

Ontario's *Fair Workplaces, Better Jobs Act*

Purpose: The purpose of the HR Minute is to provide managers with timely information about human resources issues. Please take a moment to read this important information.

Amendments for Ontario's Employment and Labour Laws

The Ontario government has passed the *Fair Workplaces, Better Jobs Act, 2017* which includes a wide-ranging series of amendments to the *Employment Standards Act* and the *Labour Relations Act*.

The government cites the purpose of such amendments to bring more fairness to Ontario workplaces and to create more security and opportunity for vulnerable workers and their families.

What follows is a detailed listing of the amendments.

Changes to the *Employment Standards Act*

Minimum Wage

Under the *Fair Workplaces, Better Jobs Act* the provincial minimum wage will be adjusted according to the following schedule:

Classification	Current	Jan. 1, 2018	Jan. 1, 2019
General Minimum Wage	\$11.60	\$14.00	\$15.00
Liquor Servers	\$10.10	\$12.20	\$13.05
Student Wage	\$10.90	\$13.15	\$14.10
Homeworkers	\$12.80	\$15.40	\$16.50

Any minimum wage increases after January 1, 2019 will continue to be tied to annual adjustment to Ontario's Consumer Price Index.

Equal Pay for Equal Work

Employers must pay casual, part-time, and seasonal employees the same rate paid to full-time employees when doing the same work. Temporary help agency employees doing the same job as permanent employees at the agencies' client companies must also receive equal pay.

Date of effect: **April 1, 2018**

Increased Vacation Entitlements

The legislation will bring Ontario's vacation time in line with the national average by ensuring an employee an additional week of vacation, amounting to at least three weeks' vacation, after five years of working for the same employer.

Date of effect: **January 1, 2018**

Public Holiday Pay

The formula to calculate such as been simplified, and is to be calculated as follows:

- Public Holiday Pay = total regular wages earned in pay period immediately preceding the public holiday / number of days worked in that pay period

For employees required to work public holidays, they are entitled to receive public holiday pay plus premium pay for the hours worked. The option for the employer to provide employees who are required to work with a substitute day off in place of the holiday has been removed.

If the public holiday falls on an employee's day off or when the employee is on vacation, it is required that the substitute day given to the employee be either the first work day after the public holiday or the last work day prior to it.

Date of effect: **January 1, 2018**

Scheduling

- After 3 months' employment with the same company, an employee is entitled to request a chance in work location or schedule.
- Employees who report to work but are given less than three hours of work will be entitled to be paid three hours at their regular wages.

- Employees will be paid three hours at their regular wages if their scheduled shift or on-call period is cancelled within 48 hours of its commencement.
- Employees are entitled to refuse a shift or be placed on-call if they are asked to work with less than four days' notice, without repercussion.
- Employees who are on-call and are either not called in or called in and work less than three hours will be paid for three hours at their regular wage rate for each 24 hour on-call period.

Date of effect: **January 1, 2019**

Leaves of Absence

Personal emergency leave is extended to 10 days per calendar year for employees, with at least two paid days per calendar year for employees who have been employed for at least one week. All employees are entitled to this leave; not merely those working for employers with 50 or more regular employees.

Family medical leave is extended to 27 weeks of leave without pay in a 52 week period to provide care to a family member. This leave may be extended for a further 27 weeks in some cases.

Leave for the passing of a child has been expanded so that employees who have been employed with the same company for at least six months will be entitled to a single period of unpaid leave of up to 104 weeks if their child dies, regardless of the circumstances.

Leave without pay for crime-related child disappearance has been expanded so that employees who have been employed with the same company for at least six months will be entitled to a single period of unpaid leave of up to 104 weeks.

Date of effect: **January 1, 2018**

Other Changes:

- Employers are banned from requiring a doctor's sick note from an employee taking personal emergency leave.
- Employees must be provided up to 17 weeks off without the fear of losing their job when they or their child has experienced or is threatened with domestic or sexual violence, including paid leave for the first five days.
- Employers will be subject to penalties (including prosecution, public disclosure of a conviction, and monetary penalties) for misclassifying employees as independent contractors.

- Where an employee holds more than one position within one single company, the employer will be required to pay them for overtime at the rate of the position they were working during the overtime period.
- Temporary help agencies are must provide assignment workers one week's notice, or pay in their thereof, when an assignment that was scheduled to last longer than three months is terminated early.
- Increased flexibility for Employment Standards Officers when it comes to issuing penalties to employers.
- Option for written agreements between employees and employers to be kept electronically.

Enforcement

In order to strengthen enforcement of employment regulations, the province will hire more than 175 new Employment Standards Officers. The province claims that once the officers are hired in mid-2020, they will endeavor to inspect 1 in 10 workplaces in Ontario, with a particular emphasis on small-to-medium sized businesses.

Changes to the *Labour Relations Act*

Union Application

A union which can show that it has the support of 20% of the employees in proposed bargaining unit will be able to apply to the Ontario Labour Relations Board (OLRB) for an order directing the employer to provide the union with a list of all employees and their contact information.

In response, the employer can file a Notice of Disagreement. The employer will know the percentage of employees in support of the union, but will not know their identity. The OLRB may decide upon an application without a hearing or consultation.

Union Certification

In the temporary help agency, building services, homecare, and community services industries, the option of card-based certification will be introduced.

Where the OLRB decides that an employer has committed an unfair labour practice that impacted the support for the union, remedial union certification is mandatory.

A union is required to file membership cards with its application for certification. The employer will have two days to respond and provide the names of all employees in the proposed bargaining

unit. If the union can demonstrate that it has the support of 40 – 55% of employees, then a vote will be ordered. For support of more than 55% in the unit, the union will be certified.

The OLRB can conduct votes outside the workplace, including electronically or via telephone. The OLRB may also authorize a Labour Relations Officer to provide insight on the voting process to ensure neutrality.

Mediation and Arbitration

The OLRB must address first contract mediation-arbitration application prior to dealing with displacement and decertification applications.

It is possible for a party to file an application for arbitration 20 days following a mediator being appointed.

The OLRB can dismiss the application, order more mediation, or direct interest arbitration. No strikes or lockouts can occur when mediation-arbitration is directed by the OLRB.

Successor Rights

Successor rights are extended to building services contracts, including food, cleaning, and security services.

Review and Consolidation

The OLRB has the authority to change the structure of existing bargaining units if it finds that they are no longer appropriate for collective bargaining. The OLRB could also consolidate newly certified bargaining units with other existing bargaining units under a single employer, where they are represented by the same bargaining agent.

Return to Work

The six month limitation on an employee's right to return to work following the commencement of a lawful strike has been removed. Employers are required to reinstate an employee at the end of a legal strike or lockout, enforceable through grievance arbitration.

Just Cause Protection

Employees are protected from being disciplined or discharged during the period between certification and conclusion of first contract, as well as the period between the date employees are in a legal strike or lockout and the date that the new collective agreement takes effect.

Date: November 23, 2017