

ONTARIO EMPLOYMENT STANDARDS ACT CHANGES PROPOSED

*By Barry Kwasniewski**

A. INTRODUCTION

On May 23, 2017, the Ontario Government released the much anticipated *Changing Workplaces Review Final Report and Summary* (the “Report”).¹ The Report recommended some 173 changes to Ontario’s employment and labour laws, and proposed amendments to Ontario’s *Employment Standards Act, 2000* (“ESA”)² and the *Labour Relations Act, 1995*.³ In response to the Report, on June 1, 2017, Bill 148, *Fair Workplaces, Better Jobs Act, 2017* (“Bill 148”) was quickly introduced and referred for consideration of the Standing Committee on Finance and Economic Affairs.⁴ Public consultations on Bill 148 will be held in various Ontario cities this summer. This Bulletin will focus on the proposed changes to the ESA which may have the most significant impact on charities and not-for-profits in Ontario, including changes proposed to provisions on minimum wage, paid vacation, personal and emergency leave, and scheduling.

B. PROPOSED CHANGES TO THE ESA

1. Minimum Wage Provisions

Bill 148 proposes an increased minimum wage. The standard minimum wage (currently \$11.40) is proposed to increase to \$14.00 between January 1, 2018 and December 30, 2018, before being raised

* Barry W. Kwasniewski, B.B.A., LL.B., a partner, practices employment and risk management law with Carters’ Ottawa office. The author would like to thank Tessa Woodland, B.Soc.Sci. (Hons), J.D., Student-at-Law, for her assistance in preparing this Bulletin.

¹ Ontario, Ministry of Labour, *Changing Workplaces Review Final Report and Summary*, (Toronto: Ministry of Labour, 23 May 2017), online: <https://www.labour.gov.on.ca/english/about/workplace/>.

² *Employment Standards Act, 2000*, SO 2000, c. 41.

³ *Labour Relations Act, 1995*, SO 1995, c. 1, Sched A.

⁴ Bill 148, *Fair Workplaces, Better Jobs Act, 2017*, 2nd Sess, 41st Parl, Ontario, 2017, (first reading 1 June 2017), online: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4963&detailPage=bills_detail_the_bill.

to \$15.00 between January 1, 2019 and September 30, 2019. Thereafter on October 1 of that and each subsequent year the minimum wage will be adjusted in line with the formula provided in s. 23.1(4) of the ESA. These minimum wage provisions have been the subject of some intense public debate. For charities and not-for-profits which hire employees at the minimum wage, they will need to take these additional costs into account in their annual budgets.

2. Right to Paid Vacation Provisions

Bill 148 would require that employees who have been employed for five years or more be provided with three weeks of vacation entitlement, beginning after the end of the employee's vacation entitlement year. Vacation pay for employees who have worked for five or more years is proposed to be set at 6%. The vacation time and vacation pay provisions will therefore increase from the current two weeks and 4% respectively. The increased vacation time and pay provisions will bring Ontario in line with several other provinces.

If Bill 148 is passed in its current form, these changes would take effect on January 1, 2018.

3. Equal Pay Provisions

Bill 148 also proposes that employees doing substantially similar work, with similar performance requirements in similar working conditions, will have to be paid at the same rate regardless of employment status. This means that full-time, part-time, casual and temporary workers will need to receive the same rate of pay. The exception would be where pay rate is based on seniority, merit, a system that measures earnings by quality or quantity of production, or any other factor other than sex or employment status. Part-time employees often receive a lower rate of pay than their full-time colleagues, so this practice will be ended if Bill 148 passes in its current form.

If Bill 148 is passed in its current form, these changes would take effect on April 1, 2018.

4. Leave Entitlements

Family medical leave⁵ would be extended from eight weeks to twenty-seven weeks. The ESA allows for this leave “if a qualified health practitioner issues a certificate stating that the individual has a serious medical condition with a significant risk of death occurring within a period of 52 weeks or such shorter period as may be prescribed.”⁶ The individual in question must be a family member as defined in the ESA.

What is currently Crime-Related Child Death or Disappearance Leave⁷ under section 49.5 of the ESA has been separated into Child Death Leave and Crime-Related Child Disappearance Leave under Bill 148. Bill 148 would no longer require that the death of the child be as a result of a crime in order to take this leave.

Personal emergency leave⁸ would no longer be limited to workplaces with more than 50 employees. All employees would be entitled to personal emergency leave under Bill 148. The reasons for such leave are also expanded to include sexual or domestic violence, or the threat of sexual or domestic violence experienced by the people prescribed by the ESA. Two days of the ten day personal leave would be paid under Bill 148.

If Bill 148 is passed in its current form, these changes would take effect on January 1, 2018.

5. Scheduling Provisions

Bill 148 proposes the addition of Parts VII.1 and VII.2 to the ESA, which include several particularly noteworthy provisions.⁹ Employees who have been employed by their employer for at least three months will be able to request changes to their schedule or work location, and employers would be

⁵ *Supra* note 2, ss 49.1(2), 49.1(3). The definition of family medical leave provides that an employee may take a period of unpaid leave to provide care or support to an individual described in subsection 49.1(3) of the ESA.

⁶ *Supra* note 4, cl 24(1).

⁷ *Supra* note 2, s 49.5.

⁸ *Ibid*, ss 50(1), 50(2). The definition of personal emergency leave currently provides that certain employees can take an unpaid leave of absence if any of the following should occur:

1. A personal illness, injury or medical emergency.
2. The death, illness, injury or medical emergency of an individual described in subsection 50(2) of the ESA.
3. An urgent matter that concerns an individual described in subsection 50(2) of the ESA.

⁹ *Supra* note 4, cls 11, 12.

required to discuss the request with the employee and notify the employee of the employer's decision within a reasonable time after receiving it.

Employees who regularly work more than three hours a day will be required to be paid for those three hours at their regular rate of pay if they are required to present themselves for work, even where they worked for fewer than three hours. Exceptions are provided for employers unable to provide work due to "fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work." Employers will also be required to pay employees who are on call wages equal to the employee's regular rate for three hours of work for every twenty-four hour period that they are on call. The twenty-four hour period begins when they first come on call even if the employee is on call for multiple times during that time period. If there is a conflicting provision in a collective agreement that addresses payment for being on call, the collective agreement applies.

An employee will have the right to refuse to work or be on call on days that they are not scheduled to work or be on call if the request or demand comes within ninety-six hours of the start of the shift or on call period. The refusal must be communicated as soon as possible to the employer. If there is a conflicting provision in a collective agreement that addresses the right to refuse to perform work or to be on call on a day an employee is not scheduled to work or be on call, the collective agreement applies. If an employer cancels a scheduled day of work or an on call period within forty-eight hours of the start of that day of work or on call period, the employer will be required to pay the employee wages equal to the employee's regular rate for three hours of work.

If Bill 148 is passed in its current form, the above mentioned changes would take effect on January 1, 2019.

C. CONCLUSION

Charities and not-for-profits in Ontario will need to be aware of the progress of Bill 148, as once declared in force, the changes will have a significant impact on all Ontario-based employers which are covered by the ESA. Also, for charities and not-for-profits operating with a unionized workforce, changes to the

Labour Relations Act, 1995, which are beyond the scope of this Bulletin, will have an impact on how employee relations are governed in Ontario.

Further, as many proposed amendments are to come into effect on January 1, 2018, the Ontario government may attempt to push Bill 148 through quickly to Royal Assent once the Legislative Assembly resumes from its summer recess on September 8, 2017. Later Bulletins will report on the progress of Bill 148.



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