

Making Ontario Open For Business Act, 2018 Could Close the Door on Bill 148

Wednesday, October 24, 2018

On October 23, 2018, the Ontario government introduced Bill 47, the *Making Ontario Open for Business Act, 2018*, which would repeal a significant number of the Bill 148 amendments to the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*.

If Bill 47 passes, the amendments relating to the next increase to minimum wage, Personal Emergency Leave, Scheduling and Equal Pay for Equal Work, among others, will be repealed. Below is a list of noteworthy amendments referred to in the [government's press release](#) dated October 23, 2018:

- **Minimum Wage**
The minimum wage will remain at \$14 on January 1, 2019, instead of rising to \$15. Minimum wage would be subject to an annual inflation adjustment on October 1 of every year starting in 2020.
- **Scheduling**
The scheduling provisions that were previously going to come into force on January 1, 2019 will be repealed:
 - On-call pay
 - Right to refuse shifts with less than 96 hours' notice
 - Cancellation pay if a shift or on-call shift is cancelled within 48 hours before it was set to begin
 - Minimum of three hours' pay for being on-call if the employee is available to work, but is not called in to work, or works less than three hours
 - Right to request changes to schedule or work location
- **Personal Emergency Leave**
The current Personal Emergency Leave provisions would be replaced by separate entitlements to sick leave (three days), family responsibility leave (three days) and bereavement leave (two days), all of which would be unpaid. The prohibition on requesting a note from a qualified health practitioner as evidence of entitlement to the leave that is reasonable in the circumstances would be repealed.
- **Public Holiday Pay**
The public holiday pay formula prescribed by Bill 148 will be repealed with a resumption of the previous prorating public holiday pay formula. The previous government announced a temporary reinstatement of the pre-Bill 148 formula beginning on July 1, 2018, but the legislation was never amended.
- **Equal Pay for Equal Work**
The equal pay for equal work provisions prohibiting lower rates of pay on the basis of employment and assignment employee status will be repealed.
- **Other Changes**

- The three-hour rule introduced by Bill 148 would be maintained by Bill 47 and come into force on January 1, 2019 or the day the *Making Ontario Open for Business Act, 2018* receives Royal Assent, whichever is later. The rule provides that where an employee who regularly works more than three hours a day is required to report to work, but works less than three hours despite being able to work longer, the employee will be paid for three hours.
- The requirement for an employer to prove that an individual is not an employee where there is a dispute over whether the individual is an employee will be repealed (*i.e.*, the "misclassification" provision).
- The previous administrative penalties for contraventions of the *Employment Standards Act, 2000* will be reinstated, meaning that maximum penalties will be decreased from \$350/\$700/\$1500 to \$250/\$500/\$1000, respectively.

We note that the amendment to vacation (three weeks' vacation time, and six per cent vacation pay, for employees with a period of employment of five years or more) will not be repealed.

Labour Relations

The *Making Ontario Open for Business Act, 2018* also proposes to roll back some of the *Labour Relations Act, 1995* amendments in Bill 148. Below are some of the more significant changes:

- Repeal card-based certification for workers in home care, building services, and temporary help agencies.
- Repeal provisions that allowed unions to apply to the OLRB for employee information lists during an organizing drive.
- Reverting to the pre-Bill 148 provisions that give the OLRB the discretion to determine relief in the event of an unfair labour practice complaint during an organizing drive.
- Repealing the power of the OLRB to review and consolidate newly certified bargaining units with existing bargaining units.
- Eliminating the first contract mediation-arbitration processes from Bill 148.

The timing of the passage of Bill 47 is not yet known; however, it would likely need to be passed before January 1, 2019 when the next wave of amendments from Bill 148 would come into force.

We will continue to monitor the status of Bill 47 and advise employers on how to comply with any amendments to the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*, once passed.

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