

Best Practices for Bill 148, *Fair Workplaces, Better Jobs Act*, 2017

What is it?

- The Bill was first introduced on June 1, 2017
- It implements significant amendments to Ontario's employment legislation (ESA, LRA)
- The Bill officially passed on **November 22, 2017**
- The amendments will come into force in four phases:

Phase 1: December 3, 2017

Phase 2: January 1, 2018

Phase 3: April 1, 2018

Phase 4: January 1, 2019



Why is it occurring?

- The Ontario government's stated goal is to create "more opportunity and security for vulnerable workers"
- The government contends that precarious work interferes with opportunities to enjoy decent working conditions and/or puts workers at risk
- Research shows that higher minimum wage results in less employee turnover, which increases business productivity
- Improperly classified workers prevents certain employees from obtaining their statutory entitlements

WHY?

(1) Increase to Minimum Wage

The Amendment:

- **29%** increase to minimum wage over the course of the next calendar year

When?

- **January 1, 2018** – Increase from \$11.60/hr to \$14.00/hr
- **January 1, 2019** – Increase from \$14.00/hr to \$15.00/hr

Practical Implications:

- Higher operating costs
- Ripple effect on **wage scales**



(2) Increase to Paid Vacation

The Amendment:

- Employees with five or more years of service will become entitled to **three weeks of vacation** or **6% vacation pay**
- This is an increase from the current 2 weeks of vacation or 4% vacation pay

When?

- Effective **January 1, 2018**



Practical Implications:

- Higher operating costs for employers to:
 1. Cover the increased vacation pay entitlements and;
 2. Ensure adequate coverage for employees who are off on vacation.
- An extra week of vacation will no longer be perceived as a perk

Best Practices for Bill 148, *Fair Workplaces, Better Jobs Act, 2017*

(3) Personal Emergency Leave

The Amendment:

- All employees will be entitled to 10 “Personal Emergency Leave” days per year with the **first 2 days paid**
- Will be available to all employees for such reasons as: illness, injury, death, other urgent matters related to the individual or certain family members

When?

- Effective **January 1, 2018**

Also Note..

- Paid days must be taken before unpaid days
- Employer **can** request evidence that is “reasonable in the circumstances” to confirm that employee is entitled to the leave
- Employers **cannot** to request documentation from qualified health practitioners to substantiate a Personal Emergency leave day

(3) Personal Emergency Leave

Practical Implications:

- 2 paid Personal Emergency Leave days for all employees, regardless of seniority, will result in **higher operating costs**
- Inability to require a medical note – potential for abuse
- Changes to Personal Emergency Leave needs to be considered and reconciled with other ESA Leaves



(4) Scheduling

The Amendments:

1. After 3 months’ of employment, employees **may now request changes** to their schedule or work location
2. **“Three-Hour” Rule** – Employees will be entitled to 3 hours’ pay at their regular rate if they are required to attend work, but work less than 3 hours
3. Employees will be entitled to three hours’ pay if the employer **cancels** their shift with less than 48 hours’ notice
4. Employees can **refuse a request** to work a shift or be “on call” if the employer makes the request with less than 96 hours’ notice
5. **Enhanced Record Keeping Requirements** – Pertaining to On-call, OT, Cancellations, Vacations and the “Three-Hour” Rule

(4) Scheduling

When?


- Scheduling Amendment 1 effective **April 1, 2018**
- Scheduling Amendments 2-5 effective **January 1, 2019**

Practical Implications:

- Loss of flexibility in how employees are scheduled
- Particularly heavy impact on seasonal businesses
- Need to be more proactive in scheduling practices



Best Practices for Bill 148, *Fair Workplaces, Better Jobs Act, 2017*

<p style="text-align: center;">(5) Misclassification of “Employees” as “Contractors”</p> <p>The Amendment:</p> <ul style="list-style-type: none"> Adds an express provision, prohibiting classifying an employee as a non-employee (i.e. Independent Contractor) <p>When?</p> <ul style="list-style-type: none"> Effective January 1, 2018 <p>Practical Implications:</p> <ul style="list-style-type: none"> The employer bears the burden of proving that the “independent contractor” is not an “employee” Employers found misclassifying employees as contractors will face significant penalties including prosecution, public disclosure of a conviction and monetary penalties Accentuates the importance of having written agreements to confirm that particular workers are indeed “independent contractors” 	<p style="text-align: center;">(6) Equal Pay for Equal Work</p> <p>The Amendment:</p> <ul style="list-style-type: none"> Requires that temporary employees immediately be paid the same rate of pay as permanent employees of the organization when: <ul style="list-style-type: none"> they perform substantially the same kind of work in the same establishment; their performance requires substantially the same skill, effort and responsibility; and their work is performed under similar working conditions <p>When?</p> <ul style="list-style-type: none"> Effective April 1, 2018 <p>Practical Implications:</p> <ul style="list-style-type: none"> Will effectively eliminate the cost reductions of utilizing temporary workers <div style="text-align: right;">  </div>
<p style="text-align: center;">(7) Additional Leave Provisions</p> <ul style="list-style-type: none"> Parental Leave – Increase to Parental Leave (From 35 to 61 weeks for Pregnancy Leave and 37 to 63 weeks otherwise) <ul style="list-style-type: none"> Effective December 3, 2017 Critical Illness Leave – New entitlement provides a leave of up to 37 weeks for an employee to provide support to a <u>critically ill minor child</u> and 17 weeks to provide support to a <u>critically ill adult</u>. <ul style="list-style-type: none"> Effective December 3, 2017 Domestic or Sexual Violence Leave – If employee or employee’s child experiences violence or threats of violence the first 5 days’ leave is paid <ul style="list-style-type: none"> Effective January 1, 2018 	<p style="text-align: center;">Top 10 Tips and Best Practices</p> <ol style="list-style-type: none"> Keep track of the legislated changes as they come into force Be pro-active and stay ahead of the curve Consider the impact (\$ and non \$) to your organization Assess which employees/groups may be impacted Review employee entitlements to ensure you are <u>not</u> unintentionally providing a greater benefit Review existing policies on an ongoing basis Review existing independent contractor agreements Operationally look at creative scheduling options Communicate, educate and train management Be innovative and prepared to try new things