
Bill 148

Fair Workplaces, Better Jobs Act, 2017

FEI Eye-Opener

January 11, 2018

Lisa Bolton and Iouri Vorobiev



 Follow @sherrardkuzz

250 Yonge Street Suite 3300
Toronto, Ontario M5B 2L7
Tel 416.603.0700
Fax 416.603.6035
24 Hour 416.420.0738
www.sherrardkuzz.com

Agenda

- How Did We Get Here?
- *Employment Standards Act*
- *Labour Relations Act*
- *Occupational Health and Safety Act*
- How to Prepare
- Questions

HOW DID WE GET HERE?



How Did We Get Here?

1. A view among some that there is a culture of non-compliance
2. A call for heightened efforts at enforcement
3. *Vulnerable Workers and Precarious Employment* become terms of art
4. May 2015 – Special Advisors undertake *Changing Workplaces Review*

Changing Workplaces Review

- July 2016 - Interim report released summarizing input received and seeking additional submissions
- May 2017 - Final Report released identifying more than 173 recommendations to amend the *Employment Standards Act* and *Labour Relations Act*
- June 1, 2017 - Government introduced Bill 148, *The Fair Workplaces, Better Jobs Act, 2017*
- November 27, 2017 - Royal Assent
- January 1, 2018 – majority of amendments take effect

EMPLOYMENT STANDARDS ACT



Key Amendments to the *ESA*

- Increased Minimum Wage
- Equal Pay for Equal Work
- Scheduling
- Employee Misclassification
- Related Employer Liability
- Vacation and Public Holidays
- Personal Emergency Leave (and other leaves)
- Exclusions, Records, Remedies and Penalties

The MOL Perspective

- MOL belief that current “rampant non-compliance” with existing ESA obligations
 - Focus on top two priority amendments:
 - Personal Emergency Leave
 - Equal Pay for Equal Work
 - Intention to engage in phased consultations to increase education and help employers prepare (and comply)

The MOL Perspective

- The engagement and consultation approach aims to:
 - Maintain working relationships with key stakeholders representing SMEs
 - Provide education & compliance support
 - Produce more effective resources
 - Encourage stakeholders to take an active role in promoting these resources

Minimum Wage Increases

	Oct '17	Jan '18	Jan '19
■ General	\$11.60	\$14.00	\$15.00
■ Students	\$10.90	\$13.15	\$14.10
■ Servers	\$10.10	\$12.20	\$13.05
■ Hunting	\$58.00	\$70.00	\$75.00
■ Homeworkers	\$12.80	\$15.40	\$16.50

Equal Pay for Equal Work

- Effective April 1, 2018...
- A part-time, seasonal or casual employee is entitled to be paid the same wage as a ‘comparable’ full-time employee
- Can be paid differently if based on:
 - Seniority system
 - Merit system
 - Quantity/Quality of production
 - Other objective factor

Equal Pay for Equal Work

- An assignment employee is entitled to be paid the same wage as a ‘comparable’ client employee
- Can be paid differently if based on any factor other than:
 - Sex
 - Employment status
 - Assignment employee status

Equal Pay for Equal Work

- Certain occupations are exempt from the equal pay provisions:
 - Firefighters
 - A student under 18 who works not more than 28 hours per week or who works during a school holiday
 - A person employed in the recorded visual and audio-visual entertainment production industry

Equal Pay for Equal Work

- An employee has the right to:
 - Request information about the wage rate paid to another employee
 - Request a review of his/her wage rate and employer must either provide a wage adjustment or a written explanation why there will be no adjustment
 - Protection against reprisal

Equal Pay for Equal Work

- Wage rates contained in a collective agreement in effect as of April 1, 2018 are temporarily “grand-fathered” until the earlier of:
 - Expiry of the agreement; or
 - January 1, 2020
- Any new collective agreement made or renewed after April 1, 2018 must comply with the equal pay requirements

Equal Pay for Equal Work

- Before April 1, 2021, the Ministry of Labour will set the timelines for a review of the “equal pay” provisions

Temporary Help Agency Notice of Termination

- Effective January 1, 2018...
- If an assignment expected to last more than 3 months is terminated early, one week of notice or pay in *lieu* is required
 - THA can avoid pay in *lieu* if it can provide reasonable work during notice period

Scheduling

- Effective January 1, 2019...
- An employee is entitled to be paid for at least 3 hours if:
 - Scheduled to work more than 3 hours but attends work and works fewer than 3 hours
 - An entire scheduled day of work is cancelled within 48 hours of its start
 - On call and not called to work, or called to work for fewer than 3 hours

Scheduling

- The wage entitlement for 3 hours of pay shall be calculated based on the greater of:
 - The amount the employee earned for the time worked, plus wages equal to the employee's regular rate for the remainder of the time; or
 - The employee's regular rate for 3 hours of work

Scheduling

- An employee also has the right:
 - To refuse a shift if request made with fewer than 96 hours' (4 days') notice
 - To request a change to work location or work schedule (after 3 months of employment)

Scheduling

- Exemptions apply to certain scheduling provisions to account for:
 - Extraordinary circumstances (fire, lightening, power failure, storms, or similar causes beyond the employer's control)
 - Weather-dependent work
 - Emergency situations and those where work is required to remedy or reduce a threat to public safety
 - Continued delivery of essential public services

Scheduling

- Scheduling requirements contained in a collective agreement in effect as of Jan 1, 2019 are temporarily “grand-fathered” until the earlier of:
 - Expiry of the agreement; or
 - January 1, 2020
- Any new collective agreement made or renewed after Jan 1, 2019 must comply with the scheduling requirements

Employee Misclassification

- Prohibits misclassification of independent contractors
- Subject to penalties, prosecution, conviction and monetary penalties
 - In addition to any order to pay wages
- Onus on employer to prove an individual is appropriately characterized as an IC in the event of a dispute

Related Employer Liability

- Historically, the *ESA* placed workplace responsibility and liability on the entity that directly employs the employee
- Associated or related business entities may be considered to be a common or related employer provided the “intent or effect” of the relationship is to directly or indirectly defeat the purpose of the *ESA*

Related Employer Liability

- Bill 148 eliminates “intent or effect”
- Two persons may be considered one employer if they carry on “related activities or businesses”
- This may have a potentially significant impact on employers
 - Will depend on how the term “related” is interpreted

Vacation

- After 5 years of employment, an employee will be entitled to:
 - 3 weeks of vacation time
 - 6% vacation pay
- This is consistent with many other provinces

Public Holiday Pay Calculation

- Previous method of calculating public holiday pay:

Regular wages in 4 weeks prior to holiday work week

20

- Example: Employee works each Saturday for 8 hours at \$20.00/hour

$$\underline{\$20 \times 32 \text{ hours} = \$640}$$

20

\$ 32.00 in public holiday pay

Public Holiday Pay Calculation

- Current method of calculating Public holiday pay :

Regular wages in pay period prior to holiday

Days worked by the employee in the pay period

- Example: Employee works each Saturday for 8 hours at \$20.00/hour (bi-weekly pay period)

$$\underline{\$20 \times 16 \text{ hours} = \$320}$$

2

\$ 160.00 in public holiday pay

Public Holiday Pay Calculation

- In construction, an employee is exempt from the public holiday pay provisions if he or she receives:
 - At least 7.7% of his or her hourly wage for vacation pay or holiday pay (if less than 5 years)
 - At least 9.7% of his or her hourly wage for vacation pay or holiday pay (if 5 years or more)

Personal Emergency Leave

- 50 or more employee threshold eliminated. entitling every employee in the province to PEL
- 10 PEL days per calendar year
- **First 2 PEL days are to be paid by employer**
- Employer can request evidence to support need for PEL **but** cannot request note from “qualified health practitioner”

Personal Emergency Leave

- In construction, an employee is not entitled to the two paid days of PEL provided he or she receives at least 0.8% of his or her hourly wage for personal emergency pay
- A construction employee is still entitled to 10 **unpaid** PEL days

Personal Emergency Leave

- In the automotive sector, special rules apply to PEL entitlement
 - 7 PEL days per calendar year, with first two paid (unless the employee is entitled to at least two days of paid sick leave, additional vacation or public holiday, in which case, **no paid PEL**)
 - 3 unpaid bereavement leave days for the death of a prescribed family member

Domestic or Sexual Violence Leave

- 10 days and 15 weeks of leave a year with **first 5 days per year to be paid** by employer
- For prescribed reasons related to the domestic violence or sexual assault of an employee or employee's child, or the threat of violence
- 13 weeks employment required before eligible
- Requirement to protect confidentiality of any records related to a leave under this section

Parental Leave

- Effective December 3, 2017, parental leave entitlements extended to:
 - 61 weeks (from 35 weeks) if pregnancy leave taken
 - 63 weeks (from 37 weeks) if no pregnancy leave taken
- Therefore, an employee who takes both a pregnancy leave and parental leave is entitled to take up to 18 months off

Pregnancy Leave

- Employee can take up to 12 weeks of leave in case of still-birth or miscarriage
 - Increase from 6 weeks under the current ESA provisions

Child Death Leave and Crime-Related Disappearance Leave

- An employee is entitled to up to 104 weeks of unpaid leave following:
 - Death of a child
 - Crime-related disappearance of a child
- Employee must have been employed for at least 6 months to be entitled to either leave

Family Medical Leave

- An employee is entitled to an unpaid leave of up to 28 weeks in a 52 week period to provide care or support to a family member who has a serious medical condition with a significant risk of death within 26 weeks
- Increase from 8 weeks under the current *ESA*

Critical Illness Leave

- An employee is entitled to an unpaid leave of up to 17 weeks to provide care and support to a critically ill adult family member and up to 37 weeks to provide care and support to a critically ill family member who is a child (under 18)
- Employee must have been employed for at least 6 months to be entitled to the leave

Inclusions and Exclusions

- ESA now applies to:
 - Crown employees
 - People receiving training for work through their employer
- ESA does not apply to people in an experiential learning program (narrower than the current exemption for “interns”)

Miscellaneous

- Increased record keeping obligations to correspond with scheduling and other new entitlements
- Increased flexibility around the administrative monetary penalties
- Increased publicity in case of contravention
 - Penalties, description of contravention, date and penalty

In Force...

■ Most provisions in force **January 1, 2018**

■ **Exceptions:**

❑ **November 27, 2017 (Royal Assent)-**
Employee Misclassification

❑ **December 3, 2017 -** Parental Leave and
Critical Illness Leave

❑ **April 1, 2018-** Equal Pay Provisions

❑ **January 1, 2019-** Scheduling Provisions

LABOUR RELATIONS ACT



Key Amendments to the LRA

- Card-based Certification in Specific Industries
- Remedial Certification
- Union Access to Employee Lists
- First Contract Mediation/Arbitration
- Successor Rights
- Bargaining Unit Consolidation
- Enhanced Just Cause Protections and Return to Work Entitlements Post-Strike

Card-Based Certification

- Expands card-based certification to specific industries:
 - Temporary Help Agency Industry
 - Building Services Sector
 - Home Care and Community Services Industry
- Can be certified **without a vote** where union has membership cards from greater than 55% of employees in the proposed bargaining unit

Remedial Certification

- The Board can order “remedial certification” under Section 11 in cases of extreme anti-union *animus*
- However, even where there is a violation of Section 11, the Board currently has the power to order a remedy short of certification
- This discretion is removed by Bill 148- on a finding of a violation of Section 11, the Board **must** order remedial certification

Employee List

- Union can request the Board order an employer to produce an employee list in context of organizing
- Board must be satisfied union appears to have membership support from at least 20% of the employees in the proposed bargaining unit

Employee List

- List is to contain employee name, phone number and personal email (if employer has this information)
- The Board also has the discretion to order the employer produce other information about the employee and any other means it has of contacting the employee
 - No home address to be provided

Employee List

- To address privacy concerns, Bill 148 requires both the union and employer to take reasonable steps to protect the confidentiality of the list
- List is to be destroyed on the earlier of:
 - The date the union's application for certification is dismissed; or
 - One year after the list is ordered produced

First Contract Mediation/Arbitration

- A union or employer may apply for first contract mediation at any point after a “no board” is issued
- The appointment of a mediator puts a 45 day “freeze” on any strike/lockout or any decertification/displacement application
- 45 days after a mediator’s appointment, either party may apply for mediation-arbitration

First Contract Mediation/Arbitration

- On receipt of an application, the Board may:
 - Dismiss the application;
 - Order further mediation; or
 - Order the agreement be settled by med-arb
- Where the Board orders mediation-arbitration
 - Any strike/lockout ceases
 - Any decertification/displacement application is dismissed

Successor Rights

- Existing successor rights extended to the retendering of building services contracts (cleaning, food services and security)
- May be extended by regulation to service providers that receive public funds
 - Who—municipalities, school boards, hospitals, long term care facilities, universities, *etc.*?

Bargaining Unit Consolidation

- Following certification, a union (or employer) may apply to have a newly-certified union consolidated with an existing bargaining unit of the employer represented by the same union
- Will consider whether consolidation contributes to:
 - Effective bargaining relationship
 - Development of collective bargaining in the **industry**

Bargaining Unit Consolidation

- When an employer and a union have multiple bargaining units at the same or a different location they may agree to a review by the Board of the bargaining unit structure
- Allows the parties, on joint application and with the Board's consent, to modify the existing bargaining unit structures

Return to Work Post-Strike

- Previously, an employee had six month period following start of strike/lockout to request a return to work
- Six month limit removed
- Mandatory reinstatement of employees at end of strike or lock-out

Enhanced Just Cause Protection

- Employee may not be disciplined or discharged without just cause:
 - Between date of certification and the date a collective agreement is entered into; and
 - Between date a lawful strike/lockout begins and the date a collective agreement is entered into
- This protection **includes** probationary employees

In Force...

- The amendments to the LRA came into force on **January 1, 2018**

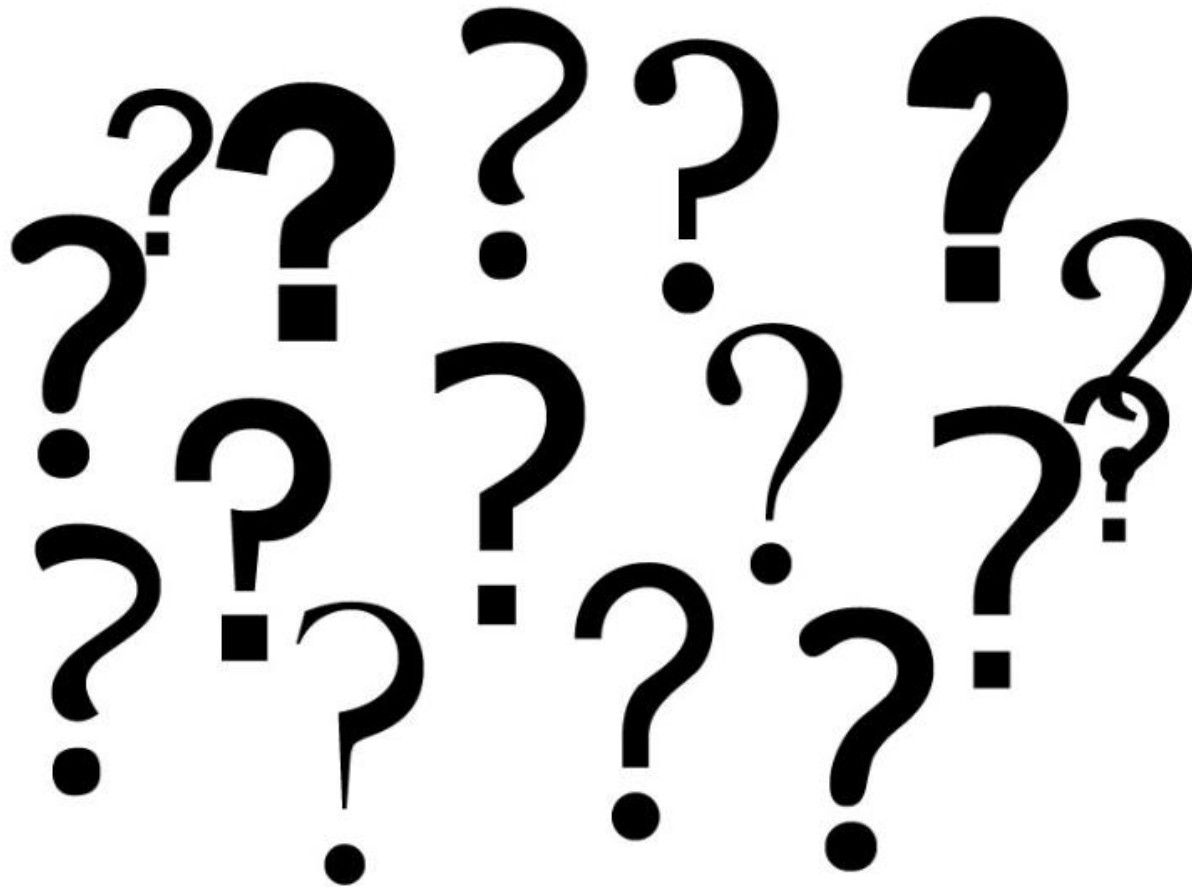
OCCUPATIONAL HEALTH AND SAFETY ACT



High Heels in the Workplace

- An employer shall not require a worker to wear footwear with an elevated heel, unless required for safety
- Exemption for a worker who works as a performer in the entertainment and advertising industry

Questions?





250 Yonge Street, Suite 3300
Toronto, Ontario, Canada M5B 2L7

416.603.0700 Phone

416.420.0738 24 Hour

416.603.6035 Fax

www.sherrardkuzz.com



LEXPERT RANKED



-
- *The information contained in this presentation/article is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This presentation/article is current as of **January 11, 2018** and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared, but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP (or other counsel).*