

BILL 47, MAKING ONTARIO OPEN FOR BUSINESS ACT

April 26th, 2019

On November 21st the provincial government passed 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 introduces many amendments to legislation governing employment and labour relations in Ontario, principally the Employment Standards Act, 2000 and the Labour Relations Act, 1995.

Key changes to Employment Standards Act that will come into force on January 1, 2019 include:

	Bill 148	Bill 47
Related employer	Separate legal entities are treated as one employer if “associated or related activities or businesses” are carried on through multiple entities	No change
Misclassification	Misclassifying is specifically prohibited and the employer must establish that the complainant is not an employee	Misclassifying is specifically prohibited but the complainant must establish that they are an employee
Scheduling	3 hour rule for shortened and cancelled shifts; on-call rule; right to request scheduling or work location changes; right to refuse work or on-call requests made with less than 96 hours of notice: all of the above were to come into force on January 1, 2019	3 hour rule for shortened shifts
Minimum wage	Currently \$14/hour; increasing to \$15/hour on January 1, 2019	\$14/hour; annual inflationary adjustments to restart as of October 1, 2020
Vacation pay	3 weeks' paid vacation after 5 years' employment	No change
Equal pay for equal work	Pay differentials based on “difference in employment status” are prohibited (e.g., PT vs. FT; temporary vs. indefinite) or for temporary help agency workers	Repeal
Domestic or sexual violence leave	Up to 10 days and up to 15 weeks of leave in a calendar year, with the first 5 days paid and the remaining days unpaid	No change

	Bill 148	Bill 47
Public holiday pay	<p>As of January 1, 2018, public holiday pay = total amount of regular wages earned in pay period immediately preceding public holiday, divided by the number of days the employee worked in that period.</p> <p>As of July 1, 2018, the “old” prorating formula re-adopted as an interim measure.</p>	<p>Prorating formula: public holiday pay = total amount of regular wages earned and vac. pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20 (i.e., the “old” formula)</p>
Personal emergency leave (PEL)	<p>10 PEL days with the first 2 days paid</p> <p>Employer cannot require a certificate from a doctor or other qualified health practitioner (QHP)</p>	<p>8 unpaid leave days: sick leave (3 days), family responsibility leave (3 days), and bereavement leave (2 days)</p> <p>No prohibition re. requiring doctor’s/QHP’s certificate</p>
Fines	<p>Maximum fine amounts for contravention of the ESA increased</p>	<p>Maximum fine amounts decreased to pre-Bill 148 amounts \$250, \$500 and \$1000)</p>

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Changes to the Labour Relations Act include:

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.

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 organizations have developed policies and training protocols to reflect changes associated with Bill 148, however these will now have to be revised.

Employment contracts, Human Resource Policies/Procedures and Employee Handbooks need to reflect the current entitlements for Minimum wage, Public Holiday Pay, Scheduling and Personal Emergency Leave.

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 or visit the Government of Ontario website (www.ontario.ca).

For additional questions in regards to the legislation and available resources please don’t hesitate to contact the WSPS Customer Care department at customer care@wsp.ca. We have a number of experts that can offer guidance and help answer your questions.

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