

BILL 148 Update
June 21st 2018

BILL 148- ESA Revisions		
Topic	Original Version	Updated Version
Public Holiday Pay (REVERT)		<p>For the July 1st, 2018 holiday, employers are able to return to the prior formula for calculating vacation pay, which is:</p> <ul style="list-style-type: none"> - The employee's public holiday pay for a given public holiday shall be equal to the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20.
Record-Keeping for Employers	The ESA currently stipulates a number of record-keeping requirements for the Employer.	<p>The following will be added to the existing record keeping requirements:</p> <ul style="list-style-type: none"> • the dates and times an employee was scheduled to work or to be on-call for work, and any changes to the on-call schedule • the dates and times an employee worked • where an employer has two or more regular rates of pay, the dates and times an employee worked in excess of the overtime threshold at each rate of pay • any cancellations of a scheduled day of work or a scheduled on-call period and the date and time of the cancellation • any written notice provided to employees regarding substitute holidays (discussed below) • the amount of vacation pay an employee earned during a vacation entitlement year and how the amount was calculated • in cases of an alternative vacation entitlement year, the amount of vacation pay an employee earned during the stub period and how that amount was calculated and • documents related to an employee taking the new Domestic or Sexual Violence Leave <p>The retention period for records of vacation time and vacation pay will increase from three years to five years.</p>

<p>Record Keeping for Temporary Help Agencies</p>	<p>ESA requires agencies to record the number of hours worked by each assignment employee for each client of the agency in each day and each week, in addition to the record-keeping obligations that apply to all employers.</p>	<p>Agencies must also retain a copy of any written notice provided to an assignment employee relating to the termination of assignment.</p> <p>Exceptions</p> <p>Agencies do not have to provide notice or pay in lieu of notice if there is:</p> <ul style="list-style-type: none"> • willful misconduct by the assignment employee • an unforeseeable event that makes it impossible to perform the assignment • or the assignment is terminated because of a strike or lock-out at the location of the assignment <p>This came into effect on January 1, 2018</p>
<p>Domestic or Sexual Violence Leave</p>	<p>Bill 148 was to add “sexual or domestic violence, or the threat of sexual or domestic violence” which was either experienced by an employee or a family member as a ground for claiming personal emergency leave under the ESA.</p>	<p>Under the amendments, there is a new leave (not personal emergency). It states that as long as an employee has been employed for 13 consecutive weeks he/she would be entitled to an unpaid leave of absence in relation to “sexual or domestic violence, or the threat of sexual or domestic violence”.</p> <p>The leave must be taken for these specific purposes only:</p> <ul style="list-style-type: none"> • to obtain services from a victim services organization • to seek medical attention for a physical or psychological injury or disability caused by the domestic or sexual violence • to relocate temporarily or permanently • to obtain psychological or other professional counselling • to seek legal or law enforcement assistance or • any other prescribed purposes <p>In each calendar year, an employee may take up to 10 days of leave <u>and</u> may take up to 15 weeks of leave as well. Employees are to advise the employer of their need for the leave, if possible, and provide evidence if requested and reasonable.</p>

		<p>What's changed</p> <p>An employee who has been employed for at least 13 consecutive weeks is now entitled to up to 10 individual days of leave and up to 15 weeks of leave if the employee or their child experiences domestic or sexual violence or the threat of domestic or sexual violence. The first five days of leave, each calendar year, will be paid, the rest will be unpaid.</p> <p>Comes into effect</p> <p>This came into effect on January 1, 2018.</p>
<p>Personal Emergency Leave</p>	<p>Bill 148 states that there will be two paid days of personal emergency leave, of the total ten-day allotment.</p>	<p>Amendments include a caveat that an employee must have worked for an employer for one week before becoming entitled to the two paid days</p> <ul style="list-style-type: none"> - if a personal emergency leave is required in the first week of employment, it will be taken from the 8 unpaid days - It is also clarified that where a paid day of leave occurs when the employee is entitled to overtime pay or a shift premium, the employee will only be entitled to pay at their regular wages and not at the higher rate. <p>What's changed</p> <p>Previously, some employees had the right to take up to 10 days of unpaid, job-protected leave, each calendar year due to illness, injury and other emergencies/ urgent matters. But these rules only applied to workplaces with 50 or more employees.</p> <p>The legislation now requires all employers to give all employees 10 personal emergency leave days per year, including two paid days if the</p>

		<p>employee has been employed for one week or longer (7 days).</p> <p>Comes into effect</p> <p>This came into effect on January 1, 2018.</p>
Pregnancy and Parental Leave	The length of pregnancy leave for employees who suffer a still-birth or miscarriage is 6 weeks	<p>The length of pregnancy leave for employees who suffer a still-birth or miscarriage will be extended from 6 weeks to 12 weeks after the pregnancy loss occurs. Effective on January 1, 2018.</p> <p>Second, the length of parental leaves will increase by a total of 26 weeks:</p> <ul style="list-style-type: none"> • from 35 weeks to 61 weeks for employees who took a pregnancy leave and • from 37 weeks to 63 weeks for employees who did not <p>There may be more amendments with the goal to bring the ESA into line with recent changes to the <i>Employment Insurance Act</i>.</p>
Family Medical Leave		The legislation increases Family Medical Leave from up to 8 weeks in a 26-week period to up to 28 weeks in a 52-week period. This provision comes into force on January 1, 2018.
Amendments to Leaves Made as a Consequence to Changes in Federal Legislation Critical Illness Leave		<p>Prior to the Fair Workplaces, Better Jobs Act, 2017 employees could take up to 37 weeks to provide care or support to their critically ill child.</p> <p>Under the new changes, an employee is entitled to take up to 17 weeks of leave in a 52 week period to provide care or support to a critically ill adult family member and up to 37 weeks to provide care or support to a critically ill child who is a family member. These changes come into force on the later of December 3, 2017 or Royal Assent.</p>
Leave for the Death of a Child and for Crime-Related Disappearance		The legislation creates a new, separate leave for child death from any cause for a period of up to 104 weeks. The new amendments also establish a separate leave for crime-related child disappearance for a period of up to 104 weeks. This provision comes into force on January 1, 2018

<p>Equal Pay for Equal Work:</p>	<p>There were new equal pay for equal work provisions instituted by Bill 148</p>	<p>The amendments include a new definition of a seniority system which provides for different pay based on the accumulated number of hours worked.</p> <p>It will be mandatory for employers to pay:</p> <ul style="list-style-type: none"> • casual, part-time, temporary and seasonal employees, who are doing substantially the same work as full-time/permanent employees, the same rate of pay as full-time/permanent employees • temporary help agency employees (also known as assignment employees), who are doing substantially the same work as employees of the client, the same rate of pay as employees of the client
<p>Equal Pay for Equal Work Provisions: Temporary Help Agency Employees</p>		<p>The Act will require that Temporary Help Agency (THA) employees (assignment workers) are paid equally to employees of the THA client when performing substantially the same job.</p> <p>The Act will protect assignment employees from repercussions for inquiring about their wage rate or the wage rate of an employee of the client.</p> <p>This provision comes into force on April 1, 2018.</p> <p>The legislation requires the Minister of Labour to start a review of equal pay provisions for Temporary Help Agency Employees by April 1, 2021.</p>
<p>Scheduling/On-Call provisions</p>	<p>1. Bill 148 will provide an employee the right to refuse a work or on-call assignment, where the</p>	<p>1. Will not apply where the work is to deal with an emergency, to remedy or reduce a threat to public safety or for other prescribed reasons.</p> <p>2. Also includes situations where the nature of the employee's work is weather-dependent and the employer cannot provide work for weather-related reasons, or for any other prescribed reasons.</p> <p>3. In order to qualify for these payments, the employee must have been available to work for at least 3 hours at the relevant time.</p>

	<p>request is made within 96 hours of the start of the shift.</p> <p>2. Bill 148 will create an obligation to pay 3 hours wages at the regular rate where an employer cancels a scheduled work or on-call shift within 48 hours of its commencement. This obligation will not apply in certain cases beyond the employer's control (e.g. fire, power failure, storms).</p> <p>3. Bill 148 amended the ESA's existing 3-hour rule (i.e. the requirement to provide at least 3 hours pay at the regular rate where an</p>	<p>4. Limits this provision: (1) the collective agreement must be in effect on January 1, 2019 and (2) the provision ceases to apply upon the expiry of that agreement or January 1, 2020, <i>whichever is earlier</i>.</p> <p>Part VII.2 - amended to clarify that the 3-hour entitlements do not pyramid, and an employee is limited to receiving only 3 hours pay even if the entitlement arises under more than one provision.</p> <p>What's changing</p> <p>The legislation will allow employees to:</p> <ul style="list-style-type: none"> • request a schedule or location change once they've been employed for three months, without fear of being penalized • refuse shifts if their employer asks them to work with less than 96 hours' notice, without fear of retaliation, with certain exceptions <p>Employers will also be required to pay wages to the employees for three hours of work if the employee:</p> <ul style="list-style-type: none"> • regularly works more than three hours a day, shows up for work and works less than three hours or not at all (for example, the shift is cut short) • the shift is cancelled within 48 hours of their scheduled start time, with certain exceptions • is scheduled to be on-call but, despite being available to work, is either not called in to work or works less than three hours. This will be required for each 24-hour period the employee is on call <p>Exceptions</p> <p><i>Cancellations</i></p>
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	<p>employee reports for work and is provided less than 3 hours work) and created a new on-call rule (i.e. a requirement to pay at least 3 hours pay for employees who are on-call and who are either not called in to work or who are called in but work less than 3 hours).</p> <p>4. Bill 148 originally provided that where the terms of a collective agreement conflict with the new scheduling provisions, the collective agreement was to prevail.</p>	<p>Employers will not be required to pay for a cancelled shift if they were unable to provide work because of:</p> <ul style="list-style-type: none"> • fire, lightning, power failure, storms or similar causes beyond their control or • the employee’s work is weather-dependent and the employer is unable to provide work for weather-related reasons <p><i>Three hour rule</i></p> <p>Employers will not be required to pay wages for three hours for a shift that lasts fewer than three hours if they were unable to provide work because of fire, lightning, power failure, storms or similar causes beyond their control.</p> <p><i>Refusing a shift with less than 96 hours’ notice</i></p> <p>Employees cannot refuse a shift if the reason that the employer is asking them to work or be on call is to:</p> <ul style="list-style-type: none"> • deal with an emergency • remedy or reduce a threat to public safety • ensure the continued delivery of essential public services, regardless of who delivers those services <p><i>On-call pay rules</i></p> <p>Employers will not be required to pay wages for three hours for an on-call shift if the employee is on call to ensure the continued delivery of essential public services, regardless of who delivers those services and the employee was not required to work.</p>
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		<p>Comes into effect</p> <p>These scheduling changes will come into effect on January 1, 2019.</p>
Substitute Holidays	<p>Bill 148 would have made vital changes to the public holidays provisions of the ESA.</p> <p>Bill 148 created a new formula for the calculation of public holiday pay which would increase holiday pay amounts for many employees. Second, Bill 148 would have removed most of the substitute holiday provisions of the ESA for employees who work on public holidays</p>	<p>The new formula for calculating public holiday pay was not amended.</p> <p>The existing public holiday framework will remain, but the amendments add a requirement that, where employees agree to work on a public holiday and are entitled to a substitute holiday, the employer must provide the employee with a written statement which sets out the public holiday on which the employee will work, the date that is the substitute holiday, and the date on which the statement was provided to the employee. Employers will also be required to keep records of that information</p>
Public Holiday Pay		<p>The new Act simplifies the formula for calculating public holiday pay so that employees are entitled to their average regular daily wage.</p> <p>The new legislation requires an employer to provide an employee with a written statement that sets out certain information when a day is substituted for a public holiday.</p> <p>This provision comes into force on January 1, 2018.</p>

Vacation Time		<p>What's changed</p> <p>Under the legislation, employees are now entitled to three weeks of paid vacation after five years with the same employer.</p> <p>Comes into effect</p> <p>This came into effect on January 1, 2018.</p>
Employee Misclassification		<p>Employers cannot misclassify employees as independent contractors. This addresses cases where employers treat employees as if they are self-employed and not entitled to employment standards protections. If there is a dispute the employer will have to prove that an individual is not an employee.</p> <p>Comes into effect</p> <p>This came into effect on November 27, 2017.</p> <hr/>
Overtime Pay		<p>Under the legislation, employees who hold more than one position with an employer and who are working overtime must be paid at the rate for the position they are working at during the overtime period.</p> <p>This provision comes into force on January 1, 2018.</p>
Termination of Assignment		<p>The legislation requires a THA to provide an assignment employee with at least one week's notice when an assignment scheduled to last longer than three months will be terminated early.</p>

		<p>If one week's notice is not given, the assignment employee must receive pay in lieu of notice, unless the assignment employee is offered at least one week's worth of reasonable work during the notice period.</p> <p>This provision comes into force on January 1, 2018.</p>
Orders to Pay Employees Directly		<p>The new Act also allows Employment Standards Officers to order money to be paid directly to an employee when an employer or Temporary Help Agency client owes money to that employee.</p> <p>This provision comes into force on January 1, 2018.</p>
Employee Contact		<p>The legislation no longer requires employees to contact their employer before filing claims under the Employment Standards Act (ESA).</p> <p>The Director of Employment Standards can no longer refuse to assign an Employment Standards Officer to investigate an ESA claim due to insufficient information from the claimant.</p> <p>This provision comes into force on January 1, 2018.</p>
Penalties for Non-Compliance of the ESA		<p>The legislation increases flexibility around the administrative monetary penalties that can be established by regulations for employers that do not comply with the ESA.</p> <p>The government also intends to amend a regulation under the ESA to increase the maximum administrative monetary penalties for non-compliant employers from \$250, \$500, and \$1000 to \$350, \$700, and \$1500, respectively.</p> <p>The new legislation allows the Director of Employment Standards to publish (including online) the names of individuals who have been issued a penalty, a description of the contravention, the date of the contravention and</p>

		<p>the amount of the penalty.</p> <p>This provision comes into force on January 1, 2018.</p>
Interest on Unpaid Wages		<p>The legislation enables Employment Standards Officers to award interest on employees' unpaid wages and on fees that were unlawfully charged to employees.</p> <p>The Director of Employment Standards would be allowed, with the Minister's approval, to determine rates of interest for amounts owing under different provisions of the ESA.</p> <p>This provision comes into force on January 1, 2018.</p>
Collections		<p>The new changes improve wage collections by the government or an authorized collector, including:</p> <ul style="list-style-type: none"> • Allowing a collector authorized by the Director of Employment Standards to issue warrants, place liens on real and personal property and to hold a security while a payment plan is underway • Enabling government and the authorized collector to disclose information to each other for the purpose of collecting an amount payable under the ESA <p>This provision comes into force on January 1, 2018.</p>

Electronic Agreements		<p>The new changes make clear that electronic agreements between employers and employees, such as an agreement to work excess hours, can serve as an agreement in writing.</p> <p>This provision comes into force on January 1, 2018.</p>
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Exclusions

Under the new legislation:

- Almost all existing ESA requirements and entitlements apply to Crown employees. This provision comes into force January 1, 2018.
- All ESA requirements and entitlements apply to people receiving training for work through their employer. This provision comes into force January 1, 2018.
- Individuals working as part of an experiential learning program run by a private career college would be excluded from the requirements and entitlements under the ESA, similar to programs run by universities, colleges or high schools.
- Students who are employed and regularly work more than three hours must be paid for at least three hours even if they work less than three hours. This provision comes into force January 1, 2019.
- All ESA requirements and entitlements apply to employees working in a simulated job or working environment for their rehabilitation (commonly known as a "sheltered workshop"). This provision comes into force on January 1, 2019.

Bill 148- LRA Amendments		
Topic	Original Version	Updated Version
Security and Confidentiality of Employee Lists	Bill 148 will add a provision to the LRA to permit a trade union, in certain circumstances, to apply to the Ontario Labour Relations Board (OLRB) for an order directing an employer to provide it with an employee list.	The Committee amendments address the confidentiality of information: <ul style="list-style-type: none"> the employer must ensure that all reasonable steps are taken to protect the security and confidentiality of the list, including during its creation, compilation, storage, handling, transportation, transfer and transmission the trade union must ensure that all reasonable steps are taken to protect the security and confidentiality of the list, and to prevent unauthorized access to the list and where the list is required to be destroyed, destruction of the list must be in such a way that it cannot be reconstructed or retrieved
Review of Structure of Bargaining Units	Bill 148 would have added a provision to the LRA which would have given the OLRB the power to review and change the structure of bargaining units where the existing units are no longer appropriate.	Although the power to consolidate bargaining units after a successful certification was not revoked, the Committee has struck the provision outlined to the left in its entirety.
Educational Support		Where the union has given notice of intent to bargain or where there is a first agreement arbitration, Committee amendments will permit either party to request educational support in the practice of labour relations and collective bargaining and will require the Minister or first collective agreement mediator, as applicable, to make such supports available.
Extension to Time Limits		The Committee will extend the following time limits with respect to first collective agreement mediation: <ul style="list-style-type: none"> no employee can strike and no person or trade union can authorize or threaten a strike during a period beginning at the time the Minister appoints a mediator and ending 45 days later (increased

		<p>from 20 days)</p> <ul style="list-style-type: none"> • the OLRB shall not deal with a decertification or displacement application until 45 days after the Minister appoints a mediator (increased from 20 days) and • at any time after 45 days after the Minister has appointed a mediator and the parties have not entered into a collective agreement, they may apply to the OLRB to direct the settlement of a first agreement by mediation-arbitration (increased from 20 days)
Joint Liability of Related Employers		<p>The new legislation removes the provision that requires proof of "intent or effect" to defeat the purpose of the Employment Standards Act, 2000 when determining whether businesses carrying on associated or related activities can be treated as one employer and held jointly and severally liable for monies owing under the Act.</p> <p>Previous language in the ESA had limited the effectiveness of the joint liability provisions. This change restores the original intention.</p> <p>This provision comes into force on January 1, 2018.</p>
Union Certification		<p>The new legislation will:</p> <p>Establish card-based union certification for the building services industry, the home care and community services industry and the temporary help agency industry.</p> <p>Make the following changes to the union certification process:</p> <ol style="list-style-type: none"> 1. Eliminate certain conditions for remedial union certification, allowing unions to more easily get certified when an employer engages in misconduct that contravenes the LRA. 2. Make access to first contract arbitration easier, and also add an intensive mediation component to the process. 3. Require the Ontario Labour Relations Board (OLRB) to address first contract mediation-arbitration applications before dealing with displacement and decertification applications.

		<p>4. Allow unions to access employee lists and certain contact information provided the union can demonstrate that it has already achieved the support of 20 per cent of employees in the proposed bargaining unit. The use of this list is subject to conditions and limits and all reasonable steps must be taken to protect the security and confidentiality of the list.</p> <p>5. Expressly empower the OLRB to conduct votes outside the workplace, including electronically and by telephone.</p> <p>6. Empower the OLRB (and Labour Relations Officers if authorized by the OLRB) to give directions relating to the voting process and voting arrangements in order to help assure the neutrality of the voting process.</p>
Successor Rights		<p>The new legislation extends successor rights to the retendering of building services contracts.</p> <p>The Act also enables the government to apply successor rights, by regulation, to other types of service providers that receive public funds.</p>
Return-to-Work Rights and Procedures		<p>Formerly the LRA gave employees the right, under certain conditions, to return to work within six months of the commencement of a lawful strike. The new legislation removes the six-month limitation.</p> <p>A new provision also requires an employer to reinstate an employee at the conclusion of a legal strike or lock-out (subject to certain conditions), and to provide access to grievance arbitration for the enforcement of that obligation.</p>
Just Cause Protection		<p>The new legislation protects employees in a bargaining unit from being disciplined or discharged without just cause by their employer in the period between certification and the date on which a first contract is entered into (or the date on which the union no longer represents the employees), and during the period between the date the employees are in a legal strike or lock-out position and the date the new collective agreement</p>

		is entered into (or the date on which the union no longer represents the employees).
Fines		The new legislation increases maximum fines under the Labour Relations Act to \$5,000 for individuals and \$100,000 for organizations (formerly these fines were \$2,000 for individuals and \$25,000 for organizations).

Minimum Wage Increases

Ontario is increasing its minimum wage rates - generally, the lowest rate that can be paid by employers to employees.

The general minimum wage will increase to:

- \$14 per hour on January 1, 2018, and
- \$15 per hour on January 1, 2019

Minimum Wage Categories	Current to Dec. 31, 2017	Jan. 1, 2018 to Dec. 31, 2018	Jan. 1, 2019 to Sept. 30, 2019
General Minimum Wage	\$11.60 per hour	\$14.00 per hour	\$15.00 per hour
Students under 18 who work not more than 28 hours per week when school is in session, or work during a school break or summer holidays	\$10.90 per hour	\$13.15 per hour	\$14.10 per hour
Liquor Servers	\$10.10 per hour	\$12.20 per hour	\$13.05 per hour

Hunting and Fishing Guides

\$58.00

\$70.00

\$75.00

Rate for working less than five consecutive hours in a day

Rate for working less than five consecutive hours in a day

Rate for working less than five consecutive hours in a day

\$116.00

\$140.00

\$150.00

Rate for working five or more hours in a day, whether or not the hours are consecutive

Rate for working five or more hours in a day, whether or not the hours are consecutive

Rate for working five or more hours in a day, whether or not the hours are consecutive

Homeworkers (employees doing paid work in their own home for an employer)

\$12.80 per hour

\$15.40 per hour

\$16.50 per hour