



Carleton Place & District Chamber of Commerce

BILL 148 – What You Need to Know

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As a boutique labour and employment law firm, Emond Harnden has represented the interests of management in both official languages for over 30 years.

Originally rooted in the Ottawa community, we have grown to represent employers in all territories and provinces of Canada.





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ABOUT

Jock graduated from Queen's University Law School in 1994, and has been called to the bars of both Ontario and British Columbia.

Jock has extensive litigation experience in both criminal and employment law. He is a former criminal and labour litigation lawyer with the Department of Justice. Jock has conducted numerous trials and arbitrations throughout his legal career and has appeared in the federal and provincial appellate courts on appeals and judicial review applications. Fluently bilingual, Jock has been working with a diverse clientele in the private, public, education and not-for-profit sectors. He provides advice on all aspects of labour and employment law. Jock is also an engaging and experienced speaker on a wide variety of legal topics.

Jock enjoyed a 12-year career in the CFL with the Montreal Alouettes, Ottawa Rough Riders and Toronto Argonauts, and continues to be a part of the league as an on-air football analyst for TSN.

Jock is very active in the community and participates in countless fundraising and charitable events.



- Bill 148 – *Fair Workplaces, Better Jobs Act, 2017*
 - Amendments to the *Employment Standards Act* (“ESA”)
 - Amendments to the *Labour Relations Act* (“LRA”)

- Questions and Answers



Status of Bill 148

- Introduced in the Legislature on June 1, 2017
- Standing Committee (“Committee”) held public hearings in 10 cities across the province in July, and also received written submissions
- Committee referred an amended version of the Bill for 2nd reading on September 12, 2017
- Currently being debated at 2nd reading



Bill 148

ESA Amendments



Minimum Wage Increases

- Minimum wage rates to be increased over the next 18 months
 - Increased from \$11.40 to \$11.60/hour on October 1, 2017
 - Increasing to \$14/hour on January 1, 2018
 - Increasing to \$15/hour on January 1, 2019

- Implications:
 - Increased labour costs (31.5% increase in less than 18 months)
 - Potential “ratcheting up” effect for employees currently making \$15/hour or slightly more
 - Implications for recruitment practices, performance management, etc.
 - Potential job losses or lay-offs



Equal Pay Regardless of Employment Status

- Employers will have to eliminate differences in pay based on employment status (e.g. full-time v. part-time wage grids) unless an exception for wage differences applies
- Ensure any differences in pay rates are based on:
 - Seniority system;
 - Merit system;
 - System that measures earnings by quantity or quality of production; or
 - Factors other than sex or employment status
- Committee added an example of a seniority system
 - Includes a system that provides for different pay based on the accumulated number of hours worked



Equal Pay Regardless of Employment Status

- For unionized employers, Committee shortened transitional period
- If collective agreement in place on April 1, 2018, contains provisions that permit different rates of pay based on employment status in conflict with the ESA, collective agreement will prevail until the earlier of:
 - Date the agreement expires; or
 - January 1, 2020
- Don't wait - start considering how to adjust wage grids now!
- May need to negotiate new pay grids with union



Increased Vacation Leave and Vacation Pay

- Paid vacation – extended to 3 weeks vacation leave (and 6% vacation pay) after 5 years of service with same employer
- Applies to vacation entitlement years that end on or after December 31, 2017 (not retroactive)
- To take vacation in periods of less than 1 week, employee must submit written request and employer must agree
- Changes to take effect **January 1, 2018**



- Calculation of public holiday pay simplified:

$$\text{Public Holiday Pay} = \frac{\text{Total regular wages in pay period}}{\text{\# of days worked in pay period}}$$

- Comes into force on January 1, 2018



- Committee amendments:
 - Revert back to *status quo* regarding substitute days off where employees work on a public holiday
 - Added new record keeping requirements – employers must provide written statement to employee which sets out:
 - Public holiday on which employee will work; date of substitute holiday; and, date statement was provided to the employee
- Implications of new formula for calculating public holiday pay
 - Significant increase in entitlement for employees who work less than full-time or irregular hours



- New rules take effect on January 1, 2019
- Request to change schedule or work location
 - Employee entitled to request after 3 months service
 - Employer must discuss request, give reasons for accepting or denying
 - No reprisal
- Three Hour Reporting Rule
 - Employees must be paid 3 hours at regular rate, if:
 - regularly work more than 3 hours per day
 - required to work but given less than 3 hours of work
 - also applies to employees on call
 - Not required if employee was not available to work longer
 - Does not apply if employer unable to provide work due to fire, lightening, power failure, storms or similar causes beyond employer's control



- Right to refuse work or on call assignment where less than 96 hours notice (4 days)
 - Employee can refuse shift or on-call without repercussions
 - Does not apply where work is:
 - To deal with an emergency;
 - To remedy or reduce a threat to public safety; or
 - Other prescribed reasons

- Shift/on call cancellation – 3 hours pay where cancelled with less than 48 hours notice
 - Does not apply where:
 - Employee's work is weather-dependent; and
 - The employer cannot provide work for weather-related reasons; or
 - Other prescribed reasons



Personal Emergency Leave

- Effective January 1, 2018, all employees will become entitled to:
 - 2 paid days; and
 - 8 days without pay
- Must work for employer for 1 week before entitled to 2 paid days
- Employer not entitled to require employee to provide a medical note

- Where employees already given paid sick days, must determine whether that constitutes a greater right or benefit:
 - Number of days of leave provided?
 - Leave with pay or without pay?
 - Reasons why leave can be taken?

- Legal challenges likely regarding when employer can require a medical note, greater right or benefit



Pregnancy Leave

- In case of miscarriage or still birth – extended from 6 to 12 weeks.
Effective January 1, 2018

Parental Leave

- Extended to match federal amendments to EI Act
 - Up to 61 or 63 weeks of unpaid job protected leave (currently 35 or 37 weeks); total combined pregnancy and parental leave increases from 52 to 78 weeks.
Effective on proclamation
- Under EI Act – employees will be able to opt for the following parental leave benefits:
 - 35 weeks at 55% of average insurable weekly earnings (Jan. 1/17 max \$543 per week)
 - 61 weeks at 33% of average weekly insurable earnings (Assume: max \$326 per week)



Domestic or Sexual Violence Leave

- New category of leave without pay where employee or a child of the employee experiences domestic or sexual violence, or the threat of either
- Eligibility:
 - 13 consecutive weeks of employment;
 - For specified purposes listed in the Act; and
 - Entitled to up to 10 days and 15 weeks of leave in a calendar year



- Effective January 1, 2018
- Family Medical Leave
 - Increased from 8 weeks in a 26 week period to 27 weeks in a 52 week period
- Child Death Leave
 - 104 weeks
 - Death no longer required to be crime-related
- Crime-Related Child Disappearance Leave
 - Increased from 52 weeks to 104 weeks



New Record Keeping Requirements

- Several new record keeping requirements added by Standing Committee to an Employer's existing obligations, e.g.:
 - Includes records on when employees are scheduled to work, hours actually worked, cancellation of shifts – for purposes of enforcing new scheduling rules
 - New requirements regarding vacation pay entitlements



Other Important Changes

- ❑ Increased penalties for employers who misclassify employees as “independent contractors”
- ❑ Director of Employment Standards can no longer refuse to investigate an ESA claim due to insufficient information from the claimant
- ❑ Increased penalties for non-compliance with the ESA
 - Maximum administrative monetary penalties for non-compliance to be increased to maximum of \$1,500
 - Employment Standards Officers (ESOs) to be given discretion in assessing penalties within a range
- ❑ Government to hire up to 175 new ESO’s to enhance enforcement



Bill 148

LRA Amendments



A Union's Access to Employee Information

- Applies to non-certified workplaces/employees
- A union can apply for an order requiring an employer to provide a list of employees
 - An employee list includes names, phone numbers, and personal email addresses
- A union must show at least 20% support of the proposed bargaining unit
- Committee amendments require employers and unions to ensure the security/confidentiality of the list
- Deemed to comply with privacy legislation



Request for Educational Support after Notice to Bargain

- Educational support provision added by Committee
- Applies following a union's notice to bargain
- May apply where there is first contract arbitration
- Either party can apply for educational support in labour relations/collective bargaining
- A first collective agreement mediator will make educational support available



Consolidation of Bargaining Units After Certification

- Committee removed proposed amendment to allow OLRB to review and change structure of existing bargaining units where it determines they are no longer appropriate
- New OLRB power to consolidate units after a successful certification remains
- The goal is to develop effective collective bargaining relationships



Acquisition of Bargaining Rights

- No Committee amendments, but significant change
- Introduces card-based certification in specific industries (building services, home care and community services, temporary help agency sector)
- Unions can be certified without a vote
- May be no open organizing campaign to allow employers to communicate with employees about unionization
- The remedial certification provisions have been amended



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