

Update

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Employment Standards Act, 2000 (Bill 147) Preliminary Summary of Changes

Bill 147, "An Act to revise the law related to employment standards" passed third reading on December 20, 2000 and received Royal Assent on December 21, 2000.

The Bill will repeal the existing *Employment Standards Act* and four other employment related statutes and replace them with the *Employment Standards Act, 2000*.

The new Act contains a wide range of substantive changes that the government has announced in its press releases. In addition to these changes the structure of the existing Act has been overhauled and almost all of its provisions have been reworded.

The "advertised" changes include amendments that will "allow" employees to "consent" to waive the standards otherwise set by the Act. Many of the changes undermine the very principle and purpose of having minimum standards legislation - namely, to protect vulnerable workers who lack the bargaining power to resist unreasonable employer demands. Under the *Employment Standards Act, 2000* employees and employers will be able to enter into the following arrangements:

Employees can 'agree' to work a 60 hour work week

From 1944 through 2000, the law in Ontario provided that an employee could not be required to work more than 8 hours in a day or 48 hours in a week unless the employee agreed to work extra hours and a special permit was issued by the government. Bill 147 repeals the 8 hour workday, allows employees to "agree" to work up to 60 hours in a week, and will largely eliminate the permit system. The 60 hour a week limit may also be changed by regulation to "such other number of hours as are prescribed".

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Once an employee “agrees” to work hours in excess of 48 in a week the employee has to give two weeks notice in writing to revoke that “agreement”. However, the Act also specifically authorizes regulations that would make “agreements” to exceed 48 hours in a week irrevocable where the “agreements” are made at the time of an employee’s hiring and have been approved by the Director of Employment Standards.

Employees can ‘agree’ to have their entitlement to overtime “averaged” over four weeks

From 1975 to 2000, the law in Ontario provided that most employees in Ontario were entitled to be paid time and half their regular rate for all hours worked in excess of 44 hours in a week. Bill 147 will allow an employer and an employee to “agree” that this entitlement to the time and half overtime rate will be averaged over a period of up to four weeks. In other words, an employee who “agrees” to four week averaging would not be entitled to the time and half overtime rate until he or she has worked more than 176 hours in a four week period.

Overtime averaging agreements must be for a specified period and, if the employee is not represented by a union, the period cannot be for longer than two years from when the agreement is made, though the agreement can be renewed. Once an employee has entered into an averaging agreement they cannot revoke the agreement before it expires unless both the employee and the employer agree. Averaging agreements do not need the approval of the Director of Employment Standards.

Employees will be “allowed” to take vacation a day-at-a-time, instead of in blocks

Vacation is to be taken in two one week periods “unless the employee requests in writing that the vacation be taken in shorter periods”

Employees can “agree” to split their half hour eating break into two 15 minutes mini-breaks

Since 1964, employees in Ontario were entitled to take a half hour eating period break every five hours. The new Act undermines this entitlement by allowing an employer and an employee to “agree” that the employee will take two 15 minute breaks in a five hour period instead of one 30 minute break after five hours.

Pregnancy and Parental Leave

The “advertised” changes to the Act include the extension of parental leave to allow Ontario parents to take advantage of the new federal Employment Insurance provisions.

Bill 147 increases parental leave entitlement from 18 weeks of unpaid leave to 35 weeks for employees who also take pregnancy leave (giving women who give birth up to 52 weeks of leave) and 37 weeks for all other new parents.

These extended leave periods are available to parents who gained care and control of a child for the first time on or after December 31, 2000.

Other Changes

Other major “advertised” changes include new enforcement mechanisms, the elimination of some of the qualifying conditions for public holidays and the introduction of ten days of “emergency leave” in a year for employees of employers of more than 50 employees.

In addition to these “advertised” changes it is clear that many of the other wording and “administrative” changes will have significant substantive impact.

Proclamations and Effective Dates

The provisions extending parental leave became effective on December 30, 2000, through a December 29, 2000 proclamation which brought into force a transitional provision in Bill 147 (s.143) amending the existing *Employment Standards Act*.

The Ministry of Labour is stating that the remainder of the new Act is currently expected to come into force in the summer of 2001.