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# The Winds of Change: Coming Changes to the *Employment Standards Act* and the *Labour Relations Act*

## Coffee Talk Webinar Series

André Nowakowski  
September 13, 2017

# Agenda

1. Background of proposed changes
2. Proposed *Employment Standards Act* changes
3. Proposed *Labour Relations Act* changes



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# Background of Proposed Changes

# Timeline

- **February 2015:** Government announces its plan to review issues and trends affecting workers and employers in the modern workplace
- **May 2015:** Public consultations begin
- **July 2016:** Special Advisors publish the Interim Report, summarizing input received and seeking additional submissions
- **May 2017:** Government releases “The Changing Workplaces Review: An Agenda for Workplace Rights Final Report”, containing 173 recommendations to amend the ESA and LRA
- **May 2017:** Government introduces Bill 148
- **June 2017:** Bill 148 passes First Reading
- **Summer 2017:** Bill 148 referred to the Standing Committee on Finance and Economic Affairs to review throughout the summer
- **August 2017:** Committee adopts amendments to Bill 148
- **September 2017:** Bill 148 receives Second Reading



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# Proposed Changes to the *Employment Standards Act*

# General Minimum Wage

Date	Amount
Current	\$11.40/hour
October 1, 2017	\$11.60/hour
January 1, 2018	\$14.00/hour
January 1, 2019	\$15.00/hour

- Separate minimum wages for students, servers, and hunting and fishing guides remain, but will increase by the same percentage
- Separate minimum wage for liquor servers only applies if the employee regularly receives tips from his or her work

# Equal Pay for Equal Work

**Effective: April 1, 2018**

- Employees will be entitled to equal pay from an employer regardless of a difference in employment status (i.e. full-time, part-time, casual, seasonal), sex, or their affiliation with a temporary help agency
- The work performed must be substantially the same and in the same establishment as a regular employee of the employer
- Employers may still differentiate pay based on seniority, merit quantity or quality of production
- Employees may inquire about wage rates without fear of reprisal

# Scheduling

**Effective: January 1, 2019**

- Employees will be entitled to a minimum of three hours' pay at the regular rate of pay if:
  - A shift is less than three hours;
  - A shift is cancelled within 48 hours of its start time; or
  - A worker is on call and not called in to work
- Employers will not be required to pay an employee a minimum of three hours' pay if the reason for the shorter shift or shift cancellation was beyond the employer's control (i.e. fire, power failure, storms, weather-dependent businesses)
- Employees will have the right to refuse a work or on-call assignment with less than four days' notice, unless the work is to deal with an emergency or to remedy or reduce a threat to public safety



# Requests to Change of Schedule

**Effective: January 1, 2019**

- Employees will be able to request changes to their schedule (i.e. increase/decrease in hours, days worked) or work location after three months of employment
- Employers must discuss these requests with the employee and either grant them or provide reasons for a denial

# Paid Vacation

**Effective: January 1, 2018**

- Employees will be entitled to a minimum of three weeks of vacation and 6% vacation pay after five years of service

# Public Holiday

**Effective: January 1, 2018**

- Holiday pay will be based on the employee's average working day in the pay period preceding the holiday
- Employers must retain certain records where employees work on a public holiday and are entitled to a substitute holiday

# Overtime Pay

**Effective: January 1, 2018**

- Employees with two or more rates of pay with an employer will be paid 1.5 times the regular rate for the work being performed in that hour

# Personal Emergency Leave

**Effective: January 1, 2018**

- All employees will be entitled to **ten days** of personal emergency leave per year, regardless of the size of the employer, the first two days of which must be paid
- Employees must have worked for at least one week before becoming entitled to the two paid days
- Previously, only employers with fifty or more employees were required to provide emergency leave
- Employers may require evidence of entitlement to these days, but cannot require a doctor's notice

# Leaves of Absence

**Effective: January 1, 2018**

- Employees will be able to take a family medical leave for up to 27 weeks
  - Currently, employees are only able to take 8 weeks
- Employees will be able to take an unpaid leave of up to two years if the employee's child dies or if there is a crime-related child disappearance
  - Currently, employees are entitled to two years of unpaid leave where there is a crime-related death of the employee's child, and up to one year of leave with respect to a crime-related disappearance of a child

# Leaves of Absence

**Effective: January 1, 2018**

- Employees will be entitled to a new standalone leave for domestic or sexual violence
  - Employees who have been employed for at least 13 consecutive weeks are entitled to an unpaid leave of absence where that employee or the employee's child experiences domestic or sexual violence or the threat of sexual or domestic violence
- Employees who suffer a still-birth or miscarriage will be entitled to 12 weeks of pregnancy leave (rather than 6) after the pregnancy loss occurs
- The length of parental leaves will increase by a total of 26 weeks to 61 weeks for employees who took a pregnancy leave and 63 for those who did not

# Temporary Help Agencies

**Effective: April 1, 2018**

- Employees from temporary help agencies must be paid equally to permanent employees of the client of the temporary help agency
- If a temporary work assignment was scheduled to last for more than three months and is terminated before the end of its term, the temporary help agency must provide the employee with one week's notice (or pay in lieu thereof) unless another assignment of at least one week is offered to the employee
- Temporary help agencies must retain a copy of any written notice provided to an assignment employee relating to the termination of their assignment



# Joint Liability for Related Employers

**Effective: January 1, 2019**

- There will be increased potential for multiple organizations to be considered one employer and found jointly and severally liable under the ESA
- There will no longer be the requirement to show an “intent or effect” to undermine the ESA when determining whether related businesses should be treated as one employer

# Classification of Employees

- Employers will be prohibited from treating anyone who is considered an employee as though they are not an employee
- This prohibits employers from improperly characterizing individuals as independent contractors rather than employees
- Employers bear the burden of showing that an individual is not an employee
- Dependent contractors have not been included in the definition of an employee

# Record Keeping for Employers

- Employers will be required to document information regarding:
  - Employee scheduling
  - Agreements to work public holidays
  - Leaves of absence
  - Employee vacation time and pay
  - Any cancellations of a scheduled day of work
  - Documents related to an employee taking the new domestic or sexual violence leave
- This documentation must be retained for five years, rather than three as is currently required under the ESA



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# **Proposed Changes to the *Labour Relations Act***

# Card-Based Certification

**Effective: Six months after Bill 148 becomes law**

- Trade unions in the building services, home care and community services, and temporary help agency industries will be able to apply for card-based certification

% of Employees in Bargaining Unit who are Members of the Union	Result
< 40%	Certification application dismissed
41% - 55%	OLRB orders representation vote
> 55%	Certification application approved OR representation vote ordered

# Automatic Remedial Certification

**Effective: Six months after Bill 148 becomes law**

- The OLRB will automatically certify a trade union where there has been a contravention of the LRA (i.e. unfair labour practice) by the employer which resulted in the union not being able to obtain 40% support from the employer's employees

# First Agreement After Certification

**Effective: Six months after Bill 148 becomes law**

- Where the employer and the union are unable to effect a first collective agreement, amendments to the LRA will now provide for first collective agreement mediation, followed by first collective agreement mediation-arbitration where the mediation does not result in an agreement
  - Currently, the LRA provides only for first collective agreement arbitration
- Mediation or arbitration applications will be determined before decertification applications

# Disclosure of Employee Information

**Effective: Six months after Bill 148 becomes law**

- A union may apply to the OLRB for an order directing an employer to provide the union with a list of employees and their contact information
- The union must demonstrate evidence of membership from at least 20% of the employer's employees
- Employers and unions must ensure that all reasonable steps are taken to protect the security and confidentiality of the list



# Review of Bargaining Unit Structure

**Effective: Six months after Bill 148 becomes law**

- The OLRB will have broad discretion to review and consolidate bargaining units to make it easier for collective bargaining in industries where one employer has different bargaining units
- The OLRB will be able to:
  - consolidate the bargaining unit;
  - amend any certification order or description of a bargaining unit;
  - order which collective agreement applies; and
  - amend provisions of a collective agreement

# Successor Rights

**Effective: Six months after Bill 148 becomes law**

- Successor rights will be extended to apply to the retendering of building services contracts (i.e. cleaning services, food services and security services)
- Any existing bargaining rights and collective agreements applying to such work will transfer to the successful bidder
- The government has the ability to pass regulations that will apply this to other types of service providers that received public funds, such as hospitals, municipalities, school boards, and long term care facilities

# Just Cause Protection

**Effective: Six months after Bill 148 becomes law**

- Employees will enjoy just cause protections from the moment the union is certified, rather than from the date of the first collective agreement
- Probationary employees are not excluded from this protection

# Reinstatement After Strike

**Effective: Six months after Bill 148 becomes law**

- Employees will have the right to reinstatement at the conclusion of a strike or lockout



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**Questions?**

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