

Goodmans^{LLP} Update

Bill 47 Proposes Significant Amendments to Employment and Labour Laws in Ontario

The *Making Ontario Open for Business Act* (Bill 47) had its first reading in the Ontario provincial legislative assembly on October 23, 2018. Bill 47 proposes to modify and repeal certain amendments enacted under the *Fair Workplaces, Better Jobs Act, 2017* (Bill 148), as detailed below. For further information on Bill 148, see our December 28, 2017 Update, *Bill 148: Compensation and Leave Policy Action Items for Employers*.

Proposed Amendments to the *Employment Standards Act, 2000* (Ontario) (ESA)

The key changes to the ESA proposed under Bill 47 relate to minimum wage, scheduling, personal emergency leave, public holiday pay, independent contractor status, equal pay for assignment employees and penalties, as detailed in the chart below.

Item	Status Under Bill 148	Proposed Changes Under Bill 47
Minimum Wage	Raised to \$14.00 per hour as of January 1, 2018; set to increase by \$1.00 per hour to \$15.00 per hour on January 1, 2019.	Remains at \$14.00 per hour on January 1, 2019. Further increases to be paused until October 1, 2020, and to increase based on inflation thereafter.
Scheduling	Subject to certain conditions, employees have the right to request changes to their schedule or work location and to refuse work requests or demands made without sufficient notice. Employees are also guaranteed a minimum of three (3) hours' pay if they are on-call but do not work up to three (3) hours, and if their scheduled shift was cancelled within 48 hours of the start time.	The scheduling provisions enacted under Bill 148 to be repealed.
Personal Emergency Leave	Employees are entitled to up to ten (10) days of personal emergency leave per year, two (2) of which must be paid. Employers cannot require employees to provide medical notes.	These provisions will be repealed. Bill 47 will establish entitlements for three (3) unpaid days of sick leave, three (3) unpaid days of family responsibility leave and two (2) unpaid days of bereavement leave. Employers will be permitted to request medical notes.
Public Holiday Pay	Introduced a new formula for calculating holiday pay, which was reverted back (via regulation) on July 1, 2018, so that holiday pay for a given public holiday equalled the total amount of regular wages earned and vacation pay payable to the employee in the four (4) work weeks before the work week in which the public holiday occurred, divided by twenty (20).	Permanently retains (and reintroduces into the ESA) the July 1, 2018 formula for calculating holiday pay.
Independent Contractor Status	Employers are required to prove an individual is not an 'employee' in the event of a dispute.	The onus will be placed on contractors to demonstrate an employment relationship.

Item	Status Under Bill 148	Proposed Changes Under Bill 47
Equal Pay for Assignment Employees	Employers are prohibited from differentiating pay on the basis of employment status and assignment employee status.	This will be repealed.
Penalties	The maximum administrative penalties for contraventions of the ESA are increased to \$350, \$750 and \$1500.	The maximum penalties will be reduced to \$250, \$500 and \$1000.

Bill 47 will not impact provisions enacted under Bill 148 relating to (i) vacation (i.e. minimum of three (3) weeks of paid vacation (or 6% vacation pay in lieu) for employees with five (5) plus years of service with the employer), (ii) paid domestic and sexual violence leave, and (iii) equal pay on the basis of sex.

Proposed Changes to the *Labour Relations Act, 1955 (Ontario) (LRA)*

Bill 47 proposes to streamline the processes under the LRA by permitting communication through alternative means like fax or e-mail, allowing the Ontario Labour Relations Board (OLRB) to make rules to expedite proceedings without requiring orders from the Lieutenant Governor in Council, and requiring the publication of documents on government websites. In addition, the key proposed amendments to the LRA relate to card-based certification, employee lists, remedial certification, successor rights, the structure of bargaining units, return-to work-rights, mediation and fines, as detailed below.

Item	Status Under Bill 148	Proposed Changes Under Bill 47
Card Based Certification	Implemented card-based union certification for workers in home care, building services and temporary help agencies.	This rule will be repealed and replaced with voting by secret ballot.
Employee Lists	Employers were required to provide a list of employees to a union applying to be a bargaining agent if twenty percent (20%) or more of the individuals in the proposed bargaining unit were members of the union at the time of application.	This requirement will be repealed.
Remedial Certification	The test under which the OLRB may certify a union as a bargaining agent in the face of employer misconduct was modified.	These provisions will be repealed. The OLRB will have to determine whether certification is the only sufficient remedy for misconduct, or a vote or new vote could also be considered.
Successor Rights	Permits the application of successor rights provisions to be determined by regulation.	The regulation-making authority will be repealed with respect to contract tendering for publicly funded services.
Structure of Bargaining Rights	The OLRB was given the power to review and consolidate new bargaining units within existing ones.	This will be repealed. The OLRB will instead be given the power to review the structure of bargaining units.
Return to Work Rights	The time limitations on when a striking employee can apply to return to work were removed.	This will be repealed and the previous six-month limit will be reinstated.

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Item	Status Under Bill 148	Proposed Changes Under Bill 47
Mediation	Implemented provisions relating to first collective agreement mediation, mediation-arbitration and educational support.	This will be repealed, and previous conditions for access to first agreement arbitration will be reinstated.
Fines	The maximum fines under the LRA were increased to \$5000 for individuals and \$100,000 for organizations.	The maximum fines will be reduced to \$2000 and \$25,000 respectively.

Conclusion

If passed, Bill 47 will significantly modify many aspects of the current employment law landscape. We will continue to monitor Bill 47 and any changes made thereto, and provide further updates.

Please contact any member of our [Employment Law Group](#) for further information or advice concerning the proposed changes.

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