

***Proposed Changes to Ontario's Employment & Labour Laws
(Bill 148 – The Fair Workplaces, Better Jobs Act, 2017)***

**This report is a preliminary assessment as of September 6, 2017 subject to further clarification after 2nd Reading scheduled when the Legislature is back in session on September 11, 2017.

Description	Proposed	Implementation Date (if passed)	City of Hamilton Compliance Details
COMPLIANT WITH BILL 148			
Employee Misclassification	This language prohibits Employers from misclassifying employees as "independent contractors".	Upon Royal Assent	The intent of this amendment is to address cases where employers are improperly treating employees as if they are self-employed and not entitled to ESA provisions. The onus is on the employer to demonstrate that an individual is NOT an employee. Penalties applicable in cases where an employer has misclassified an employee.
Minimum Paid Vacation	Employees will be entitled to a minimum of 3 weeks paid vacation or paid 6% in lieu after 5yrs of employment with the same employer.	1-Jan-18	CoH pays ESA entitlement or provides greater right or benefit.

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Family Medical Leave	Increase Family Medical Leave from 8 weeks in a 26 week period, up to 27 weeks in a 52 week period.	1-Jan-18	CoH will be in compliance with ESA.
Child Death	Employee entitled to 104 weeks of unpaid leave if their child dies for any reason.	1-Jan-18	CoH will be in compliance with ESA.
Crime/Child Disappearance	Increase in employee entitlement to crime related child disappearance leave from 52 weeks, to 104 weeks.	1-Jan-18	CoH will be in compliance with ESA.
Public Holiday	<p>Where an employee agrees to work on a public holiday and are entitled to a substitute holiday, the employer must provide the employee with:</p> <p>Written statement that sets out the public holiday on which the employee will work</p> <p>The date that is the substitute holiday</p> <p>The date on which the statement was provided to the employee</p> <p>If a Public Holiday falls on a day that would not ordinarily be a working day for an employee, the 1st day after the holiday or most recent day following the holiday</p>	1-Jan-18	<p>Employees are paid a premium if they perform work on the Statutory Holiday.</p> <p>CoH is complaint, and most CAs provide a greater right or benefit by allowing employees and employers to mutually agree on a day to be used for a Public Holiday when not scheduled.</p>

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	must be used for the Public Holiday		
Equal Pay for Equal Work	<p>The amendment will enable employees to request a review of their wages if it's believed they're not receiving equal wages to FT staff.</p> <p>They are also allowed to ask other employees about their wages without reprisal.</p>	1-Apr-18	At any time an employee can request to review their wages.
Schedule Changes/Transfer of Work Location	The employer must discuss requests to change an employee's schedule and or work location with them and if denied, provide a reason for the denial in writing.	1-Jan-19	The CA's are generally silent in regards to these requests. The CoH <i>Flexible Work Arrangements Policy</i> addresses the employer's obligation to provide employees a reason in writing in response to requests for flexible work arrangements and changes to scheduled hours of work.
Scheduling	When an employee who regularly works more than 3 hours in a shift and reports to work but is sent home before the end of their shift, the employee is entitled to 3 hours pay at their regular wage rate. In order for an employee to qualify for this entitlement the employee must have been available to work	1-Jan-19	<p>The Collective Agreements are compliant with the ESA and some provide a greater right or benefit.</p> <p>In practice, CoH will not send employees home with pay, they will find suitable work for the duration of 3</p>

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	at least 3 hours at the relevant time.		hours.
Overtime	Employer is required to pay an employee the rate of pay for the position they were working when overtime occurred (excess of 44 hrs. in a week).	1-Jan-18	CoH will be compliant with ESA.
Domestic/Sexual Violence Leave	The employer must provide an unpaid leave of absence where an employee or an employee's child are victims of domestic or sexual violence or are threatened with sexual or domestic violence. An employee may take up to 10 days of personal emergency leave in addition to up to 15 weeks of domestic/sexual violence leave.	1-Jan-18	CoH will be compliant with ESA.
Pregnancy & Parental Leave	Pregnancy and Parental Leave will be increased to mirror amendments to the Federal <i>Employment Insurance Act</i> . Pregnancy leave for an employee who suffers a miscarriage or still birth increases from 6 weeks to 12 weeks. Parental leave increases from 35 weeks to 61 weeks for employees who took a pregnancy leave, and from 37 weeks to 63 weeks for employees who did not take a pregnancy leave.	Pregnancy Leave increase for still birth or miscarriage would come into effect 1-Jan-18. All other amendments on date named by proclamation by the Lieutenant Governor in Council.	CoH will be compliant with the ESA. Housekeeping changes will be required to collective agreement language that references specific number of weeks for pregnancy and parental leave.

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NON-COMPLIANT WITH BILL 148			
Minimum Wage	Minimum wage to increase on January 1, 2018 (\$2.60/hr.) to \$14.00 from \$11.40/hr.	1-Jan-18	Minimum wage rate for students in CUPE 5167 (I/O) CA in accordance with Student LOU is \$13.478/hr. the rate will need to increase \$0.522/hr.
Minimum Wage	Minimum wage to increase on January 1, 2019 (\$1.00/hr.) to \$15.00 from \$14.00/hr.	1-Jan-19	Minimum wage rate for students in CUPE 5167 (I/O) CA in accordance with Student LOU will need to increase \$1.00 from the 2018 rate of \$14.00 totaling \$15.00.
Holiday Pay	Holiday pay will be calculated as the average daily wages earned in the pay period immediately preceding the holiday or some other prescribed manner.	1-Jan-18	Part Time employees will now receive higher amounts of Holiday Pay with this new formula. For example, a Part time employee who works one day a week for 8 hours will receive the same amount of Holiday Pay as an employee who works 8 hours a day and 5 days a week.

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			<p>"some other prescribed manner": in regards to statutory holiday pay, refers to a manner prescribed in the regulations or other legislation. The CoH will need to change its calculations of Holiday Pay to be in compliance with the ESA.</p>
Paid PEL	<p>Employees are entitled to 2 paid PEL days that must be taken before using the remaining 8 unpaid PEL days. Employees must have worked for the employer for one (1) week before qualifying for the two (2) paid PEL days.</p> <p>When a paid PEL day is used on a day that the employee is entitled to overtime pay or shift premium, the employee will only be entitled to pay at their regular wage rate.</p>	1-Jan-18	<p>Current CA language references unpaid days. <i>Personal Emergency Leave Policy</i> will require amendments to include provision of two (2) paid days. PEL days are not in addition to the CoH paid sick days. PEL days intended for emergencies related to individual employees and to others (children, spouse, etc.). Paid days are to be taken before unpaid days.</p> <p>The anticipated cost is \$4M annually (estimate based on employees taking 2 paid PEL days each calendar year). This does not consider the cost of</p>

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			overtime, backfilling, loss of productivity, etc.
REQUIRES FURTHER CLARIFICATION			
Temporary Help Agency (notice period)	This amendment will require the THA to provide an assignment employee 1 week notice or pay in lieu, if an assignment that was estimated to be 3 months or greater is terminated early, unless another assignment lasting at least 1 week is offered to the employee.	1-Jan-18	As this is a requirement of a THA, the CoH will be reviewing the CoH <i>"Use and Control of Temporary Employment Agency Services Policy & Procedures"</i> to determine if the policy needs to be updated. Clarification required to determine if there are cost implications to the COH as a result of anticipated increased cost to THA.
Temporary Help Agency (equal pay)	This amendment will require THAs to pay employees (assignment workers) equal to permanent employees of the agency's client when performing the same job.	1-Apr-18	As this is a requirement of a THA, the CoH will be reviewing the CoH <i>"Use and Control of Temporary Employment Agency Services Policy & Procedures"</i> to determine if the policy needs to be updated.

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			The CoH is awaiting further clarification to determine potential cost implications if this amendment is passed, as the CoH pays rates charged by THAs for various classifications (admin, labour).
PEL - Doctor's Note	Employers will be prohibited from requiring a Doctor's note from an employee using a PEL day.	1-Jan-18	The CoH is awaiting further clarification to determine if an employer has the right to request a Doctor's note but not require one. Employers are able to require evidence reasonable in the circumstances that the employee is entitled to the leave.
Minimum Pay – On Call	Employees will be entitled to 3 hours pay at their regular wage rate for being on call in a 24 hour period, even if they are NOT called into work.	1-Jan-19	The CoH is awaiting further clarification to determine the impact with respect to current casual employees who submit availability to work shifts and are not called into work.

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			<p>In accordance with the proposed legislation, Collective Agreement language prevails (if addresses payment for being on call) if the agreement is in effect January 1, 2019 (this provision will cease to apply upon expiry of the collective agreement or Jan 1, 2020, whichever is earlier)</p>
Shift Cancellation	<p>Employers must provide 48 hours' notice of a shift cancellation. If less than 48 hours' notice is provided, the employer must pay the employee 3 hours pay at their regular rate. This also includes employees that are working on-call shifts. This obligation will not apply in certain cases beyond the employer's control (for example fire, power failure, storms) or where the nature of the work is weather-dependent and because of weather related reasons, the work is not available.</p>	1-Jan-19	<p>Collective agreements which are silent on the cancellation of shifts will be compliant with the ESA. This amendment only contemplates cancellation of shifts (not shortening, or changes shifts)</p> <p>The CoH is awaiting further clarification pending review by the MOL on exemptions and special industry rules set out in the ESA.</p>

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			<p>In accordance with the proposed legislation, Collective Agreement language prevails (if there are provisions that address payment for canceled shifts), if the agreement is in effect January 1, 2019 (this provision will cease to apply upon expiry of the collective agreement or Jan 1, 2020, whichever is earlier)</p>
Right to Refuse	<p>The employee will have the right to refuse a shift without repercussion if asked to work with less than 4 days' notice. This will not apply where work is to deal with an emergency, to remedy or reduce a threat to the public safety or for other prescribed reasons.</p>	1-Jan-19	<p>Work refusal by an employee is not addressed in the CAs however there is language in the CAs that addresses when shifts are to be posted with defined time lines. The language within the CAs allows the Employer to change a schedule or shift due to extenuating circumstances.</p> <p>The CoH is awaiting further clarification to determine the definition of "other prescribed reasons" and pending review by the MOL</p>

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			<p>on exemptions and special industry rules set out in the ESA.</p> <p>In accordance with the proposed legislation, CA language prevails (if there are provisions that address ability to refuse) if the agreement is in effect January 1, 2019 (this provision will cease to apply upon expiry of the collective agreement or Jan 1, 2020, whichever is earlier)</p>