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BILL 148 REPEAL REPORT

November 22, 2018

Introduction

On October 23, 2018, the Ontario government introduced **Bill 47**, also known as the ***Making Ontario Open for Business Act, 2018***. On November 21, 2018, Bill 47 passed Third Reading and received Royal Assent.

Bill 47 introduced substantial amendments to the *Employment Standards Act, 2000* ("ESA") and the *Labour Relations Act, 1995* ("LRA"), and repealed and replaced numerous provisions and amendments introduced to those Acts by **Bill 148**, also known as the ***Fair Workplaces, Better Jobs Act, 2017***.

We have prepared the following chart to assist our clients in interpreting the key provisions of the ESA and the LRA amended by Bill 47.

Timing of Amendments

The Bill 47 LRA amendments identified herein are in force as of November 21, 2018.

The Bill 47 ESA amendments identified herein are scheduled to come into force on January 1, 2019.

Exclusions

Not featured below are: Bill 47 amendments to various marginal ESA and LRA provisions; new Bill 47 LRA amendments to streamline and improve processes (including by authorizing delivery of communications and certain documents by e-mail, and facilitating and requiring the publication of collective agreements and arbitration awards); Bill 47 amendments to the *Ontario College of Trades and Apprenticeship Act, 2009* (which was not amended by Bill 148); and complementary amendments made by Bill 47 to other statutes.

For more information about these amendments or related issues, please contact us.

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EMPLOYMENT STANDARDS ACT, 2000 ("ESA")			
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HOW THE ACT APPLIES			
Crown bound (s. 3) The ESA binds the Crown. The single employer provision of the ESA (subsection 4(2)) does not apply to the Crown, a Crown agency, or an authority, board, commission or corporation all of whose members are appointed by the Crown.	Extended ESA entitlements to Crown employees. Eliminated single employer liability for the Crown, Crown agencies, etc.	No change.	The ESA will continue to apply to the Crown and Crown employees. The Crown, Crown agencies, etc. will continue to be exempt from single employer liability under the ESA.
Separate persons treated as one employer (s. 4) An employer and one or more other persons will be treated as one employer for the purposes of the ESA if they carry on associated or related activities or businesses, regardless of whether the intent or effect of their doing so is to defeat the purpose of the ESA.	Eliminated the "intent or effect" requirement to treat related entities as a single employer for purposes of the ESA.	No change.	The elimination of the "intent or effect" requirement to treat related entities as a single employer for purposes of the ESA will be preserved.
No treating as if not an employee (s. 5.1) Employers are prohibited from treating an employee as if the person were not an employee. If, during an investigation or inspection, an employer or alleged employer claims that a person is not an employee, the employer or alleged employer bears the burden of proof to demonstrate that the person is not an employee. Related provisions set out the penalties that will result from misclassification.	Prohibited misclassifying an employee as an independent contractor and placed the burden on the employer to prove that an individual is in fact an independent contractor in the event of an investigation or inspection.	The provision placing the burden of proof on the employer or alleged employer to demonstrate that a person is not an employee during an investigation or inspection is repealed.	Employers will continue to be prohibited from misclassifying employees as independent contractors but will no longer bear the burden of proof in the event of an investigation or inspection.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
RECORD-KEEPING			
Records (ss. 15(1), 15.1(2)) An employer shall record the following information with respect to each employee: **3.1** The dates and times that the employee worked. **3.2** If the employee has two or more regular rates of pay and performs work in excess of the overtime threshold in a work week, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay. **3.3** The dates and times that the employee was scheduled to work or to be on call for work, and any changes made to the on call schedule. **3.4** Any cancellations of a scheduled day of work or scheduled on call period of the employee, and the date and time of the cancellation. Related provisions require employers to record the amount of vacation pay that the employee earned during the year and how that amount was calculated.	Imposed new record-keeping requirements on employers with respect to hours of work, on call schedules, work/on call cancellations, and vacation pay. *Note: paragraphs 3.3 and 3.4 were scheduled to come into force on January 1, 2019.*	The provisions establishing new record-keeping requirements in respect of on call schedules and work/on-call cancellations are repealed. The other record-keeping provisions are preserved.	Employers will continue to be required to meet the new record-keeping requirements for hours of work and vacation pay (subject to applicable exceptions). Employers will not be required to record additional information to facilitate minimum on call and cancellation payments.
SCHEDULING AND MINIMUM PAYMENTS			
Request for changes to schedule or work location (s. 21.2) An employee who has been employed by his or her employer for at least 3 months may submit a request, in writing, to the employer requesting changes to the employee's schedule or work location. The employer must discuss the request with the employee and notify the employee of its decision within a reasonable time. Related provisions specify what the employer's notification must contain if the request is granted or denied.	Establishes a statutory right for employees to request changes to their schedule or work location. *Note: these provisions were scheduled to come into force on January 1, 2019.*	The provisions are repealed.	Employees will not have a statutory right to request changes to their schedule or work location.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Three hour rule (s. 21.3) If an employee who regularly works more than 3 hours a day is required to report for work but works less than 3 hours, despite being available to work longer, the employer shall pay the employee wages for 3 hours. Related provisions specify the manner of calculating the above payment and establish an exception where the employer is unable to provide work for the employee due to causes beyond the its control.	Guarantees payment of at least 3 hours' wages when an employee is required to report for work. *Note: these provisions were scheduled to come into force on January 1, 2019.*	The provisions will be moved to a new section of the ESA (section 21.2) but are otherwise preserved.	Employees will continue to be guaranteed payment of at least 3 hours' wages when they are required to report for work.
Minimum pay for being on call (s. 21.4) If an employee who is on call to work is not required to work or is required to work but works less than 3 hours, despite being available to work longer, the employer shall pay the employee wages for 3 hours. Related provisions specify the manner of calculating the above payment, establish an exception where the employee is on call to ensure delivery of essential public services, establish a limit on the amount the employer is required to pay where the employee is on call multiple times during a 24-hour period, and allow conflicting collective agreement provisions to prevail for a limited time.	Guarantees payment of at least 3 hours' wages when an employee is on call. *Note: these provisions were scheduled to come into force on January 1, 2019.*	The provisions are repealed.	Employees will not be guaranteed a minimum on call payment.
Right to refuse (s. 21.5) An employee has the right to refuse an employer's request or demand to work or be on call on a day that they were not scheduled to work or be on call if the request or demand is made less than 96 hours before the time he or she would commence work or commence being on call, as applicable. Related provisions: establish an exception where the employer's request or demand is related to an emergency (as defined by the provisions), threat to public safety, or the continued delivery of essential public services; require the employee to notify the employer of the refusal as soon as possible; and allow conflicting collective agreement provisions to prevail for a limited time.	Establishes a statutory right for employees to refuse requests or demands to work or be on call within 96 hours. *Note: these provisions were scheduled to come into force on January 1, 2019.*	The provisions are repealed.	Employees will not have a statutory right to refuse requests or demands to work or be on call.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Cancellation (s. 21.6) An employer shall pay an employee wages equal to the employee's regular rate for 3 hours of work if the employer cancels the employee's scheduled day of work or scheduled on call period within 48 hours before the time the employee was to commence work or commence being on call, as applicable. A scheduled day of work or scheduled on call period is cancelled if the entire day of work or period is cancelled, but not if it is shortened or extended. Related provisions establish exceptions where the employer is unable to provide work for the employee for reasons beyond its control and allow conflicting collective agreement provisions to prevail for a limited time.	Guarantees payment of at least 3 hours' work if an employee's scheduled work day or on call shift is cancelled with no more than 48 hours' notice. *Note: these provisions were scheduled to come into force on January 1, 2019.*	The provisions are repealed.	Employees will not be guaranteed a minimum payment if their scheduled work day or on call shift is cancelled.
OVERTIME PAY			
Overtime pay (s. 22(1.1)) Employees who have multiple regular wage rates for different types of work will be paid overtime pay based on the type of work performed during the overtime work period.	Required that overtime pay be calculated based on the work performed in each overtime hour as opposed to a blended pay rate.	No change.	Where an employee has multiple regular wage rates, employers will continue to be required to calculate overtime pay based on the work performed during the overtime hours worked.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
MINIMUM WAGE			
Determination of minimum wage (s. 23.1) Between January 1, 2018 and January 1, 2019, the general minimum wage will be $14.00 per hour. Effective January 1, 2019, the general minimum wage will increase to $15.00 per hour. From October 1, 2019 onwards, the general minimum wage will be adjusted annually for inflation. Related provisions: establish proportional increases to the minimum wage rates for students under 18 years of age, liquor servers, hunting and fishing guides, and homeworkers, which differ from the general minimum wage rate; clarify that if a student under 18 years of age is also a homeworker, he/she must be paid at least the homeworker minimum wage; and clarify how calculations to determine an employer's compliance with the minimum wage provisions are to be made in circumstances where the minimum wage changes in the middle of an employee's pay period.	Significantly increased to the general minimum wage from the previous rate of $11.60 per hour to $14.00 per hour, and then to $15.00 per hour by 2019 (with corresponding increases to special minimum wage rates).	Provisions establishing an increase in the general minimum wage to $15.00 per hour (and proportional increases to special minimum wage rates) effective January 1, 2019 are repealed. Provisions establishing annual adjustments to the minimum wage for inflation are amended to provide that said adjustments will commence effective October 1, 2020. Clarificatory provisions regarding the payment of students under 18 years of age who are also homeworkers, and how calculations to determine an employer's compliance with the minimum wage provisions are to be made where the minimum wage changes in the middle of an employee's pay period, are preserved. Other minor amendments are made for consistency.	The general minimum wage will be frozen at $14.00 per hour (and special minimum wage rates will be frozen at their respective current values) until October 1, 2020, at which time the minimum wage will be adjusted for inflation and continue to be so adjusted annually thereafter.
PUBLIC HOLIDAYS			
Public holiday pay (s. 24) The following formula will be used to calculate public holiday pay: Public holiday pay = total amount of regular wages earned in the pay period preceding the public holiday divided by the number of days the employee worked in that period. Related provisions address how pay should be calculated in the event an employee was on personal emergency leave, vacation, or was not employed during the previous pay period. **Note: Effective July 1, 2018, the above formula was replaced by the pre-Bill 148 formula pursuant to O Reg 375/18.**	Prior to this amendment, public holiday pay was calculated as the total amount of regular wages payable to the employee in the 4 work weeks before the public holiday, divided by 20. The Bill 148 amendment significantly increased the amount of public holiday pay that would be received by casual and part-time employees who worked long but less frequent shifts.	The following pre-Bill 148 formula is restored to the ESA (and O Reg 375/18 is revoked): Public holiday pay = the total amount of regular wages earned and vacation pay payable to the employee in the 4 work weeks before the work week in which the public holiday occurred, divided by 20.	Public holiday pay will continue to be calculated in the same manner as before Bill 148 was enacted. Part-time and casual employees will typically receive less favourable pay treatment than under the Bill 148 calculation.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Substitute public holiday (ss. 27(2.1), 28(2.1), 29(2.1), 30(2.1)) If an employee agrees to work or is on vacation on a public holiday and is entitled to a substitute day off work, the employer must provide the employee with a written statement before the public holiday specifying: a) The public holiday that the employee will work; b) The date that will be substituted for the public holiday; and c) The date that the statement was provided to the employee.	Established entitlement to a written statement providing details of the substitute day that an employee will be provided when he or she works on a public holiday.	No change.	Employees will continue to be entitled to a written statement providing details of the substitute day that will be provided when they work on a public holiday.
VACATION WITH PAY			
Vacation (s. 33) Employees with 5 or more years of service shall be entitled to 3 weeks of vacation per year and vacation pay of 6% of gross wages. Related provisions address when employees may take their vacation as well as the treatment of employees who do not have a regular work week.	Increased vacation entitlements for employees with 5 years of service or more (from 2 weeks' vacation and 4% vacation pay, to 3 weeks' vacation and 6% vacation pay).	No change.	Employees with 5 or more years of service will continue to be entitled to 3 weeks' vacation and 6% vacation pay.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
EQUAL PAY FOR EQUAL WORK			
Equal Pay for Equal Work (ss. 42.1, 42.2, 42.3) Employees are entitled to receive pay at equal rates regardless of employment status when: a) they perform substantially the same kind of work in the same establishment; b) their performance requires substantially the same skill, effort and responsibility; and c) their work is performed under similar working conditions. Related provisions set out exceptions, a mechanism for requesting a review of a pay rate, and enforcement mechanisms. Similar provisions are applicable to temporary help agencies.	Established a right to equal pay for equal work regardless of employment status. This meant that part-time, seasonal and temporary help agency employees could not be paid less than full-time employees for performing substantially the same work. Prior to this amendment, the equal pay for equal work provisions were limited to distinctions based on sex.	The provisions introduced by Bill 148 are repealed.	Employers may pay employees differently based on employment status. Temporary help agencies may pay their employees less than the client pays its own employees for performing substantially the same work. Employees will continue to be entitled to receive equal pay for equal work regardless of sex.
LEAVES OF ABSENCE			
Pregnancy Leave (s. 47(1)) Pregnancy leave for employees who suffer a miscarriage or still-birth who are not entitled to parental leave will end on the later of: a) 17 weeks after the pregnancy leave began; or b) 12 weeks after the birth, still-birth or miscarriage. Related provisions specify who will be considered a "legally qualified practitioner" for the purposes of pregnancy leave entitlement.	Increased pregnancy leave for employees who suffer a miscarriage or still-birth from 6 weeks to 12 weeks.	No change.	Employees who suffer a miscarriage or still-birth will continue to be entitled to take up to 12 weeks of pregnancy leave after the still-birth or miscarriage.
Parental Leave (s. 48) Employees taking pregnancy leave are entitled to take 61 weeks of parental leave and employees not taking pregnancy leave are entitled to take 63 weeks of parental leave. Related provisions increased the window for commencing parental leave from 52 weeks to 78 weeks after the child is born or comes into custody.	Increased parental leave for eligible employees by 26 weeks.	No change.	Employees with at least 13 weeks' service will continue to be entitled to up to 61 or 63 weeks of parental leave, as applicable.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Family Medical Leave (s. 49.1) All employees are entitled to a leave of absence of up to 28 weeks to provide care or support to a family member who has a serious medical condition that causes significant risk of death within a 52-week period. This leave is in addition to any entitlement to family caregiver leave, critical illness leave, crime-related child disappearance leave, child death leave, domestic or sexual violence leave, and personal emergency leave. Related provisions set out eligibility requirements.	Increased family medical leave from 8 weeks to 28 weeks (unpaid).	Family medical leave is preserved. The provision specifying that family medical leave is in addition to various other statutory leaves is repealed. However, a new provision (s. 53.1) is added to specify that every entitlement to a leave of absence under the ESA applies separately from, and in addition to, every other entitlement to leave.	Employees will continue to be entitled to take up to 28 weeks of unpaid leave to care for family members with serious medical conditions causing a significant risk of death.
Critical Illness Leave (s. 49.4) This leave replaces "Critically Ill Child Care Leave". Critical illness leave provides: a) A leave of up to 37 weeks in a 52-week period to provide care/support to a critically ill minor child who is a family member; b) A leave of up to 17 weeks in a 52-week period to provide care or support to a critically ill adult who is a family member. This leave is in addition to any entitlement to family medical leave, family caregiver leave, child death leave, crime-related child disappearance leave, domestic or sexual violence leave, and personal emergency leave. Related provisions set out eligibility requirements and describe how an employee may take further leaves if the family member remains critically ill after initial leave.	Established an entitlement for eligible employees to take an unpaid leave of absence to care for a critically ill adult family member (in addition to a critically ill child).	Critical illness leave is preserved. The provision specifying that critical illness leave is in addition to various other statutory leaves is repealed. However, a new provision (s. 53.1) is added to specify that every entitlement to a leave of absence under the ESA applies separately from, and in addition to, every other entitlement to leave.	Employees with at least 6 months' consecutive service will continue to be entitled to take up to 17 or 37 weeks of unpaid leave to care for critically ill family members, as applicable.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Child Death Leave (s. 49.5) This leave replaces "Crime-Related Child Death or Disappearance Leave", which provided up to 104 weeks of leave for the crime-related death of a child. The new provisions provide that, if an eligible employee's child dies, he or she will be entitled to an unpaid leave of absence of up to 104 weeks which must be taken within 105 weeks after the child's death. This leave is in addition to any entitlement to family medical leave, family caregiver leave, critical illness, crime-related child disappearance leave, domestic or sexual violence leave, and personal emergency leave. Related provisions set out eligibility requirements and exemptions.	Provided up to 104 weeks of unpaid leave to eligible employees who suffer the death of a child, regardless of whether the child died as a result of crime.	Child death leave is preserved. The provision specifying that child death leave is in addition to various other statutory leaves is repealed. However, a new provision (s. 53.1) is added to specify that every entitlement to a leave of absence under the ESA applies separately from, and in addition to, every other entitlement to leave.	Employees with at least 6 consecutive months' service who suffer the death of a child will continue to be entitled to take up to 104 weeks of unpaid leave.
Crime-Related Child Disappearance Leave (s. 49.6) This leave replaces "Crime-Related Child Death or Disappearance Leave", which provided up to 52 weeks of leave to a parent whose child disappears as a likely result of crime. The new provisions provide that, if an eligible employee's child disappears as a likely result of crime, he or she will be entitled to an unpaid leave of absence of up to 104 weeks. This leave is in addition to any entitlement to family medical leave, family caregiver leave, critical illness leave, child death leave, domestic or sexual violence leave, and personal emergency leave. Related provisions set out eligibility requirements and exemptions that apply where the child or parent was involved in crime.	Increased the amount of time eligible employees are entitled to take off from work following the crime-related disappearance of a child from 52 weeks to 104 weeks (unpaid).	Crime-related child disappearance leave is preserved. The provision specifying that crime-related child disappearance leave is in addition to various other statutory leaves is repealed. However, a new provision (s. 53.1) is added to specify that every entitlement to a leave of absence under the ESA applies separately from, and in addition to, every other entitlement to leave.	Employees with at least 6 consecutive months' service whose child disappears as a likely result of a crime will continue to be entitled take up to 104 weeks of unpaid leave.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Domestic or Sexual Violence Leave (s. 49.7) An eligible employee who has experienced domestic or sexual violence or the threat of domestic or sexual violence or whose child has experienced such threat or violence may take up to 10 days and up to 15 weeks of leave. The first 5 days of leave shall be paid. This leave is offered in addition to any entitlement to family medical leave, family caregiver leave, critical illness leave, child death leave, crime-related child disappearance leave, and personal emergency leave. Related provisions set out entitlement and eligibility requirements as well as confidentiality requirements.	Established an entitlement to both paid and unpaid time off for eligible employees who have been victims of domestic or sexual violence or threats of such violence, or whose children have been victims of such threats or violence.	Domestic or sexual violence leave is preserved, including the entitlement to paid leave. The provision specifying that domestic or sexual violence leave is in addition to various other statutory leaves is repealed. However, a new provision (s. 53.1) is added to specify that every entitlement to a leave of absence under the ESA applies separately from, and in addition to, every other entitlement to leave.	Employees with at least 13 consecutive weeks' service will continue to be entitled to take up to 10 days and up to 15 weeks of leave (the first 5 days of which are paid) if they or their child experience domestic or sexual violence, or threats of domestic or sexual violence.
Personal Emergency Leave (s. 50) Eligible employees are entitled to 2 paid and 8 unpaid days of personal emergency leave in each calendar year. An employee must be employed for at least 1 week to be eligible for paid personal emergency leave. Personal emergency leave may be taken for: a) personal illness, injury or medical emergency; or b) the death, illness, injury, medical emergency or urgent matter of a prescribed family member. Employers may not require an employee to provide a certificate from a qualified health practitioner to establish entitlement to personal emergency leave, but may request evidence "reasonable in the circumstances". Related provisions specify when personal emergency leave may be taken, and how personal emergency leave pay is to be calculated (including issues of public holiday and premium pay).	Granted a new entitlement of 2 paid personal emergency leave days to eligible employees. Prohibited employers from requiring a medical note to substantiate entitlement to personal emergency leave.	The personal emergency leave provisions are repealed and replaced with new provisions (ss. 50, 50.0.1 and 50.0.2) establishing separate entitlements to sick leave, family responsibility leave and bereavement leave (for employees with at least 2 consecutive weeks of service). **Sick leave**: Employees will be entitled to 3 unpaid days of leave per calendar year for personal illness, injury or medical emergency. Employers may require a medical note to substantiate this entitlement. **Family responsibility leave**: Employees will be entitled to 3 unpaid days of leave per calendar year for illness, injury, medical emergency or urgent matter relating to a prescribed family member. **Bereavement leave**: Employees will be entitled to 2 unpaid days of leave per calendar year for the death of a prescribed family member. Where an employee takes paid or unpaid leave under an employment contract in circumstances for which he or she would be entitled to take one of the above leaves, the employee will be deemed to have taken the applicable ESA leave.	Personal emergency leave will be eliminated. Employees with at least 2 consecutive weeks' service will be entitled to a total of up to 8 unpaid days off per year as sick leave (3 days), family responsibility leave (3 days) and bereavement leave (2 days). Employers may require a medical note to substantiate entitlement to sick leave. When an employee takes paid or unpaid leave under an employment contract or collective agreement for reasons that overlap with the reasons for which bereavement, sick leave or family responsibility leave may be taken, the leave will be counted as ESA leave.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
REPRISAL			
Reprisal (s. 74) An employer is prohibited from reprising against an employee for doing either of the following for the purpose of determining or assisting in the determination of whether an employer is complying with the "equal pay for equal work" provisions of the ESA: a) making inquiries about the rate paid to another employee; or b) disclosing his or her own rate of pay to another employee.	Provided protection from reprisal to employees seeking or making disclosures regarding rates of pay for the purpose of assessing an employer's compliance with equal pay for equal work requirements.	These provisions are preserved. However, due to the repeal of the Bill 148 equal pay for equal work provisions, employees no longer have a right to equal pay for equal work regardless of employment status. Accordingly, inquiries or disclosure will only be protected under section 74 if they relate to compliance with the right to equal pay for equal work regardless of sex.	Employees seeking or making disclosures regarding rates of pay for the purpose of assessing an employer's compliance with equal pay for equal work requirements will continue to be protected from reprisal.
TEMPORARY HELP AGENCIES			
Temporary help agency employees (ss. 42.2, 74.4-74.17) Employees of temporary help agencies are entitled to at least 1 week of written notice or pay in lieu thereof if they have been on an assignment that had a projected term of at least 3 months and the assignment was terminated early. Employees of temporary help agencies will be paid the same rate of pay as employees of the client if they perform substantially the same kind of work under similar working conditions (as noted in the Equal Pay for Equal Work section, above). Related provisions establish exceptions to this notice requirement, create record-keeping requirements for hours worked by its employees, permit agency employees to request a review of their rate of pay, and prohibit reprisals for inquiring about or disclosing rates of pay for assessment of "equal pay for equal work" compliance by the employer.	Established an entitlement for agency employees to notice of termination of longer-term assignments when such assignments are terminated early. Granted equal pay for equal work entitlements to agency employees (as noted in the Equal Pay for Equal Work section, above).	The "equal pay for equal work" provisions applicable to agency employees are repealed (as noted in the Equal Pay for Equal Work section, above). Other provisions are preserved. Corresponding amendments are made for consistency.	Employees of temporary help agencies will continue to be entitled to 1 weeks' notice of the early termination of a long-term assignment. Employees of temporary help agencies will no longer be entitled to a rate equal to that paid to the client's employees performing substantially the same work (as noted in the Equal Pay for Equal Work section, above).

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
ENFORCEMENT			
Steps required before complaint assigned (s. 96.1) (Repealed) Prior to Bill 148, complaints under the ESA could not be referred for investigation unless the complainant took steps specified by the Director of Employment Standards to facilitate the investigation. One potential step was for the complainant to first address the complaint with the employer. This was referred to as the "self-help requirement". The self-help requirement and related provisions are repealed.	Eliminated the potential requirement for employees to address employment standards complaints with the employer before an investigation may be commenced.	No change.	Employment standards complaints may continue to be referred for investigation without the complainant being required to first address the complaint with the employer.
Miscellaneous provisions related to enforcement (ss. 103, 113, 125, 125.1-125.3) Broader powers are conferred on employment standards officers to enforce the ESA, including the power to order employers to pay wages directly to employees, and to exercise discretion to determine penalties for contraventions in accordance with prescribed criteria. The Director of Employment Standards may publish information related to a deemed contravention of the ESA after a notice of contravention is issued. The Director may accept security for amounts owing under the ESA, issue warrants to collect money pursuant to an order under the ESA, or register a lien respecting money owed pursuant to an order under the ESA. These powers may be delegated to collectors. The Director and collectors may disclose information to each other for the purpose of collecting an amount owed under the ESA.	Expanded the powers of employment standards officers and the Director to enforce the ESA.	No change. **Note:** pursuant to O. Reg. 450/18 (which was made and filed separately from Bill 47), effective January 1, 2019, the statutory penalties for contraventions of the ESA are reduced from $350 for a first offence, $700 for a second offence and $1,500 for a third or subsequent offence to the pre-Bill 148 amounts of $250, $500, and $1,000 respectively.	Employment standards officers and the Director will continue to have the ability to exercise the broader enforcement powers conferred upon them by Bill 148. Statutory penalties for contraventions of the ESA will be reduced to the pre-Bill 148 amounts of $250 for a first offence, $500 for a second offence, and $1,000 for a third or subsequent offence.

LABOUR RELATIONS ACT, 1995 ("LRA")			
Key Bill 148 Provisions	**Impact**	**Bill 47 Amendment**	**Impact**
CERTIFICATION			
Application for employee list (s. 6.1) Where no union has been certified as bargaining agent of the employees of an employer in a unit that a union claims to be appropriate for collective bargaining and the employees are not bound by a collective agreement, the union may apply to the Ontario Labour Relations Board for an order directing the employer to provide to the union a list of the employer's employees. This order will be granted if 20% or more of the individuals in the proposed bargaining unit appear to be members of the union at the time the application was filed. Related provisions establish an exception for construction industry employers, and address: the timing and content of the union's application to the Board; the timing and content of the employer's notice of disagreement with the application (if any); how the Board will determine the application; the content, security and confidentiality of the employee list and restrictions on its use; and time limits on bringing another application for employee list if certification is attempted unsuccessfully.	Established a new right for unions to obtain a list of the employees of an employer and certain related information.	The provision is amended to provide that: (i) employee list applications made but not yet determined by the Board will be terminated on the date that Bill 47 comes into force; and (ii) unions that obtained a list of employees by order of the Board under the prior version of the provision must, on or immediately after the date that Bill 47 comes into force, destroy the list in such a way that it cannot be reconstructed or retrieved.	Unions no longer have the right to apply to the Board to obtain a list of the employees of the employer and related information. Undetermined applications made under the Bill 148 provision will be terminated and employee lists obtained under the Bill 148 provision must be destroyed.
Remedy if contravention by employer, etc. (s. 11(2) Prior to Bill 148, in the event that an employer or employers' organization contravened the LRA in a manner that resulted in the true wishes of employees not being reflected in a representation vote, the Board had the discretion to order one of several remedies, including certifying the union as bargaining agent without a vote if no other remedy would be sufficient to counter the effects of the contravention. Bill 148 made remedial certification mandatory in the event of such a contravention.	Imposed mandatory remedial certification for contraventions of the LRA that result in interference with the true wishes of the employees in the bargaining unit in a representation vote.	The provision is amended to restore the Board's discretion to order other remedies to address contraventions of the LRA that result in interference with the true wishes of the employees in the bargaining unit. Other remedies include ordering a representation vote or further representation vote. As was the case before Bill 148, certification may only be ordered if no other remedy would be sufficient to counter the effects of the interference. A transitional provision is added requiring that undetermined applications made under the Bill 148 provision be determined under the amended provision.	The pre-Bill 148 test and preconditions for ordering certification to remedy a contravention of the LRA that results in interference with the true wishes of the employees in the bargaining unit is restored. Certification may only be ordered if no other remedy is sufficient.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
No discharge or discipline following certification (s. 12.1) If a union is certified as the bargaining agent of employees in a bargaining unit, the employer shall not discharge or discipline an employee in that bargaining unit without just cause during the period that begins on the date of certification and ends on the earlier of the date on which a first collective agreement is entered into and the date on which the union no longer represents the employees in the bargaining unit.	Extended just cause protection to employees (including probationary employees) immediately following certification.	No change.	Employees (including probationary employees) continue to be entitled to just cause protection between the date that a union is certified, and the date that a first collective agreement is entered into or the union ceases to represent the employees in the bargaining unit.
Review of structure of bargaining units – consolidation after certification (s. 15.1) If the Board certifies a union or council of trade unions as the bargaining agent of the employees in a bargaining unit, the Board may review the structure of the bargaining units if: 1. The employer, union or council of trade unions makes an application to the Board requesting the review at the time the application for certification is made, or within 3 months after the date of certification. 2. A collective agreement has not yet been entered into in respect of the bargaining unit. 3. The same union or council of trade unions that is certified already represents employees of the employer in another bargaining unit at the same or a different location. Related provisions establish an exception for construction industry employers, address how applications under this section are to be heard with certification applications, and specify: that if the Board reviews the structure of the bargaining units it must allow the parties a reasonable period of time to come to an agreement regarding same; the factors that the Board must consider and the orders that the Board may make in respect of applications under this section; and what the parties may agree to do with the Board's consent on a joint application under this section.	Established a new right to apply to the Board for review of the structure of bargaining units where a newly certified union already represents employees of the employer in another bargaining unit, and to make changes to the structure of bargaining units on agreement with the Board's consent.	This provision is repealed.	Employers, unions and councils of trade unions no longer have the right to apply to the Board for review of the structure of bargaining units where a newly certified union already represents employees of the employer in another bargaining unit, or to make changes to the structure of bargaining units on agreement with the Board's consent.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
Card-based union certification – certification without a vote (s. 15.2) If a union demonstrates membership support from employees of employers in a specified industry on the date of the application for certification, the following may occur depending on the percentage of membership in the union of the proposed bargaining unit: a) 55% or more: The Board may either certify the union without a vote or direct that a representation vote be taken; b) 40%-55%: The Board must direct that a representation vote be taken; and c) Less than 40%: The Board must dismiss the union's application. Card-based certification is available to employees in the following industries: building services; home care and community services; and temporary help agency.	Made card-based certification, which allows for certification without a vote if the union can demonstrate support by at least 55% of the bargaining unit, available in the following industries: building services; home care and community services; and temporary help agency. Card-based certification was previously only available to employees in the construction industry.	These provisions are repealed. Transitional language provides the following: a) If the application for certification was filed before the day Bill 47 received first reading, it will be determined in accordance with s. 15.2 as it read immediately before that day; b) If the application for certification was filed on or after the day Bill 47 received first reading, the application will be determined in accordance with s. 8 (i.e. the standard certification application and vote procedure).	Card-based certification is no longer available to employees outside of the construction industry for applications for certifications filed after October 23, 2018.
NEGOTIATION OF COLLECTIVE AGREEMENTS			
Educational support (s. 16.1) After notice to bargain a first collective agreement has been given, either party may request educational support in the practice of labour relations and collective bargaining, and the Minister of Labour will make educational support available to the parties.	Allowed either party negotiating a first collective agreement to request and receive educational support from the Minister.	This provision is repealed.	Parties no longer have the right to request educational support from the Minister when negotiating a first collective agreement.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
First collective agreement mediation (s. 43) If parties are unable to negotiate a first collective agreement, either party may apply to the Minister of Labour to have a mediator appointed any time after the Minister has issued a No Board Report. A mediator will be appointed within 7 days. No strike or lock-out may occur in the 45-day period after a mediator is appointed. Related provisions set out exceptions, the information an application must include, the duties of the mediator, and decertification applications.	Allowed either party negotiating a first collective agreement to apply to have a mediator appointed within 7 days. In the 45 days following the appointment, no strikes or lock-outs may occur. Mediation must occur as a precondition to mediation-arbitration (see below).	This provision is repealed.	First collective agreement mediation is no longer available to parties by application.
First collective agreement mediation-arbitration (s. 43.1) At any time on or after 45 days from the date a first collective agreement mediator was appointed under section 43, either party may apply to the Board to direct the settlement of a first collective agreement by mediation-arbitration. Within 30 days, the Board will direct the settlement of a first collective agreement by mediation-arbitration unless: the applicant has engaged in bad faith bargaining or taken an uncompromising bargaining position without reasonable justification; or the Board is of the view that further mediation would be appropriate. The parties will have 7 days to agree to a mediator-arbitrator, failing which either party may apply to have the Board appoint a Chair of Vice-Chair as the mediator-arbitrator. Related provisions set out the mediation-arbitration procedure and time limits, prohibit strikes and lock-outs and the alteration of working conditions during the mediation-arbitration process.	Allowed either party to make an application to direct the settlement of a first collective agreement by mediation-arbitration in the event mediation was unsuccessful. Mediation-arbitration will typically be directed by the Board unless there has been bad faith or unreasonable bargaining by the applicant. Previously, first contract arbitration was only available if the applicant could demonstrate that bargaining had been unsuccessful for specific reasons, such as the refusal of the employer to recognize the union.	This provision is repealed. The mediation and mediation-arbitration provisions of the LRA are replaced with "First agreement arbitration". The first agreement arbitration provisions in Bill 47 are identical to the pre-Bill 148 first agreement arbitration provisions in the LRA. The new section 43(1) will allow either party to apply to the to the Board to direct the settlement of a first collective agreement by arbitration any time after the Minister of Labour has issued a No Board Report. The Board will direct settlement by arbitration where it appears that bargaining has been unsuccessful because of: a) The refusal of the employer to recognize the bargaining authority of the union; b) The uncompromising nature of any bargaining position adopted by the respondent without reasonable justification; c) The failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or d) Any other reason the Board considers relevant. Related provisions provide for consensual appointments, arbitration by the Board, time limits, mediation, and a prohibition on strikes and lock-outs.	In practice, the return to the pre-Bill 148 first collective agreement arbitration provisions means that it is more difficult for applicants to gain access to first collective agreement arbitration. Additionally, mediation is no longer necessarily ordered as a first step prior to first agreement arbitration.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
SUCCESSOR RIGHTS			
Successor employer rights (ss. 69.1, 69.2) Section 69.1 states that when building services contracts are retendered, successor rights will be extended. Accordingly, a new service provider at a building may become bound to a collective agreement that applied to a previous service provider at that site. The protections do not extend to building service employees who are in construction services, non-cleaning maintenance services, and food production services where the food is not produced and consumed on the premises. Section 69.2 permits regulations that would extend successor rights protection to other types of service providers that receive public funds.	Established that, when new eligible building service contracts are retendered and the contract is awarded to a new provider, the union will retain its bargaining rights, the collective agreement will remain in place, and unionized employees will continue to be employed under the terms of that agreement with the new employer.	Section 69.1 (building services) is preserved. Section 69.2 (other service providers) is repealed.	Successor employer rights apply to building services contracts that are retendered. The LRA no longer allows for regulations that would extend these rights to other types of service providers that receive public funds.
UNFAIR PRACTICES, STRIKES AND LOCK-OUTS			
Reinstatement of employee (s. 80(1)) Prior to Bill 148, employers were required to reinstate an employee who was engaged in a lawful strike provided the employee made an unconditional application to return to work in writing within 6 months of the commencement of the strike (subject to exceptions). The requirement that such an application be made within 6 months is removed, and new provisions are added requiring employers to reinstate employees at the end of a strike or lock-out on such terms as the employer and bargaining agent may agree upon. Related provisions provide that this requirement may be enforced through collective agreement grievance and arbitration procedures, establish that striking or locked out employees are entitled to "bump" replacement workers, and specify the conditions upon which employers are required to reinstate striking or locked out employees if there is insufficient work available.	Eliminated the requirement for striking employees to apply to return to work within 6 months of the start of the strike in order to be reinstated. Imposed a new statutory obligation on employers to reinstate striking or locked out employees at the end of a strike or lock-out, subject to various conditions.	The provision is amended to restore the requirement that striking employees make an application to return to work in writing within 6 months of the commencement of the strike in order to be reinstated. The new provisions establishing a statutory obligation for employers to reinstate employees at the end of a strike or lock-out, and the rules governing the reinstatement process, are repealed. A transitional provision is added to clarify that the provision as amended by Bill 148 continues to apply to applications to return to work made by striking employees before the date that Bill 47 comes into force.	The 6-month limitation on an employee's right to reinstatement following the start of a strike is restored. Employers are no longer subject to a statutory obligation to reinstate striking or locked out employees at the end of a strike or lock-out.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
No discharge or discipline following strike or lock-out (s. 80.1) An employer shall not discharge or discipline an employee in a bargaining unit without just cause during the period that begins on the date on which a strike or lock-out in respect of that bargaining unit became lawful, and ends on the earlier of the date on which a new collective agreement is entered into and the date on which the union no longer represents the employees in the bargaining unit. This requirement may be enforced through the collective agreement grievance and arbitration procedures.	Extended just cause protection to employees (including probationary employees) immediately after a strike or lock-out becomes lawful.	No change.	Employees (including probationary employees) continue to be entitled to just cause protection between the date that a strike or lock-out becomes lawful, and the date that a new collective agreement is entered into or the union ceases to represent the employees in the bargaining unit.
ENFORCEMENT			
Board power re interim orders (s. 98) Prior to Bill 148, the Board's authority to make interim orders was generally restricted to procedural matters and was subject to various other limitations and conditions. The Board's authority to make interim orders is broadened. The Board may make interim decisions and orders in any proceeding with or without reasons and may impose conditions on an interim decision or order.	Expanded the scope of the Board's authority to make interim orders and decisions.	No change.	The Board continues to have broader authority in making interim orders and decisions.
Offences (s. 104(1)) Individuals who contravene the LRA are guilty of an offence and liable to a fine of not more than $5,000 (increased from $2,000). Corporations, unions, councils of trade unions or employers' organizations that contravene the LRA are guilty of an offence and liable to a fine of not more than $100,000 (increased from $25,000).	Increased the maximum fines that may be levied against individuals and organizations for contravening the LRA to $5,000 and $100,000, respectively.	The provision is amended to restore the maximum fines that were previously in effect.	The maximum fines that may be levied against individuals and organizations for contravening the LRA are reduced to the pre-Bill 148 amounts of $2,000 and $25,000, respectively.

Key Bill 148 Provisions	Impact	Bill 47 Amendment	Impact
ADMINISTRATION			
Power and duties of Board, general (s. 111(2)) The Board has the power to, *inter alia*: **(h.1)** conduct votes at a location or in a manner that, in the opinion of the Board, is appropriate in the circumstances, including to conduct votes outside the workplace and to conduct votes electronically or by telephone; and **(h.2)** issue direction relating to the voting process or voting arrangements.	Conferred new powers on the Board to conduct representation votes outside of the workplace, including by internet or telephone, and to direct the voting process or arrangements.	No change.	The Board continues to have the ability to exercise the new powers conferred upon it by Bill 148 with respect to voting procedures.