



INFORMATION REPORT

TO:	Mayor and Members General Issue Committee
COMMITTEE DATE:	February 7, 2018
SUBJECT/REPORT NO:	<i>Bill 148 - The Fair Workplaces, Better Jobs Act, 2017</i> (HUR17011(a)/FCS18019) (City Wide)
WARD(S) AFFECTED:	City Wide
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Council Direction:

At its July 10, 2017 General Issues Committee meeting (GIC), Council directed staff to prepare a comprehensive report that outlined all of the impacts arising from *Bill 148, The Fair Workplaces, Better Jobs Act, 2017* (the "Act"). On September 20, 2017, staff provided a report to Council, outlining anticipated implications of Bill 148 pending approval by the Government of Ontario. Bill 148 received Royal Assent on November 27, 2017.

Information:

On May 30, 2017, the Government of Ontario announced its intention to introduce *Bill 148 - The Fair Workplaces, Better Jobs Act, 2017* in response to the Final Report of the Changing Workplaces Review. After receiving Royal Assent on November 27, 2017, many of the amendments resulting from Bill 148 came into effect January 1, 2018. The Act resulted in major changes to the *Employment Standards Act, 2000* ("the ESA") and the *Labour Relations Act, 1995* (the "LRA").

To ensure compliance with Bill 148, Human Resources is leading a steering committee responsible for the necessary changes to systems, policies, administrative processes and record keeping practices. Specifically, representatives from relevant areas of Human Resources, Payroll, Finance, IT and Communications are meeting regularly and working together towards implementation of Bill 148 amendments, including communicating changes and new obligations to People Leaders. Any changes that were necessary to ensure compliance with amendments that came into effect January 1, 2018 have been implemented.

Communication to all front line employees will include the distribution and on-line posting of the new Employment Standards Poster, and reintroducing policies and procedures that required updating as a result of Bill 148.

Currently, the estimated financial impacts of Bill 138 are \$1.7M, which is included in the 2018 budget (\$1.3M for Personal Emergency Leave Days backfilling and \$400,000 for minimum wage). Additional costs may occur in 2018 but staff continue to develop the estimates.

The following is a summary of some of the more significant changes and updates to the ESA and LRA, as result of Bill 148, that was previously reported to Council on September 20, 2017. Please note that all leave provisions are without pay unless specifically identified.

Changes to the *Employment Standards Act, 2000 (ESA)*

Minimum Wage Increases:

- \$14 per hour on January 1, 2018
- \$15 per hour on January 1, 2019

Employee Misclassification:

The creation of penalties applicable to employers who have misclassified an employee as an “independent contractor”. The employer bears the onus of demonstrating that the individual is not an employee. This amendment came into effect upon Royal Assent (November 27, 2017).

Vacation with Pay:

Increased vacation entitlement to three (3) weeks after five (5) years of employment with the same employer, with corresponding increases to the vacation pay provisions (i.e. 6% vacation pay instead of 4% after 5 years). This amendment came into effect on January 1, 2018.

Family Medical Leave:

Increase leave (to care for dying relatives) from up to eight (8) weeks to twenty-eight (28) weeks (in a 52 week period).

- Update to the ESA, as result of Bill 148, that was previously reported to Council on September 20, 2017
 - This leave was increased after the previous Council report in September, 2017. It was previously reported that Family Medical Leave was twenty-seven (27) weeks in a 52 week period. This amendment came into effect on January 1, 2018.

Critical Illness Leave:

An amendment to the previous Critically Ill Child Leave, the new leave provisions have been amended and renamed to Critical Illness Leave, and provide job protected leave for of up to thirty-seven (37) weeks in a 52 week period to care for a critically ill dependent child (minor) or up to seventeen (17) weeks in a 52 week period to care for a family member. This amendment came into effect December 3, 2017.

Leave for the Death of a Child and for Crime-Related Disappearance:

An increase to the leave for the crime-related disappearance of a child from 52 weeks to 104 weeks. And a separate leave for the death of a child for a period of up to 104 weeks from the week in which the child dies. This amendment came into effect on January 1, 2018.

Domestic or Sexual Violence Leave:

An additional leave entitlement, allowing employees who have been employed for at least 13 consecutive weeks, to take a leave of absence of up to ten (10) emergency leave days and up to an additional 15 weeks, if the employee, or the employee's child, is a victim of domestic or sexual violence, or has been threatened with domestic or sexual violence.

- Update to the ESA, as result of Bill 148, that was previously reported to Council on September 20, 2017
 - A significant change to this leave that was introduced after the previous Council report in September, 2017, is that the first five (5) days of Domestic or Sexual Violence Leave are employer paid.

The leave must be taken for specific purposes, which include seeking medical attention, obtaining support from a victim services organization, seeking counselling from a psychologist or other professional, relocating, seeking legal or law enforcement assistance, or any other prescribed purposes. The ten (10) emergency leave days are in addition to the ten (10) allotted Personal Emergency Leave days already available by statute. This amendment came into effect on January 1, 2018.

Pregnancy and Parental Leave:

The length of pregnancy and parental leave has been increased to mirror recent amendments to the Federal Employment Insurance Act which governs the payment of employment insurance benefits. Specifically, the length of pregnancy leave for an employee who suffers a still-birth or miscarriage has been extended from six (6) weeks to twelve (12) weeks. This amendment came into effect on January 1, 2018, however pregnancy leave for an employee who suffered a still-birth or miscarriage came into effect December 3, 2017.

Parental leave has increased from thirty-five (35) weeks to sixty-one (61) weeks for those employees who took a pregnancy leave (which is currently 17 weeks), and from thirty-seven (37) weeks to sixty-three (63) weeks for employees who did not take a pregnancy leave. The amendments are compared to the previous entitlement, as illustrated below.

	Previous	Amendments
Birth parent (an employee who is pregnant)	Entitled to 17 weeks of pregnancy leave, and may take an additional 35 weeks of parental leave (total job protected leave = 52 weeks)	Continued entitlement to 17 weeks of pregnancy leave, and may take an additional 61 weeks of parental leave (total job projected leave = 78 weeks) i.e.
Any parent when a child is born, including birth parent (who does not take pregnancy leave), father, partner, or when a child comes	Entitled to 37 weeks of parental leave (including birth parent who did not take pregnancy leave)	Entitled to 63 weeks of parental leave (including birth parent who did not take pregnancy leave)

Public Holidays:

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

The formula for calculating public holiday pay is simplified so that employees are entitled to their average regular daily wage based on the wages earned in the pay period immediately preceding the holiday. Previous to this, holiday pay was calculated based on an average wage earning during previous four (4) weeks earnings. Where an employee has agreed to work on a public holiday and is entitled to a substitute holiday, the employer must provide a written statement to the employee specifying the date of the public holiday, the substitute holiday date and the date on which the statement was provided to the employee. This amendment came into effect on January 1, 2018.

Equal Pay for Equal Work - Casual, Part-time, Temporary & Seasonal Employees:

Greater opportunity for employees to request a review of their wages if they believe they are not receiving wages equal to full-time employees when they are performing work that is substantially the same. Exceptions to such requests include provisions for a merit system, systems that determine pay by quantity or equality of production, or any other factor other than sex or employment status. If a collective agreement permits differences in pay based on employment status and such provisions conflict with the legislation, the collective agreement will prevail where such agreement is in force on January 1, 2019.

- Update to the ESA, as a result of Bill 148, that was previously reported to Council on September 20, 2017
 - Since last reporting to Council on September 20, 2017, two significant changes were made to this amendment; the removal of seniority systems (including one that provides for different pay based on accumulated hours worked) as an exemption to the equal pay for equal work entitlement, and the introduction of a new definition of “substantially the same” when determining work of equal value.

In addition, greater penalties will be applied for non-compliance, interest on unpaid wages as well as improved wage collections by the government or an authorized creditor. This amendment will come into effect on April 1, 2018.

Overtime Pay:

Requirement that employees who hold more than one position with an employer, and who work in excess of 44 hours in a work week, be paid at the rate of one and one-half for each hour for the position they are working during the overtime period. This amendment came into effect on January 1, 2018.

Equal Pay for Temporary Help Agency Employees:

Temporary Help Agency (THA) employees (assignment workers) must be paid equal to permanent employees of the agency's client when performing the same job. This amendment will come into effect on April 1, 2018.

Notice of Termination for Temporary Help Agency Employees:

Requires a Temporary Help Agency (THA) to provide assignment employees with at least one (1) weeks' notice (or pay in lieu thereof) where an assignment scheduled to last longer than three (3) months terminates early. This obligation will be offset if an employee is offered other work during the notice period. This amendment came into effect on January 1, 2018.

Personal Emergency Leave:

Eliminate the 50-employee threshold for eligibility for ten (10) personal emergency leave (PEL) days per calendar year. Additionally, all employees will be entitled to have two (2) paid PEL days that must be taken before using the remaining eight (8) unpaid days.

Employees must have worked for the employer for one (1) week before qualifying for the two (2) paid days. Employers would be prohibited from requiring a doctor's note from an employee taking personal emergency leave. This amendment came into effect on January 1, 2018.

The following scheduling provisions will come into effect on January 1, 2019.

Right to Request:

An employee who has been employed for three (3) months will have a right to request, in writing, that the employer: decrease or increase hours of work; give a more flexible schedule; or alter the location of work. The employer would be required to discuss the issue with the employee and provide reasons, in writing, if the request is denied.

Three-Hour Rule:

Employees who report to work and are given less than three (3) hours of work must be paid three (3) hours at their regular rate of pay if they normally work more than three (3) hours a day. To be qualified to receive these payments, the employee must have been available to work at least three (3) hours. Such requirement to pay three (3) hours is triggered only once in each 24 hour period even in circumstances where an employee may have been called in more than once during that time.

Minimum Pay – On-call:

When employees are “on-call” and are not called in, or are called to work but work less than three (3) hours, they must be paid three (3) hours at their regular rate. To be qualified to receive these payments, the employee must have been available to work at least three (3) hours. Such requirement to pay three (3) hours is triggered only once in each 24 hour period even in circumstances where an employee works more than one on-call shift during a 24 hour period.

- Updates to the ESA, as result of Bill 148, that was previously reported to Council on September 20, 2017
 - An exemption to this rule was introduced after the previous Council report in September, 2017, such that this minimum on-call pay requirement will not apply where an employee is on-call for the purposes of ensuring the continued delivery of essential public service, and the employee is not required to work.

Shift Cancellations:

Employers must give 48 hours’ notice of a shift cancellation. Where less than 48 hours is given, three (3) hours pay must be provided. This shall include on-call shifts. This obligation will not apply in certain cases beyond an 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.

Right to Refuse:

An employee may refuse to accept a shift without repercussion if asked to work with less than four (4) days’ notice. If passed, this provision would not apply where the work involves responding to an emergency, to remedy or reduce a threat to public safety or for other prescribed reasons.

- Updates to the ESA, as result of Bill 148, that was previously reported to Council on September 20, 2017
 - After the previous Council report in September, 2017, a definition of “emergency” was introduced which includes search and rescue operations and situations or impending situations that constitute a danger of major proportions that could result in serious harm to persons or substantial damage to property caused by forces of nature, disease or other health risk which is accidental, or an act that is intentional or otherwise.

If a collective agreement contains provisions covering the right of refusal of work, on-call pay or cancelled shift payment, the collective agreement will prevail over the Employment Standards Act if the collective agreement is in effect on January 1, 2019.

Thereafter, this provision will cease to apply upon the expiry of that collective agreement, or on January 20, 2020, whichever is earlier.

The Ministry of Labour is conducting a review of the exemptions and special industry rules set out in the ESA, including the exemptions in place for Managers and Supervisors.

Changes to the *Labour Relations Act, 1995 (LRA)* - The following changes came into effect January 1, 2018.

Card Based Certification:

The establishment of a card-based union certification for temporary help agencies, the building services sector, and home care and community services industry.

Union Certification:

Eliminate certain conditions for remedial union certification, allowing unions to certify more easily when an employer engages in misconduct; make access to first contract arbitration easier (with added intensive mediation component to the first contract arbitration process); allow unions to access employee lists and certain employee contact information if the union can demonstrate that it has already achieved the support of twenty (20) percent of employees involved; empower the Ontario Labour Relations Board (OLRB) to conduct votes outside the workplace, including electronically and by telephone, and to authorize Labour Relations Officers appointed by the Ministry to give directions relating to the voting process and voting arrangements; grant either party access to “educational support” in the practice of labour relations following certification or voluntary recognition by an employer.

Successor Rights:

Extend successor rights to the retendering of building services contracts, and apply successor rights to the retendering of other publicly funded contracted positions.

Structure of Bargaining Units:

Allow the OLRB to consolidate newly certified bargaining units with existing bargaining units under a single employer where those units are represented by the same bargaining agent.

Just Cause Protection:

Protect employees from being disciplined or discharged without just cause by their employer in the period between certification and the conclusion of a first contract, and in the period between the date the employees are in a legal strike or lock-out position and the new collective agreement.

Financial Implications of Bill 148

As mentioned previously, the 2018 budget includes \$1.7M in estimated costs related to the implementation of Bill 148. That is, \$1.3M to backfill absences related to the two (2) paid Personal Emergency Leave Days and \$400,000 related to the \$1/hour minimum wage increase. For 2019, staff continue to review the financial implications but have currently identified an additional \$920,000 required for the further \$1/hour minimum wage increase, on call provisions and potential contractual increase.

Staff continues to analyze and review the financial impact of Bill 148. Much of the impact is difficult to determine as it is contingent on the unknown utilization of the unpaid leave days available (and the required backfilling costs). The following points highlight the areas which may result in additional financial cost to the City:

- Holiday Pay
- Statutory Pay
- Backfilling Other Leaves (Family Medical; Domestic or Sexual Violence; Death of Child/Crime Related Disappearance; Pregnancy Leave changes)
- Equal Pay Provisions (Casual, Temp, Part-time)
- Temporary Agency Pay
- On Call Provisions
- Impact flow through from City vendors

Appendices and Schedules Attached

Appendix A to Report (HUR1701(a)/FCS18019) – Bill 148 People Leader Communication Volume 2