

<b>TO:</b>	<b>CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING ON JANUARY 23, 2018</b>
<b>FROM:</b>	<b>WILLIAM C. COXHEAD MANAGING DIRECTOR, CORPORATE SERVICES AND CHIEF HUMAN RESOURCES OFFICER</b>
<b>SUBJECT:</b>	<b>Changes to the <i>Employment Standards Act, 2000</i> and the <i>Labour Relations Act, 1995</i> - Bill 148</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Corporate Services and Chief Human Resources Officer, this Report **BE RECEIVED** for information.

<b>BACKGROUND AND PURPOSE</b>
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The purpose of this Report is to provide general information regarding the recent changes to the *Employment Standards Act, 2000* (the “*ESA*”) and the *Labour Relations Act, 1997* (the “*LRA*”) as a result of Bill 148 – Fair Workplaces, Better Jobs Act, 2017 which received Royal Assent on November 27, 2017.

This Report will provide an overview of the key changes to the *ESA* and *LRA* as well as potential implications for the Corporation.

<b>CHANGES TO THE <i>EMPLOYMENT STANDARDS ACT, 2000</i></b>
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Below is a summary of the key changes to the *ESA* along with the corresponding effective dates. For ease of reference and to review all of the changes, the updated *ESA* can be found at <https://www.ontario.ca/laws/statute/00e41>.

**Key Changes Effective November 27, 2017**

- **Persons who are employees must be treated as employees**

Section 5.1 was added to clarify that an employer cannot treat a person who is an employee of the employer as if the employee is not an employee.

**Key Changes Effective December 3, 2018**

- **Parental Leave**

Section 49 (1) provides for increased parental leave from 35 weeks to 61 weeks for an employee who takes pregnancy leave and from 37 weeks to 63 weeks for an employee who does not take pregnancy leave.

- **Critical Illness Leave**

Section 49.4 was amended to replace the previous leave which was limited to a child under the age of 18. This section now provides an unpaid leave of up to 37 weeks in a 52 week period to provide care for a critically ill minor child who is a family member of the employee and an unpaid leave of up to 17 weeks in a 52 week period for an employee to provide care or support to a critically ill adult who is a family member of the employee.

In order to qualify for this leave, the employee must be employed for at least six consecutive months. The employee must also provide a certificate from a qualified health practitioner that states that the individual is critically ill and requires the care or support of one or more family members and sets out the period during which the adult requires the care or support. The list of individuals for whom the leave can be taken include:

- the employee's spouse,
- a parent, step-parent or foster parent of the employee or the employee's spouse,
- a child, step-child or foster child, of the employee or the employee's spouse,
- a child under legal guardianship of the employee or the employee's spouse
- a brother, step brother, sister or step sister of the employee
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- a brother-in-law, step-brother-in-law, sister-in-law, or step-sister-in-law of the employee
- a son-in-law, or daughter-in-law of the employee or the employee's spouse
- an uncle or aunt of the employee or the employee's spouse
- a nephew or niece of the employee or the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- a person who considers the employee to be like a family member, provided the prescribed conditions if any are met
- any individual prescribed as a family member

### **Key Changes Effective January 1, 2018**

- **Records**

Section 15(1) was amended to add the following as records that the employer is required to keep for each employee.

- The dates and times the employee worked
- If the employee has two or more regular rates of pay for work performed for the employer and, in a work week, the employee performed work for the employer in excess of the overtime threshold, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay.

- **Minimum Wage**

Section 23.1 was amended to provide for a minimum wage rate of \$14.00 per hour effective January 1, 2018 for most employees.

- **Overtime – two or more regular rates**

Section 22(1.1) provides that where an employee has two or more regular rates of pay, the employee is entitled to be paid overtime at the rate of pay which applies to the work being performed.

- **Public Holiday Pay**

Section 24(1) is amended to provide for a different method for calculating public holiday pay. Under this new section, public holiday pay shall be calculated based on "*the total amount of regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that period*". A different calculation is provided for employees who were not employed in the pay period prior to the public holiday.

Section 28 (2.1) was added and provides that certain information be given to an employee if a day is substituted for a public holiday. In that case, a written statement must be provided to the employee which sets out the following:

- The public holiday on which the employee will work
- The date of the day that is substituted for the public holiday
- The date on which the statement is provided to the employee

- **Vacation**

Section 33 provides for vacation as follows:

- At least two weeks after each vacation entitlement year that the employee completes, if the employee's period of employment is less than five years
- At least three weeks after each vacation entitlement year that the employee completes, if the employee's period of employment is five years or more

Section 35.2 provides for the following vacation pay:

- 4% if the employee's period of employment is less than five years
- 6% if the employee's period of employment is five years or more

- **Leaves of Absence**

**Pregnancy Leave:** Section 47 was amended to provide for an increase in pregnancy leave in cases of miscarriage or still-birth to 12 weeks.

**Family Medical Leave:** Section 49.1(2) was amended to provide for an increase in family medical leave of up to 28 weeks. In addition, Section 49.1(3) was amended to expand the list of individuals for whom the leave can be taken to include:

- the employee's spouse,
- a parent, step-parent or foster parent of the employee or the employee's spouse,
- a child, step-child or foster child, of the employee or the employee's spouse,
- a child under legal guardianship of the employee or the employee's spouse
- a brother, step brother, sister or step sister of the employee
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- a brother-in-law, step-brother-in-law, sister-in-law, or step-sister-in-law of the employee
- a son-in-law, or daughter-in-law of the employee or the employee's spouse
- an uncle or aunt of the employee or the employee's spouse
- a nephew or niece of the employee or the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- a person who considers the employee to be like a family member, provided the prescribed conditions if any are met
- any individual prescribed as a family member

**Child Death Leave:** The *ESA* was amended to create two separate leaves from the former crime related child death or disappearance leave. Section 49.5 provides for an unpaid leave of up to 104 weeks if a child of the employee dies. The employee must be employed for at least six consecutive months.

**Crime-Related Child Disappearance Leave:** The *ESA* was amended to create two separate leaves from the former crime related child death or disappearance leave. Section 49.6 provides for an unpaid leave of up to 104 weeks if a child of the employee disappears and it is probable, considering the circumstances that the child disappeared as a result of a crime. The employee must be employed for at least six consecutive months.

**Domestic or Sexual Violence Leave:** Section 49.7 was added to provide for a leave of absence if the employee or a child of the employee experiences domestic or sexual violence, or the threat of domestic or sexual violence, and the leave of absence is taken for the purposes outlined below:

- To seek medical attention for the employee or the child of the employee in respect of a physical or psychological injury or disability caused by the domestic or sexual violence.
- To obtain services from a victim services organization for the employee or the child of the employee
- To relocate temporarily or permanently
- To seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence
- Such other purpose as may be prescribed

The employee may take up to 10 days of leave and up to 15 weeks of domestic or sexual violence leave. The first five days of the leave in each calendar year must be paid leave and the remainder unpaid leave. To be eligible for this leave, an employee must be employed with the employer for at least 13 consecutive weeks.

**Personal Emergency Leave:** Section 50 of the *ESA* provides that an employee may take ten personal emergency leave days in each calendar year. Previously, all ten of these days were unpaid. Effective January 1, 2018, the first two personal emergency leave days must be paid, provided the employee has worked for the employer for at least one week. Personal emergency leave for the purposes of the *ESA* includes a leave of absence because of any of the following:

- A personal illness, injury or medical emergency of the employee.
- The death, illness, injury or medical emergency of certain prescribed relatives of the employee, the employee's spouse, or certain prescribed relatives of the employee's spouse.
- An "urgent matter" that concerns certain prescribed relatives of the employee, the employee's spouse, or certain prescribed relatives of the employee's spouse.

Section 50 was also amended to provide that an employer cannot require an employee to provide a certificate from a qualified health practitioner as evidence to support entitlement to personal emergency leave.

### **Key Changes Effective April 1, 2018**

- **Equal Pay for Equal Work – Employment Status**

Section 42.1 was added to provide for the following:

- (1) *No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,*
- (a) *They perform substantially the same kind of work in the same establishment;*
  - (b) *Their performance requires substantially the same skill, effort and responsibility; and*
  - (c) *Their work is performed under similar working conditions.*

#### *Exception*

- (2) *Subsection (1) does not apply when the difference in rate of pay is made on the basis of,*
- (a) *A seniority system;*
  - (b) *A merit system;*
  - (c) *A system that measures earnings by quantity or quality of production; or*
  - (d) *Any other factor other than sex or employment status.*

In addition, there are provisions that set out the process to be used for employees to inquire regarding equal pay for equal work and for employers to respond to such inquiries.

### **Key Changes Effective January 1, 2019**

- **Records**

Section 15(1) was amended to add the following as records that the employer is required to keep for each employee:

- The dates and times the employee was scheduled to work or to be on call for work, and any changes made to the on call schedule
- Any cancellations of scheduled day of work or scheduled on call period of the employee, and the date and time of the cancellation
- The number of hours the employee worked in each day and each week
- The information contained in each written statement given to the employee as follows:
  - statement of wages on termination of employment as set out in section 12.1

- statement regarding substitute day for a public holiday as set out in section 27(2.1), 28(2.1), 29(1.1) and 30 (2.1)

- **Changes to Schedule or Work Location**

Part VII.1, section 21.2 was added to provide employees who are employed for at least three months the ability to make requests for changes in their schedule or work location.

- **Scheduling Provisions**

Part VII.2 was added which provides for the following:

- Section 21.3 provides for a minimum of three hours pay for employees who regularly work more than three hours per day and present themselves for work but work less than three hours. There are exceptions in circumstances of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work.
- Section 21.4 provides for employees to receive three hours of pay when they are on call and/or if they are on call and come in to work but work less than three hours. There are exceptions where the on-call is required for continued delivery of essential public services and the employee on call was not required to work. Regarding the effective date for this change, if there is a collective agreement in effect on January 1, 2019 and it contains provisions regarding on-call, if those provisions conflict with the *ESA* provisions, the collective agreement will prevail until the collective agreement expires or January 1, 2020 whichever comes first.
- Section 21.5 provides that employees may refuse to be on call on a day they were not scheduled to work or be on call if the request or demand by the employer is made less than 96 hours before the time he or she would commence work or on call. There are exceptions in circumstances of an emergency, to remedy or reduce a threat to public safety, to ensure the continued delivery of essential public services, regardless of who delivers the services, and other reasons that may be prescribed. Regarding the effective date for this change, if there is a collective agreement in effect on January 1, 2019 and it contains provisions regarding on-call, if those provisions conflict with the *ESA* provisions, the collective agreement will prevail until the collective agreement expires or January 1, 2020, whichever comes first.
- Section 21.6 provides that if an employer cancels an employee's scheduled day of work or scheduled on-call within 48 hours of the start of the shift or on-call, the employee shall receive three hours of pay. There are exceptions where the employer cannot 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, if 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 and for such other reasons that may be prescribed. Regarding the effective date for this change, if there is a collective agreement in effect on January 1, 2019 and it contains provisions regarding payment for a cancelled scheduled shift or on-call, if those provisions conflict with the *ESA* provisions, the collective agreement will prevail until the collective agreement expires or January 1, 2020 whichever comes first.

- **Minimum Wage**

Section 23.1 was amended to provide for a minimum wage rate of \$15.00 per hour effective January 1, 2019 for most employees.

<b>CHANGES TO THE <i>LABOUR RELATIONS ACT</i>, 1995</b>
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Below is a summary of the key changes to the *LRA* all of which came into effect **January 1, 2018**. For ease of reference and to review all of the changes, the updated *LRA* can be found at <https://www.ontario.ca/laws/statute/95l01>

- **Employee Lists**

Section 6.1: New access rights of unions to employers' employee lists: Under the new amendment, unions would be able to apply to the Ontario Labour Relations Board ("OLRB" or "Board") for an order directing an affected non-union employer to provide the applying union with a list of its employees (i.e., prospective bargaining unit members) for a proposed appropriate

collective bargaining unit where it demonstrates that it has at least 20% support of said unit. This amendment contains: (i) the process for applying, obtaining and using such a list during an organizational campaign; (ii) rules for the OLRB to follow in determining whether to grant such an order; and (iii) deemed compliance with freedom of information legislation provisions.

- **Remedial Certification**

Section 11: This amendment requires automatic certification of a union as the only remedy available (i.e., one size fits all) where the employer has engaged in conduct contrary to the *OLRA* during an organizing drive where the result is either that any vote would be unrepresentative of the affected employees' true wishes or the union is unable to obtain the requisite 40% support necessary for the ordering of a vote.

- **Addition of "just cause" protection for union workers during bargaining periods**

Sections 12.1 and 80.1(1): Addition of "just cause" protection for union workers during bargaining periods. These additions would result in employers being unable to terminate or discipline employees in an affected bargaining unit without "just cause" from the date a certification (where a first collective agreement) or the date of a legal strike or lockout (where a renewal of an existing collective agreement) to the earlier of the date when the collective agreement is entered or the union no longer represents the employees (i.e., decertified).

- **New OLRB power to review the structure of a bargaining unit(s):**

Section 15.1: New OLRB power to review the structure of a bargaining unit(s). Three preconditions must be met before this power can apply: (1) The employer, trade union or council of trade unions makes an application to the board requesting the review at the time of the application for certification is made, or within three months after the date of certification, (2) a collective agreement has not yet been entered into in respect of the bargaining unit, and (3) the same trade union or council of trade unions that is certified as the bargaining agent of the employees in the bargaining unit already represents employees of the employer in another bargaining unit at the same or a different location. Upon completion of review by the OLRB, it must allow the parties to come to an agreement within a period that the Board considers reasonable, with respect to the determination of bargain units. If the OLRB believes the agreement by the parties would not lead to the creation of bargaining units appropriate for collective bargaining or the parties do not come to an agreement or cannot agree on certain issues, the OLRB may make a variety of orders as outlined in section 15.1(5).

Further, an employer and a trade union or council of trade unions that represents employees of the employer in multiple bargaining units at the same or different location, may agree in writing to review the structure of bargaining units. This section provides that, after such a review, with the consent of the OLRB, the employer and union may take a variety of actions as set out in section 15.1(8).

- **Card-based applications for certification in 3 new industries**

Section 15.3: Newly added to the act for Card-based applications for certification in 3 new industries. The 3 new industries are: Building Services Sector, Temporary Help Agencies and Home Care and Community industries.

- **Alternative dispute remedy added**

Changes to Section 43 and addition of Section 43.1: Addition of alternative dispute remedy of first collective agreement mediation or mediation-arbitration along with the applicable processes.

- **Addition of new successor employer rights**

Sections 69.1 and 69.2: Addition of new successor employer rights would apply to employees working under building service contracts whether employed by building owner or manager.

- **New provisions have removed the 6 month time limit to return to work following the commencement of a strike or lock-out**

Changes to Section 80: Increased return to work rights at the conclusion of a lawful strike or lockout: Employers must return employee to work if they have been on strike and must displace any person who was hired to perform the employee's work while they were on strike.

- **Broadening of the OLRB's powers to make interim orders**

Section 98: Amended to include the power to make interim orders in the OLRB's powers. This amendment will eliminate prior preconditions and considerations for the granting of such orders

and replace them with open-ended powers. No checks and balances of current provision would remain.

- **Voting Procedure**

Section 111(2): Amended to grant the OLRB powers to allow the votes to take place outside the workplace or to conduct votes electronically or by telephone. The Board will also be able to give directions about voting process and arrangements.

- **Increase to the maximum penalties**

Section 104(1): Amended to increase the maximum penalties for an individual who is convicted of an offence under the *LRA* to \$5,000 and for a corporation union, council of unions or employer's organization to \$100,000.

<b>POTENTIAL IMPLICATIONS</b>
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As a result of the changes made to the *ESA* and the *LRA*, Civic Administration has, and will continue to, review and update its practices, procedures and policies as applicable to ensure that it continues to comply with any new and amended statutory requirements. The changes to the *ESA* will likely have the most significant impact on the Corporation from both a financial and operational perspective, including with respect to scheduling, system administration, increased record keeping, and increased wages, leave and benefits where applicable. The financial implications associated with the legislative amendments will be funded through the Corporation's approved operating budget. Impacts of the changes on the approved operating budget will be monitored as part of the City's operating budget monitoring report. As noted above, some of the changes have already come into effect while others will not become effective until January 1, 2019 or January 1, 2020.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
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