

Bill 47 update - proposed changes to the *Employment Standards Act, 2000*

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On October 23, 2018, the Ontario government formally announced its intention to make significant changes to employment and labour legislation in Ontario. In large part, these proposed changes will reverse or amend the legislation that the government previously passed through Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*. Some of the Bill 148 changes have already been phased in during 2018, such as the 10 days of “personal emergency leave” (two of which were paid) and the increase in minimum wage to \$14 per hour, while others were to have taken effect in 2019, such as the new scheduling requirements.

In the [press release](#) issued alongside the announcement, the government states that the purpose of the new legislation is to reduce regulatory burdens on employers by repealing many aspects of Bill 148. This will involve changes to the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*. In addition, the government has proposed changing the skilled trades and apprenticeship model in Ontario, which will likely have a significant impact on the construction industry.

Yesterday afternoon, the government introduced Bill 47, the *Making Ontario Open for Business Act*. A copy of the bill has now been posted online and can be viewed at this [link](#). At this time, Bill 47 is only at the First Reading stage, and is therefore subject to change as it goes through the legislative process. However, it is likely that the final version of Bill 47 will be substantially similar to what is currently being proposed. If and when Bill 47 is passed, the intention is for the changes to take effect on January 1, 2019.

In the chart below we summarize how Bill 47 will impact the changes previously made to the *Employment Standards Act, 2000* through Bill 148. While the changes are extensive, some aspects of Bill 148 are being maintained, including the \$14 minimum wage, the increase to 3 weeks of vacation after 5 years, and the majority of the new and expanded statutory leaves of absence (including Domestic of Sexual Violence Leave).

We will continue to keep you updated regarding the status of Bill 47 as information becomes available.

	REPEALED AND REPLACED	
	Repealed Bill 148 provision	New Bill 47 provision (First Reading)
Minimum wage of \$15 per hour	<ul style="list-style-type: none"> General minimum wage increases to \$15.00 per hour (from rate of \$14.00 per hour in place as of January 1, 2018) Special minimum wages for students (\$14.10), liquor servers (\$13.05) and homeworkers (\$16.50) also increase 	<ul style="list-style-type: none"> Beginning on October 1, 2020, the \$14 per hour minimum wage will be subject to an annual inflation adjustment on October 1 of every year
Sick leave, family responsibility leave and bereavement leave <i>replaces</i> Expanded Personal Emergency Leave (PEL)	<ul style="list-style-type: none"> All employers must provide 10 days of PEL per calendar year, the first two of which must be paid Employers cannot require employee to provide medical note as a condition of receiving PEL 	<ul style="list-style-type: none"> All employees will be entitled to the following leaves in each calendar year, all of which are unpaid: up to 3 days of unpaid “sick leave” (personal illness, injury or medical emergency) up to 3 days of unpaid “family responsibility leave” (illness, injury, medical emergency or “urgent matter” relating to certain family members) up to 2 days of unpaid “bereavement leave” (death of certain family members) Certain restrictions apply (e.g. must have been employed for at least 2 weeks, leave to be taken in entire days, no duplication if employment contract already provides for similar paid or unpaid leave) Employer may require reasonable evidence that employee is entitled to leave, with no express restriction on requesting medical note
	AMENDMENTS	
	Current Bill 148 provision	New Bill 47 amendment (First Reading)
Classification as contractor	<ul style="list-style-type: none"> Employers are prohibited from treating person who is an employee as if not an employee (i.e. as a contractor) 	<ul style="list-style-type: none"> The prohibition on treating employees as contractors remains The “reverse onus” in s. 5.1(2) is repealed

	<ul style="list-style-type: none"> • <i>Onus of proof that person is not an employee is on employer</i> • Prosecution and monetary penalties under <i>ESA</i> for misclassification 	
Holiday pay	<ul style="list-style-type: none"> • Holiday pay calculation will be based on <i>number of days actually worked</i> • Employees that work on the public holiday and receive a substitute day off must also be provided with written notice of the day of the substitute holiday 	<ul style="list-style-type: none"> • Previous prorated public holiday pay formula reinstated (<i>note: this change had already been implemented by regulation as of July 1, 2018</i>)
Equal pay for equal work - sex	<ul style="list-style-type: none"> • Prohibition on basing differences in pay on sex remains the same • <i>Employees have new right to request a “review” of their rate of pay and to receive a substantive written response from their employer</i> 	<ul style="list-style-type: none"> • The prohibition on basing differences in pay on sex remains the same • The right of an employee to request a written “review” and receive a substantive written response is repealed
	REPEALED AND <u>NOT</u> REPLACED	
	Repealed Bill 148 provision <i>Currently in effect</i>	New Bill 47 provision (First Reading)
Equal pay for equal work - employment status	<ul style="list-style-type: none"> • <i>Employers cannot base differences in pay on employment status (e.g. whether the employee is full-time / part-time / casual / temporary / seasonal)</i> • <i>Employees have new right to request a “review” of their rate of pay and to receive a substantive written response from their employer</i> 	<ul style="list-style-type: none"> • Repealed - no remaining obligation or entitlement
Equal pay for equal work - assignment employee status	<ul style="list-style-type: none"> • <i>Temporary help agencies cannot base differences in pay on assignment employee status</i> • <i>Employees have new right to request a “review” of their rate of pay and to receive a substantive written response from their employer</i> 	<ul style="list-style-type: none"> • Repealed - no remaining no obligation or entitlement
	Repealed Bill 148 provision <i>Would have taken effect January 1, 2019</i>	New Bill 47 provision (First Reading)

Changes to schedule or work location	<ul style="list-style-type: none"> Employees with at least three months of service may submit a written request to change their schedule or work location. . 	<ul style="list-style-type: none"> Repealed - no remaining obligation or entitlement
On-call employees - guaranteed three paid hours	<ul style="list-style-type: none"> If “on call” employees are not called into work, or are called in but work less than three hours despite being available to work longer, then they must be paid three hours at their regular pay rate 	<ul style="list-style-type: none"> Repealed - no remaining obligation or entitlement
Right to refuse - 96 hour rule	<ul style="list-style-type: none"> An employee can refuse to work or to be on-call on a day that they were not scheduled to work or be on-call if the employer does not provide 96 hours’ notice 	<ul style="list-style-type: none"> Repealed - no remaining obligation or entitlement
Cancellation pay - guaranteed three paid hours	<ul style="list-style-type: none"> If a scheduled shift or scheduled on-call assignment is cancelled within 48 hours of the scheduled start time, employees must be paid three hours at their regular pay rate 	<ul style="list-style-type: none"> Repealed - no remaining obligation or entitlement
	MAINTAINED	
	Bill 148 provision currently in effect that will not be impacted by Bill 47 (First Reading)	
Minimum wage of \$14 per hour	<ul style="list-style-type: none"> General minimum wage increases to \$14.00 per hour (from rate of \$11.60 per hour in place as of October 1, 2017) Special minimum wages for students (\$13.15), liquor servers (\$12.20) and homeworkers (\$15.40) also increase 	
Vacation with pay	<ul style="list-style-type: none"> Vacation time increases from 2 weeks to 3 weeks after 5 years of service Vacation pay increases from 4% of wages to 6% of wages after 5 years of service 	
Extended parental leave	<ul style="list-style-type: none"> Increases to 61 weeks (from 35 weeks) for employees who take pregnancy leave Increases to 63 weeks (from 37 weeks) otherwise 	
Extended pregnancy leave	<ul style="list-style-type: none"> Increases from 6 weeks to 12 weeks for employees who experience a still-birth or miscarriage 	
Expanded critical illness leave	<ul style="list-style-type: none"> Up to 17 weeks to provide care and support to a critically ill <u>adult</u> family member In addition to existing critically ill <u>child</u> care leave of up to 37 weeks 	
New Domestic or Sexual Violence Leave	<ul style="list-style-type: none"> Employees will be entitled to a leave of absence where the employee or the employee’s child experiences domestic or sexual violence or the threat of domestic or sexual violence The length of the leave can be up to 10 days (if taken as days) or 15 weeks 	

	<p>(if taken as full weeks)</p> <ul style="list-style-type: none"> The first five days of the leave must be paid
Extended Family Medical Leave	<ul style="list-style-type: none"> Increases from 8 weeks to 28 weeks per 52 week period to provide care or support to a family member who has a serious medical condition with a significant risk of death within 26 weeks
	Bill 148 provision that would have taken effect on January 1, 2019 that will not be impacted by Bill 47 (First Reading)
Three hour rule	<ul style="list-style-type: none"> Employees who regularly work more than three hours each day must be paid three hours at their regular pay rate if they are required to work and work for less than three hours despite being available to work longer