Update on Bill 148 – The Fair Workplaces, Better Jobs Act, 2017

Date : November 29, 2017

On July 20, 2017, we reported on the changes to the *Employment Standards Act, 2000*, and the *Labour Relations Act, 1995*, that were being proposed by the provincial government in Bill 148. Since then, the Standing Committee on Finance and Economic Affairs held public hearings on the Bill over the summer and an amended version of the bill was introduced and debated in the Legislature in September. The bill passed Second Reading on October 18, 2017. The Bill was then referred back to the Standing Committee for further public consultations. A further amended version of Bill 148 was referred back to the Legislature and passed Third Reading on November 22, 2017. The Bill received Royal Assent on November 27, 2017, and is now law.

This article summarizes the key amendments that have been made to Bill 148 since our previous article.

Employment Standards Act, 2000

Scheduling rules

- Employers who require employees to be on call "for the purposes of ensuring the continued delivery of essential public services" will be exempted from the requirement to pay employees for three (3) hours if they are on call and either do not get called in or do not work for three (3) hours.
- An employee's entitlement to a minimum of three (3) hours pay will only apply where the employee worked less than three (3) hours "despite being available to work longer".
- The right of an employee to refuse work where the employer gives less than four (4) days' (96 hours') notice will not apply if the employer's request is to deal with an emergency, to remedy a threat to public safety, or "for such other reasons as may be prescribed". The Bill now also includes a definition of "emergency", which limits its meaning to very serious situations that involve a risk of serious harm to persons or substantial damage to property. The right to refuse will also not apply to employees if their employer requires them to work or be on call "to ensure the continued delivery of essential public services".

- The exemption from the requirement to pay an employer for three (3) hours where a scheduled day or on call period is cancelled with less than 48 hours' notice will be expanded to add, in addition to fire, lightening, storms, etc., situations where "(b) the nature of the employee's work is weather-dependent and the employer is unable to provide work for the employee for weather-related reasons; or (c) the employer is unable to provide work for such other reasons as may be prescribed [by Regulation]."

- Provisions in collective agreements dealing with scheduling issues that conflict with the new rules set out in Bill 148 will only prevail over the legislation until the earlier of: (a) the date the collective agreement expires; or (ii) January 1, 2020.

Equal pay regardless of employment status

- The term “substantially the same”, which will be applied in determining whether employees are performing work for which they must be paid the same, is now defined in the Bill as meaning “substantially the same but not necessarily identical”.
- The Minister of Labour will be required to cause a review of sections 42.1 (equal pay regardless of employment status) and 42.2 (equal pay for assignment employees) to be commenced before April 1, 2020.
- The Ministers of Labour and Municipal Affairs have written a letter to the President of the Association of Municipalities of Ontario indicating that the government intends to enact a Regulation that would exempt firefighters from the equal pay for equal work provisions of Bill 148. This would clarify that volunteer firefighters are not entitled to the same pay as full-time firefighters.

Pregnancy and parental leave

- The period of pregnancy leave to which employees are entitled will remain at 17 weeks; however, for employees who are not entitled to parental leave, pregnancy leave will end on the date that is the later of: (i) 17 weeks after it began, or (ii) 12 weeks after the birth, still-birth or miscarriage. This is an increase from the current six (6) weeks after the birth, still-birth or miscarriage.
- The period of parental leave to which employees are entitled will be extended to match recent federal amendments to the *Employment Insurance Act* (scheduled to come into effect on December 3, 2017). Employees who take both pregnancy and parental leave will be entitled to 61 weeks of parental leave (without pay), while employees who do not take pregnancy leave will be entitled to 63 weeks of parental leave (without pay).
- New transitional provisions have been added that make it clear that the extended parental leave entitlement will only apply in respect of a birth or adoption that occurs **after** the day the new provisions come into force, on December 3, 2017. Any employee on parental leave in respect of a child who was born or came into the employee’s custody, care and control for the first time **before** that date will remain entitled to take 35 weeks of parental leave if the employee also took pregnancy leave or 37 weeks otherwise.

Sexual or domestic violence leave

- The Standing Committee introduced a new category of leave for employees who have been employed for at least 13 consecutive weeks and who experience (or whose children experience) domestic or sexual violence. Employees will be entitled to take both up to ten

(10) days and up to 15 weeks of leave for the specific reasons set out in the legislation (i.e., to seek services or medical treatment, to relocate, etc.). Notably, following Second Reading, the Committee amended these provisions to provide that the first five (5) days of leave in a calendar year will be leave **with pay**.

Other leaves

- The **Family Caregiver Leave** has been both extended and expanded. Employees will now be entitled to take up to 28 weeks of job-protected leave without pay for the purpose of caring for a family member (broadly defined) with a serious medical condition and a serious risk of death within 26 weeks.
- Critically ill child care leave will be expanded to include a range of adult family members and will be re-named **Critical Illness Leave**. The purpose of this leave is to allow an employee to take time off work in order to provide care and support to a critically ill family member, which is defined as someone "whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury". Employees who have been employed for at least six (6) consecutive months will be entitled to: (i) 37 weeks of leave to care for a critically ill child; and/or (ii) 17 weeks of leave to care for a critically ill adult family member.
- For the purposes of **Personal Emergency Leave**, there is a new requirement that an employee must have been employed by their employer for a minimum of one (1) week in order to be entitled to the two (2) paid days of leave. An employee who has been employed for less than a week will only be entitled to take unpaid personal emergency leave days.
- If a paid personal emergency leave day falls on a day or at a time where a shift premium or overtime pay would be payable, the employee will not be entitled to overtime pay or shift premium.

New record-keeping requirements

- A number of new record-keeping requirements have been introduced, including requirements to keep records of when employees are scheduled to work, hours actually worked, cancellation of shifts, etc. These requirements are designed to aid in the enforcement of the new scheduling rules. Additionally, there are new record-keeping requirements with respect to the vacation leave and vacation pay entitlements, as well as new record-keeping requirements for temporary help agencies.

Labour Relations Act

- The information that an employer may be required to provide to a union seeking to organize a workplace has been expanded. There is now a "mandatory" list, as well as a "discretionary" list. Under the mandatory list, the Ontario Labour Relations Board can order an employer to provide a union with the names, phone numbers and personal email

addresses of employees. Under the discretionary list, where the Board considers it equitable to do so, it may order an employer to provide the union with further information, such as employees' job titles, business address(es) and any other means of contacting employees that has been provided to the employer other than their home addresses.
- Employers and unions will be required to take all reasonable steps to ensure the security and confidentiality of the information contained in employee lists that are provided to unions.
- The Standing Committee has removed the requirement that the description of the proposed bargaining unit set out in a union's application for certification must be the same as the description of the proposed bargaining unit that was included in the initial application for the employee list.
- Following the giving of notice to bargain by the union, either party will be able to apply for educational support in the practice of labour relations and/or collective bargaining from the Minister of Labour. The same support will also be available to the parties when they are engaged in first collective agreement mediation.
- The Board will have the power to consolidate bargaining units after a successful certification. In all other cases, where an employer and a trade union (or council of trade unions) agree in writing to review the structure of existing bargaining units, they may, with the consent of the Board, change existing bargaining units and make the necessary changes to collective agreements to reflect those mutually agreed changes.
- The Standing Committee has amended the provisions dealing with the coming into force of the changes to the *Labour Relations Act*. These provisions will now come into force on January 1, 2018. The Bill previously provided that these changes would come into effect six (6) months after the Bill received Royal Assent.

Occupational Health and Safety Act

- A new section will be added to the *Occupational Health and Safety Act* prohibiting employers from requiring workers to wear high heeled shoes unless it is required for the worker to perform their work safely. This new provision will not apply to employers in the entertainment and advertising industries.

In Our View

Bill 148, as amended by the Standing Committee, is now law. The first changes will take effect on December 3, 2017 and January 1, 2018. Employers should undertake a review of their existing policies, employment agreements and collective agreements (if applicable) to ensure that they will be in compliance with these changes when they come into effect.

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