



## Changes needed to Bill 148

### Labour Relations Act

**What workers need:** All workers should be covered by the Labour Relations Act – no exclusions

**What's in the Bill:** The Bill does not address exclusions.

**What changes are needed:** Currently, several occupations including licensed professionals (e.g., members of the architectural, dental, land surveying, legal, or medical profession), agricultural, horticultural, and domestic workers are exempt from the Act.

Bill 148 fails to address the reality that several classes of workers in Ontario are not covered by the *Labour Relations Act*.

Excluding workers from accessing their fundamental freedom to associate meaningfully in pursuit of collective workplace goals is unjustifiable.

**What workers need:** Prohibit combining bargaining units where bargaining rights are held by different unions.

**What's in the Bill:** Bill 148 proposes empowering the Ontario Labour Relations Board (OLRB) to change the structure of units within a single employer, where the existing units are “no longer appropriate for collective bargaining”. This will permit the OLRB to consolidate, restructure, or reconfigure units; determine which union will be the bargaining agent of resulting units; and amend bargaining unit descriptions in any collective bargaining agreement.

**What changes are needed:** Bill 148 should restrict the Board's ability to consolidate varying bargaining units to instances where workers are represented by the same bargaining agent.

The involuntary consolidation of different bargaining units represented by different bargaining agents will cause significant instability and create less harmonious labour relations in the province.

The OLRB should not have the power to deny workers continued representation by their own union. Compelling workers to join another union undermines their right to choose their own bargaining agent.

**What workers need:** Combine bargaining units of franchisees of the same franchisor.

**What's in the Bill:** The legislation does not address franchise workers in a meaningful way.

**What changes are needed:** For collective bargaining purposes, franchisees of a common franchisor should be treated like a single large employer with multiple locations.

Bill 148 should extend the right of a union to apply to consolidate its bargaining rights at multiple locations of the same employer to multiple locations of the same franchisor.

The Special Advisors of the Changing Workplaces Review pointed out that “It is likely that no single bargaining unit for a single location of a franchisee has sufficient leverage to improve terms and conditions of employment when, in the same geographic area, there are many other locations selling the exact same product at the same or similar price. The only way to bargain effectively is to be able to bargain collectively with multiple locations involved with that brand in that geographic area.”

**What workers need: Provide greater access to workplace information.**

**What’s in the Bill:** Currently, Ontario workers seeking to form unions have no right to employee information until their organizing campaign has resulted in the filing of an application for certification. Bill 148 makes significant improvements in this respect by providing access to workplace information – provided that unions can demonstrate membership evidence for 20 per cent of workers in the bargaining unit and that the OLRB determines that the unit is appropriate for collective bargaining. The ability to access needed information, however, remains limited.

**What changes are needed:** To strengthen workers’ right to organize, Bill 148 should also permit unions to access – in addition to full names, phone numbers, and personal email addresses – employees’ mailing addresses, job classification, employment status (i.e., full-time or part-time and permanent or temporary), and an organizational chart that outlines the relationship of the employees in the proposed unit to other employees and the lines of authority between management, supervisors, and subordinate employees.

**What workers need: Extend card-based certification to all sectors.**

**What’s in the Bill:** Only four sectors (temp agency industry, the building services sector, home care and community services industry, and the existing construction industry) will permit workers to unionize through card-based certification in the province.

**What changes are needed:** All sectors, not just four sectors of the job market, should have access to card-based certification. The law must end the two step-process which gives employers the opportunity to intimidate employees before balloting.

Given that women, racialized workers, youth, and newcomers represent a significant proportion of the Ontario workforce, the proposal to restrict card-based certification to certain extremely limited sectors significantly impedes their ability to join a union. All Ontario workers – with no exceptions – deserve the same protection of their constitutional right to unionize.

The Supreme Court of Canada has recognized that “the function of collective bargaining is not served by a process which undermines employees’ rights to choose what is in their interest and how they should pursue those interests”, Bill 148 should repeal the mandatory vote system and extend card-based certification to all sectors in Ontario.

**What workers need: Provide greater access to automatic first contract arbitration.**

**What’s in the Bill:** Bill 148 proposes that if a union is remedially certified, the OLRB must then order mediation-arbitration unless the union has aggravated the process (i.e., refused to bargain, bargained in bad faith, or took an uncompromising position without reasonable justification). In all other first agreement situations, however, the OLRB may grant the request, dismiss the application on limited grounds, or order the parties to engage in further mediation.

**What changes are needed:** Bill 148 should provide automatic access to first agreement arbitration. Employers often delay reaching a first collective agreement in an effort to weaken the resolve of newly organized workers. Inevitably, workers grow frustrated with

lengthy delays while their working conditions worsen. This undermines their right to access meaningful collective bargaining.

**What workers need: Extend successorship rights to all contracted services.**

**What's in the Bill:** The legislation proposes to extend successorship rights only to the building services industry and allows for regulations to potentially extend successorship rights to publicly funded services – although exemptions can be made through regulations.

**What changes are needed:** Bill 148 should extend successorship rights to all contracted services. It should not matter whether workers are employed in a publicly or privately funded contracted service – all workers deserve protections against contract flipping.

**What workers need: Prohibit replacement workers.**

**What's in the Bill:** The Bill does not prohibit replacement workers.

**What changes are needed:** Bill 148 should prohibit the use of replacement workers during strikes and lockouts.

The law should not undermine workers who are fighting for decent work and exercising their constitutional right to withdraw their labour.

The Supreme Court of Canada has established that the right to exercise economic sanctions is an important part of the collective bargaining process. When employers are allowed to use replacement workers, a union's primary economic sanction (i.e., the right to strike) is effectively curtailed.

## **Employment Standards Act**

**What workers need: Extend Employment Standards Act coverage to dependent contractors.**

**What's in the Bill:** Bill 148 fails to recognize that the changing nature of work has created a spectrum of different workers – ranging from the traditional employee (i.e., those completely protected by the ESA) to so-called independent contractors (i.e., those outside of the ESA's protections). The Ontario Court of Appeal has concluded that an intermediate category between the traditional employee and independent contractor exists, known as 'dependent contractors'.

**What changes are needed:** Bill 148 should apply a similar broad definition of employees as the LRA and ensure ESA coverage extends to dependent contractors.

The LRA rightly recognizes another class of workers "dependent contractors", defining them as a "person who performs work or services for another person for compensation or reward on such terms and conditions that the [employee] is in a position of economic dependence upon, or under an obligation to perform duties for, that person".

**What workers need: Strengthen equal pay for equal work legislation.**

**What's in the Bill:** Bill 148 acknowledges the fundamental principle that workers who are doing similar work should be paid the same. However, it currently states that males and females (and other genders) doing "substantially the same" work should be paid the same. This creates an incentive for employers to establish or maintain minor differences between jobs performed by different genders in an effort to maintain pay differences.

**What changes are needed:** To protect equal pay for equal work and prevent employers from manipulating job duties to evade equal pay obligations, the legislation should instead speak to “similar work” because it avoids the narrow focus associated with “same” duties.

For equal pay protections to be effective, workers must be aware of the wage structure in their workplace. 148 should require employers to have a proactive obligation of pay transparency that requires them to post wage rate information in the workplace and to report this information to the Ministry of Labour. Workers must also be protected from reprisal when requesting and discussing wage rates.

The inclusion of grounds for differential pay, namely “a system that measures earnings by quantity or quality of production” as well as the ambiguous “other factors”, undermines the intent behind equal pay for equal work. Bill 148 should repeal both exceptions to equal pay and mirror the exemption language in the *Pay Equity Act*, which requires an employer to show that differential pay is both objective and does not discriminate based on sex.

### **What workers need: Prohibit parties from contracting out of the Employment Standards Act.**

**What’s in the Bill:** Bill 148 sets a dangerous precedent. On two separate occasions, the legislation allows a collective agreement to violate the proposed minimum standards.

**What changes are needed:** Bill 148 should repeal provisions under the sections on equal pay for equal work and scheduling that allow the collective agreement to prevail – even if it violates the proposed amendments to the ESA.

No party, including unions, should be able to contract out of the basic provisions of the ESA.

The principle of mandatory compliance with minimum standards is fundamental to ensuring that workers can access basic protections in the workplace.

Unionized workers, like non-unionized workers, should be able to access the minimum protections afforded under the ESA and not be forced to work under conditions deemed to be lower than the minimum, even if those conditions are set out in their collective agreement.

### **What workers need: Remove all exemptions to the minimum wage.**

**What’s in the Bill:** Bill 148 rightly proposes implementing a \$15 general minimum wage in 2019 and embedding the minimum wage in the ESA. However, there are several workers, including liquor servers and students, who will continue to receive a lower minimum wage.

**What changes are needed:** Bill 148 should eliminate exemptions to the minimum wage, including for liquor servers and students.

20 per cent of liquor servers earn less than the general minimum wage after tips, and women constitute nearly 75 per cent of liquor servers. This exemption to the minimum wage further reinforces the need for some to tolerate sexual harassment or other harassment from customers to get tips in an effort to make ends meet.

Furthermore, the legislation maintains the fact that Ontario is currently the only province in the country with a lower minimum wage for students. Instead of addressing inequity in the labour market, this provision further embeds discrimination, suggesting that the work of youth is valued less than that of others, promoting age bias and potentially violating the Charter.

### **What workers need: Extend just cause protection for all workers.**

**What’s in the Bill:** Bill 148 fails to protect non-unionized workers from unjust dismissal. Currently, the ESA does not require employers to have “just cause” when terminating workers.

**What changes are needed:** Bill 148 should provide for unjust dismissal protection in the ESA after a worker has been employed for three months with the same employer.

Extending just cause protection to all Ontario workers will provide workers with greater job security because they will be safeguarded against arbitrary and unfair terminations.

It is also important to note that it is only when workers feel secure in their employment will they feel safe enough to ensure that their employer is complying with other minimum standards. In short, just cause protection is an indispensable part of the goal to ensure better enforcement of the ESA.

**What workers need: Legislate seven paid Personal Emergency Leave (PEL) days.**

**What's in the Bill:** If passed, the legislation will provide workers with two paid sick days – without a medical note requirement – within the confines of the ten job-protected PEL days.

**What changes are needed:** Bill 148 should provide workers with seven paid PEL days.

The number of days allocated to personal illness is unreasonable and inadequate. No one is immune from getting sick.

Taking time off when sick is known to speed up recovery, deter further illness, and reduce overall health care costs.

People should not be forced into a position where they must either compromise their own health and the welfare of others or risk losing wages. Workers not only require the right to take time off when sick, but that leave must also be paid to make it a viable option.

**What workers need: Establish a designated leave for survivors of domestic and/or sexual violence.**

**What's in the Bill:** The Bill does not provide designated domestic and/or sexual violence leave. Instead of creating a separate leave, Bill 148 creates a new entitlement to PEL.

**What changes are needed:** Bill 148 should create a designated leave for survivors of domestic and/or sexual violence – ten paid days of job-protected leave, followed by 60 days of job-protected unpaid leave. It must be emphasized that the creation of this leave alone will not be sufficient to help survivors of sexual and domestic violence. It is a first step and many more need to be taken, such as creating greater access to transitional housing, medical services, and counseling.

Survivors of domestic and/or sexual violence should not be forced to choose between their safety and their job.

By requiring these workers to use their personal emergency days, it further shortens their leave entitlement and restricts their ability to use it for other purposes such as illness and bereavement.

It is also important to note that the current legislation only provides for two paid days, which is severely inadequate to help address issues associated with leaving an abusive relationship and ensuring their own safety.