

Changes to the ESA Under Bill 47

This summary is provided for your general information and does not constitute legal advice. Every situation is unique and may also be subject to other laws not contemplated in this summary. This summary should not be relied on as a substitute for legal advice which necessarily must be specific to your situation.

Topic	ESA Pre-Bill 148	ESA as amended by Bill 148	Bill 47 (Effective Jan. 1, 2019)	Comments
<p>No Treating as if Not Employee (Misclassification)</p>	N/A	<p>[As of Nov. 27, 2017] An employer may not treat an employee as though he/she/they were not an employee (i.e. an employer cannot misclassify an employee as an independent contractor).</p> <p>In an investigation, if an employer claims that a person is not an employee, the employer has the onus of proving that a person is not an employee (i.e. the Employment Standards Officer does not need to prove the person is an employee, the employer must prove the person is not an employee).</p> <p>Penalties apply for misclassification.</p>	<p>The prohibition against misclassifying an employee remains, as do the penalties.</p> <p>The employer will no longer have the onus of proving that a person is not an employee.</p>	<p>Employers should be careful to consider the nature of the relationships they have with those working for/with them. Regardless of how the relationship is described on paper, the whole of the relationship must be carefully examined in order to determine its true character.</p>
<p>Request to Change Schedule or Work Location</p>	N/A	<p>[To be effective Jan. 1, 2019] An employee employed for at least 3 months can submit a written request for change to</p>	Removed.	<p>There will be no statutory right to request change to work schedule or location, and no</p>

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		<p>his/her/their schedule or work location.</p> <p>The employer must discuss the request with the employee and must deliver a decision in a reasonable time.</p> <p>If the request is denied, the Employer must provide reasons.</p>		obligation to provide reasons for a denial if a request is made.
Three Hour Rule	<p>[Under O. Reg 285/01] If an employee who regularly works 3+ hours shows up and is sent home after < 3 hours, the employee is entitled to be paid for 3 hours of work at the minimum wage, unless the employer is unable to provide work due to fire, lightning, power failure, storms or similar causes beyond the employer's control.</p>	<p>[To be effective Jan. 1, 2019] If an employee who regularly works 3+ hours shows up and is sent home after < 3 hours, the employee is entitled to be paid for 3 hours of work <u>at the employee's regular wage rate</u>, unless the employer is unable to provide work due to fire, lightning, power failure, storms or similar causes beyond the employer's control.</p>	Unchanged from Bill 148.	Employees will still be entitled to be paid for three hours at their regular wage rate (instead of at minimum wage) when required to show up for a shift but are sent home before three hours.
Minimum Pay for Being On Call	N/A	<p>[To be effective Jan. 1, 2019] An employee required to be on call will be paid at for at least 3 hours at the employee's regular rate of pay.</p>	Removed.	<p>There will be no minimum pay for being on call.</p> <p>Employees must still be paid for the time that they actually spend working.</p>
Record Keeping – On Call & Scheduling	N/A	<p>[To be effective Jan. 1, 2019] An employer is required to keep records of:</p>	Removed.	These record keeping requirements fall away with the removal of the on-call

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		<ul style="list-style-type: none"> • 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; and • any cancellations of a scheduled day of work or scheduled on call period and the date and time of the cancellation. 		and shift scheduling amendments that were to take place in January 2019 under Bill 148.
Right to Refuse Demand to Work	N/A	[To be effective Jan 1, 2019] An employee has the right to refuse if an employer demands/requires an employee to work on a day that the employee was not scheduled to work if the demand is made less than 96 hours before the start of the shift.	Removed.	There will be no statutory right to refuse a demand to work.
Shift Cancellation Pay	N/A	[To be effective Jan. 1, 2019] An employee has the right to be paid for 3 hours of work at the employee's regular rate if a shift or on-call requirement is cancelled within 48 hours of the shift or on-call start time.	Removed.	There will be no statutory right to compensation for a cancelled shift or on-call period.
Minimum Wage	Set the minimum wage at a prescribed amount and adjusted annually according to the change in the Consumer Price Index. The last increase before the those resulting from Bill 148 was October	[Effective Jan. 1, 2018] Increase to the minimum wage, with the general minimum wage increasing to \$14 per hour. Scheduled increase to the minimum wage, with general	Cancels the increase to \$15 scheduled for January 1, 2019. Increases resume according to the change in the Consumer Price Index beginning October 1, 2020.	There will be a temporary reprieve from any further increase to the minimum wage until October 2020.

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	1, 2017 and increased the general minimum wage to \$11.60 per hour.	<p>minimum wage going to \$15 per hours as of January 1, 2019.</p> <p>Increases to the minimum wage according to the change in the Consumer Price Index beginning October 1, 2019.</p>		Any wage increases that were already made or agreed to in order to comply with the anticipated increase are still effective.
Public Holiday Pay	Public holiday pay calculated as total amount of regular wages and vacation pay in the four weeks before the week of the public holiday, divided by 20.	<p>[Effective Jan. 1, 2018] Public holiday pay calculated based on the total amount of regular wages earned in the pay period immediately before the holiday, divided by the number of days the employee worked in that period.</p> <p>*NOTE: Effective July 1, 2018, a regulation permitted employers to calculate public holiday pay based on the pre-Bill 148 calculation.</p>	<p>Removes the new calculation established by Bill 148.</p> <p>Reverts to the pre-Bill 148 calculation: total amount of regular wages and vacation pay in the four weeks before the week of the public holiday, divided by 20.</p>	The new calculation created confusion and difficulties. The official return to the former calculation should make calculating public holiday pay easier.
Vacation with Pay	<p>Employees are entitled to at least 2 weeks of vacation time after each vacation entitlement year.</p> <p>Employees are entitled to at least 4% of their wages as vacation pay.</p>	<p>[Effective Jan. 1, 2018] Increased entitlements for employees with 5+ years of employment:</p> <ul style="list-style-type: none"> • at least 3 weeks of vacation time; and • at least 6% of their wages as vacation pay. 	Unchanged from Bill 148.	Vacation entitlement is based on length of employment, whether the employee was active or inactive (i.e. includes leaves of absence).
Equal Pay for Equal Work – Employment Status and	N/A	<p>[Effective Apr. 1, 2018] An employer must pay employees the same rate for the same work regardless of employment status (full-time, part-time, casual etc.).</p>	Removed.	The change will allow different rates to be paid based on employment status (full-time, part-time,

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Temporary Placements		<p>An employer must pay a person working by temporary assignment (i.e. through a placement agency) at the same rate as employees performing the same work.</p> <p>Permits a pay differential based on seniority, merit, quantity/quality of production or other factors other than sex or employment status.</p>		<p>casual or placement employees) for the same work.</p> <p>Any increases to wages implemented in order to comply are still effective and would need to be properly addressed if a reduction is wanted going forward.</p>
Overtime Pay – Rate Used	<p>Overtime pay is calculated based on 1.5 times an employee’s “regular rate”.</p> <p>No specific provisions relating to situations where an employee had more than one “regular rate” in a work week (e.g. different jobs at different wage rates for the same employer).</p> <p>The “regular rate” was calculated based on the employee’s regular earnings divided by the non-overtime hours in the week (i.e. the employee’s average rate).</p>	<p>[Effective Jan. 1, 2018] Where an employee has more than 1 “regular rate” in a work week, the employee’s overtime rate is calculated at 1.5 times the “regular rate” applicable to the work being performed in the particular overtime hour.</p>	Unchanged from Bill 148.	Employers should consider whether work with a higher “regular rate” can/should be prioritized for earlier in the week, before the overtime threshold is reached, so that work with a lower “regular rate” is more likely to flow into overtime at a lesser premium.
Exemption for Simulated Job/Work for Rehabilitation	The ESA does not apply to an individual who performs work in a simulated job or working environment if the primary purpose in placing the individual in the job	<p>[Effective Jan. 1, 2019] Removes this exemption.</p>	The exemption will remain.	

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	or environment is his/her/their rehabilitation.			
Parental Leave	Employees with at least 13 weeks of employment are entitled to an unpaid parental leave of 35 weeks if the employee also took pregnancy leave, and 37 weeks if the employee did not take pregnancy leave.	[Effective Dec. 3, 2017] Employees with at least 13 weeks of employment are entitled to an unpaid parental leave of <u>61 weeks</u> if the employee also took pregnancy leave, and <u>63 weeks</u> if the employee did not take pregnancy leave	Unchanged from Bill 148.	
Family Medical Leave	An employee is entitled to up to 8 weeks of unpaid leave in a 26-week period to provide care or support to certain individuals (family members) if the individual has a serious medical condition and is at risk of dying within that 26-week period, as identified by a certificate from a qualified medical practitioner. The leave is shared, such that only 8 weeks of leave in total can be taken for any particular individual by all employees.	[Effective Dec. 3, 2017] The leave of absence is extended to up to <u>28 weeks</u> in a <u>52-week period</u> . Expands the scope of individuals for whom the employee may take the leave (e.g. adds siblings, grandparents, in-laws, aunts/uncles, nephews/nieces etc.) The leave remains shared.	Unchanged from Bill 148.	The new 28-week leave in a 52-week period aligns the leave with the eligibility period in which certain caregiving benefits can be received by an employee through Employment Insurance.
Child Death Leave & Child Disappearance Leave	“Crime-related child death or disappearance leave” Employees with at least 6 consecutive months of employment are entitled to: <ul style="list-style-type: none"> 104 weeks of unpaid leave if a child dies and it is probable 	[Effective Jan. 1, 2018] Broken into 2 distinct leaves (1) Child Death Leave Employees with at least 6 consecutive months of employment are entitled to a	Unchanged from Bill 148.	

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	<p>that the death resulted from a crime</p> <ul style="list-style-type: none"> • 52 weeks of unpaid leave if a child disappears and it is probable that the disappearance resulted from a crime <p>No entitlement if the employee is charged with a crime related to the death or disappearance.</p>	<p>leave of up to 104 weeks if his/her/their child dies.</p> <p>No requirement that the child's death be related to a crime.</p> <p>Shared leave – a total of 104 weeks can be taken by all employees with respect to the same death(s) that resulted from the same event.</p> <p>(2) Crime Related Child Disappearance Leave Employees with at least 6 consecutive months of employment are entitled to a leave of up to 104 weeks if his/her/their child disappears and it is probable that the disappearance resulted from a crime.</p> <p>Shared leave – a total of 104 weeks can be taken by all employees with respect to the same disappearance(s) that resulted from the same event.</p> <p>For both leaves: No entitlement if the employee is charged with a crime related to the death or disappearance.</p>		

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<p>Domestic or Sexual Violence Leave</p>	<p>N/A</p>	<p>[Effective Jan. 1, 2018] Employees with at least 13 weeks of employment are entitled to leave of up to 10 days, and up to 15 weeks of leave, in each calendar year.</p> <p>Leave may be taken where an employee or his/her/their child experiences domestic or sexual violence, or the threat of such violence.</p> <p>Leave may be used for:</p> <ul style="list-style-type: none"> • Medical attention • Seeking victim services • Obtaining counselling • Relocating • Seeking legal or law enforcement assistance. <p>The first 5 days of leave are paid.</p> <p>An employer can request evidence to substantiate the leave.</p> <p>An employer has an obligation to ensure confidentiality of records given to or produced by the employer relating to an employee taking the leave.</p>	<p>Unchanged from Bill 148.</p>	

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Personal Emergency Leave	<p>Only available to an employee of an employer that regularly employs 50+ employees.</p> <p>10 unpaid days of Personal Emergency Leave per calendar year.</p> <p>Usable for:</p> <ul style="list-style-type: none"> personal illness, injury or medical emergency death, illness injury or medical emergency of certain persons (family members) urgent matter certain persons (family members) <p>Employer able to require reasonable evidence to support leave (including a doctor's note).</p>	<p>[Effective January 1, 2018] Entitlement of <u>all</u> employees.</p> <p>10 days of Personal Emergency Leave per calendar year.</p> <p>First 2 days per year with pay, remaining 8 days are unpaid.</p> <p>The 2 paid days are available to employees after 2 weeks of employment.</p> <p>Usable for:</p> <ul style="list-style-type: none"> personal illness, injury or medical emergency; death, illness injury or medical emergency of certain persons (family member); or urgent matter concerning certain persons (family member). <p>Employer able to require reasonable evidence to support leave <u>but not a doctor's note</u>.</p>	<p>Personal Emergency Leave is removed and replaced with 3 distinct leaves.</p> <p>(1) Sick Leave 3 unpaid days per calendar year.</p> <p>Useable for personal illness, injury or medical emergency.</p> <p>(2) Family Responsibility Leave 3 unpaid days per calendar year.</p> <p>Useable for:</p> <ul style="list-style-type: none"> illness injury or medical emergency of certain persons (family members); or urgent matter concerning certain persons (family members). <p>(3) Bereavement Leave 2 unpaid days per calendar year.</p> <p>Useable for death of a certain persons (family members).</p> <p>For all 3 leaves: Available to employees after 2 weeks of employment.</p> <p>Can require reasonable evidence to support claim for leave.</p> <p>No prohibition against requiring a doctor's note.</p>	<p>Changes that were already implemented to comply with PEL requirements remain in effect. Employers should consider whether they will continue to provide PEL days based on current policy/practice or take appropriate steps to implement only the minimum requirements of the three new leaves.</p> <p>Employers should nevertheless be mindful of the <i>Human Rights Code</i> and the protections against discrimination on the basis of disability, family status and marital status</p>