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In a recent Employers' Alert, we reviewed *Bill 148: Fair Workplaces, Better Jobs Act, 2017* and highlighted how the proposed changes to the *Employment Standards Act, 2000* (the "ESA") may impact employers.

Staying up to date with the changes to Bill 148: What employers need to know

In August 2017, the Standing Committee on Finance and Economic Affairs adopted additional amendments to Bill 148. These amendments were reported to the Ontario Legislature on September 11, 2017. The Bill was subsequently ordered for a Second Reading.

In the chart below, we outline the updates to the original proposals set out in Bill 148. These updates are current. For the original proposal summary, please click here to read our Employers' Alert from July.

In the right-hand column below, we have included our thoughts on what the resulting impact of these changes might be on employers.

Amendment	Current	Proposed Amendment	Resulting Impact
Equal pay for equal work	The ESA's S.42 currently covers equal pay provisions. Under subsection (2), equal pay may not apply when the difference in the rate of pay is made on the basis of a number of factors – *seniority* is one of them.	This proposal now includes a new definition of a *seniority system* based on the accumulation of hours worked. This new "seniority" definition will act as a ground to justify pay differences.	Depending on the final definition of *seniority system*, it may provide employers with a new ground to justify differences in employees' pay.
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.	This proposal now includes substitution being re-included but with written requirements for documenting substitutions. Under the new proposal, the employer would provide the employee with a written statement outlining:	While the result would remain the same – that is, the option of substituting holidays – the procedure for engaging the option will be more onerous for employers.

Amendment	Current	Proposed Amendment	Resulting Impact
Substitute Holidays *continued*		a) the public holiday; b) the substitution date; and, c) the date of the written statement.	This would require planning and discussion with employees in advance of the specified holiday to ensure a written statement is properly executed.
Three hour minimum pay when shift is less than three hours, or, when on-call employee works less than three hours.	When an employee who regularly works more than three hour shifts 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.	This proposal now includes a new requirement for employees who benefit from the three hour rule: *In order to qualify, the employee must have been available to work for at least three hours at the time of the shift.*	Employers will need to be more diligent in scheduling employee shifts to avoid the added expense. The new requirements, though useful in that they encourage employee availability, will do little to mitigate against the added expense.
Three hour pay for cancellation of scheduled work or on-call shift with less than 48 hours' notice* *Note: the minimum three-hour pay entitlements may not be grouped together if more than one entitlement arises in one particular instance. The entitlement is capped at three hours.	Employees are not entitled to pay for being on call or if an employer cancels their shift prior to them reporting to work.	This proposal now includes exemptions in circumstances: • Beyond the employer's control – such as extreme weather, power failure, etc. • Where the work is weather dependent and the employer cannot provide work for weather dependent reasons.	Having an employee be on-call was a means to avoid idle time and reduce costs. However, as a result of the proposed amendment, the benefit of having on-call employees will be greatly reduced. The new exemptions will, at the very least, relieve employers of this obligation in unforeseen circumstances.
Right to refuse short notice request to work or to be on-call	No right to refuse.	This proposal now states that there is no employee right to refuse work where the work is to: a) deal with an emergency; b) to remedy or reduce a threat to public safety; or, c) for such other reasons as may be prescribed.	Employers will need to be more diligent in their shift scheduling by providing advance notice of shifts to employees. However they will not have to worry about short-notice calls in the event of emergencies and threats to public safety or other circumstances as may be prescribed in regulations.

Amendment	Current	Proposed Amendment	Resulting Impact
Employer record-keeping requirements	There are currently a host of record-keeping requirements under the ESA which employers must currently abide by. Some of these record-keeping requirements include (but are not limited to): recording employee information, recording hours worked, providing pay stubs to employees, etc. Employers are currently required to retain records for 3 years after an employee ceases to be employed by the employer.	A larger list of record-keeping requirements has been proposed: - Dates and times of work and on-call schedules, and any changes made to scheduling. - Dates and hours worked. - Where an employee has two or more regular rates of pay, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay. - Dates and times of cancellations of a scheduled day of work or scheduled on-call period. - Records of substitute holidays (mentioned above). - Retention of documents for all leaves. - Record-keeping of vacation pay and time. -Record retention for 5 years instead of 3.	While employers are already obligated to maintain detailed records, these provisions will make record-keeping more onerous. Increased record-keeping obligations open up the possibility of increased non-compliance fines and penalties for employers who fail to abide by these new requirements.
Paid personal emergency leave	Employees of employers with 50 or more employees are entitled to up to 10 unpaid days off for personal emergencies.	This proposal now includes a qualifying period requirement: the employee must have worked for the employer *for at least one week* before reaching entitlement for the two paid days. Regardless of overtime pay or shift premiums, the employee will be paid regular wages.	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. The new requirements will put minor limits on eligibility and limit payment to regular wages.

Amendment	Current	Proposed Amendment	Resulting Impact
Domestic or sexual violence leave	A leave for domestic or sexual violence leave would currently fall under s.50 (1) of the ESA – "personal emergency leave".	This new standalone leave will allow an employee, who has been employed by an employer for at least 13 consecutive weeks, to take a leave of absence without pay if the employee or their child experiences sexual or domestic violence. The leave can be up to 10 days, and up to 15 weeks. The leave may be taken: to seek medical attention; to obtain services from a victim services organization; to obtain counselling; to relocate; or, to seek legal or law enforcement assistance.	While domestic and sexual violence leave addresses a significant concern for survivors of violence, it does limit the employer's ability to gauge employee availability and monitor scheduling. The allowance of up to 15 weeks of leave can significantly impact the employer's ability to forecast and plan staffing.
Pregnancy and parental leave	Currently, the length of pregnancy leave for employees who suffer miscarriage or stillbirth have 6 weeks' leave after the loss occurs. Parental leave for employees who took a pregnancy leave is 35 weeks; employees who take parental leave and have not taken pregnancy leave may take a parental leave up to 37 weeks.	New proposed amendments will extend the leave for employees who suffer a stillbirth or miscarriage from 6 weeks to 12 weeks. The length of parental leave will be extended from 35-61 weeks if the employee took a pregnancy leave and from 37-63 weeks for employees who did not.	The extension of pregnancy and parental leave does not change the rights and obligations imposed on employers currently in place – such as, reinstating a returning employee, refraining from penalizing an employee on leave, continuing the employee's benefits, and maintaining the continuance of the employee accruing length of service and seniority. While these duties remain intact, the length of time that an employer must uphold these protections is greater.

Questions about how Bill 148 may affect your business? Contact our employment law group at (416) 847-1814.

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