

Fair Workplaces, Better Jobs Act, 2017: Changes to the Employment Standards Act, 2000 (ESA) and The Labour Relations Act, 1995 (LRA)

UPDATE December 18, 2017

UPDATE #2 – BILL 148

Further to the update you received on December 4, 2017, the following is additional information and updated Q&As. Please refer to this update for a comprehensive review of all changes to the *Employment Standards Act* and what it means for you as a People Leader. Updates from the previous correspondence are highlighted in red font.

EFFECTIVE DECEMBER 3, 2017

Pregnancy & Parental Leave

- to align with changes to the federal Employment Insurance Act, parental leave increases from 35 weeks to 61 weeks of job protected leave for those that took a pregnancy leave. And for employees who are only taking job protected parental leave, their entitlement increases from thirty-seven (37) weeks to sixty-three (63) weeks. **Effective January 1, 2018**, an employee who suffers a miscarriage or stillbirth are entitled to 12 weeks job protected leave (an increase from 6 weeks).

Critical Illness Leave

- Employees entitled to 37 weeks in a 52 week period to care for or provide support to a critically ill minor who is a family member, and up to 17 weeks in a 52 week period to provide care for or support to a critically ill adult who is a family member.

**an updated Pregnancy and Parental Leave Policy will be available shortly on the e-net along with an updated Managers Guide to Leaves with additional details, including eligibility criteria.

EFFECTIVE JANUARY 1, 2018

Minimum Wage

- Increase to the minimum wage to \$14 per hour on **January 1, 2018** and \$15 per hour on **January 1, 2019**. This will result in some changes to a few classifications within the City, however most classifications are already compensated accordingly.

Public Holidays

- Holiday pay will be calculated as the average daily wages earned in the pay period immediately preceding the holiday.

- 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 date on which the statement is provided to the Employee.

Minimum Paid Vacation

- Employees with 5 years of service with the same employer will be entitled to an increase in vacation from 2 weeks to 3 weeks, or from 4% in lieu to 6% in lieu.

Leaves of Absence

****an updated Management Guide to Leaves will be issued with additional details, including eligibility criteria (some leaves are only available to employees who have been with the Employer for a specific length of time)**

- Pregnancy Leave (miscarriage or stillbirth) – increase in leave from 6 weeks to 12 weeks for an employee who suffers a miscarriage or stillbirth.
- Family Medical Leave – increase in leave from 8 weeks in a 26 week period, to 28 weeks in a 52 week period.
- Child Death Leave – Employees entitled to 104 weeks of unpaid leave if their child dies for any reason.
- Crime/Child Disappearance Leave – increase from 52 weeks to 104 weeks of unpaid leave.
- Domestic/Sexual Violence Leave – Employees who have worked for the Employer for 13 weeks are entitled to 10 days of personal emergency leave in addition to 15 weeks leave (of which the first 5 days will be paid) where an Employee or their child are victims of, or threatened with domestic or sexual violence. Employers must establish a mechanism to ensure confidentiality of records related to the leave.
- Personal Emergency Leave – Current entitlement is 10 unpaid days of personal emergency leave. Employees will now be entitled to 2 paid days, which must be taken before using the remaining 8 unpaid days, and must have worked for the Employer for one week before qualifying for the 2 paid days. Employers will be prohibited from requiring a Doctor's note from an Employee using a personal emergency leave.

Record Keeping

Effective January 1, 2018, Managers/Supervisors who do not have a detailed attendance tracking system (for example, KRONOS) will be required to maintain the following records for up to five (5) years;

- Dates and times that an employee worked (scheduled and on-call)
- Dates and times of cancelled or altered shifts
- If providing a substitute holiday (when an Employee works a Public Holiday), the date and time the substitute holiday is scheduled must be provided in a written statement to the Employee.

EFFECTIVE APRIL 1, 2018

Equal Pay for Equal Work

- Employees will be paid equal pay regardless of employment status (fulltime, part-time, casual, temporary, seasonal). Employees can request a review of their wages if they believe they are not receiving equal pay.

EFFECTIVE JANUARY 1, 2019

Scheduling

- Employees may request changes to their schedules or work location. Employers must discuss these requests with the Employee and if denied, provide a reason in writing.
- Employees required to be at work for more than 3 hours, but report to work and get sent home before the end of their shift, will be entitled to 3 hours pay at their regular wage rate.
- Employees will be entitled to 3 hours pay at their regular rate for being on call in a 24 hour period, even if they are not called into work. However, this will not apply where the purposes for being on call is to provide continued delivery of essential public service. Employees will have the right to refuse a shift if asked to work with less than 4 days notice. However, this will not apply where work is to deal with an emergency, or to remedy or reduce a threat to public safety.
- Employers must provide 48 hours' notice of shift cancellation, or pay the employee 3 hours at their regular rate of pay. However, this will not apply in situations beyond the Employer's control, or where the nature of the work is weather dependent.

WHAT'S NEXT

- Finance has estimated costs associated with personal emergency leave days and the increase to minimum wage, and incorporated these costs into the 2018 Budget.

- Human Resources is available to provide you with support and assistance in answering employees questions and/or administrating these changes within your respective areas.
- Policies and Procedures are being updated to reflect these changes, as are systems and administrative process within HR, IT, Finance and Payroll, and further updates will keep you apprised of these changes.

QUESTIONS & ANSWERS

1. Do I need to make any changes to my current operations as a result of these changes?

- Prior to January 1, 2018, there isn't anything you need to change, other than be prepared to answer questions you may receive from Employees, in which case you're encouraged to contact Human Resources for assistance. The Steering Committee is working on updating processes, systems and policies to prepare for the changes coming in 2018 and will continue to update you as these changes are made. If you're not already doing so, you should ensure your section/division is able to keep a record of all dates and times an Employee was scheduled to work or be on-call for work, and record any changes to on-call schedules.

2. I have an employee currently on pregnancy leave and she's contacted me about the extended pregnancy leave provisions? Is she entitled?

- The increase to job protected leave for pregnancy and parental leave is only available when the date of birth (or the date the child first comes into the care and custody of the parent) is on or after December 3, 2017. It is not retroactive.

3. Are there any exemptions to the Scheduling amendments that come into force on January 1, 2019? With all the scheduling changes happening on January 1, 2019, how can I manage emergency or essential services?

There are exemptions to the new Scheduling provisions, including when the work is related to an emergency, to remedy or reduce a threat to public safety or to ensure the continued delivery of essential public service.

An *emergency* is defined as a search and rescue operation, a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property. This includes forces of nature, a disease or other health risk, an accident or an act of whether intentional or otherwise.

If you have questions about your particular operations (for example, winter operations, public health protocols, emergency services, weather dependent work), please contact Human Resources for assistance.

4. What is the difference between Family Medical Leave and Critical Illness Leave?

- Family Medical Leave is an existing entitlement under the ESA, providing for job protected leave for an Employee to care or support a family member where the individual has a serious medical condition with **significant risk of death** within a period of 26 weeks (as certified by a qualified health practitioner). Bill 148 increases the amount of job protected time off.
- Critical Illness Leave is an amended entitlement, previously titled “Critically Ill Child Care Leave” and was intended for a parent or legal guardian to care for a critically ill child under the age of 18. The new Critical Illness Leave is expanded to include job protected leave to support and care for a critically ill family member who is under the age of 18, or a critically ill adult who is a family member.

5. How do collective agreements apply when they already cover things like scheduling, wages and other entitlements that Bill 148 provides?

- The collective agreements still apply and should continue to be adhered to. For most employee entitlements, it’s going to be business as usual, since most collective agreements provide benefits that are equal to, or better than the entitlements introduced by Bill 148. If you have questions about how to interpret and apply both the collective agreement and Bill 148, please contact Human Resources.

6. My department provides services on Public Holidays and pay employees who work on that day their premium, per the collective agreement. Does Bill 148 now require me also provide an additional substitute day off?

- One of the new amendments as a result of Bill 148 is the requirement to provide a written statement to the employee, specifying the date of a substitute holiday when one is offered as a result of the employee working on a Public Holiday. However, this is only in the case WHEN a substitute day is provided. Some collective agreements provide for a substitute day off when an employee works a public holiday, based on mutual agreement between the employer and the employee. Bill 148 does not REQUIRE the employer to provide a substitute day; it only requires the employer to provide the employee a written statement WHEN a substitute day is provided.

7. Are ALL employees entitled to the 2 paid Personal Emergency Leave days?

- As long as employees have been employed for one (1) week, they are entitled to 2 paid Personal Emergency Leave days (full time, part time, student, temporary, casual). The entitlement to Personal Emergency Leave days is 10 days, whereby the first 2 days shall be paid. Employers are prohibited from requiring a medical note to substantiate the leave, however can continue to request other reasonable documentation to substantiate the absence.

8. There are changes as a result of Bill 148 regarding Temp Agency Employees. I often retain temp agency employees. How do Temp Agency Employees differ from all other City of Hamilton Employees?

- Temp Agency Employees are employed by the temp agency, they are not City of Hamilton employees. When we retain the services of a temp agency, the City of Hamilton is considered the client, not the employer. Accordingly, it will be the temp agency that will be responsible to ensure temp agency employees are paid in accordance with Bill 148 (and likely, charge that cost back to the client).

9. Will the “Equal Pay for Equal Work” impact salary structures based on steps within a pay grade, or differences in pay based on seniority or merit?

- The “Equal Pay for Equal Work” amendment does provide for exemptions, which include differences in pay because of a seniority system, merit system and pay based on quantity/quality of production. Our current compensation structures that include steps within a pay band based on the above, is compliant with Bill 148. These amendments were intended to ensure equal pay regardless of employment status (full time, part time, casual, temporary or permanent).