 Changes

- **First Contract Interest Arbitration**
  - Current Board practice is generally not to direct parties to settle a first contract via interest arbitration.
  - Changes expand the Board's discretion to encourage increased use of interest arbitration and impose a mediation process to settle first contract, instead of strike or lockout.
  - Perception that interest arbitration favors employees.
  - Perception that strikes have become increasingly less effective as a means for unions to achieve bargaining objectives

# Labour Relations Act, 1995 Changes

- Card-Based Certification (no vote!) now available in certain industries
  - Currently only applies in the construction industry – proposed amendments would expand application to:
    - Temporary help agencies;
    - Building services providers;
    - Home care and community service providers.
  - Effect of changes would be that employers in these industries can become unionized without a certification vote if more than 55% of employees in the proposed bargaining unit are union members

# Labour Relations Act, 1995 Changes

- Expansion of Remedial Certification for employer violations of *LRA*.
  - Changes provide Labour Board with greater authority to unionize an employer who violates the *LRA* as a remedy
  - If enacted, changes could provide unions with an expanded means to unionize an employer

# Legislative Process

- Government sent Bill 148 to Committee, skipping 2<sup>nd</sup> reading.
- Committee will hold public hearings in various communities over the summer.
- Public hearing in Windsor some time during the week of July 10, 2017 (interested delegates should contact committee clerk by July 4, 2017).
- Finalized Bill should be ready for 3<sup>rd</sup> reading when legislature resumes in September.

# Thank you for your time.

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