

# Rolling Back Bill 148:

Changes to the *Employment Standards Act, 2000* and *Labour Relations Act, 1995*

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# End of the Bill 148 Era

- Bill 148, *Fair Workplaces, Better Jobs Act*, 2017
  - Passed on November 22, 2017
  - Amendments to the *Labour Relations Act*, 1995 and *Employment Standards Act*, 2000 on January 1, 2018
  - Further amendments to the ESA on January 1, 2019
- Bill 47, *Making Ontario Open for Business Act*, 2018
  - Royal Assent on November 21, 2018
  - Amendments to the LRA in force as of November 21, 2018
  - Amendments to the ESA in force as of January 1, 2019

# Rolling Back Bill 148

## Changes to the *Employment Standards Act, 2000*

# What Bill 148 provisions will be *repealed* by Bill 47?

## Minimum Wage

Bill 148	Bill 47
Increase in minimum wage to \$15/hour on January 1, 2019 (s. 23.1, ESA)	Minimum wage will be frozen until October 1, 2020 and then wages will be adjusted for inflation

# What Bill 148 provisions will be *repealed* by Bill 47?

## Equal Pay for Equal Work

Bill 148	Bill 47
<p>Equal pay for equal work regardless of employment status if:</p> <ul style="list-style-type: none"><li>• Employees perform substantially the same work in the same establishment</li><li>• Performance requires substantially the same skill, effort and responsibility</li><li>• Work is performed in similar working conditions</li></ul> <p>(ss. 42.1, 42.2, 42.3, ESA)</p>	<p>Employees may pay employees differently based on employment status</p>
<p>Temporary help agency employees (ss. 74, ESA)</p>	<p>Agency employees will no longer be entitled to a rate equal to that paid to the client's employees performing substantially the same work</p>

# What Bill 148 provisions will be *repealed* by Bill 47?

## Public Holiday Pay

Bill 148	Bill 47
Public holiday pay = Regular wages earned in the pay period before the public holiday, divided by Number of days the employee worked	Public holiday pay = Regular wages and vacation pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20

# What Bill 148 provisions will be *repealed* by Bill 47?

## Scheduling

Bill 148	Bill 47
Request for changes to schedule or work location (s. 21.2, ESA)	Employees will not have the right to request changes to their schedule or work location
Minimum pay for being on call (s. 21.4, ESA)	Employees will not be guaranteed a minimum on call payment
Right to refuse requests or demands to work or be on call within 96 hours (s. 21.5, ESA)	Employees will not have the right to refuse employer requests to work or be on call
Guaranteed payment of at least 3 hours' work if an employee's scheduled shift or on call shift is cancelled with less than 48 hours' notice (s. 21.6, ESA)	Employees will not be guaranteed minimum payment if the scheduled shift or on call shift is cancelled

# What Bill 148 provisions will *continue* under Bill 47?

## Scheduling

Bill 148	Bill 47
Guarantees payment to employees of at least 3 hours' wages when an employee is required to report to work (s. 21.3, ESA)	Employees will be guaranteed payment of at least 3 hours' wages when they are required to report for work



# What Bill 148 provisions will *continue* under Bill 47?

## Overtime Pay

Bill 148	Bill 47
Calculation of overtime pay for employees with multiple wage rates (s. 22(1.1), ESA)	Overtime pay will continue to be based on the work performed during overtime hours if an employee has multiple wage rates

# What Bill 148 provisions will *continue* under Bill 47?

## Vacation

Bill 148	Bill 47
Increased vacation entitlements for employees with 5 or more years of service (s. 33, ESA)	Employees with 5 or more years of service will continue to be entitled to 3 weeks' vacation and 6% vacation pay

# What Bill 148 provisions will *continue* under Bill 47?

## Temporary Help Agencies

Bill 148	Bill 47
Entitlement for agency employees to notice of termination of longer-term assignments when such assignments are terminated early (ss. 74.4-74.17, ESA)	Agency employees will continue to be entitled to 1 week of notice of early termination of a long-term assignment

# What Bill 148 provisions will *continue* under Bill 47?

## Reprisal

Bill 148	Bill 47
Protection to employees seeking or making disclosures regarding pay rates (s. 74, ESA)	Employees seeking or making disclosures regarding pay rates will continue to be protected from reprisal

# What Bill 148 provisions will *continue* under Bill 47?

## Leaves of Absence

Bill 148	Bill 47
Pregnancy Leave (ss. 47(1), ESA)	Employees who suffer a miscarriage or still-birth continue to be entitled to take up to 12 weeks of pregnancy leave
Parental Leave (s. 48, ESA)	Employees will continue to be entitled to take up to 61 or 63 weeks of unpaid leave
Family Medical Leave (s. 49.1, ESA)	Employees will continue to be entitled to take up to 28 weeks' unpaid leave
Critical Illness Leave (s. 49.4, ESA)	Employees will continue to be able to take this leave to care for critically-ill family members

# What Bill 148 provisions will *continue* under Bill 47?

## Leaves of Absence (Cont.)

Bill 148	Bill 47
Child Death Leave (s. 49.5, ESA)	Employees will continue to be entitled to take up to 104 weeks of unpaid leave
Crime-Related Child Disappearance Leave (s. 49.6, ESA)	Employees will continue to be entitled to take up to 104 weeks' unpaid leave where a child has disappeared
Domestic or Sexual Violence Leave (s. 49.7, ESA)	Employees with at least 13 weeks' service will be entitled to take up to 10 days and up to 15 weeks of leave if they or their child experiences domestic or sexual violence

# What Bill 148 provisions will *change* under Bill 47?

## Personal Emergency Leave

Bill 148	Bill 47
Entitlement to 2 paid personal emergency leave days and 8 unpaid personal emergency leave days	Employees with 2 weeks' service are entitled to 8 unpaid days per year as follows: <ul style="list-style-type: none"><li>• Sick leave (3 days)</li><li>• Family responsibility leave (3 days)</li><li>• Bereavement leave (2 days)</li></ul>
Prohibited employers from requiring a medical note to prove entitlement to personal emergency leave	Employers can require a medical note from employees to substantiate entitlement to leave days
	Where an employee takes leave under an employment contract or collective agreement for reasons that overlap with personal emergency leave, the leave will be counted as ESA leave

# What Bill 148 provisions will *change* under Bill 47?

## Misclassification of Employees

Bill 148	Bill 47
Employers are prohibited from misclassifying an employee as an independent contractor (s. 5.1, ESA)	Employers will continue to be prohibited from misclassifying an employee as an independent contractor
Employers are required to prove that an individual is an independent contractor (s. 5.1, ESA)	Employers will not have reverse onus of proof



# Rolling Back Bill 148

## Changes to the *Labour Relations Act, 1995*

# What Bill 148 provisions will be *repealed* under Bill 47?

## Consolidation of Bargaining Units

Bill 148	Bill 47
Established a right to apply to the OLRB for review of the structure of bargaining units where a newly certified union already represents employees of the employer in another bargaining unit (s. 15.1, LRA)	No right to apply to the OLRB to review the structure of bargaining units where a newly certified union already represents employees of the employer in another bargaining unit

# What Bill 148 provisions will be *repealed* under Bill 47?

## Card-Based Certification

Bill 148	Bill 47
<p>Permitted card-based certification on the following industries:</p> <ul style="list-style-type: none"><li>• Building services</li><li>• Home care and community services</li><li>• Temporary help agencies</li></ul> <p>(s. 15.2, LRA)</p>	<p>Card-based certification is only available to employees in the construction industry</p>

# What Bill 148 provisions will be *repealed* under Bill 47?

## First Collective Agreement

Bill 148	Bill 47
Any party negotiating a first collective agreement could apply to have a mediator appointed (s. 43, LRA)	Negotiating parties cannot apply for first collective agreement mediation
Any party negotiating a first collective agreement could apply for mediation-arbitration (s. 43., LRA)	Negotiating parties cannot apply for first collective agreement mediation-arbitration if mediation is unsuccessful

# What Bill 148 provisions will *change* under Bill 47?

## Employee Lists

Bill 148	Bill 47
Unions can obtain a list of employees and their information (s. 6.1, LRA)	Unions cannot apply to the OLRB to obtain a list of employees and their related information

# What Bill 148 provisions will *change* under Bill 47?

## Remedial Certification

Bill 148	Bill 47
<p>Mandatory remedial certification was the result if there was an interference with the true wishes of employees in a representation vote (s. 11(2), LRA)</p>	<p>The OLRB has the discretion to order other remedies to address contraventions of the LRA that results in the interference with the true wishes of employees in a representation vote</p>

# What Bill 148 provisions will *change* under Bill 47?

## Successor Rights

Bill 148	Bill 47
Union will retain bargaining rights when a new building service contract is retendered and the contract is awarded to a new provider (s. 69.1, LRA)	Union will continue to retain bargaining rights when building services contracts are retendered
Regulations could extend successor rights protection to other types of service providers that receive public funds (s. 69.2, LRA)	Regulations cannot extend successor rights protection to other types of service providers that receive public funds

# What Bill 148 provisions will *continue* under Bill 47?

## Just Cause Protection

Bill 148	Bill 47
Just cause protection to employees immediately following certification (s. 12.1, LRA)	Employees will continue to have just cause protection from the date of certification to the date that a first collective agreement is concluded
Just cause protection to employees after a strike or lock-out (s. 80.1, LRA)	Employees will continue to have just cause protection from the date that a strike or lock-out becomes lawful and the date that a new collective agreement is concluded



# Key Takeaways

- Bill 148 provisions will still be in effect until December 31, 2018
- Change workplace policies and procedures with caution
  - Constructive dismissal
  - Employee morale

# Thank you

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