

MINKEN

EMPLOYMENT LAWYERS

Your Work is Our Business



Bill 148 – Proposed Changes to the *Employment Standards Act, 2000*

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BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017* - Changes to the *Employment Standards Act, 2000*

MINIMUM WAGE *

	Current	Oct. 1/17	Jan. 1/18	Jan. 1/19
General Minimum Wage	\$11.40/hr	\$11.60/hr	\$14.00/hr	\$15.00/hr
Students under 18, working less than 28 hrs/week when school is in session or working during a school holiday	\$10.70/hr	\$10.90/hr	\$13.15/hr	\$14.10/hr
Liquor Servers	\$9.90/hr	\$10.10/hr	\$12.20/hr	\$13.05/hr
Homeworkers	\$12.55/hr	\$12.80/hr	\$15.40/hr	\$16.50/hr

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017*
- Changes to the *Employment Standards Act, 2000*

EQUAL PAY FOR EQUAL WORK - Revised*

42.1(1) No employer shall pay an employee at a rate of pay **less than the rate paid to another employee** of the employer because of a *difference in employment status* when,

- (a) they perform **substantially the same kind of work in the same establishment**;
- (b) their performance requires **substantially the same skill, effort and responsibility**; and
- (c) their work is performed under **similar working conditions**.

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017*
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EQUAL PAY FOR EQUAL WORK – Revised*

Exception

42.1(2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of,

- (a) a **seniority system**;
- (b) a **merit system**;
- (c) a **system** that measures earnings by **quantity or quality of production**; or
- (d) any other **factor other than sex or employment status**.

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017*
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EMPLOYEE MISCLASSIFICATION - NEW*

No treating as if not employee

5.1 (1) An employer **shall not treat...**a person who is an employee of the employer **as if the person were not an employee under this Act.**

Onus of proof

(2) ...if,...an employer or alleged employer claims that a person is not an employee, **the burden of proof that the person is not an employee lies upon the employer or alleged employer.**

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017* - Changes to the *Employment Standards Act, 2000*

REQUEST FOR CHANGES TO SCHEDULE OR WORK LOCATION – *NEW**

21.2(1) An employee who has been **employed** by his or her employer for ***at least three months*** may submit a **request**, in **writing**... **requesting changes to the employee's *schedule or work location***.

Receipt of request

- (2)** An employer who receives a request...shall,
- (a) **discuss** the request with the employee; and
 - (b) **notify** the employee of the employer's **decision** within a **reasonable time** after receiving it.

Denial of request

- (4) If an employer denies the request...**must include reasons**...

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017* - Changes to the *Employment Standards Act, 2000*

SCHEDULING - Revised

Three hour rule

21.3 (1) An employer shall **pay** an employee wages equal to the **employee's regular rate [as opposed to minimum wage]** for **three hours of work** if the employee,

- (a) **regularly works more than three hours a day;**
- (b) **is required to work;** and
- (c) **works less than three hours, despite being available to work longer.**

Exception

(2) Subsection (1) does **not apply** if the employer is unable to provide work for the employee because of **fire, lightning, power failure, storms or similar causes beyond the employer's control** that result in the stopping of work.

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MINIMUM PAY FOR BEING ON CALL - *NEW*

21.4(1) An employer shall **pay** an employee wages equal to the employee's ***regular rate*** for **three hours of work** if the employee is ***on call*** to work and the employee,

(a) is **not required to work**; or

(b) is required to work but works **less than three hours**, despite being available to work longer.

Limit

(2) Subsection (1) only requires an employer to pay an employee a **minimum of *three hours of pay during a twenty-four hour period beginning at the start of the first time during that period that the employee is on call***, even if the employee is on call multiple times during those twenty-four hours.

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SCHEDULING: RIGHT TO REFUSE ON CALL - NEW

21.5(1) An employee has the **right to refuse an employer's request or demand to work or be on call** on a day that they were **not scheduled** to work or be on call if the request or demand is made **less than 96 hours [4 days] before the time he or she would commence work or commence being on call**, as applicable.

Exception

(1.1) Subsection (1) **does not apply** if the employer's request or demand to work or be on call is,

- (a) to deal with an **emergency**;
- (b) to remedy or reduce a **threat to public safety**; or
- (c) made for such **other reasons** as may be prescribed.

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017*
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SCHEDULING: SHIFT CANCELLATION - NEW

21.6(1) An employer shall **pay** an employee wages equal to the employee's **regular rate for three hours of work** if the **employer *cancels* the employee's scheduled day of work or scheduled on call period *within 48 hours* before the time the employee was to commence work or commence being on call**, as applicable.

Meaning of cancellation

(2) [...] a scheduled day of work or scheduled on call period is **cancelled if the *entire day* of work or on call period is cancelled** but **not if the day of work or on call period is shortened or extended**.

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OVERTIME PAY - *Revised*

22 (1.1) If an employee has **two or more regular rates for work performed for the same employer in a work week,**

- (a) the employee is entitled to be paid overtime pay for each hour of work performed in the week after the total number of hours performed for the employer reaches the overtime threshold; and
- (b) the **overtime pay** for each hour referred to in clause (a) is one and one-half times the regular rate that ***applies to the work performed in that hour.***

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RIGHT TO VACATION - Revised*

33(1) An employer shall give an employee a **vacation** of,

- (a) **at least two [2] weeks** after each vacation entitlement year that the employee completes, if the employee's period of employment is **less than five years**; or
- (b) **at least three [3] weeks** after each vacation entitlement year that the employee completes, if the employee's period of employment is **five [5] years or more**.

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017* - Changes to the *Employment Standards Act, 2000*

VACATION PAY - Revised

35.2 An employer shall pay vacation pay to an employee who is entitled to vacation under section 33 or 34, equal to at least,

(a) **4 per cent of the wages**, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is **less than five years**; or

(b) **6 per cent of the wages**, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is **five years or more**.

BILL 148: *FAIR WORKPLACES, BETTER JOBS ACT, 2017* - Changes to the *Employment Standards Act, 2000*

PERSONAL EMERGENCY LEAVE - Revised*

50(1) An employee is entitled to a **leave of absence** because of any of the following:

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

Limit

(5) Subject to subsection (5.1), an employee is entitled to take a total of **two days of paid leave** and **eight days of unpaid leave**...in each calendar year.

(5.1) If an employee has been employed by an employer for **less than a week**, the following rules apply:

1. The employee is **not entitled to paid days of leave** under this section...

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PERSONAL EMERGENCY LEAVE – Revised*

Evidence

(10) Subject to subsection (11), an **employer may require** an employee who takes leave under this section to **provide evidence reasonable in the circumstances** that the employee is entitled to the leave.

Same

(11) An employer *shall not require* an employee to provide a **certificate** from a qualified health practitioner as evidence under subsection (10).

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DOMESTIC OR SEXUAL VIOLENCE LEAVE - NEW*

Entitlement to Leave

49.7 (2) ...employed by an employer for at least 13 consecutive weeks is entitled to a leave of absence *without pay* if the *employee or a child of the employee experiences domestic or sexual violence, or the threat of domestic or sexual violence*...for any of the following purposes:

1. To **seek medical attention**...in respect of a physical or psychological injury or disability caused by the domestic or sexual violence.
2. To **obtain services from a victim services organization**
3. To **obtain psychological or other professional counselling**
4. To **relocate** temporarily or permanently.
5. To **seek legal or law enforcement assistance**, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.
6. Such **other purposes as may be prescribed**.

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DOMESTIC OR SEXUAL VIOLENCE LEAVE – NEW*

Exception

(3) Subsection (2) **does not apply** if the domestic or sexual violence is **committed by the employee**.

Length of leave

49.7(4) An employee is entitled to take, in each calendar year,
(a) **up to 10 days** of leave under this section; **and**
(b) **up to 15 weeks** of leave under this section

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FAMILY MEDICAL LEAVE - *Revised*

Entitlement to Leave

49.1(2) An employee is entitled to a leave of absence ***without pay*** of ***up to 27 weeks*** to provide care or support to an individual described in subsection (3) 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.

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PREGNANCY LEAVE – Revised*

End of pregnancy leave

47(1) An employee's pregnancy leave ends,

(a) if she is **entitled** to parental leave, 17 weeks after the pregnancy leave began;

(b) if she is **not entitled** to parental leave, on the day that is the later of,

(i) **17 weeks after the pregnancy leave began, and**

(ii) **12 weeks after the birth, still-birth or miscarriage.**

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PARENTAL LEAVE - *Revised**

When leave may begin

48(2) An employee may **begin** parental leave no later than **78 weeks [18 mo.]** after the day the child is born or comes into the employee's custody, care and control for the first time.

End of parental leave

49(1) An employee's parental leave **ends 61 weeks [14 mo.]** after it began, if the employee also took pregnancy leave and **63 weeks [14.5 mo.]** after it began, otherwise.

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CHILD DEATH LEAVE - Revised

Entitlement to leave

49.5(2) An employee who has been **employed** by an employer for at least **six consecutive months** is entitled to a **leave of absence without pay of up to 104 weeks [24 mo.]** if a **child of the employee dies**.

Exception

(3) An employee is **not entitled** to a leave of absence under this section if the employee is **charged with a crime in relation to the death of the child** or if it is probable, considering the circumstances, that **the child was a party to a crime in relation to his or her death**.

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CRIME-RELATED CHILD *DISAPPEARANCE* LEAVE – Revised

Entitlement to leave

49.6(2) An employee who has been **employed** by an employer for **at least six consecutive months** is entitled to a **leave of absence without pay of up to 104 weeks [24 mo.]** if **a child of the employee disappears and it is probable, considering the circumstances, that the child disappeared as a result of a crime.**

Exception

(3) An employee is **not entitled** to a leave of absence under this section if the **employee is charged with the crime** or if it is probable, considering the circumstances, that **the child was a party to the crime.**

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REPEALED!

ESA, 2000

Steps required before complaint assigned

96.1 (1) The Director shall not assign a complaint to an employment standards officer for investigation unless the complainant has taken the steps specified by the Director to facilitate the investigation of the complaint.

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PUBLICATION RE NOTICE OF CONTRAVENTIONS - *Revised*

Publication re notice of contraventions

(6.2) If a person, including an individual, is deemed under subsection (5) to have contravened this Act after being issued a notice of contravention, **the Director may publish or otherwise make available to the general public the name of the person, a description of the deemed contravention, the date of the deemed contravention and the penalty for the deemed contravention.**

Internet publication

(6.3) Authority to publish under subsection (6.2) includes authority to **publish on the Internet.**

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INCREASED ENFORCEMENT - NEW

Ontario is planning on hiring up to **175 more Employment Standards Officers**, allowing it to inspect 1 out of every 10 workplaces.

There will also be a **program launched to educate employees, and small and medium-sized businesses** on their rights and obligations under the *Employment Standards Act, 2000*.



THE END

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