

ONTARIO FILES REGULATIONS TO CLARIFY THE IMPLEMENTATION OF BILL 148: IMPACTS FOR THE AUTO SECTOR, CONSTRUCTION INDUSTRY AND OTHERS

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After Ontario's Bill 148 received Royal Assent in November 2017, one of the province's necessary next steps was to make regulatory changes to both enable and clarify several of the Bill's amendments to the *Employment Standards Act, 2000* ("ESA") and *Labour Relations Act, 1995* ("LRA").

On December 18, 2017, the province filed a number of new regulations aimed at various elements of the *ESA*, as well as one (O. Reg. 534/17) which sets various transition dates for amendments to the *LRA*. This bulletin highlights the changes for the automotive sector and construction industry, as well as identifying some other important clarifications to the implementation of Bill 148.

Regulations Directed at the Automotive Sector

Personal Emergency Leave

- O. Reg 502/06 was substantially amended to address personal emergency leave ("PEL") for auto sector employees. The government maintained the seven days of PEL for employers subject to the regulation and added a section permitting employers to replace paid PEL with equivalent paid vacation days, paid holidays or paid sick days, provided that with respect to vacation days and holidays, the employee is receiving a greater right or benefit than what is provided for under the *ESA*.

Scheduling and Hours of Work

- O. Reg. 528/17 ("Exemptions, Special Rules and Establishment of Minimum Wage") provides a very important carve-out for the automotive industry from several of the hours of work and scheduling changes otherwise imposed through Bill 148, including:
 - Employees in the automobile manufacturing industry, the automobile parts manufacturing industry, the automobile parts warehousing industry and the automobile marshalling industry will not be subject to new entitlements to a minimum of 3 hours' pay if on call (s. 21.4 of the *ESA*), a right to 96 hours' notice of a scheduled shift, (s. 21.5), and payment of at least 3 hours' wages if a

shift is cancelled without 48 hours' notice (21.6).

- Automobile industry employers will be exempt from new obligations to keep records of dates and times on which employees were scheduled to work, as well as cancellations of any work or on-call period.

Regulations Directed at the Construction Industry

Personal Emergency Leave

- The PEL allowance for construction employees is unique. O. Reg 528/17 modifies the application of the PEL requirement and provides that a construction employee who receives 0.8% or more of his/her hourly rate or wages for PEL pay is not entitled to paid PEL days under s. 50 of the ESA. Construction employees will, however, still be entitled to the full 10 PEL days.

Scheduling

- Under the amended O. Reg 528/17, the public holiday pay provisions of the ESA will not apply to a construction employee if: (a) the employee's period of employment is fewer than 5 years and the employee receives 7.7% or more of wages for vacation or holiday pay, or (b) the employee's period of employment is 5 years or more and the employee receives 9.7% or more of wages for vacation or holiday pay.

Increased Penalties

- All penalties set at \$250, \$500 and \$1,000 accompanying notices of contravention issued by employment standards officers under s. 113 of the ESA are increased to \$500, \$750 and \$1,500, respectively.

Additional Regulations of Note

- The *Family Medical Leave and Critical Illness Leave* regulation (O. Reg. 535/17) will permit employers to request a copy of the document provided to a Government of Canada agency for the purposes of claiming employment insurance benefits in which it is stated that the employee is considered to be like a family member (to the individual for whom the employee is providing care).
- The *Benefit Plans* regulation (O. Reg. 286/01) is amended to include allowance for pooled registered retirement plans, which have recently been incorporated into provincial and federal pension legislation.
- The following are exempted from new "equal pay for equal work" provisions under the ESA:
 - Firefighters,
 - Employees who are students under 18 years of age, if weekly hours are not in excess of 28 hours or if the student is employed during a school holiday, and

- Persons employed in the recorded visual and audio-visual entertainment industry.

As we have previously advised, Bill 148 will have a substantial impact on Ontario employers. If you have any questions about Bill 148, amendments to the ESA, or the new regulations thereunder, please contact McMillan's employment and labour relations team.

by Dave McKechnie and Kyle Lambert

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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