

ONTARIO GOVERNMENT WALKS BACK CHANGES TO PUBLIC HOLIDAY PAY CALCULATION

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On May 7, 2018, the Government of Ontario announced that it would walk back one of the more controversial changes to the *Employment Standards Act, 2000* (“**ESA**”) made as a result of the *Fair Workplaces, Better Jobs Act* (also called Bill 148).

Before Bill 148, public holiday pay under the ESA was calculated as the amount equal to total regular wages and vacation pay earned over the previous 4 weeks, divided by 20. This meant that full-time employees typically received more than part-time or casual employees, since the daily rate of the latter over the full calculation period would be lower.

Through Bill 148, Ontario changed the public holiday pay formula to the following (found at s. 24 of the ESA):

“the total amount of regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that period”

This change has left many employers with the burden of paying part-time and casual employees public holiday pay at a substantially higher rate since, for example, an employee working only a single long shift during the prior pay period would receive public holiday pay at a comparable rate to a full-time employee.

However, having received negative feedback as a result, Ontario is implementing the new [Public Holiday Pay regulation \(Reg 375/18\)](#) through which the province will temporarily revert back to the pre-Bill 148 formula while it conducts further review of the public holiday pay system under Part X of the ESA.

The new Regulation will take effect on July 1, 2018, though pay calculation will not be retroactive, meaning that employers are still required to calculate holiday pay under the Bill 148 formula until July 1, 2018. The new (old) formula states:

The employee’s public holiday pay for a given public holiday shall be equal to the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20.

The Public Holiday Pay Regulation and above formula expires on December 31, 2019, though it is possible that the Government will make the change permanent before then. We will continue to keep you updated on changes to Ontario's workplace laws, including any moves made by the Ontario Government to alter the implementation of Bill 148.

by Kyle Lambert and Paul Boshyk

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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