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EQUAL PAY FOR EQUAL WORK IN ONTARIO WORKPLACES

Spring brings further changes to provincially-regulated Ontario workplaces. These latest changes arise from last November, when the Legislature passed “Bill 148” (also known as the *Fair Workplaces, Better Jobs Act*), on which we reported [in our last newsletter](#). However, some parts of the Bill did not take effect immediately.

Starting **April 1, 2018**, Part XII of the *Employment Standards Act, 2000* (“ESA”), has been amended such that 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.

Note that **substantially the same** means substantially the same, but not necessarily identical.

A difference in employment status relates to a difference in the number hours regularly worked (thus, a *part-time employee cannot be paid less than a full-timer*), and a difference in the term of employment (accordingly, a *seasonal employee cannot be paid less than a permanent one*).



There are exceptions to the new rules, however. **Equal pay for equal work** will not apply when a difference in a rate of pay is made on the basis of a seniority system, a merit system, a system that measures earnings by quantity or quality of production, or any other factor *other than sex or employment status*.

The ESA already provided that an employee of one sex can't be paid less than an employee of another sex when the reasons

are the same as a., b., and c. above.

The *Equal Pay for Equal Work* provisions also apply to **temporary help agencies** who pay assignment employees. As well, the clients of a temporary help agency cannot reduce the pay of an employee to assist the agency to comply with the law.

These new provisions do not apply to unionized workplaces until the earlier of the date the collective agreement expires and January 1, 2020.

Finally, an employee who believes that their rate of pay is not compliant with these changes can **request a review**. The employer must then adjust the employee's pay, or, if the employer disagrees, it must provide a written response setting out the reasons for its disagreement.

Violations of the ESA can create significant costs and penalties for employers. Thus, compliance is essential. To ensure your organization is compliant with the legislative changes, or, if you are an employee who believes your employer is not complying with the ESA, please contact me by phone or by e-mail for assistance:

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or: 416-224-1996 (209).