

Employment Law:
**Bill 148 - Changes to the
Employment Standards Act**

January 11, 2018

Presented by



Sean Bawden

What we're covering

- Minimum wage increase
- Changes to overtime pay
- Vacation with pay
- Holiday pay
- Mischaracterization of independent contractors
- Unpaid interns
- Equal pay for equal work
- Leaves of absence
- New rules governing requests for changes to schedule or work location
- New rules governing scheduling
- Enforcement

Minimum wage increase

- \$14 per hour is the new minimum wage in Ontario
- \$12.20 per hour minimum wage for employees that serve liquor directly to customers and receive tips
- \$13.15 per hour minimum wage for students under 18 years of age, if the student's weekly hours do not exceed 28 hours or if the student is employed during a school holiday
- \$15.40 per hour minimum wage for homeworkers

The minimum wages rise again on January 1, 2019.

Changes to Overtime Pay

- Amended to establish a rule for overtime pay for employees who have two or more regular rates for work performed for the same employer.

Section 22(1.1), paragraph (b) now reads:

If an employee has two or more regular rates for work performed for the same employer in a work week...

(b) the overtime pay for each hour [worked in excess of the maximum number of hours] is one and one-half times the regular rate that applies to the work performed in that hour.

Note: employers must also now keep track of how many hours are worked at each wage rate. (Section 15)

Vacation Pay

- Effective January 1, 2018
- Amended to provide a minimum of three weeks of vacation entitlement to employees whose period of employment is five years or more
- Begins after the end of the employee's "vacation entitlement year"
- As I argue here, <http://bit.ly/2kJeh4D>, in order to qualify for the enhanced vacation period and pay, an employee must be continuously employed for a period of five years, with the only possible interruptions to employment being leaves of absence taken in accordance with the provisions of [Part XIV](#) of the ESA, e.g. pregnancy and parental leave.

Holiday Pay

- Effective January 1, 2018
- The rules for the calculation of public holiday pay under section 24 are amended to be based on the number of days actually worked in the pay period immediately preceding the public holiday.
- Previous formula: $\text{Wages earned in previous 20 days} / 20$.
- New formula: $\text{Wages in earned in previous 20 days} / \text{number of days actually worked in that period}$.
- This change will lead to more pay for employees who only work a few days per week.

Mischaracterization of Independent Contractors

- Effective November 27, 2017
- New section prohibits employers from treating a worker who is their employee as if the person were not an employee under the Act.
- The most important impact of this new section will be a shifting of the onus onto employers to demonstrate that a worker is truly an independent contractor and not an employee. The presumption will be that the worker is an “employee.”

Unpaid Interns

Now defined as:

“a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer’s employees”

Now, a person receiving “training” is an “employee”, unless the training is in accordance with an approved post-secondary program.

Unless the person is in a co-op program: pay them.

Equal Pay for Equal Work

- Effective April 1, 2018
- Four new provisions:
 1. A definition is added that provides that “substantially the same” means “substantially the same but not necessarily identical”.
 2. The Part is amended to provide for an entitlement for equal pay from an employer regardless of a difference in employment status.
 3. An entitlement for equal pay for assignment employees of a temporary help agency who perform substantially the same work as an employee of the temporary help agency’s client is created.
 4. Finally, new section 42.3 requires that the Minister cause a review of the new entitlements.

Equal Pay for Equal Work

- Part-time, temporary and seasonal workers will be entitled to be paid the same as full-time employees when performing “substantially the same” job for the same employer.
- Distinctions in the rate of pay will only be allowed if they are based on a seniority system, a merit system, quantity/quality of production, or some other “objective factor”.
- Related amendments are made to the reprisal provisions in the Act to prohibit reprisals against employees who make inquiries about rates of pay or who disclose their rate of pay

Leaves of Absence

- The entitlement to six weeks pregnancy leave in certain circumstances is increased to 12 weeks.
- Parental leave may begin no later than 78 weeks after the child is born or comes into the employee's custody, care and control for the first time.
- Parental leave is increased from 35 weeks to 61 weeks for employees who take pregnancy leave, and from 37 weeks to 63 weeks otherwise.
- Entitlement to family medical leave is increased from up to eight weeks to up to 28 weeks.
 - An employee is entitled to take leave to provide care and support to any critically ill family member.

Leaves of Absence

- New entitlement - up to 104 weeks of unpaid leave if a child of the employee dies for any reason.
- Entitlement to crime-related child disappearance leave increased from up to 52 weeks to up to 104 weeks.
- Up to 10 days and up to 15 weeks of leave if the employee or a child of the employee experiences domestic or sexual violence or the threat of domestic or sexual violence.
 - Employee must have been employed by an employer for at least 13 consecutive weeks
 - The first five days of leave are to be paid.

Leaves of Absence

- Personal Emergency Leave is amended to provide personal emergency leave to all employees, not just employees of employers who regularly employ 50 or more employees.
 - Two days of personal emergency leave are now required to be paid days.
 - Employers retain the right to require evidence of entitlement to these days but are not permitted to require a certificate from a qualified health practitioner

Requests for changes to schedule or work location

- Effective January 1, 2019
- Employees will be able to request changes to their schedule or work location.
- Employers who receive these requests must discuss them with the employee and either grant them or provide reasons for a denial.
- Employee must have 3 months of employment.

Scheduling

- Effective January 1, 2019
- New scheduling provisions will include:
 - a minimum of three hours' "wages" for shifts that are under three hours;
 - minimum pay for being on call;
 - a right to refuse requests or demands to work on a day that an employee is not scheduled to work with insufficient notice (less than 96 hours); and
 - entitlement to pay for three hours of work in the event of cancellation with insufficient notice (less than 48 hours).
- As of January 1, 2019, employers will be required to keep records of the dates and times employees were scheduled to work or be on call and any changes made to that schedule.

Enforccement

- Employees no longer required to first confront the employer with the allegation before filing ESA complaint
- Employment standards officers can order employers to pay wages directly to employees
- Employment standards officers are given the discretion to determine a penalty within the range in accordance with the prescribed criteria
- Director can accept security for amounts owing under the Act, issue warrants to collect money pursuant to an order under the Act or register a lien respecting money owed
- Director of Employment Standards can calculate rates of interest for amounts owing under different provisions of the Act or the regulations and for money held by the Director in trust.

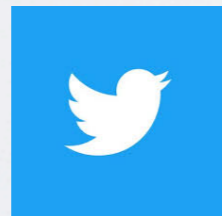
Questions



Sean Bawden

Tel. 613 238 6321

sbawden@kellysantini.com



KELLY SANTINI LLP|SRL
lawyers | avocats

Blog - Labour Pains

ottawaemploymentlaw.com

