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Bill 148 - Six Months Later – Changes to the
Employment Standards Act, 2000

Angela Wiggins
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CRAWFORD CHONDON & PARTNERS LLP

24 QUEEN ST. EAST, SUITE 500, BRAMPTON, ON L6V 1A3
T 905 874 9343 1 877 874 9343 F 905 874 1384
E info@ccpartners.ca www.ccpartners.ca

BARRIE T 705 719 2107
SUDBURY T 705 805 0174



Bill 148 and the *Employment Standards Act, 2000*

Bill 148, receiving Royal Assent on November 17, 2017, brought along many substantial changes to the *Employment Standards Act, 2000* ("ESA"). These changes took effect on various dates as early as November 27, 2017 and as recently as April 1, 2018. Many of these changes have already had a significant impact on employers and how employers operate their business. A review of five major changes is provided below:

1. Minimum Wage Increase:

The Ontario Provincial Government has continued their mandate of drastically increasing the provincial minimum wage. Since 2014 the minimum wage of \$10.25/hour has been increased on three occasions. The most recent change was an increase on January 1, 2018 to \$14.00/hour was ushered in by Bill 148 and the Bill will require a further increased to \$15.00/hour on January 1, 2019. Needless to say, many business owners will face tough operational decisions to offset the sharp uptick in labour costs.

2. Vacation Entitlement

As of January 1, 2018 Bill 148 also increased minimum vacation entitlement to 3 weeks for all employees with 5 years of employment. This impact is likely less severe than many of the other amendments as many employers already offer increased vacation time for long service employees. The increased entitlement to 3 weeks' vacation time will be couple with a corresponding increase in vacation pay, from 4% to 6%.

3. Changes to Leaves of Absence

Bill 148 introduced a variety of amendments to Part XIV of the *ESA*, through increased benefits for existing leaves of absence, while replacing and introducing new leaves of absence. The most drastic amendment is the introduction of partial mandatory paid Personal Emergency Leave.

Personal Emergency Leave:

Prior to Bill 148 the entitlement was limited to larger employers (50+ employees) and provided for 10 days of job protected unpaid leave. As of January 1, 2018 Personal Emergency Leave is available to all employees that have worked at least one week. Furthermore the new provisions requires the **first two (2) days** to be paid, while the remaining eight (8) days are unpaid. In an effort to reduce the burden on the medical system, employees are not required to provide a medical note to substantiate a request for Personal Emergency Leave. This is a significant cost to employers, especially those with a significant work force as it equates to two paid days of leave per calendar year for each employee.

New Domestic Violence/Sexual Assault Leave:

This new job protected leave of absence provides up to 10 days and 15 weeks of job-protected leave each calendar year where the employee has been employed for at least 13 weeks and meets the qualifying provisions which relate to actual events or threats of domestic violence or sexual assault against the employee or an employee's child. **The first 5 days of this leave will be paid.**



Increases to other Unpaid Leaves of Absence:

Family Medical Leave – The previous legislation provided up to eight (8) weeks of unpaid leave within a 26-week period. The amendments, as of January 1, 2018, increased the entitlement to **28 weeks within a 52-week period.**

Critical Illness Leave – The previous legislation provided for “Critically Ill Child Care Leave” and permitted qualifying employees up to 37 weeks of unpaid leave within a 52-week period in order to provide care and support to a critically ill child. Bill 148 re-named the leave and created two different entitlements: up to 37 weeks within a 52-week period to provide care and support for a critically ill child, and up to 17 weeks within a 52-week period to provide care and support to a critically ill adult family member.

Pregnancy and Parental Leave – The Bill 148 amendments have increased the leave related to a still-birth or miscarriage from 6 weeks to 12 weeks. The changes also increase an employee’s potential parental leave from **35 weeks to 61 weeks** if an employee takes a pregnancy leave and from **37 weeks to 63 weeks** for employees who do not take a pregnancy leave. The potential for employees to nearly double the length of their leave could present significant operational issues for employers that must find a way to manage the employee’s absence. Furthermore, an employee that has taken pregnancy leave may be out of the workplace for up to 78 weeks and may require significant re-orientation upon their return. There is also a potential significant financial impact to employers that offer “top-up” benefits to employees during these periods. **Of note, these provisions do not apply to any employees who were on leave as of the date these amendments came into force.**

Crime-Related Child Disappearance Leave – Bill 148 increases the length of the unpaid leave from 52 weeks to up to 104 weeks where a child has disappear and it is likely to be the result of a crime.

4. Equal Pay for Equal Work

As of April 1, 2018 the *ESA* now requires that part-time, casual and temporary employees be paid the same rate of pay as full-time employees when performing substantially similar (defined as “substantially the same but not identical”) work. If performing substantially the same work, pay differences will only be permitted when an employer has implemented a system that permits differentiation of wage rate based on the following: seniority, merit, quantity or quality of production, or, some other objective factor. In addition to creating a new substantial cost to employers that utilize and pay their employees differently based on the character of their employment, these new provisions are likely to have a significant impact on the temporary help and labour supply industry. The inability to pay temporary staff a lower rate of pay greatly reduces the incentive for employers to use these services. **Of note, equal pay for equal work does not include group benefit coverage or pensions.**

5. New Scheduling Obligations

Prior to Bill 148 the *ESA* did not regulate scheduling. As of **January 1, 2019** sweeping changes will be brought in which significantly impact costs for on-call hours and cancelled shifts, while also creating the rights with respect to declining a shift.

As of January 1, 2019 employees will be entitled to at least 3 hours of pay where an employee is on-call and not called into work, or attends for a 3+ hour shift and works fewer than 3 hours. This presents a significant cost increase to employers that operate 24-hour businesses and provide for on-call



services. Previously many employers would manage their 24-hour business through rotating on-call shifts, and pay employees a base amount if “on-call” but not called to work during the scheduled period. The new legislation will require all employees be paid a minimum of 3 hours regular pay whether they are “called in” or not. Employees will also be entitled to 3 hours of pay if their scheduled shift is cancelled within 48 hours of the intended start time, unless:

- 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.

The new scheduling provisions will provide employees the right to refuse shifts where asked to work fewer than 4 days (96 hours) before the requested shift or on-call period.