

***Making Ontario Open For Business Act***  
**Executive Summary**  
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In 2017, Ontario's Liberal Government introduced and passed Bill 148, referred to as the "Fair Workplaces, Better Jobs Act, 2017" ("Bill 148") which made sweeping changes to Ontario's employment and labour landscape.

In October Ontario's Conservative Government introduced Bill 47, the *Making Ontario Open For Business Act, 2018* ("Bill 47") which, when passed, will in large part return Ontario's employment and labour laws to their pre-Bill 148 status.

This article provides a very high level overview of the proposed changes to the Ontario *Employment Standards Act, 2000* ("ESA") only. For more detailed information, including information about the proposed changes to the *Labour Relations Act, 1995* please visit [www.sherrardkuzz.com](http://www.sherrardkuzz.com)

**If passed in their present form, the following amendments to the ESA will take effect on the later of January 1, 2019 and the date of Royal Assent:**

**Minimum Wage**

- Minimum wage will remain at \$14 come January 1, 2019.
- Recent increases to the minimum wage will not be rolled back.
- There will be a 33-month pause in minimum wage increases with annual increases tied to inflation starting in 2020.

**Scheduling**

Bill 47 repeals all of the scheduling provisions that were to come into force on January 1, 2019. Specifically:

- The right to request a change to schedule or work location after an employee has been employed for at least three months.
- A minimum of three hours' pay for being on-call if the employee is available to work but is not called in to work, or works fewer than three hours.
- The right to refuse a request or demand to work or to be on-call on a day an employee is not scheduled to work or to be on-call with fewer than 96 hours' notice.

- The requirement to pay three hours' pay in the event of cancellation of a scheduled shift or an on-call shift within 48 hours before the shift was to begin.
- All of the record-keeping provisions introduced to address these new scheduling provisions.

### **Three Hour Rule**

Bill 47 introduces an amendment to the “three hour rule” similar to that which was included in Bill 148. Where an employee is regularly scheduled to work more than three hours a day attends work but works fewer than three hours, even if available to work longer, the employee will be entitled to the greater of (i) the amount earned for the time worked plus the employee’s regular rate for the remainder of the three hours, and (ii) the employee’s regular rate for three hours of work.

### **Personal Emergency Leave**

One of more significant proposed amendments, Bill 47 repeals the controversial changes to the *ESA* Personal Emergency Leave (“PEL”) provisions introduced by Bill 148. Specifically, Bill 47 removes PEL entirely from the legislation replacing it with three separate unpaid leaves designed to address the specific situations to which PEL applied prior to Bill 148. An employee with at least two consecutive weeks of employment will have the following entitlements:

- **Sick Leave:** up to three days per calendar year for the employee’s illness, injury or medical emergency.
- **Family Responsibility Leave:** up to three days per calendar year for the illness, injury, medical emergency or urgent matter related to a prescribed family member.
- **Bereavement Leave:** up to two days per calendar year because of the death of a prescribed family member.

For each of these leaves, an employer may request an employee provide evidence reasonable in the circumstances to verify entitlement to the leave (including a medical note from a qualified health practitioner, reversing Bill 148’s prohibition on requiring medical documentation to support a PEL leave). Bill 47 also expressly recognizes that, if an employee takes a paid or unpaid leave under an employment contract in circumstances that would otherwise entitle the employee to one of these *ESA* leaves, the employee is deemed to have taken leave under the *ESA* as well.

### **Vacation**

Bill 47 makes no change to the vacation entitlements introduced by Bill 148. After five years of employment an employee remains entitled to three weeks of vacation time and 6% vacation pay.

### **Public Holiday Pay**

Under Bill 47, public holiday pay is calculated based on the formula in effect pre-Bill 148. An employee’s public holiday pay is equal to the total amount of the regular wages earned and vacation

pay payable to the employee in the four weeks before the work week in which the public holiday occurred, divided by 20.

### **Employee Misclassification**

Bill 47 amends the employee misclassification section introduced by Bill 148. Where there is a dispute as to whether an individual has been misclassified as an independent contractor, the employer will no longer bear the burden of proving the individual is not an employee. Rather, the individual who claims to be an employee will have the onus to prove his/her employee status.

### **Equal Pay for Equal Work**

Other than the requirement for equal pay on the basis of sex (which was included in the *ESA* prior to Bill 148), an employer will no longer be required to provide equal pay based on employment status (part-time, casual, and temporary). Bill 47 also repeals the requirement a temporary help agency pay an agency employee at the same rate of pay as an employee of the client performing substantially similar work.

### **Penalties for Contravention**

Administrative penalties for contraventions of the *ESA* will be reduced from \$350/\$700/\$1500 to \$250/\$500/\$1000.

Once again, we invite you to visit [www.sherrardkuzz.com](http://www.sherrardkuzz.com) for more information concerning these proposed changes, as well as proposed changes to the Ontario *Labour Relations Act*.