

## **Bill 148 Regulations now published**

### **What you should know!**

December 2017

Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*, introduces significant amendments to Ontario's *Employment Standards Act* ("ESA") and *Labour Relations Act* ("LRA"), and limited amendments to the *Occupational Health and Safety Act*. **Most of the amendments come into force on January 1, 2018.**

### **The Government of Ontario recently published several regulations under the amended acts.**

This briefing note summarizes the most significant regulations.

**For assistance preparing *your* workplace for Bill 148, contact Sherrard Kuzz LLP.**

### **EMPLOYMENT STANDARDS ACT**

#### **Construction Employees** ([O Reg 526/17: Exemptions, Special Rules and Establishment of Minimum Wage -Amending O Reg 285/01](#))

The regulations make significant amendments to the entitlement to personal emergency leave ("PEL") and vacation pay and public holiday pay.

A construction employee working in the construction industry will be exempt from the public holiday provisions of the ESA where the employee receives:

- At least 7.7% of his or her hourly wage for vacation pay or holiday pay, if the employee's period of employment is less than five years.
- At least 9.7% of his or her hourly wage for vacation pay or holiday pay, if the employee's period of employment is five years or more.

In addition, a construction employee working in the construction industry who receives at least 0.8% of his or her hourly wage for personal emergency pay will not be entitled to receive two paid PEL days. However, the employee will continue to be entitled to receive ten (10) unpaid PEL days.

#### **Automotive Sector** ([O Reg 530/17: Terms and Conditions of Employment in Defined Industries – Automobile Manufacturing, Automobile Parts Manufacturing, Automobile Parts Warehousing and Automobile Marshalling – Amending O Reg 291/01](#))

In the late Fall of 2016, the Government of Ontario enacted a regulation which amended the PEL provisions of the ESA for the automobile manufacturing, automobile parts manufacturing, automobile parts warehousing, and automobile marshalling industries (the "Automotive PEL Regulation"). The Automotive PEL Regulation removed bereavement leave as a basis for PEL and added a separate bereavement leave entitlement to the ESA, providing an employee up to three unpaid bereavement

leave days in the event of the death of a prescribed family member. The total number of PEL days was reduced to seven days to account for this bereavement leave.

The Automotive PEL Regulation will continue to apply to these employees. However, it has been amended to:

- Remove the 50 employee threshold, such that each employee employed in this sector will be entitled to PEL in accordance with the Automotive PEL Regulation.
- Clarify an employee will be entitled to up to three bereavement days in each circumstance of the death of a prescribed family member, as opposed to three bereavement leave days per calendar year.
- Entitle an employee to receive the first two PEL days off **with pay**. However, an employee will not be entitled to have these days paid where the terms and conditions of the employee's employment already provide him or her with two or more days off with pay for vacation or public holidays in excess of the ESA entitlements or for personal illness or medical appointments (*i.e.*, paid sick days).
- Align the PEL Regulation with the other PEL provisions by removing the right to request a doctor's note to verify the need for the PEL day.

In addition to the amendments to the Automotive PEL Regulation, employees in the automotive sector will also be exempt from some of the scheduling provisions of Bill 148 when they come into force on January 1, 2019. Specifically, an employee in this sector will be exempt from the entitlement to at least three hours of pay for being on-call, the right to refuse a shift offered with fewer than 96 hours' notice, and the right to at least three hours of pay where a shift is cancelled with fewer than 48 hours' notice.

**Equal Pay for Equal Work** ([O Reg 526/17: Exemptions, Special Rules and Establishment of Minimum Wage -Amending O Reg 285/01](#))

Bill 148 amended the ESA to prohibit an employer from establishing a different wage rate for employees who do similar work requiring a similar degree of skill and effort in similar circumstances by reason of an employee's status (*i.e.*, temporary, seasonal, contract, casual or part-time) unless that difference is based on a seniority or merit system, a system that establishes pay rates based on the quality or quantity of production or any other factor other than sex or employment status.

The regulation establishes an exemption from the equal pay for equal work provision for the following three categories of employees:

- A firefighter within the meaning of the *Fire Protection and Prevention Act, 1997*.
- A student under 18 who works not more than 28 hours a week or who works during a school holiday.
- A person employed in the recorded visual and audio-visual entertainment production industry.

**Benefit Plans** ([O Reg 527/17: Benefit Plans – Amending O Reg 286/01](#))

The ESA currently prohibits an employer from providing a benefit plan under which an individual is treated differently by reason of age, sex or marital status, unless such difference in treatment is prescribed by regulation. The regulation adds a pooled registered pension plan to the list of plans for which age may be a basis for differential treatment.

**Prescribed Penalties** ([O Reg 528/17 Enforcement – Amending O Reg 289/01](#))

The regulation materially increases (up to 50%) the prescribed penalties under the ESA.

**LABOUR RELATIONS ACT** ([O Reg 534/17 Transitional Matters – LRA](#))

The single transition regulation addresses several aspects of the LRA, including:

- That the new remedial certification provisions in section 11 of the LRA apply to a certification application filed on and after January 1, 2018 and only in respect of an event or conduct that occurred on or after that date.
- That the consolidation of an existing bargaining unit with a bargaining unit that is the subject of a certification application only applies to a certification application filed on or after January 1, 2018.
- That the just cause protection afforded an employee during the period between the date a strike or lockout is legal and a new collective agreement is reached (or the union's bargaining rights are terminated) applies only to an event or conduct that occurs on or after January 1, 2018.
- Increased fines from \$2,000 to \$5,000 for an individual and \$25,000 to \$100,000 for a union or corporation, applicable only to an event or conduct that occurs on or after January 1, 2018.
- That the power given to the Ontario Labour Relations Board ("OLRB") to conduct a vote electronically or by telephone applies to a certification application filed on or after January 1, 2018, but may also apply to a certification application filed before that date if a vote has not yet taken place and the OLRB considers it appropriate to apply the new provisions.

**To learn more and for assistance preparing *your* workplace for Bill 148, contact the employment and labour law experts at Sherrard Kuzz LLP.**

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