



Ontario is Open for Business - the PC Plan Revealed

The day many have been anticipating has arrived. Is it a “good” day or a “bad” day? That depends on your point of view.

On October 23, 2018 Jim Wilson, Ontario’s Minister Responsible for Red Tape and Regulatory Burden Reduction, Laurie Scott, Minister of Labour and Merrilee Fullerton, Minister of Training, Colleges and Universities, [announced](#) a number of regulatory and statutory changes that will, if they are passed, and according to the government, “bring jobs and investment back to our province by lightening the burden on business and making sure that hard work is rewarded”. That is indeed a lofty goal.

More specifically, the Ontario PC Government introduced Bill 47, [Making Ontario Open for Business Act, 2018](#) (“Bill 47” or the “Act”) which, if passed, would repeal many of the Bill 148 [Fair Workplaces, Better Jobs Act, 2017](#) amendments to the *Employment Standards Act, 2000* (“ESA”) and the *Labour Relations Act, 1995* (“LRA”).

This has, not surprisingly, troubled unions and employee advocacy groups who accuse the government of acting in an abrupt manner and without reasonable and transparent consultation of all stakeholders.

As you may recall, the Wynne government introduced Bill 148 after a nearly 2 year consultation process culminating in the release of the [Final Report](#) of the Special Advisors to the *Changing Workplaces Review*, a comprehensive document containing 173 recommendations to amend the *ESA*, *LRA* and the *Occupational Health and Safety Act*.

Bill 47 was introduced without formal public consultation though many employer groups, including the Ontario Chamber of Commerce, have been [pushing for the repeal of Bill 148](#). Of course, the PCs won a clear majority at the ballot box, though that is little comfort to those who oppose sweeping amendments to the *ESA* and *LRA*. Employer groups, on the other hand, are buoyed by the tabling of Bill 47 (see: [Ontario Government Taking Bold Action to Make the Province Open for Business](#)).

In any event, if passed, Bill 47 would make some significant amendments to the *ESA* and *LRA*. Here is a sampling of some of the proposed changes.

Employment Standards Act, 2000

- ◆ Maintain the hourly minimum wage at \$14 and not increase it to \$15 on January 1, 2019. This had already been announced by the Ford government.

- ◆ The minimum wage would be maintained with annual increases to the minimum wage, tied to inflation, which will restart October 1, 2020.
- ◆ Repeal the following scheduling changes that were to come into force on January 1, 2019:
 - ❖ Right to request changes to schedule or work location after an employee has been employed for at least three months.
 - ❖ 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 less than three hours.
 - ❖ Right to refuse requests or demands to work or to be on-call on a day that an employee is not scheduled to work or to be on-call with less than 96 hours' notice.
 - ❖ 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.
- ◆ With respect to the current three (3) hour rule in the *ESA*, the Act would provide that an employee is guaranteed three hours pay where they are required to report for work and work less than three hours. The exception is where the employer is unable to 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.
- ◆ Bill 47 would repeal the Public Holiday Pay Regulation, including the complex holiday pay calculation under Bill 148, and would return to the calculation based on the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20.
- ◆ The Act would repeal what the PCs call the "previous government's disastrous Personal Emergency Leave reforms with a straightforward package of annual leave days for every worker". Specifically, every worker will be allowed to take up to three days for personal illness, two for bereavement and three for family responsibilities.
- ◆ The Act will preserve the vacation with pay of three (3) weeks for an employee with five (5) or more years of service.
- ◆ Employers would be permitted to request that an employee provide a medical note from a qualified health practitioner in support of an employee requesting a leave under the *ESA*. In other words, the Act would repeal those provisions that prevent employers from asking for this supporting evidence where a personal leave is requested.
- ◆ Repealing the Act to remove the reverse onus on the employer to prove that an individual is not an employee where there is a dispute about whether the individual is an employee or, for example, independent contractor.
- ◆ Bill 47 would repeal the equal pay for equal work provisions as relates to the employment status (part-time, casual, and temporary) and assignment employee status (temporary help agency status).
- ◆ Bill 47 proposes a return to the previous administrative penalties for contraventions of the *ESA* by decreasing the maximum penalties from \$350/\$700/\$1500 to \$250/\$500/\$1000, respectively.

Labour Relations Act, 1995

- ◆ Repeal the card-based certification option for employees working in home care, building services, and temporary help agencies. A secret ballot vote is maintained.
- ◆ Bill 47 would repeal the "employee list" provisions where a union can establish that they have 20% or more of the individuals in the bargaining unit proposed in the application appear to be members of the union at the time the application was filed. Further, and importantly, to the extent that a union obtained a list of employees in accordance with a direction of the Ontario Labour Relations Board

(“OLRB”) under this LRA, as it read immediately before Bill 47 came into force, the trade union will, on or immediately after that day, destroy the list in such a way that it cannot be reconstructed or retrieved.

- ◆ Bill 47 would reinstate the pre-Bill 148 test and preconditions for the OLRB to certify a union as a remedy for employer misconduct.
- ◆ Repeal the regulation-making authority to expand successor rights to contract tendering for publicly-funded services such as home-care.
- ◆ Repeal the power of the OLRB to review and consolidate newly certified bargaining units with existing bargaining units. The OLRB will, however, be empowered to review the structure of bargaining units where the existing bargaining units are no longer appropriate for collective bargaining.
- ◆ The current legal strike and lockout timing provisions are repealed and Bill 47 would provide that, where no collective agreement is in operation, no employee will strike and no employer will lock out an employee until the Minister of Labour has appointed a conciliation officer or a mediator under this Act and,
 - (a) seven days have elapsed after the day the Minister has released or is deemed pursuant to the Act to have released to the parties the report of a conciliation board or mediator; or
 - (b) 14 days have elapsed after the day the Minister has released or is deemed pursuant to the Act to have released to the parties a no board report.
- ◆ Bill 148 removed the six-month limitation under which striking employees may apply to return to work following a lawful strike or lockout. The Act would return to the six month limitation on an employee's right to reinstatement following the start of a lawful strike or lock-out.
- ◆ Bill 47 would repeal the Bill 148 “first agreement arbitration” provisions and return to the conditions for access to first agreement arbitration (where it appears to the OLRB that collective bargaining has

been unsuccessful for specified reasons) that were in place prior to Bill 148.

- ◆ Maximum fines for offences under the LRA would be decreased under Bill 47 from \$5,000 to \$2,000 for individuals and from \$100,000 to \$25,000 for organizations who violate the LRA.
- ◆ Expanding and recognizing alternative means of communications under the Act. According to Bill 47, for the purposes of the Act, and any proceedings taken under the Act, any notice or communication may be sent by mail, courier, fax, or e-mail. There are also deeming provisions with respect to the time of the release or receipt of the document.
- ◆ Facilitating and requiring the publication of documents (collective agreements and arbitration awards) filed with the Minister, including publication on the Government website.

These are, quite literally, early days, but the path is set. The coming days and weeks should come with ramped up opposition to Bill 47 both in the legislature, in the media and by employee advocacy groups and unions.

What seems pretty clear is that employers and HR practitioners will have to again revise and update their policies and procedures to bring them in line with whatever the new legislation looks like when passed. Many employers have, of course, spent time and money updating their policies in response to Bill 148, and now will have to take a fresh look at their policies.

I will continue to monitor the progress of Bill 47 as it winds its way through the legislature.

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