

BILL 47, Making Ontario Open for Business Act

On October 23rd the provincial government introduced Bill 47, *Making Ontario Open for Business Act*. The purpose of the Bill will reverse many of the amendments to Ontario's labour and employment laws created by Bill 148, which was passed in November 2017. In addition to stopping any further changes that would have come into force on January 1st, 2019, Bill 47 will reverse many changes already in effect under Bill 148.

What is Bill 47?

Bill 47 makes many proposed changes to various pieces of legislation governing employment and labour relations in Ontario, principally the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*.

Changes to the *Employment Standards Act* include:

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| Minimum wage | Minimum wage would remain at \$14 per hour (Bill 148 allowed an increase of \$15 per hour on January 1, 2019). Annual adjustments to the minimum wage tied to inflation would restart as of October 1, 2020. |
| Scheduling | In Bill 47 scheduling provisions that were slated to come into force on January 1, 2019 under Bill 148 would be repealed: <ul style="list-style-type: none"> • The right to request changes to scheduling after an employee has been employed for at least 3 months • Minimum 3 hours of pay for being on-call • The right to refuse requests to work or be on-call where the employee was not scheduled with less than 96 hours' notice • 3 hours of pay where a scheduled or on-call shift is canceled within 48 hours before the shift was to begin • Record-keeping requirements associated with these scheduling provisions. |
| Personal emergency leave | The 2 paid days and 8 unpaid days of leave due to illness, injury, death and certain emergencies and urgent matters provided for under Bill 148 will be repealed. Bill 47 amendments include; 3 unpaid sick days, 2 unpaid bereavement days, and 3 unpaid days for family responsibilities. |
| Public holiday pay | The prorating public holiday pay formula would be re-adopted. Public holiday pay will be calculated as 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. |
| Misclassification | An individual asserting a claim under the ESA would have the onus of establishing they are an "employee" where there is a dispute over classification. |
| Equal pay for equal work | Bill 47 will remove the equal pay for equal work on the basis of "difference in employment status" |
| Penalties | The maximum penalties for a contravention of the ESA would be decreased to \$250, \$500, and \$1000 (i.e. the amounts previous to Bill 148). |

The government has indicated that the following changes to the ESA that were introduced under Bill 148 **will not** be repealed:

- Previous minimum wage increases
- The 3-hour rule, insofar as employers are required to pay employees for 3 hours of work, where an employee who regularly works more than 3 hours a day is required to report to work, but works less than 3 hours
- 3 weeks of paid vacation after 5 years of employment; and leave entitlements in the case of domestic or sexual violence

Changes to the *Labour Relations Act* include:

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| Card-based certification | Repeal card-based certification in the building services industry, the home care and community services industry or for temporary help agencies and revert to a vote-based system. |
| Employee lists | Repeal current expedited process under which a union with the support of at least 20% of the proposed bargaining unit can apply for a list of employees in that bargaining unit. |
| Remedial certification | The test and preconditions for the Ontario Labour Relations Board (OLRB) to certify a union as a remedy for employer misconduct that were in force prior to Bill 148 would be reinstated. |
| Return-to-work rights | Revert to the pre-Bill 148 protections for employees' right to reinstatement following the start of a strike or lock-out to 6 months. |
| Fines | Revert to the pre-Bill 148 fines for offences under the LRA, \$2000 for individuals and \$25,000 for organizations. |

In addition, significant amendments have been proposed to the *Ontario College of Trades and Apprenticeship Act, 2009*. These changes include:

- A new section setting the journey person to apprentice ratios to one-to-one,
- The creation of a moratorium on the referral of trades to the Classification Roster
- The addition of a new Part that would give the Minister the authority to make a regulation vesting control and charge of the affairs of the board of the College in the Minister.

What could this mean for you?

All Ontario employers should be familiar with components of Bill 47 and how it may impact their business operations and workers. Many of the organization have developed policies and training protocols to reflect changes associated with Bill 148. If and when Bill 47 passes, they will need to be revised. The timeline for the repeal of Bill 148 at this time is currently unknown.

Those seeking to obtain more information or would like to increase their awareness about the various sections of Bill 47 are encouraged to continue monitoring the WSPS Legislative Tracker, visit the Government of Ontario website (www.ontario.ca) or contact the WSPS Customer Care department. We have a number of experts that can offer guidance and help answer your questions.

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