

Employment Standards Act: Bill 47

May 15, 2019

Safia J. Lakhani, Iler Campbell LLP
slakhani@ilercampbell.com





Legal information?



Legal advice?

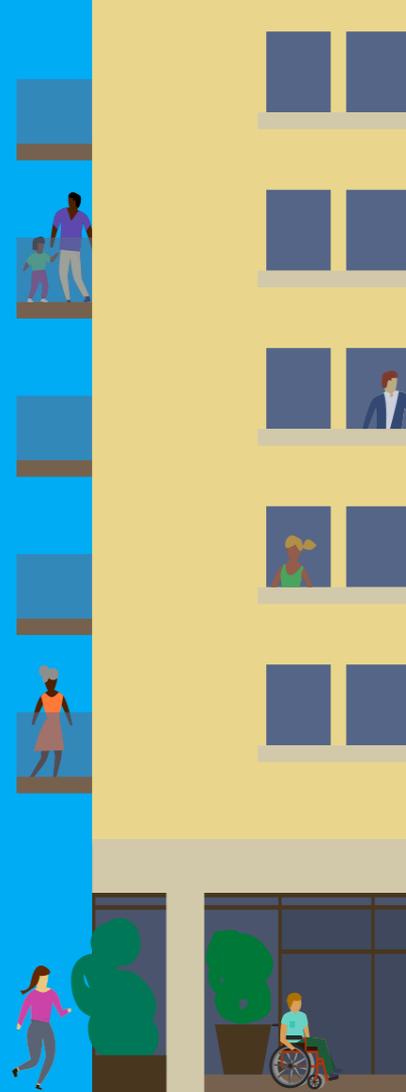
Employment Standards Act , 2000 (*ESA*)

- Legislation that governs employment relationships in Ontario
- Administered by the Ministry of Labour
- Supersedes employment agreements

Sources of Rights and Obligations:

Legislation:

- *Employment Standards Act*
- *Occupational Health and Safety Act*
- *Canada Labour Code (for unionized workplaces)*
- *Labour Relations Act (for unionized workplaces)*
- *Human Rights Code*



Sources of Rights and Obligations:

- Employment Agreements
- Workplace Policies
- Common Law

ESA Section 5(1) : Subject to Subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting or waiver is null and void.



Employment Standards Act 2000, S.O.2000

- Overtime Pay
- Minimum Wage
- Public Holidays
- Vacation
- Benefits
- Leaves of Absence
- Termination
- Enforcement
- Complaints mechanisms

Employment Standards Act 2000, S.O.2000

- Exceptions for certain industries/positions
- *ESA* does not apply to certain professions



Changes to *Labour Relations Act*

- Governs the relationship between unions and employers
- Sets out:
 - bargaining rights
 - negotiation of collective agreements
 - unfair practices
 - enforcement

History of the *ESA*

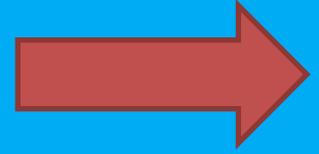
- **1920:** Minimum Wage Act
- **1944:** Hours of Work and Vacation with Pay Act
- **1968:** First Employment Standards Act
- Further amendments in the **1970s, 1980s and 1990s:**
 - 1970s: termination pay, pregnancy leave entitlements, addition of public holidays,
 - 1980s: entitlement to severance pay, addressed length of notice on termination, added an additional public holiday
 - 1990s: parental leave, employee wage protection

History of the *ESA*

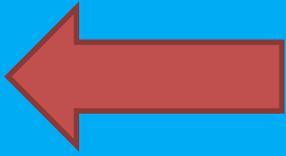
- **2000:** ESA in the form we recognize it today. Included changes to:
 - Hours of work
 - Rest periods
 - Overtime
 - Job-protected leave (personal emergency leave)
 - Posting requirements
 - enforcement
- **Further changes between 2000 and the present**

2017 *ESA* Amendments

Bill 148



- *The Fair Workplaces, Better Jobs Act*
- *Passed in November 2017*
- Included changes to the *ESA*, as well as other key pieces of legislation.
 - Minimum wage increase
 - Changes to scheduling for on-call positions
 - Increase to vacation time for 5+ year employees
 - Increase to personal emergency leave



2018 *ESA* Amendments

Bill 47

- *Making Ontario Open for Business Act, 2018*
 - Introduced by Ford Government
 - Came into force in **January 2019**
 - Reverses certain amendments of Bill 148
 - Changes are now part of the *Employment Standards Act*

1. Minimum Wage

- **Bill 148**: Increased minimum wage from \$11.60/hour to \$14.00 per hour. Scheduled increase to \$15.00 in January 2019
- **Bill 47**: Freezes minimum wage at \$14.00 per hour until October 1, 2020.
- Annual increases to minimum wage will restart in October 2020, and will be based on inflation.

1. Minimum Wage

- **Bill 148**: Increased minimum wage from \$11.60/hour to \$14.00 per hour. Scheduled increase to \$15.00 in January 2019
- **Bill 47**: Freezes minimum wage at \$14.00 per hour until October 1, 2020.
- Annual increases to minimum wage will restart in October 2020, and will be based on inflation.

1. Minimum Wage: **ESA Provision**

Determination of minimum wage

23.1 (1) The minimum wage is the following:

1. On or after January 1, 2018 but before October 1, 2020, the amount set out below for the following classes of employees:
 - i. For employees who are students under 18 years of age, if the student's weekly hours do not exceed 28 hours or if the student is employed during a school holiday, \$13.15 per hour.
 - ii. For employees who, as a regular part of their employment, serve liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act* and who regularly receive tips or other gratuities from their work, \$12.20 per hour.
 - iii. For the services of hunting and fishing guides, \$70.00 for less than five consecutive hours in a day and \$140 for five or more hours in a day, whether or not the hours are consecutive.
 - iv. For employees who are homeworkers, \$15.40 per hour.
 - v. For any other employees not listed in subparagraphs i to iv, \$14.00 per hour.
2. REPEALED: 2018, c. 14, Sched. 1, s. 6 (2).
3. From October 1, 2020 onwards, the amount determined under subsection (4). 2017, c. 22, Sched. 1, s. 15 (1); 2018, c. 14, Sched. 1, s. 6 (1-3).

2. Equal Pay for Equal Work

- **Bill 148:**
- Employers cannot pay different “rates of pay” based on “employment status” (i.e., part-time, full-time, fixed-term, seasonal or casual) where:
 - employees perform substantially the same kind of work in the same establishment;
 - their performance requires substantially the same skill, effort and responsibility; and
 - they work under similar working conditions.

2. Equal Pay for Equal Work

- **Bill 47:**
- Equal pay for equal work provisions related to gender will remain.
- Equal pay for equal work provisions related to “employment status” and “assignment employee status” are repealed.
- Employees’ right to request a review of their rate of pay is also repealed.

2. Equal Pay for Equal Work: **ESA Provision**

Equal pay for equal work

- 42 (1)** No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,
- (a) they perform substantially the same kind of work in the same establishment;
 - (b) their performance requires substantially the same skill, effort and responsibility; and
 - (c) their work is performed under similar working conditions. 2000, c. 41, s. 42 (1).

Exception

- (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of,
- (a) a seniority system;
 - (b) a merit system;
 - (c) a system that measures earnings by quantity or quality of production; or
 - (d) any other factor other than sex. 2000, c. 41, s. 42 (2); 2017, c. 22, Sched. 1, s. 26 (1); 2018, c. 14, Sched. 1, s. 8 (1).

Reduction prohibited

- (3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1). 2000, c. 41, s. 42 (3).

Organizations

- (4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1). 2000, c. 41, s. 42 (4); 2017, c. 22, Sched. 1, s. 26 (2).

Deemed wages

- (5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee. 2000, c. 41, s. 42 (5).
- (6) REPEALED: 2018, c. 14, Sched. 1, s. 8 (2).

3. On-Call Scheduling

- **Bill 148:**
 - Protections for on-call workers
 - Minimum of three hours' pay for being on-call (even if not called to work).
 - Employees can refuse an employer's request to work or be on call for an unscheduled day if the request is made less than 96 hours before the time the employees are expected to start work or be on call.

3. On-Call Scheduling

- **Bill 148:**
- Right to receive wages for three hours of work if a scheduled work day or on call period is cancelled with less than 48 hours' notice.
- Employees can request changes to schedule or work location after three months of employment.

3. On-Call Scheduling

- **Bill 47:**
 - All provisions relating to on-call work repealed
 - *Implications?*

4. Personal Leave

- **Bill 148:**
- Required all employers to give all employees 10 personal emergency leave days per year, including two paid days if the employee has been employed for one week or longer (7 days)
- Available to all employees, regardless of the size of the workplace.
- Employer can require "reasonable evidence" of a need to take this leave but could no longer require a medical note.

4. Personal Leave

- **Bill 47**: The personal emergency leave provisions are repealed and replaced by the following **unpaid** days:
 - 3 days for "sick leave" (personal illness, injury or medical emergency);
 - 3 days for "family responsibility leave" (illness, injury, medical emergency or other urgent matter concerning prescribed individuals);
 - 2 days for "bereavement leave" (related to the death of prescribed individuals).

4. Personal Leave

- **Bill 47:**
- Employers may also require employees to provide "evidence reasonable in the circumstances" for leaves (i.e., which includes providing a medical note).

5. Vacation

- **Bill 148**: Required employers to give employees with 5 years of service three weeks' vacation
- **Bill 47**: Stays the same

6. Classification of Employees

- **Bill 148**: Statutory prohibition on misclassification of employees added and “reverse onus” for employer to prove that a person is a contractor and not an employee.
- **Bill 47**: Removes this

Implications of Changes

- Number of changes to legislation
- Reversal of certain provisions does not mean employer can make **unilateral changes**
- Risk of implementing one-way changes
- Assess policies and obtain legal advice

Questions –
you likely have some!

