



Do You Have Bill 148 Under Control? Don't Lose Sight of These Key Provisions

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By now, employers are largely familiar with Ontario's Bill 148 and how it has affected employment relations generally by raising the minimum wage, increasing vacation pay and otherwise amending the [Employment Standards Act, 2000](#). For retailers in particular, however, there are additional key changes that have not garnered as much media attention, but they should be given due consideration. In particular, amendments to equal pay for equal work provisions and scheduling requirements will continue to shift the retail experience.

Equal Pay for Equal Work

As of April 1, casual, part-time, temporary and seasonal employees are required to be paid equally to full-time employees when performing the same job for the same employer. These changes also allow employees to request a review of their wages, which employers must respond to with either a pay adjustment or written explanation.

There are exceptions to these provisions — namely seniority, merit, pay by quantity or quality of production or any other factor other than sex or employment status. Therefore, existing pay differentials should not place an employer offside the new provision if one or more of the exceptions apply.

For retailers, these changes will directly impact the hiring of seasonal, temporary employees. Many retailers supplement their ranks during busy holiday seasons, often with temporary employees. As the changes are now in effect, those in charge of hiring and payroll should be conscious of the equal pay for equal work provisions when recruiting seasonal employees in Ontario. If a pay differential exists between these temporary workers and the company's regular, full-time employees, it must be justified by reference to one of the named exceptions. If not, the employer runs the risk of a complaint to the Ministry of Labour, as well as an adverse finding if audited.

Scheduling Changes

Effective Jan. 1, 2019, changes to scheduling requirements will be one of the last Bill 148 amendments to come into force. Briefly, these scheduling changes can be categorized into four groups: (i) the three-hour rule; (ii) on-call work; (iii) rights of refusal; and (iv) cancellation pay.

As of April 1, 2019, a new pay calculation requires employees that regularly work more than three hours per day but are called into work and work less than three hours to be compensated at the greater of: (i)

their regular rate of pay for three hours of work; or (ii) the amount the employee earned for the time actually worked, plus wages equal to the employee's regular rate for the remaining time. Additional pay will also be available to employees who are required to be on call. If an employee is on call but is not actually called in to work or is called in to work for less than three hours, the employee will be entitled to be paid wages for three hours (calculated in the same manner as set out above).

Employees will also have the right to refuse last-minute work requests from employers. More specifically, if an employee is provided with less than 96 hours of prior notice that they are required to work or be on call, the employer's request can be refused. This right can be exercised without reprisal.

Further, employees that have their shifts cancelled with less than 48 hours' of prior notice will be entitled to three hours of pay (calculated in the same way as the three-hour rule set out above). Finally, employees that have been employed with their employer for at least three months will have the ability to request changes to their schedule or work location. When presented with these requests, employers are required to discuss the request with the employee and either grant it or provide reasons for a denial within a reasonable time period.

While there are exceptions that apply to these scheduling changes, such as in cases of emergency or where requests are beyond the employer's control, the vast majority of existing scheduling practices will be impacted.

As a result of the amendments, current hiring and scheduling policies and procedures should be carefully reviewed to ensure workplaces remain ESA-compliant while also meeting operational demands.

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