

Overview of Bill 148 for Construction Employers

Ed Snetsinger – Tuesday, February 27, 2018

*Peterborough Construction Association, Peterborough
Chamber of Commerce and Peterborough & The Kawarthas
Home Builders Association*



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Agenda

- How Did We Get Here?
- *Employment Standards Act*
 - Equal pay
 - Vacation pay
 - Scheduling
 - Personal Emergency Leave and other leaves
- *Labour Relations Act*
- Questions

How Did We Get Here?

- A view among some that there is a culture of employer non-compliance
- A call for greater assets and heightened efforts at enforcement
- “*Vulnerable Workers*” and “*Precarious Employment*” become terms of art

Changing Workplaces Review

- Special Advisors

- Michael Mitchell

- Honorable John C. Murray

- Motivating purpose

- Determine how the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995* can be reformed to better protect workers while supporting business in our changing economy

Legislative Status

- 1st Reading – June 2017
- Referred to Standing Committee:
 - Public Meetings across Ontario – July 2017
 - Clause by clause review – August 2017
- 2nd Reading – September and October 2017
- Referral back to Standing Committee – November 2017
- Royal Assent – November 27, 2017

Changes to Employment Standards Act, 2000

Increases to Minimum Wage

■ October 2017

□ \$11.60 per hour

■ January 2018

□ \$14.00 per hour (+20.7%)

■ January 2019

□ \$15.00 per hour (+7.1%)

■ October 2019

□ Back to COLA adjustments

Equal Pay for Equal Work

(April 1, 2018)

- A part-time, seasonal or casual employee is entitled to be paid the same wage as a ‘comparable’ full-time employee
- Can be paid differently if based on:
 - Seniority system (including hours-based seniority system)
 - Merit system (that is objective)
 - Quantity/Quality of production
 - Other objective factor

Equal Pay for Equal Work

(April 1, 2018)

- An employee has the right to:
 - Request information about the wage rate paid to another employee
 - Request a review of his/her wages rate and employer must either provide a wage adjustment or a written explanation why there will be no adjustment
 - Protection against reprisal

Temporary Help Agency Employees

(April 1, 2018)

- Paid equally to permanent employees of the temporary help agency client
- Can be paid differently if based on any factor other than sex, employment status or temporary help agency employee status
- Temporary help agency to provide one weeks' notice when assignment scheduled to last longer than 3 months is terminated

Equal Pay for Equal Work

(April 1, 2018)

- Bill 148 temporarily “grand-fathers” wage rates contained in a collective agreement in effect as of April 1, 2018 until the earlier of:
 - Expiry of the agreement; or
 - January 1, 2020
- Any new collective agreement made or renewed after April 1, 2018 must comply with the equal pay requirements

Vacation and Public Holidays

(January 1, 2018)

■ Paid Vacation

- ❑ 3 weeks' vacation time and 6% vacation pay after 5 years of service with the same employer
- ❑ Now consistent with most provinces

■ Public Holiday Pay

- ❑ “Simplifies” the formula for calculating public holiday pay
- ❑ Average regular daily wage

Public Holidays

(January 1, 2018)

- Pre-2018, holiday pay was calculated by:

Regular wages in 4 weeks prior to holiday work week

20

- Example: Employee works each Saturday for 8 hours at \$20.00/hour

$$\frac{\$20 \times 32 \text{ hours}}{20} = \$640$$

20

\$ 32.00 in public holiday pay

Public Holidays

(January 1, 2018)

- Now, holiday pay is calculated by:

Regular wages in pay period prior to holiday

Days worked by the employee in the pay period

- Example: Employee works each Saturday for 8 hours at \$20.00/hour (bi-weekly pay period)

$$\underline{\$20 \times 16 \text{ hours} = \$320}$$

2

\$ 160.00 in public holiday pay

Public Holidays

(January 1, 2018)

- Options for “construction employees”*
- An employee is exempt from the public holiday pay provisions if he or she receives:
 - At least 7.7% of his hourly wage for vacation and holiday pay (if less than 5 years)
 - At least 9.7% of his or her hourly wage for vacation and holiday pay (if 5 years or more)

* Not available for all employees of a construction employer – only “construction employees”

Scheduling

(January 1, 2019)

- An employee is entitled to be paid for at least 3 hours where:
 - Scheduled to work more than 3 hours but attends works and works less
 - An entire scheduled day of work is cancelled within 48 hours of its start
 - On call and not called to work, or called to work for fewer than 3 hours

Scheduling

(January 1, 2019)

- The wage entitlement for 3 hours of pay shall be calculated based on the greater of:
 - The amount the employee earned for the time worked, plus wages equal to the employee's regular rate for the remainder of the time; or
 - The employee's regular rate for 3 hours of work

Scheduling

(January 1, 2019)

- An employee also has the right:
 - To refuse a shift if request made with fewer than 96 hours' (4 days') notice
 - To request a change to work location or work schedule (after 3 months of employment)

Scheduling

(January 1, 2019)

■ Exemptions include:

□ No entitlement to three hours of pay for a cancelled day of work or on call period where:

■ Extraordinary circumstances (fire, lightening, power failure, storms, or similar causes beyond the employer's control)

■ Weather-dependent work

■ These exemptions will be important in construction

Scheduling

(January 1, 2019)

- Bill 148 temporarily “grand-fathers” scheduling requirements contained in a collective agreement in effect as of Jan 1, 2019 until the earlier of:
 - Expiry of the agreement; or
 - January 1, 2020
- Any new collective agreement made or renewed after Jan 1, 2019 must comply with the scheduling requirements

Employee Misclassification

(Royal Assent – November 2017)

- Prohibit misclassification of independent contractors
- Subject to penalties, prosecution, conviction and monetary penalties
- Employer onus in the event of a dispute

Personal Emergency Leave

(January 1, 2018)

- 50 or more employee threshold eliminated
- 10 personal emergency leave days per year
 - First two (2) personal emergency leave days are paid
 - Employee must be employed for at least one week
- Employer can request evidence “reasonable in the circumstance” to support need for PEL but **cannot** request doctor’s note

Personal Emergency Leave

(January 1, 2018)

■ Common questions:

- What can an employer ask for if an employee calls in citing a flooded basement/car trouble?
- What happens if an employer already provides its employees with paid days for such things as illness, bereavement, *etc.*?
- An employer provides 5 paid sick days and an employee calls in sick for the 3rd time in the year – can the employer ask for a doctor's note?

Personal Emergency Leave

(January 1, 2018)

- Options for “construction employees”*
 - Provide two paid PEL days and eight unpaid PEL days; or
 - Provide 0.8% extra on hourly wage for personal emergency pay
 - Still entitled to 10 **unpaid** PEL days
- A risk/reward business decision

* Not available for all employees of a construction employer – only “construction employees”

Other Leaves

(January 1, 2018)

■ NEW:

□ Domestic or Sexual Violence Leave

- Each year, the first 5 days of the leave are paid

□ Critical Illness Leave (replaces and expands Critically Ill Child Care Leave)

Other Leaves

(January 1, 2018)

■ EXPANDED:

- Pregnancy Leave and Parental Leave
- Family Medical Leave
- Child Death Leave and Crime Related Disappearance Leave

Record Keeping and Compliance

(January 1, 2018)

■ Record Keeping

□ Increased record keeping obligations to correspond with scheduling and other new entitlements

■ Penalties for non-compliance

□ Increased flexibility around the administrative monetary penalties

□ Publish penalties, description of contravention, date and penalty

Changes to Labour Relations Act, 1995

Key Amendments to the LRA

(January 1, 2018)

- Card-based certification in specific industries
- Remedial certification
- Union access to employee lists
- First contract mediation/arbitration
- Successor rights
- Bargaining unit consolidation
- Enhanced just cause protections and return to work entitlements post-strike

Impact on Construction Industry

- Some of the amendments are not applicable to construction employers:
 - Card-based certification already exists in the construction industry
 - *...But now for the building services industry, the home care/community services industry, and the temporary help agency industry.*
 - Employee list access not provided in construction industry

Remedial Certification

■ Pre-Bill 148

- Board **may** order “remedial certification” or other remedy in cases where employer breaches LRA

■ Post-Bill 148

- Discretion removed
- On a finding violation of the LRA resulting in union’s membership evidence not reflecting true wishes of employees in bargaining unit, the Board **must** order remedial certification

First Contract Mediation/Arbitration

- A union may apply for first contract mediation at any point after a “no board” is issued
- 45 days after a mediator’s appointment, either party may apply for mediation-arbitration
- Board may:
 - Dismiss the application;
 - Order further mediation; or
 - Order the agreement be settled by med-arb

Enhanced Just Cause Protection

- Employee may not be disciplined or discharged without just cause:
 - Between date of certification and the date a collective agreement is entered into; and
 - Between date a lawful strike/lockout begins and the date a collective agreement is entered into
- This protection **includes** probationary employees

Questions?





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