

Ontario's Bill 47 Gets Green Light

By [Jordan Kirkness](#) & [Susan MacMillan](#) on November 21, 2018

On November 21, 2018, [Bill 47, Making Ontario Open for Business Act, 2018](#) ("Bill 47"), passed Third Reading and received Royal Assent. Bill 47 repeals or rewrites numerous provisions of the previous government's *Fair Workplaces, Better Jobs Act, 2017* ("Bill 148"). To help employers navigate and prepare for the many changes under Bill 47, we have summarized the key changes and what is left intact.

Key Takeaways

The Bill 47 amendments to the *Employment Standards Act, 2000* come into force on January 1, 2019. However, employers should approach future changes to Bill 148 entitlements with caution. For non-union employees, the employer will be at risk of a constructive dismissal claim if it did not preserve the right to change the entitlement to correspond with its legal obligations. Legal advice should be obtained before any changes are made that would reverse or reduce Bill 148 entitlements.

Generally speaking, unionized employers who amended their collective agreement language to reflect Bill 148 requirements are likely without recourse until they negotiate again. Whereas employers who have not made changes to their language may have more flexibility. Employers who are currently engaged in bargaining should ensure that, where possible, they use language that limits the employer's obligations to statutory compliance.

Employment Standards Act, 2000

The following changes under Bill 47 come into force on January 1, 2019.

| | Bill 148 | Bill 47 |
|---------------------------|---|--|
| Related employer | Separate legal entities are treated as one employer if “associated or related activities or businesses” are carried on through multiple entities | No change |
| Misclassification | Misclassifying is specifically prohibited and the employer must establish that the complainant is not an employee | Misclassifying is specifically prohibited but the complainant must establish that they are an employee |
| Scheduling | 3 hour rule for shortened and cancelled shifts; on-call rule; right to request scheduling or work location changes; right to refuse work or on-call requests made with less than 96 hours of notice: all of the above were to come into force on January 1, 2019 | 3 hour rule for shortened shifts |
| Minimum wage | Currently \$14/hour; increasing to \$15/hour on January 1, 2019 | \$14/hour; annual inflationary adjustments to restart as of October 1, 2020 |
| Public holiday pay | As of January 1, 2018, public holiday pay = total amount of regular wages earned in pay period immediately preceding public holiday, divided by the number of days the employee worked in that period. As of July 1, 2018, the “old” prorating formula re-adopted as an interim measure. | Prorating formula: public holiday pay = total amount of regular wages earned and vac. pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20 (i.e., the “old” formula) |

| | Bill 148 | Bill 47 |
|--|--|---|
| Vacation pay | 3 weeks' paid vacation after 5 years' employment | No change |
| Equal pay for equal work | Pay differentials based on "difference in employment status" are prohibited (e.g., PT vs. FT; temporary vs. indefinite) or for temporary help agency workers | Repeal |
| Domestic or sexual violence leave | Up to 10 days and up to 15 weeks of leave in a calendar year, with the first 5 days paid and the remaining days unpaid | No change |
| Personal emergency leave (PEL) | 10 PEL days with the first 2 days paid Employer cannot require a certificate from a doctor or other qualified health practitioner (QHP) | 8 unpaid leave days: sick leave (3 days), family responsibility leave (3 days), and bereavement leave (2 days) No prohibition re. requiring doctor's/QHP's certificate |
| Fines | Maximum fine amounts for contravention of the ESA increased | Maximum fine amounts decreased to pre-Bill 148 amounts (\$250, \$500 and \$1000) |

Labour Relations Act

The following changes under Bill 47 are in force as of November 21, 2018.

| | Bill 148 | Bill 47 |
|--|--|---|
| Employee lists | Expedited process under which a union with support of at least 20% of the proposed bargaining unit can apply for a list of employees in that bargaining unit (and their personal information) | Repeal |
| Remedial certification | <p>The Ontario Labour Relations Board (“Board”) is required to certify the union if the Board is satisfied the employer’s contravention resulted in (a) the true wishes of the employees were not likely reflected in a representation vote; or (b) the union not being able to demonstrate 40% support.</p> <p>The Board no longer has the option of ordering a representation vote under the circumstances described above and instead must certify the union for the bargaining unit the Board determines could be appropriate.</p> | <p>Reinstatement of pre-Bill 148 approach to penalty certification for employer misconduct.</p> <p>Under the prescribed conditions, the Board would again have discretion to order a vote or certify.</p> |
| Reviewing bargaining unit structure | The Board may review structure of the bargaining unit if certain conditions are met (application made at time of certification application or within 3 months of certification; no collective agreement yet; same union represents both units) | Repeal |
| Card-based certification | <p>In the following sectors, the Board may certify the union (or direct a representation vote) if the Board is satisfied that more than 55% of employees in bargaining unit are union members: building services, home care and community services, and temporary help agencies.</p> <p>If 40-55%: the Board will direct a representation vote.</p> | Repeal (with transition clause for elections made before the in force date) |
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| | Bill 148 | Bill 47 |
|------------------------------|---|---|
| First agreements | Mediation and mediation-arbitration provisions | Return to pre-Bill 148 first agreement arbitration |
| Return-to-work rights | No time limit on an employee's right to reinstatement following the start of a strike or lock-out | Employee's right to reinstatement following the start of a strike or lock-out is reduced to six months (return to the pre-Bill 148 timeframe) |
| Fines | Fines for offences increased (\$5000 for individuals and \$100,000 for corporations) | Fines decreased to the pre-Bill 148 amounts (\$2000 for individuals and \$25,000 for corporations) |