

Bill 47 – Making Ontario Open for Business Act

BACKGROUND

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Repealing our New Workplace Laws

The Ontario government tabled legislation titled Making Ontario Open for Business Act (Bill 47) on Tuesday October 23, 2018. A summary of the changes to the Employment Standards Act (ESA) is provided below. The majority of these changes are in effect as of January 1, 2019.

Minimum Wage

The minimum wage was scheduled to increase to \$15 on January 1, 2019 (\$14.10 for students and \$13.05 for liquor servers) with annual adjustments by the rate of inflation to occur annually starting October 1, 2019.

- Bill 47 freezes the general minimum wage at \$14 (\$13.15 for students and \$12.20 for liquor servers). The minimum wage will remain frozen at \$14 until October 1, 2020. That is, the minimum wage will remain the same for almost three years from January 1, 2018 to October 2020. Starting October 1, 2020, the minimum wage will be adjusted in accordance with the consumer price index.
- Bill 47 repeals the scheduled review of the minimum wage rate in 2024 and all subsequent reviews, which were to occur every 5 years.
- In removing the January 1, 2019 adjustment of the minimum wage to \$15 from the ESA, Bill 47 returns minimum wage setting to regulatory decision making.

Scheduling

The ESA provided new scheduling standards that were expected to come into effect January 1, 2019. Under this provision, employees had job-protected right to request changes to work schedule and work location.

- Bill 47 repeals this provision.

The ESA required a minimum of 3 hour's pay for on-call workers that were not called in to work or

work less than three hours of their on-call shift.

- Bill 47 removes on-call pay.

The ESA provided employees with a job-protected right to refuse an employer's request or demand to work or be on call if insufficient notice is given by the employer (96 hours or 4 days' notice).

- Bill 47 removes the right to refuse shifts with insufficient notice, thereby allowing employers to require employees to work with little notice or no notice.

The ESA requires employers to pay employees up to 3 hours shift cancellation pay if the employer cancels the scheduled day of work with less than 48 hours' notice.

- Bill 47 removes shift cancellation pay.

Equal Pay for Equal Work

Effective last April 1, 2018, the ESA required employers to pay employees the same pay rate when they do substantially the same job, using substantially the same skills, experience and responsibility in the same workplace.

The ESA was expanded to ensure equal pay for equal work beyond equity on the basis of sex to include equity on the basis of employment status

Temporary help agencies were also explicitly required to provide equal pay for equal work for an assignment employee doing substantially the same kind of work as a directly-hired employee of the client company.

- Bill 47 repeals all equal pay for equal work protections on the basis of employment status and temporary assignment employee status.
- Bill 47 also reduces the protections for women under the equal pay for equal work. While employers will still be prohibited from paying women less than men who do substantially the same work, Bill 47 removes women's rights to request that their employer review their rate of pay and adjust accordingly or provide a written response setting out the reasons for the unequal pay rates.

Public Holiday Pay

The ESA public holiday provisions were updated in 2017 to calculate public holiday pay on the actual hours and days worked in the previous pay period. This step ensured that people who worked part time or irregular schedules got the same public holiday pay on a pro-rated basis as fulltime workers.

The previous government put this on hold just prior to the last election and reverted back to the old public holiday formula that benefited full-time workers over part-time workers.

- Bill 47 maintains the old public holiday pay formula and the inequality in public holiday pay between full-time and part-time workers.
- Bill 47 limits public holiday pay by removing provisions to calculate public holiday in the cases where employers were not working in the period before the public holiday for vacation, other leaves, or the ending of employment.

New leave provisions

The ESA provided personal emergency leave (PEL) of up to 10 days of job protected leave for personal illness and family illness, injury, medical emergency, death and urgent matters. The first two of these days were paid. The employer exemption for PEL in businesses with 49 or fewer employees was also removed, extending protections to 1.6 million workers.

- Bill 47 repeals the 2 paid leave days and divides the remaining 8 leave days into 3 days sick leave, 3 days family responsibility leave and 2 days bereavement leave per year. Employees will be required to work 2 weeks before becoming eligible for each of the proposed leaves.
- Employers will no longer be prohibited from requesting that workers provide a medical note from a qualified health practitioner.
- Bill 47 clarifies that an employee who takes a paid or unpaid leave under an employment contract under the terms that comply with the proposed sick leave, family responsibility leave or bereavement leave, then the employee is deemed to have taken a leave day under the proposed new leaves. That is, days taken

under employer leave provisions may be counted as the proposed ESA sick, family responsibility and bereavement leave days.

- Bill 47 would maintain the employer's power to consider any portion of a day taken under sick, family responsibility or bereavement leave to be a full day of leave. For example, taking 2 hours off early due to sickness may be counted as one full day leave under the 3-day sick leave.

Misclassification

The ESA prohibited employers from misclassifying an employee as an independent contractor (specifically, to be treated as 'not an employee' and therefore outside of the protections of the ESA and by extension, ineligible for EI, CPP and WSIB).

The ESA was specifically updated last year so that the burden of proof rested with the employer to prove that the person is not an employee.

- Bill 47 maintains the prohibition on misclassification but removes the requirement for the onus of proof to be on the employer. That is, employers will not be required to prove that an individual is not an employee.

Sheltered workshops

- Bill 47 delays the inclusion of people in the ESA who work in simulated job or work environments. Instead, the exclusion of these workers from ESA protections will come into force on January 1, 2019.

ESA Enforcement

Reduced Penalties for Employers

Last year, the government implemented modest increases in the penalties applied to employers who violate the ESA.

- Bill 47 reduces the amount of penalties that employers can pay for violating the ESA from \$350/\$700/\$1500 to \$250/\$500/\$1000, respectively.

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