Bill 148: *Fair Workplaces, Better Jobs Act, 2017*

Introduction

In 2015, the Government of Ontario announced that it would undertake a review of the Province's workplace legislation. The project was led by two Special Advisors and dubbed the "Changing Workplaces Review". The Honourable John Murray was selected as one of the Advisors. Murray is a former Justice of the Ontario Superior Court, a former prominent management-side labour and employment lawyer, and is a current labour arbitrator. Michael Mitchell, the second Advisor, is a former union-side labour and employment lawyer and worked at one of the largest union-side firms in the country. Murray and Mitchell released their final recommendations in May 2017 after two years of work.

The Final Report contained 173 recommendations to change both the *Employment Standards Act* and the *Labour Relations Act*. It is important to note that The Changing Workplaces Review was not mandated to address the province's minimum wage and as such, no comprehensive review of the province's minimum wage exists. A week after the Final Report was released, the Ontario Liberals introduced the "*Fair Workplaces, Better Jobs Act, 2017*", also known as "Bill 148". The Act, which received Royal Assent on November 27, 2017, adopted many of the recommended changes made in the Review as they are, but to the surprise of many, goes beyond the recommendations made in key areas at the expense of employers.

Why the legislation is controversial

Given the political landscape and timing of its release, Bill 148 has widely been criticized as an attempt at "vote pandering" by the Ontario Liberals. With the Bill initially being released almost exactly a year before the next provincial election and set to take effect in early 2018, it is easy to understand the skepticism. When looked at in concert with other recent measures introduced by the Wynne government such as rent control, short-term hydro rate cuts, exponential increases to the maximum fines under the *OHSA* and offering raises to public sector union's without seeking concessions, it is hard to claim otherwise.

One of the most controversial aspects of Bill 148, the sharp rise in the province's minimum wage, was not included in the Changing Workplaces Review. The Review was not mandated to address minimum wage issues in Ontario, yet it was lumped in with the recommendations and will arguably have the greatest impact of any of the proposed changes on employers. The impact of new legislation is potentially devastating on businesses across the province. Aside from a 23% hike to minimum wage with only 6 months of notice and an overall increase of 32% over the next 18 months, Bill 148 adds a number of other costly provisions to Ontario's workplace laws, including: parity in pay between part-time and full-time employees, an increase in minimum vacation entitlements, paid emergency leave days, and easier certification for unions.

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Part I: Amendments to the *Employment Standards Act*

Minimum Wage Effective: January 1, 2018	
Current Legislation	**General minimum wage** until September 30, 2017 - $11.40 **General minimum wage** as of October 1, 2017 - $11.60 **Student minimum wage** until September 30, 2017 - $10.70 **Student minimum wage** as of October 1, 2017 - $10.90 **Liquor Servers' minimum wage** until September 30, 2017 - $9.90 **Liquor Servers' minimum wage** as of October 1, 2017 - $10.10 **Homeworkers' minimum wage** until September 30, 2017 - $12.55 **Homeworkers' minimum wage** as of October 1, 2017 - $12.80
Bill 148	**General minimum wage** from January 1, 2018 to December 31, 2018 - $14.00 **General minimum wage** as of January 1, 2019 - $15.00 **Student minimum wage** from January 1, 2018 to December 31, 2018 - $13.15 **Student minimum wage** as of January 1, 2019 - $14.10 **Liquor Servers' minimum wage** from January 1, 2018 to December 31, 2018 - $12.20 **Liquor Servers' minimum wage** as of January 1, 2019 - $13.05 **Homeworkers' minimum wage** from January 1, 2018 to December 31, 2018 - $15.40 **Homeworkers' minimum wage** as of January 1, 2019 - $16.50 **Student minimum wage** – This rate applies to students under the age of 18 who work 28 hours a week or less when school is in session, or work during a school break or summer holidays. **Liquor Servers' minimum wage** – This hourly rate applies to employees who serve liquor directly to customers or guests in licensed premises as a regular part of their work. "Licensed premises" are businesses for which a license or permit has been issued under the *Liquor Licence Act*. If a server does not directly serve liquor to customers and regularly receives

	tips, they will be entitled to the general minimum wage. **Homeworkers' minimum wage** – Homeworkers are employees who do paid work in their own homes. For example, they may sew clothes for a clothing manufacturer, answer telephone calls for a call centre, or write software for a high-tech company. Students of any age, including those under the age of 18 years who are employed as homeworkers must be paid the homeworker's minimum wage. Regular wages is now defined as: wages other than overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, personal emergency leave pay, termination pay, severance pay and termination of assignment pay and entitlements under a provision of an employee's contract of employment.
Impact on Employers	An increase to the minimum wage is one of the key amendments made in Bill 148. The amendments call for a 23% increase to the minimum wage within 6 months and an overall increase of 32% within 18 months. For businesses in Ontario, this will have a tremendous impact on competitiveness and operating costs. Businesses will be forced to either cut costs or pass along the increases to customers. In the ever increasing global economy that we live in, this will prove difficult for many employers.
Recommendations	One of the biggest criticisms of implementing such a large hike in the minimum wage is that it will encourage automation. Employers may want to look into whether any jobs can be done through automation. If it is possible, employers may look into reducing pension or benefit entitlements going forward in order to "claw-back" some of the increases that workers will be entitled to. In the restaurant industry, in order to maintain a competitive advantage, a "no-tipping" policy can be implemented. Finally, and perhaps inevitably, employers will be forced to either pass along the cost increases to customers or absorb the financial hit.

Equal Pay for Equal Work (Wage Parity Between Part-Time and Full-Time Employees) **Effective: April 1, 2018**	
Current Legislation	The ESA currently does not provide any provisions on wage parity between contract, part-time, and full-time employees.
Bill 148	Where employees perform substantially the same kind of work in the same establishment, and their performance requires substantially the same skill, effort and responsibility, and their work is performed under similar working conditions, they shall all be paid the same, regardless of whether they are part-time, full-time, or contract employees. A difference in the rate of pay will only be allowed if pay is based on a seniority system or merit system, a system that measures earnings by quantity or quality of production, or any other factor other than sex or employment status. Bill 148 deletes the added definition of "seniority system" and no longer defines "seniority systems" to include those that base seniority on accumulated work hours. Further, the phrase "substantially the same" has been clarified to mean "substantially the same not necessarily identical". The proposed changes 'grand-father' wage rates that are contained in a collective agreement so long as it is in effect prior to April 1, 2018. Any new collective agreement that comes into effect after April 1, 2018 must comply with the parity in pay legislation. Bill 148 guarantees an employee the right to request about the wage rate paid to another employee and a review of their wages if the employee does not believe that wage parity has been achieved. The employer must provide either a wage adjustment or written reasons for declining the adjustment.
Impact on Employers	While on its face this may seem like a devastating provision for employers, there are ways to get around the equal pay for equal work requirements. Structuring wages in a way that is compliant with the provision should allow employers to maintain wage disparities between contract, part-time, and full-time employees.
Recommendations	Employers may wish to implement an hours-based seniority system to maintain the status quo. By doing this, employees that work less hours will not be entitled to the same rate of pay as employees who work more hours. The provision does not extend parity to benefits or pension plan entitlements either, so disparity in overall income can be

	created through increased benefits or pension plan contributions. Employers that utilize temporary help agencies will want to review their current contracts to ensure compliance with the new legislation and may want to consider if temporary help still provides a competitive edge for their business. It would be wise for employers that are currently in the collective bargaining process with a part-time bargaining unit to try and ratify an agreement for as long a term as possible and before April 1, 2018. If a collective agreement has a disparity in pay between part-time and full-time employees, the longer the agreement is in place for, the longer the employer can maintain the disparity.
Scheduling and Short-Notice Schedule Changes Effective: January 1, 2019	
Current Legislation	The ESA does not currently regulate scheduling. There is no requirement for employers to post schedules in advance and there are no consequences for schedule changes that are done on short notice. The only protection that the ESA does provide in its current form is for an employee that typically works more than three hours being sent home after working less than three hours. In those cases, the employee must be paid at the minimum wage for three hours of work.
Bill 148	The language, "is required to present himself or herself" used in the current legislation stating that the rule is engaged where "an employee who regularly works more than 3 hours a day is required to present himself or herself for work but works less than three hours…." has been reinserted into the Bill. Where an employee that regularly works more than three hours per shift and is called in, but ultimately works less than three hours, despite being available to work longer, the employer shall pay the employee wages for three hours, equal to the greater of the following: • for three hours of work at their regular rate of pay; or, • the sum of (i) the amount that the employee earned for the time worked and (ii) wages equal to the employee's regular rate for the remainder of the time. Under this amendment, if an employee is entitled to some form of premium pay while actually working, the employee would remain entitled to that premium.

If an employee's shift is cancelled within 48 hours of its start, the employee is entitled to payment of "wages for three hours", calculated as the greater of the same two amounts described above.

If an employee is "on call" and is not called in, or is called in to work for less than three hours, the employee will be entitled to three hours of pay at their regular rate. The three hour rule calculation will require the payment of "wages for three hours", calculated as the greater of the same two amounts descried above.

An employer is not required to pay an employee wages equal to the employee's regular rate for three hours of work if the employer cancels the employee's scheduled day of work or scheduled on call period within 48 hours before the time the employee was to commence work or commence being on call if:

- the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work;
- the nature of the employee's work is weather-dependent and the employer is unable to provide work for the employee for weather-related reasons; or
- the employer is unable to provide work for the employee for such other reasons as may be prescribed.

There is also a new exception to the minimum on-call pay rule, which will apply where a person is put on call for the purposes of ensuring the continued delivery of essential public services, and the person is not required to work.

An employee can refuse a request to work or be "on call" if the request is made less than 96 hours before the shift is supposed to start. As with the minimum on-call pay provisions, the new exception stated above applies here as well to ensure the continued delivery of essential public services, regardless of who delivers those services. This new exception adds to the other three exceptions in the Bill which include: to deal with an emergency, to remedy or reduce a threat to public safety, and other reasons as prescribed.

"Emergency" in this section now includes:

a) a situation or impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise; or

	b) a situation in which a search and rescue operation takes place. Bill 148 also adds several new record-keeping requirements for employers. Employers are required to keep a record of: • The dates and times that the employee worked. • If the employee has two or more regular rates of pay for work performed for the employer and, in a work week, the employee performed work for the employer in excess of the overtime threshold, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay. • The dates and times that the employee was scheduled to work or to be on call for work, and any changes made to the on call schedule. • Any cancellations of a scheduled day of work or scheduled on call period of the employee and the date and time of the cancellation.
Impact on Employers	This provision further limits the flexibility that employers currently have. The amendment makes scheduling for employers more difficult and requires employers to provide a schedule to employees at least 4 days in advance. There are further cost consequences for making changes to the schedule on short notice. In addition, rather than paying an employee for three hours of work at the minimum wage, employers must now pay employees for three hours of work at their regular wage.
Recommendations	For businesses with unpredictable labour requirements, such as in the retail and hospitality industries, employers may wish to schedule fewer employees in order to control costs. In workplaces, such as restaurants, where employees are regularly sent home early, it may make more financial sense to understaff rather than overstaff. If Bill 148 is passed, Employers should do their best to provide their employees with a schedule at least 4 days in advance. Failure to do so could result in employees declining work without facing reprisal. If an employee is scheduled to work and they are not needed for three hours or more, it would not make financial sense to end their shift early; the costs would be identical to keeping them at work. Under the old legislation, employers could end an employee's shift early and pay them only minimum wage for up to 3 hours. Under the proposed legislation, since they

	are being paid at their regular wage, it would only make sense to keep them at work for 3 hours rather than sending them home early.
Personal Emergency Leave Effective: January 1, 2018	
Current Legislation	The current legislation entitles employees only working in companies with 50 or more employees to 10 personal unpaid emergency leave days. These are job-protected leave days. The current legislation also allows employers to require medical notes to substantiate the need for a paid emergency leave day.
Bill 148	Bill 148 maintains the 10-day entitlement for personal emergency leave days, but now makes it mandatory for **2** of those days to be **paid.** The paid days must be used before the 8 unpaid days. This entitlement extends to all workplaces, not only those with 50 or more employees. However, an employee must have worked for an employer for one week before becoming entitled to the two paid days. Bill 148 further expands the scope of Personal Emergency Leave days to apply to time off work as a result of sexual or domestic violence experienced by the employee or a family member. If a paid day of leave falls on a day or at a time of day when overtime pay or shift premium would be payable by the employer, the employee is not entitled to overtime pay or shift premium for any leave taken under this section. Another critical blow to employers is that they can no longer require an employee to provide "sick notes" to substantiate any personal emergency leave days. Employers may still request notes, but employees can decline to provide them without fear of reprisal.
Impact on Employers	The biggest impact arising from this portion of Bill 148 is the requirement for 2 sick days to be paid for all employees, regardless of workplace size. In addition to the increase in minimum wage, this pushes further costs onto employers. In small workplaces, an extra entitlement to 10 days of personal emergency leave may also force employers to alter staffing levels to cover off the increased time off. Waiving the requirement for medical notes in practice may have no substantial impact on employers. Providing medical

	notes for personal emergency leave days has been a widely controversial topic in recent years, with many doctors opposing the practice, claiming that it places an unnecessary burden on the healthcare system. It has been common practice for employees to obtain a doctor's note after the fact, and when they are no longer showing any symptoms. As a result, waiving the requirement to provide a medical note may not result in any real change to workplaces. In fact, for employers that currently pay for medical notes, this may result in a minor cost savings.
Recommendations	Our recommendation for employers to address these changes is similar to the advice provided for wage increases, as ultimately this will result in an increased cost for employers. Employers may want to look into whether any jobs can be done through automation. If it is possible, employers may look into reducing pension or benefit entitlements going forward in order to "claw-back" some of the increases that workers will be entitled to. In the restaurant industry, in order to maintain a competitive advantage, a "no-tipping" policy can be implemented. Finally, and perhaps inevitably, employers will be forced to either pass along the cost increases to customers or absorb the financial hit. For employers that currently employ fewer than 50 employees, staffing increases may be necessary in order to ensure a continuation of coverage as a result of the increased time off that will be taken by employees. Employers are encouraged to review any paid leave, sick leave and/or paid personal day policies to ensure there are no overlapping paid days being offered to employees.
Temporary Help Agencies Effective: January 1, 2018	
Current Legislation	There is no corresponding provision under the existing legislation.
Bill 148	Under the equal pay for equal work provisions, Bill 148 would require assignment employees to be paid the same as employees of the agency's client. Equal pay is mandated for assignment employees where they: perform substantially the same work in the same establishment; utilize substantially the same skills and effort and have the same responsibilities;

	and the work is performed under similar conditions. If an assigned employee inquires about their rate of pay in comparison to non-assigned employees, the agency would have an obligation to reply and the employee cannot face reprisal for asking. Assignment employees may also request an adjustment to their pay without fear of reprisal. If the agency declines to adjust pay, they must provide written reasons for doing so. Bill 148 requires that a temporary help agency shall (a) record the number of hours worked by each assignment employee for each client of the agency in each day and each week; and (b) retain a copy of any written notice provided to an assignment employee. If Bill 148 is passed in its current state, as of January 1, 2018, an employee that is on an assignment that was scheduled to last 3 months or more must be given one week's written notice of termination or pay in lieu of notice. If working notice is provided, the agency may be able to offer one week of reasonable work during the notice period.
Impact on Employers	For agencies, these provisions are in place to discourage any long term placements of temporary employees. These provisions will be incredibly detrimental to the temporary help agency industry. For employers that hire agency workers, these provisions are a blow to workplace flexibility. Bill 148 makes it increasingly more difficult to hire temporary agency workers.
Recommendations	For employers that hire agency workers, it may no longer be cost-effective to continue on with the practice. As no cost savings will be experienced, it may make more sense to hire non-agency workers directly. For agencies, the equal pay provisions are a very worrying change to Ontario's employment legislation. One of the added values of contracting with a temporary help agency is the cost-savings often associated with their workers. Temporary agencies will now need to maintain a competitive advantage by either recruiting superior workers (that will cost the same to the client employer) or simplifying the hiring process for companies that need temporary workers.

Internships **Effective: January 1, 2018**	
Current Legislation	Under the *Employment Standards Act*, unpaid interns are not classified as employees only if six stated conditions related to the receipt of training are met. These include: 1. The training is similar to that which is given in a vocational school. 2. The training is for the benefit of the individual 3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained. 4. The individual does not displace employees of the person providing the training. 5. The individual is not accorded a right to become an employee of the person providing the training. 6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training.
Bill 148	Bill 148 does not make any substantial changes to the existing legislation, but it provides some clarity as to when interns will be considered employees. Under Bill 148, if an intern receives training from an employer, and the training is for a skill that is used by the employees of the employer, then the intern will be considered an employee for the purposes of the ESA. An exemption exists where the intern performs the work under an approved program through an educational institution.
Impact on Employers	Employers will no longer be able to legally train interns outside of a formal process associated with an educational institution.
Recommendations	For employers that wish to continue on the practice of implementing interns in their workforce, it would be advised to connect with an educational institution to ensure that any such program is compliant with the ESA. Non-compliance with the amended legislation could result in having to pay wages for the time period in which an intern

	was with a company.
Paid Vacations Effective: January 1, 2018	
Current Legislation	Under the current legislation, there is no extra entitlement for employees that have been with an employer for five years or more. All employees are entitled to two weeks of vacation and vacation pay of 4%.
Bill 148	Bill 148 increases the mandatory vacation time for employee's that have been with the same employer for five years or more to three week's per year and vacation pay to 6%.
Impact on Employers	For most employers, this will have very little impact on their operations, as vacation for employees with five years of service or more will typically match or exceed the proposed change. However, for many small businesses that do not already offer these proposed entitlements, it will represent an increased overall cost, much like many other provisions of Bill 148.
Recommendations	For most employers, this provision will not have a significant impact on their operations. For those that it does affect, our recommendations are similar to the advice provided for wage increases, as ultimately this will result in an increased cost. Employers may want to look into whether any jobs can be done through automation. If it is possible, employers may look into reducing pension or benefit entitlements going forward in order to "claw-back" some of the increases that workers will be entitled to. In the restaurant industry, in order to maintain a competitive advantage, a "no-tipping" policy can be implemented. Finally, and perhaps inevitably, employers will be forced to either pass along the cost increases to customers or absorb the financial hit.

Public Holiday Pay **Effective: January 1, 2018**	
Current Legislation	The current method of calculating holiday pay is to take an employee's wages in the four weeks before the week of the holiday and dividing that number by 20. This takes into account how often an employee works when calculating holiday pay. Under the current legislation, an employer can choose to pay an employee premium pay for working on a holiday, or they can pay the employee their regular wages for the day and substitute another paid day off.
Proposed Legislation	Bill 148 introduces a new method for calculating public holiday pay. Under this new method, the pay required for holidays is calculated by taking an employee's total amount of regular wages earned in the previous pay period and dividing it by the number of days worked within that same period or if some other manner of calculation is prescribed, the amount determined using that manner of calculation Further, if employees agree to work on a public holiday and are entitled to a substitute holiday, the employer must provide the employee with a written statement which sets out the public holiday on which the employee will work, the public holiday that is being substituted, the date that is the substitute holiday and the date on which the statement was provided to the employee.
Impact on Employers	For employers with part-time workers or workers that work irregularly, this will likely result in higher wages being paid out for public holidays.
Recommendations	None.

Overtime Pay Effective: January 1, 2018	
Current Legislation	Under the current legislations, an employer must pay an employee at one and one-half time his or her regular rate for work in excess of 44 hours per week or another prescribed threshold if applicable.
Bill 148	For employees with more than one role and paygrade with an employer, Bill 148 gets rid of the "blended rate" that is currently used for overtime pay and instead requires the overtime rate to be based on the rate of pay for the work being performed during the overtime hours.
Impact on Employers	While this impact is likely to be minor on employers, it is another restriction on scheduling flexibility that employers may want to take into account. To reduce costs, employers may want to structure a dual-rate employee's schedule in a way that entitles them to overtime pay at their lower rate rather than their higher rate.
Recommendations	If overtime is expected to be incurred, employers should structure an employee's schedule in a way that entitles the employee to overtime pay at their lower wage rate.
Electronic Agreements Effective: January 1, 2018	
Current Legislation	This is not covered by the current legislation, but is a practice that has already been adopted by the Ministry of Labour.
Proposed Legislation	Bill 148 allows any written agreement required by the ESA to be accepted electronically. This simply codifies an existing practice.
Impact on Employers	Employers are now able to rely on an electronic ESA-related agreement.
Recommendations	Continue to increase use of technology to implement agreements and improve record-keeping.

Crown Employees Effective: January 1, 2018	
Current Legislation	Under Ontario's currently employment legislation, Crown and Crown agency employees were not subject to the ESA provisions mentioned above.
Bill 148	Bill 148 eliminates the exemption of the ESA provisions that do not apply to Crown or Crown agency employees. Employees of these two groups will now be subject to the ESA provisions regarding: hours of work; minimum wage; overtime; vacation; and public holidays.
Impact on Employers	This will not have a significant impact on employers. While it may make it more attractive for talent to work for the Crown, this is unlikely. As Bill 148 is provincially proposed legislation, it can be presumed that the province will provide the funding to accommodate the added expenses to their own agencies.
Recommendations	None.
Family Medical Leave Effective: January 1, 2018	
Current Legislation	The current legislation entitles employees for up to eight weeks of unpaid family medical leave in a 26-week period. This needs to be certified by a qualified health practitioner for the leave to be engaged.
Bill 148	Bill 148 increases an employee's entitlement to family medical leave to 28 weeks within a 52-week period. The amendments also expanded the definition of "qualified health practitioner" to include physicians, registered nurses with an extended certificate of registration (or an individual with equivalent qualifications) and prescribed health practitioners.
Impact on Employers	This change was expected given the amendments to the *Employment Insurance Act*, which will cover 26 weeks of compassionate care benefits.

Recommendations	If an employee must provide care to a family member with a serious medical condition with a significant risk of death, employers must provide up to 28 weeks of leave within a 52-week period. This is likely a practice that most employers already follow. Employers should review their existing policies to ensure compliance with the increased leave entitlement.
Domestic or Sexual Violence Leave Effective: January 1, 2018	
Current Legislation	The ESA in its current state does not provide for any provisions on domestic or sexual violence leave.
Bill 148	Under this new section, an employee who has been employed for at least 13 consecutive weeks will be entitled to up to 10 days and up to 15 weeks of job-protected leave if the employee or a child of the employee experiences domestic or sexual violence or the threat of domestic or sexual violence. The first **5** days of this leave will be **paid**. The payment will generally be equal to the wages that the employee would have earned had they not taken the leave, although an alternate calculation is provided for employees who receive performance-related wages, such as commissions or a piece work rate. The domestic or sexual violence leave must be taken for one of the following purposes: • to seek medical attention for a physical or psychological injury or disability caused by the domestic or sexual violence; • to obtain services from a victim services organization; • to obtain psychological or other professional counselling; • to seek legal or law enforcement assistance; or, • any other prescribed purposes. Additionally, if a paid day of leave falls on a day or at a time of day when overtime pay, a shift premium, or both would be payable by the employer,

	a) the employee will not be entitled to more than his or her regular rate for any leave taken under this section; and, b) the employee will not be entitled to shift premium for any leave taken under this section. This leave also requires employers to establish mechanisms to ensure confidentiality of records related to a leave, and to specify a limited range of permitted disclosures.
Impact on Employers	The impact on employers would arise from the requirement of 5 paid days of leave, as this pushes further costs onto employers. The requirement on employer to have mechanisms in place to ensure confidentiality further increases the burden on employers to employ resources that protects confidentiality of employees that take this leave.
Recommendations	Amendments to current leave policies to include this new leave.
Critical Illness Leave (section 49.4) Effective: December 3, 2017	
Current Legislation	The current legislation contains a leave entitled "Critically Ill Child Care Leave, which provides up to 37 weeks of leave within a 52-week period for a parent or legal guardian to provide care and support to a critically ill child under the age of 18. The current legislation also establishes a range of conditions on the leave, and allows for an extended leave under certain circumstances.
Bill 148	Bill 148 replaces the "Critically Ill Child Care Leave" to "Critical Illness Leave". The new Critical Illness Leave will encompass two basic entitlements: • a leave of up to 37 weeks in a 52-week period for an employee to provide care or support to a critically ill minor child (i.e. who is under 18 years of age) who is a family member of the employee; and, • a leave of up to 17 weeks in 52-week period for an employee to provide care or support to a critically ill adult who is a family member of the employee. While, the range of "family members who can take the leave is quite broad, as it encompasses spouses, parents, grandparents, siblings, aunts and uncles, and more, there remains a range of conditions to quality for this leave. For

	example, the leave is only available to employees who have been employed for at least 6 consecutive months and the new provision regulates such matters as time limits on the leave and extensions of the leave.
Impact on Employers	These provisions expand the scope of accommodation required from employers. Employers could be required to temporarily replace employees that are on critical illness leave with other temporary or part-time employees and at the same time ensure that the rights of these temporary employees are protected.
Recommendations	Amendments to current policies to provide for this amended leave.
	Pregnancy Leave Effective: January 1, 2018
Current Legislation	Under the current legislation, a pregnant employee is entitled to a leave of absence without pay unless her due date falls fewer than 13 weeks after she commenced employment. An employee may begin her pregnancy leave no earlier than the earlier of a) the day that is 17 weeks before her due date and b) the day on which she gives birth.
Bill 148	The primary change is an extension of the leave available for employees who suffer a still-birth or miscarriage from 6 weeks to 12 weeks. The amendments also include a definition of "legally qualified medical practitioner" for pregnancy leave purposes. This amendment extends the scope of who can provide a certificate stating the due date (if such a certificate is requested by an employer) or who can provide a certificate stating the due date (if such a certificate is requested by an employer) or who can certify that the employee is unable to perform her duties because of complications during the pregnancy, to include nurses with extended certificates of registration and midwives.
Impact on Employers	Although a minor change, employers will be required to update their workplace policies to accommodate this provision.
Recommendations	See above.

Parental Leave Effective: December 3, 2017	
Current Legislation	Under the current legislation, an employee's parental leave ends 35 weeks after it began, if the employee also took pregnancy leave and 37 weeks after it began otherwise. An employee may begin parental leave no later than 52 weeks after the child is born or comes into the employee's custody, care and control for the first time.
Bill 148	The primacy change is an increased leave entitlement from 35 weeks to 61 weeks (for employees who took a pregnancy leave), and from 37 weeks to 63 weeks (for employees who did not take a pregnancy leave). Further, the section is amended to provide that a parental leave may begin no later than 78 weeks after the child is born or comes into employee's custody, care and control for the first time. The new amendments also clarify that the extended parental leave is only available where the date of birth or the date that the child first comes into custody, care and control of the parent is on or after the effective date of the new provisions.
Impact on Employers	This new change places a further burden on employers to accommodate employees for a longer period of time and fill their positions with temporary employees if need be.
Recommendations	Review and amend current parental leave policies to comply with legislation. Review any current "top-up" policies or SUB plans to see if current policies create increased liability given expanded leave entitlement.
Related Employer Effective: January 1, 2018	
Current Legislation	The current legislation requires the entities in question to have some level of common control or ownership.
Bill 148	Bill 148 eliminates the "intent or effect" requirement for businesses to be considered common or related employers. For two entities to be considered related employers under the ESA, Bill 148 only requires them to carry on associated or

	related activities.
Impact on Employers	It remains to be seen how these changes will be interpreted by adjudicators. This may result in an overhaul of how related employer claims are treated, or it may have no measurable impact. For employers that may have gone bankrupt before paying out termination and severance to employees, this legislation is aimed at ending that practice.
Recommendations	Take a 'wait and see' approach. It remains to be seen what impact this change will have.
"Self Help" Requirement Effective: January 1, 2018	
Current Legislation	Current legislation requires employees to raise concerns about ESA violations with their employer first, before filing a complaint with the Ministry.
Bill 148	Bill 148 removes the requirement for employees to raise an alleged contravention with their employer before filing a claim with the Ministry of Labour.
Impact on Employers	Rather than solving issues that may be unknown to the employer, employers and employees must now undergo a bureaucratic process involving that Ministry.
Recommendations	Employers should prepare for an increase in claims as a result of breaches of the ESA. Even if these breaches are unintentional or unknown to the employer, the formal process must now be adhered to.
Independent Contractors Effective: November 27, 2017	
Current Legislation	The current legislation is similar, although employers do not currently bear the burden of proof in independent contractor/employee cases. Under the common law, if a worker is misclassified as an independent contractor, they will attract the same rights under

	the ESA as an employee.
Bill 148	Bill 148 prohibits an employer from treating a person as if they are not an employee when they are an employee. This is aimed at preventing employers from misclassifying workers as independent contractors rather than employees. During an inspection or investigation under the ESA, if an employer claims that a worker is not an employee, they bear the burden of proving their claim.
Impact on Employers	Employers that currently hire independent contractors would be prudent to seek legal advice to see if they are properly classifying the persons that do work for them.
Recommendations	Employers should consult a legal professional to ensure that they are in compliance with the legal standards.
Crime-Related Child Disappearance Leave Effective: January 1, 2018	
Current Legislation	Current legislation allows for up to 52 weeks of leave for crime-related child disappearances.
Bill 148	Bill 148 proposes an increase to crime-related child disappearance leave to 104 weeks of leave. This type of leave is applicable where a child disappears and it is likely to be as a result of a crime. This leave does not apply where the employee is charged with the disappearance or when it is probable that the employee was a party to the crime.
Impact on Employers	This amendment is unlikely to impact the vast majority of employers.
Recommendations	Amend current policies.
Enforcement	
Current Legislation	Not applicable.

Bill 148	While not a legislative change, the government has indicated its intention to hire 170 more Employment Standards Officers in the province.
Impact on Employers	Employers can expect there to be more scrutiny with regards to compliance with the ESA. A substantial increase in the number of enforcement officers signals that the government intends on ensuring that Ontario's employers follow the province's employment legislation.
Recommendations	With an increase in enforcement, employers should be proactive and seek legal counsel to ensure that they are in compliance with the proposed changes to Ontario's employment laws.

Part II: Amendments to the *Labour Relations Act*

Scope and Coverage	
Current Legislation	Under the current legislative framework, certain groups of employees are exempt from the protections of the *Labour Relations Act* – individuals engaged in trapping or hunting, agriculture or horticulture workers, domestic worker employed in a private home, labour mediators and conciliators, and provincial court judges. Additionally, licenced professionals are not classified as employees under the LRA if they are employed in their professional capacity. This includes licenced members of the architectural, dental, land surveying, legal or medical profession entitled to practice in Ontario. Similarly, individuals who exercise a managerial function or are employed in a confidential capacity in matters relating to labour relations will not be considered employees for the purposes of the Act.
Bill 148	Bill 148 does not alter or remove the existing exemptions.
Impact on Employers	The Ministry of Labour has stated that it "will work with affected ministries to remove the exclusions under the *LRA* taking into account ongoing litigation." This statement suggests that while no alterations to the existing exemptions has yet occurred, these changes may still occur moving forward.
Recommendations	Employers should keep informed about continuing developments in this area.
Remedial Certification Requirements Effective: January 1, 2018	
Current Legislation	Currently, remedial certification (i.e. certification without a vote or despite the results of a vote) is only available as an "extraordinary" remedy where certain legal thresholds have been met (section 11).

Bill 148	Under Bill 148, remedial certification becomes the "presumptive remedy" where unfair labour practices have been committed and the Board finds that, as a result, the true wishes of the employees cannot be ascertained by a vote or the employer's actions prevented the union from achieving the forty (40) percent support required for a vote.
Impact on Employers	Employers will need to be much more careful in their approach to communications and other counter-measures taken in response to a union organizing campaign. Failing to do so will more readily now result in an employer "winning the battle but losing the war".
Recommendations	[See above]
Card-Based Certification Effective: January 1, 2018	
Current Legislation	In 1995, Bill 7 eliminated card-based certification and introduced a mandatory voting model. In this model, certification occurs when the union receives the majority of votes. More recently in 2005, Bill 40 reintroduced the practice of card-based certification in the construction industry. Under this model, the Ontario Labour Relations Board will determine whether certification has occurred based on the evidence provided by the union and the employer's response to that evidence.
Bill 148	Bill 148 allows for a trade union to apply for card-based certification if the employer operates in the "business services industry", "home care and community services industry", or "temporary help agency." Bill 148 further extends to the government the power under the *Labour Relation Act* to determine whether employers are eligible for card-based certification. In doing so, the government may further define or clarify the meaning of "business services industry", "home care and community services industry", or "temporary help agency." This means that moving forward card-based certification may be extended to include a broader range of employers.
Impact on Employers	The card-based certification system proposed under Bill 148 appears to mirror the system currently in use in the construction industry. Once an employer receives an application for certification, it must file its response within two days. In this response, the employer will be required to provide the names of employees it believes are in the proposed bargaining unit. The employer may also choose to propose a different bargaining unit than that proposed by the union. If

	so, the employer must include the names of the employees in its proposed bargaining unit. Once the employer's response has been received, the Ontario Labour Relations Board will decide what percentage of the bargaining unit employees are union members as of the date the application was filed. If the union has provided membership evidence for 55% or more of the relevant bargaining unit employees, the Ontario Labour Relations Board may either certify the union or direct a representation vote. Practically speaking, it would require unusual circumstances for the Board to direct a representation vote at this point. One such circumstance may be a "petition" or other statement from employees revoking their membership in the union or challenging the circumstances under which their cards were signed. The application will be dismissed if the union has provided membership evidence for 40% of employees or less. If the membership evidence amounts to between 40% and 55% of the bargaining unit employees the Board must order a representation vote. Additionally, the inclusion of temporary help agencies to industries eligible for card-based certification indicates that the agency, rather than the clients to which employees are provided, is the employer.
Recommendations	Adopt good employer practices, including open communications on workplace matters, to minimize the interest of employees to seek union certification. It is important to note that the Ontario Labour Relations Board is not required to hold a hearing to determine card-based certification applications. Employers must therefore ensure that to respond to certification applications within the two day window. Otherwise, the Board may proceed to certify the union.
First Agreement Mediation and Arbitration Effective: January 1, 2018	
Current Legislation	Under the current statutory framework, either the union or the employer may apply to the Ontario Labour Relations Board for first agreement arbitration. If a displacement application for certification by a competing union or an application for decertification is filed before the Board decides the application for first agreement arbitration, the new application stays the first agreement arbitration proceedings.

Bill 148	Bill 148 adopts the recommendation of the Changing Workplaces Review that first agreement mediation and arbitration must be completed prior to the determination of a new application for decertification or a displacement certification application. Additionally, where the union has given notice of intent to bargain or where there is a first agreement arbitration, amendments permit either party to request educational support in the practice of labour relations and collective bargaining and will require the Minister or first collective agreement mediator to make such supports available. Further, either the union or the employer may apply for the appointment of a first agreement mediator following the issuance of a no board report by the Minister. If such an application has been filed, the Minister is required to appoint a mediator. Once the appointment has been made, a 45-day mediation period will commence. During this period there can be no strike or lock-out. OLRB shall not deal with a decertification or displacement application until 45 days after the Minister appoints a mediator (increased from 20 days). At any time at least 45 days after the Minster has appointed a mediator, and if the parties have not accepted a collective agreement within this period, either party may apply for first agreement arbitration. Pending displacement certification applications or decertification applications will be held in abeyance until the first arbitration mediation and arbitration process has concluded.
Impact on Employers	The amendments in Bill 148 significantly increase the ability of trade unions to secure a collective agreement despite a failure to ratify the agreement. Employees are no longer able to terminate a union's bargaining rights or introduce a new union after the mediation and arbitration process has started. Further, unions will have access to first contract arbitration essentially "on demand", unless it can be demonstrated that the union has been taking unreasonable positions to impasse without justification in bargaining.
Recommendations	Be diligent in trying to conclude a first collective agreement and establish the bargaining relationship.

Union Access to Employee Information **Effective: January 1, 2018**	
Current Legislation	Prior to Bill 148, there was no comparable disclosure requirement.
Bill 148	Bill 148 requires employers to provide, if requested, the union with the names and contact information of employees in the proposed bargaining unit in all applications for certification where the union can demonstrate that it has at least 20% membership support in that unit. This includes card-based certification. The contact information required includes the employee's telephone numbers and personal email addresses if the employer has access to such information. This disclosure is mandatory where the employee has provided the information to the employer. The Board may use its discretion and require that the list also include: • other information relating to the employee, including job title and business address; and, • any other means of contact that the employee has provided to the employer (except for a home address). Further, where an OLRB order directing an employer to provide the Union with an employee list is granted, the confidentiality of the information is to be protected. Amendments required that: • the employer must ensure that all reasonable steps are taken to protect the security and confidentiality of the list, including during its creation, compilation, storage, handling, transportation, transfer and transmission; • the trade union must ensure that all reasonable steps are taken to protect the security and confidentiality of the list, and to prevent unauthorized access to the list; and, • where the list is required to be destroyed, destruction of the list must be in a way that it cannot be reconstructed or retrieved. This requirement does not apply in circumstances where a new union is seeking to displace the existing union in a workplace. The Ontario Labour Relations Board will decide whether at least 20% of the employees in the bargaining unit appear to be union members. If this threshold is met, the Board will instruct the employer to supply the required information. If the threshold is not met the application will be dismissed.

	There is no longer the requirement that the trade union must use the same proposed bargaining unit in a subsequent certification application that it used in its application to obtain the employee list. This would eliminate the need for the union or the employer to litigate the appropriateness of a potential bargaining unit at this preliminary stage. The employer may file a notice of disagreement on the Board if it disagrees with either the union's proposed bargaining unit or the union's estimate of their support among the unit. This notice must be filed within two days of the application. The employer must indicate whether it believes the proposed bargaining unit is appropriate for the purposes of collective bargaining and provide an estimate of the number of employees in the proposed bargaining unit. If the employer has filed a notice of disagreement, the Board will first determine whether the union's proposed bargaining unit is appropriate. If the unit is found to be appropriate, the Board will proceed to consider whether the 20% threshold is met. Otherwise, the application will be dismissed. The application for the disclosure of employee information does not apply to employers in the construction industry. Additionally, it is important to note that unlike when an employer receives notice of a certification application, a request for employee information will not impose a statutory freeze.
Impact on Employers	The new requirement on employers to provide unions with access to employee information raises some concerns. First, this requirement will likely necessitate additional litigation in circumstances where an employer has challenged whether the union has adequately demonstrated that they have met the 20% support threshold that entitles them to this information. This will likely increase the time and expense associated with the certification process. Second, the requirement that employers must disclose the telephone numbers and personal email addresses of all employees based relatively minor union support in the workplace raises concerns as to the privacy rights of employees. Note that under the currently accepted interpretation by the Ontario Labour Relation Board of what amounts to a business in the construction industry, it may be possible for employers to utilize this exemption. The classification of construction industry employer can extend even to employers largely uninvolved in the construction if some employees engage in some level of construction work.
Recommendations	Employers should be diligent to ensure they do not engage in conduct that may be interpreted as "anti-union", especially after a request for employee information has been made. Any such conduct may trigger remedial certification and it is

	likely that employers will face increased union attention following such a request.
Consolidation of Bargaining Units Effective: January 1, 2018	
Current Legislation	Prior to the implementation of Bill 148, the Ontario Labour Relations Board does not have the power to consolidate bargaining units.
Bill 148	Bill 148 now allows an employer and trade union (or council of trade unions) that represents multiple bargaining units to jointly agree in writing to review the structure of the bargaining units. On a joint application of parties, the provisions would allow them to agree to the following changes, subject to the consent of the OLRB: • consolidating bargaining units; • amending descriptions of bargaining units; • making a collective agreement to apply to the consolidated units and terminating the existing collective agreements that applied to the pre-consolidated units; • amending collective agreements, including expiry dates and seniority provisions. ; • terminate the operation of a collective agreement that applied in respect of an existing bargaining unit before the consolidation; and, • permit a party to give notice to bargain collectively. Bill 148 gives additional powers to the Ontario Labour Relations Board to consolidate bargaining units in circumstances where an employer has multiple different units of employees. This power applies even where the different units within the workplace are represented by multiple unions. This change of structure may be made where the pre-existing bargaining units are found to be "no longer appropriate for collective bargaining." In the event that the Board chooses to consolidate units represented by different unions, it may decide which of the

	unions applies to the new unknit. This will accordingly terminate the bargaining rights of the surplus union. The Board will also have the power to determine if the collective agreement will apply to "with or without amendments" to the consolidated unit.
Impact on Employers	This change will likely have little impact on employers; it is concerning that employee choice is sacrificed in favour of efficiency in the collective bargaining process.
Recommendations	Employers should also consider circumstances where they might benefit from a more streamlined bargaining structure and the reduction in multiple bargaining units, sets of negotiations, grievance procedures, etc.
Extending Collective Bargaining Obligation: Building Services Effective: January 1, 2018	
Current Legislation	No corresponding provision under the current legislation.
Bill 148	Bill 148 grants successor rights when building service contracts are retendered. This includes: building cleaning services, food services, and security services. The regulation also extends these rights to other publically funded contracted services.
Impact on Employers	Under the proposed legislation, following the end of a contract for building services if a new producer contracts to provide those services it will be deemed a sale of business. Accordingly, the new service provider will be bound by the existing collective agreement and will be responsible for any outstanding obligations of the previous provider.
Recommendations	Employers who engage in subcontracted work should be mindful that contracting to provide services in certain sectors may result in collective agreement obligations.
Extending Just Cause Requirement for Discipline and Discharge Effective: January 1, 2018	
Current Legislation	No corresponding provision under the existing legislation.

Bill 148	It is important to note that probationary employees are not excluded from this just cause protection. Bill 148 provides that if a trade union is certified as the bargaining agent of employees in a bargaining unit, the employer should not discharge or discipline an employee in that bargaining unit without just cause during the period that begins on the date of certification and ends on the earlier of the date on which a first collective agreement is entered and the date on which the trade union no longer represents the employees in the bargaining unit.
Impact on Employers	The extension of just cause protections under Bill 148 will significantly limit an employer's ability to discipline employees while the collective agreement process is ongoing. This will include the discharge of probationary employees, as there is no such qualification to the just cause protections in this section.
Recommendations	Training for supervisory staff on new rights and obligations. Adopt a progressive disciplinary approach which better meets the "just cause" standard.
Return to Work After Strike or Lock-Out Effective: January 1, 2018	
Current Legislation	Under the existing legislation, if an employee engaging in a lawful strike makes an application in writing to return to work within six months of the commencement of the strike, the employer must reinstate that employer to his or her former position.
Bill 148	Bill 148 eliminates the existing six-month cap on an employee's right to return to work during a strike.
Impact on Employers	This will likely have a minimal impact on employers as in most cases issues surrounding return to work are agreed upon by the parties when establishing return to work protocols.
Recommendations	Ensure that those hired during a strike or lockout are informed of the temporary nature of the opportunity.

Ontario Labour Relations Board Expanded Power to Grant Interim Relief **Effective: January 1, 2018**	
Current Legislation	Prior to the implementation of Bill 148, the Ontario Labour Relations Board does not have the power to grant substantive interim relief, save for the power to order interim reinstatement in the face of an employee termination during an organizing campaign.
Bill 148	Bill 148 provides the Ontario Labour Relations Board with the unfettered power to make interim decisions and orders in any proceeding. Further, an interim decision or order need not be accompanied by reasons, written or otherwise.
Impact on Employers	May be used by Unions to stop employers from introducing significant workplace changes.
Recommendations	Ensure that all actions are well documented, based on business needs and, where possible, communicated in advance.