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LATE FALL/EARLY WINTER 2018 – EMPLOYMENT NEWSLETTER

## **THERE ARE MAJOR CHANGES TO ONTARIO EMPLOYMENT LAW – ARE YOU READY?**

Last summer, many Ontario employers took a collective gasp (while many employees cheered) when the government announced that minimum wage would be increasing to \$15.00 per hour by the end of the decade. The move was only one part of Bill 148, with sweeping changes to Ontario’s **Employment Standards Act, 2000 (“ESA”)**. There are other, significant changes to vacation pay, leaves of absence, equal work legislation, and other areas of workplace law. The Legislature has now passed the Bill, and it has received Royal Assent. Some provisions are now in effect, and others are delayed until later dates. Both employers and employees need to know their changing rights and obligations. **Here’s a short (non-exhaustive) guide to get you started:**

PREVIOUS ESA	NEW ESA	WHAT IT REALLY MEANS
<ul style="list-style-type: none"> <li>• Previous annual increases to <b>minimum wage</b> as of October 1<sup>st</sup> of each year in line with the Consumer Price Index.</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum wage rises to \$14 per hour on Jan. 1, 2018 and \$15 per hour on Jan. 1, 2019, with subsequent escalations in the following years.</li> </ul>	<ul style="list-style-type: none"> <li>• Employers must ensure they are paying at least the new minimum wage -- even if employees are salaried (a common misconception is that salaried employees are exempt).</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Equal pay for equal work</b> provisions previously protected against a ‘gender gap’ in wages.</li> </ul>	<ul style="list-style-type: none"> <li>• Provisions as of April 2018 will now ensure that temporary, casual, and seasonal employees all earn equal wages for the same work as full time employees (with some exceptions).</li> </ul>	<ul style="list-style-type: none"> <li>• The change will cause an adjustment for businesses employing summer students or temporary help. There is a caveat, however, that seniority systems are still protected.</li> </ul>
<ul style="list-style-type: none"> <li>• Employees (working for employers with 50 or more employees) are entitled to 10 days’ <b>Personal Emergency Leave</b> to deal with death, illness, or medical emergency in their family.</li> </ul>	<ul style="list-style-type: none"> <li>• Personal emergency leave can now be taken by all employees, even if the length of service is just one week, and the first two days are required to be <u>paid</u> by the employer.</li> </ul>	<ul style="list-style-type: none"> <li>• While many ESA leaves require an employee to have worked for several months, this change ensures that even an employee who has an urgent situation in their first month of work is protected.</li> </ul>
<p><b>NEW LEAVE OF ABSENCE PROVISIONS:</b></p>	<ul style="list-style-type: none"> <li>• Employees are entitled to domestic or sexual violence leave of up to 15 weeks if they or their child experiences or is threatened with domestic or sexual violence. The first five days are paid.</li> </ul>	<ul style="list-style-type: none"> <li>• This leave is designed for the employee or individual to seek medical treatment, assistance from victim services, psychological treatment or counseling, relocation, or legal assistance.</li> </ul>

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<ul style="list-style-type: none"> <li>• <b>Pregnancy Leave</b> generally 17 weeks' unpaid leave, followed by 35 weeks' unpaid Parental Leave available.</li> </ul>	<ul style="list-style-type: none"> <li>• Parental Leave is extended to an optional 61 weeks, with other surrounding leaves extended as well.</li> </ul>	<ul style="list-style-type: none"> <li>• The move is in line with changes to the federal <i>Employment Insurance Act</i> allowing new parents to take up to 18 months' of benefits. However, the previous 12-month sums are spread out over 18 months.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Public Holiday Pay</b> is calculated by a formula based on the employees' previous 4 weeks of work.</li> </ul>	<ul style="list-style-type: none"> <li>• Public Holiday Pay will now be calculated based on the days worked in the pay period immediately before the holiday.</li> </ul>	<ul style="list-style-type: none"> <li>• In many cases, this will result in a larger amount paid to the employee.</li> </ul>
<ul style="list-style-type: none"> <li>• An employee is entitled to a minimum of (2) two weeks' <b>vacation</b> after their first year of earning vacation entitlement (generally their first year of work).</li> </ul>	<ul style="list-style-type: none"> <li>• Employees will be entitled to a minimum of three (3) weeks' vacation pay if they have been with the employer for five (5) years or more.</li> </ul>	<ul style="list-style-type: none"> <li>• While extended vacation pay was formerly a perk of a higher level job or lengthy service, longer legal minimums mean longer vacations for employees. That said, Canadians are still notorious for not taking all of their allotted vacation time.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Scheduling:</b> Employers are generally not required to pay employees for work not performed unless contractually obligated to do so (which is rare).</li> </ul>	<ul style="list-style-type: none"> <li>• Employers will be obligated to pay for at least 3 hours' of work if the employee works less than 3 hours due to scheduling, despite being available to work longer. Employers must also evaluate employee requests for a change of schedule or location.</li> </ul>	<ul style="list-style-type: none"> <li>• Employers will need to schedule employees carefully in order to avoid payouts for work not performed due to inadvertent scheduling errors, mismanagement or employer convenience.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Record Keeping:</b> Employers are required to keep simple information on employees including their start date, hours worked, pay, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Employers will also need to keep records of employees' vacation and vacation pay, any overtime worked, and any scheduled shifts that had been cancelled.</li> </ul>	<ul style="list-style-type: none"> <li>• Good record keeping is not just important for keeping a business running smoothly, but can be mandatory for passing a Ministry of Labour inspection</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Employee Misclassification:</b>  There was confusion as to what position the Ministry of Labour would take regarding independent contractors.</li> </ul>	<ul style="list-style-type: none"> <li>• The ESA now expressly prohibits misclassifying an employee as an independent contractor (denying them entitlements like minimum wage, vacation, and leaves, etc).</li> </ul>	<ul style="list-style-type: none"> <li>• Employers have the burden of proving that a worker is an independent contractor, and not an employee. The risks of misclassification are enormous for employers.</li> </ul>

**A review of your employment contracts, policies, and procedures is essential to legal compliance as failure to comply with the ESA can result in large fines, unexpected payouts, excessive legal costs - and bad publicity. These changes will bring more inspections from the Ministry of Labour and an increased push for enforcement. For assistance about complying with these changes and other matters, please call or e-mail me to set up an appointment for your employment law needs:**

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