

BILL 148 IS LAW: TIMELINE TO HELP EMPLOYERS TRANSITION

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The Fair Workplaces, Better Jobs Act, 2017 (Bill 148) received royal assent on November 27, 2018, which is the final stage of the legislative process by which a bill becomes law. However, not all of the changes made to Ontario's employment standards legislation by Bill 148 are in force immediately. To assist employers in prioritizing their efforts to update their policies and practices to ensure compliance with Bill 148, this bulletin describes each change and its effective date.

Changes Effective Immediately

- **No High-Heeled Shoes.** Employers cannot require workers to wear high-heeled shoes unless such footwear is required for the worker to perform his or her work safely. Exemptions exist for performers in the "entertainment and advertising industry", which is defined to mean the industry of producing: (a) live or broadcast performances, or (b) visual, audio-visual recordings of performances, in any medium or format.
- **Misclassification of Independent Contractors.** Employers are prohibited from treating a person who is an employee under employment standards legislation as if the person were not an employee. Employers face a reverse onus in demonstrating that any independent contractors they have engaged are not in fact employees.

Changes Effective December 3, 2017

- **Extended Parental Leave.** The length of parental leave is extended by a total of 26 weeks thereby increasing the entitlement from 35 weeks to 61 weeks for employees who take pregnancy leave and from 37 weeks to 63 weeks for employees who do not. Employees are only entitled to this extended parental leave if the child is born or came into their custody, care and control after December 3, 2017.
- **Critical Illness Leave.** The former "Critically Ill Child Care Leave" is replaced by a new "Critical Illness Leave", which is divided into two separate entitlements: (1) a 37 week critically ill minor child leave; and (2) a 17 week critically ill adult leave.

Changes Effective January 1, 2018

- **Minimum Wage.** Minimum wage is raised as follows:

Affected Worker	Wage Rate
General	\$14.00
Students	\$13.15
Liquor Servers	\$12.20
Homeworkers	\$12.80

- Personal Emergency Leave.** The 50-employee threshold is eliminated so that all employees in Ontario are entitled to 10 days of personal emergency leave for all of the reasons currently covered by the provisions so long as the employee has been employed by the employer for one week or longer. An employer must provide employees with pay for 2 days of the 10 day leave.
 - Domestic Violence Leave.** In each calendar year, an employee may take one leave of up to 10 days and another leave of up to 15 weeks for the purposes of (a) seeking medical attention for a physical or psychological injury or disability caused by domestic or sexual violence; (b) obtaining services from a victim services organization; (c) obtaining psychological or other professional counseling; (d) relocating temporarily or permanently; (e) seeking legal or law enforcement assistance; or (f) any other prescribed purposes. The first five days of leave are to be paid.
 - Extended Leaves of Absence.** Family Medical Leave is extended from 8 weeks in a 26 week period to 28 weeks in a 52 week period. Child Death or Disappearance Leave expanded to include the death of a child (non-crime related) and the disappearance of a child (non-crime related). Additionally, the leave is increased from up to 52 weeks to up to 104 weeks.
- Increased Vacation. An employer must provide an employee with a vacation of at least three weeks of time off and 6% of wages as vacation pay starting once the employee has worked for that employer for five years.

Changes Effective April 1, 2018

- Equal Pay for Equal Work.** An employer must provide equal pay to workers who perform “substantially the same” type of work, the work requires substantially the same skill, effort and responsibility, and the work is performed under similar working conditions. “Substantially the same” means “substantially the same but not necessarily identical”. Exemptions exist when the difference in rate of pay is made on the basis of a seniority system, merit, a measurement of earnings by quantity or quality of production, or any other factor except for sex or employment status.

Changes Effective January 1, 2019

- **Minimum Wage.** Minimum wage is raised as follows:

Affected Worker	Wage Rate
General	\$15.00
Students	\$14.10
Liquor Servers	\$13.05
Homeworkers	\$16.50

- **Flexible Scheduling Requests.** After three months of service, an employee has right to request that their employer decrease or increase hours of work, provide a more flexible schedule, or alter their location of work. Employers who receive these requests must discuss them with the employee and either grant the request or provide written reasons for a denial.
- **On-Call Pay.** If an employee is on-call to work and is either not called in to work or is called in to work but works less than three hours, the employer must pay to the employee three hours of pay provided the employee is available to work for at least three hours at the relevant time.
- **Compensation for Cancelled Shifts.** When an employer cancels an employee's scheduled shift or scheduled on-call period within 48 hours before the time the employee was supposed to commence work, the employer shall pay the employee three hours of pay. This obligation will not apply in certain cases beyond the employer's control (e.g. fire, power failure, storms) as well as situations where the nature of the employee's work is weather-dependent and the employer cannot provide work for weather-related reasons.
- **Requests to Work Extra Shifts.** If an employer requests or demands that an employee work on a day that the employee was not scheduled to work upon less than 96 hours of notice, the employee may refuse the request or demand without penalty. This provision will not apply where the work is to deal with an emergency, to remedy or reduce a threat to public safety, to ensure the continued delivery of public services (regardless of who delivers those services), or for other prescribed reasons.
- **Record-Keeping.** Employers will be required to document and retain records of the following information: (a) the dates and times that an employee was scheduled to work or to be on-call for work, and any changes made to the on-call schedule; (b) the dates and times the employee worked; (c) if the employee has two or more regular rates of pay for work performed for the employer, and, in a work week, the employee performed work for the employer in excess of the overtime threshold, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay; (d) any cancellations of a scheduled day of work or scheduled on-call period of the employee and the date and time of the cancellation; (e) written agreements to work public holidays; (f) the dates an employees is on a leave of absence; and (g) the amount of vacation time and vacation pay the employee earned during the vacation entitlement year and how that amount was calculated.

Please do not hesitate to contact any member of McMillan's Employment and Labour Relations group if you

have any questions about Bill 148 or require assistance with your organization's transition plans.

by Stefanie Di Francesco

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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