

The Ontario *Employment Standards Act, 2000* (the “ESA”) is in place largely to protect vulnerable employees from the inherent unequal bargaining power between employers and their employees. At a high level, the ESA sets out the minimum employment standards afforded to employees, including things like minimum wages, maximum working hours and pay resulting from termination of employment.

How the Proposed Amendments to the *Employment Standards Act, 2000* will Impact Businesses

In February 2015, the Government of Ontario began an assessment of the employees in the modern workplace with a view to further enhancing employee protection. As summarized by Patrizia Piccolo in her three-part podcast, the assessment ultimately resulted in a proposed amendment to the ESA: *Bill 148, Fair Workplaces, Better Jobs Act, 2017*.

As these amendments will ultimately result in greater rights or benefits to employees, they will also result in corresponding additional costs to employers. However, some of the changes will have a proportionately greater impact on small businesses. We have listed some of the amendments in the chart below, which, while impacting all employers, will undoubtedly disproportionately increase the labour costs of small businesses.

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Amendment	Current	Proposed Amendment	Resulting Impact
Increased Minimum Wage	The general minimum wage is \$11.60 per hour. The ESA also prescribes special minimum wages for certain occupations.	General minimum wage will be \$14 per hour on January 1, 2018 and \$15 per hour on January 1, 2019. There will also be a proportional increase to special minimum wage rates.	The first increase to \$14 per hour amounts to a 20.7% increase in minimum wage rate. As a result, labour costs for businesses employing minimum wage earners will be substantially increased.
No difference in pay rate because of employment status	Employers are not prohibited from paying part-time employees disproportionately lower wage rates than their full-time counterparts.	Employers will be prohibited from paying employees at different rates depending on whether they are full-time, part-time, seasonal, etc.	Part-time employees generally command a disproportionately lower salary than full-time employees. As a result of the amendment, however, small businesses may want to avoid hiring part-time workers entirely and focus on hiring fewer full-time employees.
Increased public holiday pay for part-time employees	Holiday pay is calculated as wages and vacation pay earned in the four work weeks prior to the week in which the holiday falls, divided by 20.	Holiday pay will be calculated as the average daily wages earned in the pay period leading up to the holiday.	Now part-time employees will receive higher holiday pay (i.e. someone working 8 hours per day and one day per week will earn the same holiday pay as someone working 8 hours per day and 5 days per week. Previously that part-time worker would have earned 1/5th the holiday pay of the full-time worker because their holiday pay would have been calculated as four days' wages divided by 20). Similar to prohibiting pay rate differentiation, this will increase the costs of hiring part-time employees.

Amendment	Current	Proposed Amendment	Resulting Impact
Removal of substitute holidays	Where an employee works on a public holiday, the employee and employer can agree to either provide the employee with a substitute day off or pay the employee public holiday pay and premium pay.	Where an employee works on a public holiday, the employer must pay the employee public holiday pay and premium pay.	Increases the costs of operating on public holidays. This will have a particularly substantial impact on the retail sector.
Three hour minimum call in pay	When an employee who regularly works more than three hour shifts and reports to work but is sent home before the end of their shift, the employee receives the greater of their wages earned and three hours at the minimum wage.	When an employee who regularly works more than three hour shifts and reports to work but is sent home before the end of their shift, the employee's three hours' pay would be calculated at their regular wage rate.	Employers will need to be more diligent in scheduling employee shifts to avoid the added expense.
Three hour pay for being on call or shift cancellation with less than 48 hours' notice	Employees are not entitled to pay for being on call or if an employer cancels their shift prior to them reporting to work.	Employees are entitled to a minimum of three hours' pay for being on call (even if they are not called into work) or if an employer cancels the employee's shift within 48 hours of the start of that shift.	Having an employee be on call was a means to avoid idle time and reduce labour costs. However, as a result of the proposed amendment, the benefit of having an employee on call will be greatly reduced. The employer will pay the employee the same if they require the employee to attend work.
Right to refuse short notice request to work or to be on-call	No right to refuse.	Employee is entitled to refuse without repercussion an employer's request to work or to be on call if the request was made less than 96 hours prior to the commencement of the shift.	Employers will need to be more diligent in their shift scheduling by providing advance notice of shifts to employees.
Paid personal emergency leave	Employees of employers with 50 or more employees are entitled to up to 10 unpaid days off for personal emergencies.	All employees will be entitled to 10 days off for personal emergencies, two of which must be paid. Employers will be unable to require medical documentation to support the personal emergency leave.	The amendment not only entitles employees to two paid personal emergency days, but also significantly limits employers from managing the employee's attendance and ensuring the personal emergency leaves are taken appropriately.

Written by David Witkowski

