

Repeal of Bill 148

Earlier today the Ontario government announced its intention to propose the *Making Ontario Open for Business Act* (“*Open for Business Act*”). The *Open for Business Act*, if passed, will repeal many of the workplace amendments implemented by the previous Liberal government under the *Fair Workplaces, Better Jobs Act, 2017*, better known as Bill 148.

Significant amendments the *Open for Business Act* intends to introduce to the *Employment Standards Act, 2000* (“ESA”) include:

- **Minimum Wage:** Freezing the minimum wage at \$14 an hour until 2020. The minimum wage under Bill 148 was set to increase to \$15 an hour on January 1, 2019.
- **Personal Emergency Leave:** Replacing the Personal Emergency Leave reforms introduced by Bill 148 with three personal illness days, two days for bereavement and three days for family responsibilities, all of which are likely unpaid. Bill 148 currently provides most Ontario employees with up to 10 days of job-protected leave, the first two of which are paid.
- **Misclassification:** Repealing the requirement for the employer to prove that an individual is not an employee (“reverse onus”) where there is a dispute over whether the individual is an employee.
- **Equal Pay for Equal Work:** Repealing equal pay for equal work based on employment status (part-time, casual, and temporary) and assignment employee status (temporary help agency status). The requirement for equal pay based on sex will remain.
- **Scheduling:** Repealing several scheduling provisions introduced by Bill 148 that were going to be effective as of January 1, 2019 including the right to refuse scheduling changes without sufficient notice, on call pay and cancellation pay.
- **Penalties:** The government is returning to the previous administrative penalties for contraventions of the ESA by decreasing the maximum penalties from \$350/\$700/\$1500 to \$250/\$500/\$1000, respectively.

If passed, the *Open for Business Act* will also introduce the following changes to the *Labour Relations Act* (“LRA”):

- **Card-Based Certification:** Repealing card-based certification for workers in home care, building services and temporary help agencies.
- **Employee Lists:** Repealing the rules that required an employer to provide employees’ contact information to a union if it could establish it had 20% support from the employees.
- **Remedial Certification:** Reinstating the pre-Bill 148 test and preconditions for the Ontario Labour Relations Board (OLRB) to certify a union as a remedy for employer misconduct.
- **Bargaining Unit Consolidation:** Repealing the power of the OLRB to review and consolidate newly certified bargaining units with existing bargaining units.
- **Return to Work:** Returning to the six-month limitation on an employee’s right to reinstatement following the start of a strike or lock-out.
- **First Collective Agreement:** Repealing the Bill 148 first collective agreement mediation and mediation-arbitration provisions and provisions for educational support. The amendments will reinstate pre-Bill 148 conditions for access to first agreement arbitration.
- **Penalties:** Returning to the previous maximum fines for offences under the LRA by decreasing the fines from \$5,000 to \$2,000 for individuals and from \$100,000 to \$25,000 for organizations.

While the changes proposed in the *Open for Business Act* will be welcomed by most Ontario employers, it likely will create a substantial amount of uncertainty for those employers seeking to successfully navigate Ontario’s workplace legislation. Once the *Open for Business Act* is formally introduced we will provide a further update. In the meantime, if you have any questions please contact an e2r® Advisor for further information.