CAVALLUZZO

SUMMARY OF AMENDMENTS TO THE *EMPLOYMENT STANDARDS ACT*, 2000 AND *LABOUR RELATIONS ACT, 1995*, UNDER BILL 47[1]

Affected Rights	Affected Legislation	Law Under Bill 148, 'Fair Workplaces and Better Jobs Act'	Changes Under Bill 47, 'Making Open for Business Act'
Right to Benefits as an Employee	*Employment Standards Act* (*"ESA"*), s. 5.1(2)	• During an investigation, inspection or any proceeding under the *Act*, an employer claiming that a person is not an employee has the burden of proof.	This provision will be repealed.
Minimum Wage	*ESA*, s. 23.1	• The general minimum wage is $14.00/hour, which would have increased to $15.00/hour on January 1, 2019. • Liquor servers earn $12.20/hour, which would have increased to $13.05/hour on January 1, 2019. • Students earn $13.15/hour, which would have gone up to $14.10 an hour on January 1, 2019. • Homeworkers earn $15.40/hour, which would have increased to $16.50/hour on January 1, 2019.	All of the increases scheduled to take place January 1, 2019 will be repealed. Instead, the minimum wage will increase by an "annual inflation adjustment", beginning October 1, 2020. At that rate, the general minimum wage is expected to reach $15.00 in 2024.[2]

[1] Danielle Stampley, Deborah Guterman, Graciela Flores-Mendez and Patrick Enright

[2] https://www.thestar.com/politics/provincial/2018/10/23/ontario-moves-to-hold-minimum-wage-at-14-and-end-paid-sick-days.html

Right to Request Schedule and Location Changes	*ESA*, s. 21.2	Effective January 1, 2019, employees with 3 months' or more of service with an employer would have a statutory right to request changes to their work schedule or location, discuss the request with the employer and receive a decision within a reasonable time.	The statutory right to request changes to work schedule will be repealed.
Right to Minimum Pay for Shifts Cancelled on Short Notice	*ESA*, s. 21.3(1)	Effective January 1, 2019, employees who regularly work more than 3 hours and attend work and are sent home from their shift after less than 3 hours would have been entitled to 3 hours' pay at their regular wage, plus any additional income they might have earned during that time (such as tips or commissions), provided they were available to work longer.	The law will revert to the previous standard, which provides that employees who regularly work more than 3 hours and attend work and are sent home after less than 3 hours are entitled to the greater of either: (i) payment for the time worked, plus wages at their regular rate for the remainder of the time up to three hours; OR (ii) 3 hours' wages at the employee's regular rate.

Right to Minimum On-Call Pay	*ESA*, s. 21.4	Effective January 1, 2019, employees who are on call and either (i) not called in or (ii) work less than 3 hours despite being available to work longer, would have been entitled to 3 hours' pay at their regular wage rate, plus any additional income earned during the time worked. Limitations: Employees are only entitled to minimum pay for only one 3-hour shift in a 24 hour period even if on call for multiple shifts, and not applicable to employees responsible for ensuring continued delivery of essential public services.	This provision will be repealed.
Right to Refuse Last-Minute Shifts	*ESA*, s. 21.5	Effective January 1, 2019, employees would have the right to refuse shifts scheduled with less than 96-hours' notice, unless the shift was scheduled for ensuring delivery of essential public services or to deal with an emergency that could result in serious harm to persons or substantial damage to property, among other prescribed reasons.	This provision will be repealed.
Right to 3 Hours' Pay if Shift Cancelled Less than 48 hours in Advance	*ESA*, s. 21.6	Effective January 1, 2019, employees would have the right to 3 hours' pay at their regular wage if their shift or on-call period was cancelled with less than 48 hours' notice, with certain exceptions set out in the *Act*.	This provision will be repealed.

Personal Emergency Leave	*ESA*, s. 50	Effective January 1, 2018, employees employed for at least a week have the right to two days of paid leave and eight days of unpaid leave. Employees employed for less than a week are entitled to unpaid leave days until they accrue one week of service, at which point they become eligible for two days of paid leave. Although employers can ask for reasonable evidence of an employee's entitlement to take leave, they cannot ask for a doctor's note.	The *ESA*'s personal emergency leave provisions will be repealed in their entirety and are replaced by distinct entitlements to sick leave, family responsibility leave, and bereavement leave. Part of a day off will count as a whole day of leave. *Sick leave:* Employees employed for at least two weeks will be entitled to three unpaid sick days for personal illness, injury, or medical emergency. Employers can now ask employees for a sick note to prove entitlement to leave. *Family responsibility leave:* Employees employed for at least two weeks will be entitled to three days unpaid leave to deal with the illness, injury, or medical emergency of certain family members. *Bereavement leave:* Employees employed for at least two weeks will be entitled to two days unpaid leave owing to the death of certain family members. If an employee has the right, by contract, to paid leave, any paid leave taken under their contract will also count against their statutory right to three unpaid sick days. Employees cannot therefore add the unpaid leave days they are guaranteed under statute to the paid leave days they have under their contracts.

Family Medical Leave	*ESA*, s. 49.1	Effective January 1, 2018, employees are entitled to 28 weeks of unpaid family medical leave to care for a wide range of family members and persons who consider the employee to be like a family members. This leave is only available where a medical practitioner has certified that the family member has a serious medical condition with a significant risk of death in the next 26 weeks. Employees are entitled to family medical leave *in addition to* family caregiver leave, critically ill family member leave, child death leave, crime-related child disappearance leave, domestic or sexual violence leave, and personal emergency leave.	The right to family medical leave should remain intact. It is unclear, however, whether family medical leave can be taken in addition to family caregiver leave, critically ill family member leave, child death leave, crime-related child disappearance leave, domestic or sexual violence leave, and personal emergency leave, as the *ESA* provision guaranteeing this entitlement (s. 49.1(12)) will be repealed.
Family Caregiver Leave	*ESA*, s. 49.3(7.1)	Effective January 1, 2018, the employer can consider any part of a week taken to care for certain relatives as a full week for the purposes of counting the employee's right to 8 weeks of family caregiver leave.	No change. It is unclear, however, whether family caregiver leave can be taken in addition to family medical leave, critically ill family member leave, child death leave, crime-related child disappearance leave, domestic or sexual violence leave, and personal emergency leave, as the *ESA* provision guaranteeing this entitlement (s. 49.3(9)) will be repealed.

Critically Ill Family Member Leave	*ESA*, ss. 49.4(1), (5)-(6)	Effective January 1, 2018, employees employed for at least six months have the right to take up to 17 weeks to provide care to a critically ill adult.	No change. It is unclear, however, whether family medical leave can be taken in addition to family caregiver leave, critically ill family member leave, child death leave, crime-related child disappearance leave, domestic or sexual violence leave, and personal emergency leave, as the *ESA* provision guaranteeing this entitlement (s. 49.1(21)) will be repealed.
Public Holiday Pay and Notice of 'Lieu Days'	*ESA*, ss. 24(1), 27(2.1), 28(2.1), 29(1.1) and 30(2.1)	Effective January 1, 2018: Public holiday pay is calculated by determining the employee's average daily wage for the days actually worked in the pay period preceding the public holiday (s. 24(1)). This notably excludes vacation pay from the calculation. Employees are entitled to receive advance written notice of "lieu days." When an employee is scheduled to work on a public holiday, or when a public holiday will fall on a vacation day or other day that would not ordinarily be a working day, the employer must give the employee a written statement before the public holiday specifying which ordinary working day the employee will take off instead of the public holiday.	Section 24(1)(a) will be repealed, and the public holiday pay formula in place prior to Bill 148 will be re-adopted. Under this formula, public holiday pay will be calculated as the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20.

Right to Equal Pay for Equal Work for Casual, Part-Time and Temporary Employees and Protection against Reprisal	*ESA*, ss. 42.1-42.3	Sections 42.1-42.3 provided that employees were entitled to equal pay for equal work, regardless of their status as full-time, part-time, casual or temporary employees.	These provisions will be repealed.
Right to *ESA* Protection for Workers Doing Work Related to Rehabilitation	*ESA*, s. 3(5)6	Effective January 1, 2019, individuals performing work in a simulated job or working environment for the primary purpose of rehabilitation would no longer have been exempt from the *ESA*'s protections.	This provision will be repealed and such individuals will not be protected by the *ESA*.
Union Right to Request Employee Lists During Organizing Drives	*LRA*, s. 6.1	Unions in most sectors had the right to apply to the OLRB for a list of all employees in a proposed bargaining unit before filing a certification application if they showed 20% support in the proposed unit. The employer had the right to object to this request. If the OLRB granted the request, both the employer and union had an obligation to protect the security and confidentiality of the list and destroy it within one year or as directed.	This provision will be repealed, and any proposed bargaining unit that received an employee list under this provision must destroy that list.

Right to Remedial Certification after Employer *LRA* Contravention	*LRA*, s.11(2)	The OLRB was directed to certify a trade union if it determined that an employer's contravention of the *LRA* (i) prevented a representation vote from reflecting the employees' true wishes; or (ii) prevented the union from demonstrating that 40% or more of the proposed bargaining unit appeared to be members of the union upon application.	Section 11(2) of the *LRA* will be repealed, and the OLRB will have discretion to take the following actions in response to an *LRA* contravention during an organizing drive: • order a representation vote and do anything to ensure that the representation vote reflects the true wishes of the employees; • order another representation vote and do anything to ensure that the representation vote reflects the true wishes of the employees; or • certify the trade union as the bargaining agent if the Board determines no other remedy would be sufficient to counter the effects of the contravention.

Right to Review and Consolidate Bargaining Units	*LRA*, s. 15.1	Trade unions and employers had the right to request an OLRB review of bargaining units with an eye toward consolidating them, or to mutually agree to merge bargaining units in certain circumstances.	Bill 47 expands the Board's powers to review the appropriateness of bargaining units. These review powers were previously restricted to within the first three months following certification, and where no collective agreement was in place. The new s. 15.1 authorizes the Board to review the appropriateness of a bargaining unit at any time that an employer or trade union makes an application. So long as the Board is satisfied that the bargaining unit is no longer appropriate, the Board may then make orders that include, but are not limited to, consolidating or reconfiguring bargaining units and amending certification orders.
Card-Check Certification in Building Services, Temporary Help Agencies and Home Care Community Services	*Labour Relations Act, ("LRA")*, s. 15.2	Workers in building services, temporary help agencies and home care and community services had the right to choose between a card-based application and a standard representation vote certification application.	This provision will be repealed. Any applications filed before Bill 47 receives royal assent will be treated as follows: "1. If the application was filed before the day the *Making Ontario Open for Business Act, 2018* received first reading, the application shall be determined in accordance with this section, as it read immediately before that day. 2. If the application was filed on or after the day the *Making Ontario Open for Business Act, 2018* received first reading, the application shall be determined in accordance with section 8."

Right to Just Cause Protection, First Contract Mediation and Expanded Access to First Contract Mediation-Arbitration	*LRA*, ss. 12.1, 43, 43.1	Under the current regime, parties that cannot agree on an initial collective agreement can apply to the Board to have a mediator appointed. If no agreement is reached within 45-day of mediation, the parties move to mediation-arbitration. Under this regime, if the parties do not reach an agreement within 30-days, the board has the authority to make a binding order on the parties.	Under Bill 47, if the parties cannot come to an initial agreement, the parties are restricted to applying to the Minister to direct arbitration proceedings (not mediation). The decision of the Board of Arbitration is then issued within 45-days of the commencement of the hearing. The first collective agreement will be settled by the arbitrator before any applications for decertification or displacement are considered. Transition notes: If any applications are pending and have been directed to settlement by mediation-arbitration by the Board as of the day Bill 47 comes into force, the parties will proceed as directed. If any parties are in first collective agreement mediation when Bill 47 comes into force, the mediation will cease on that day or immediately after. Pending applications as of Bill 47's enactment will proceed under the s. 43 as amended by Bill 47.

Successor Rights to Employees in the Building Services Sector	*LRA*, s. 69.1	Unionized building services employees, or those whose work is related to "servicing the premises," remain protected by their collective agreement and maintain their bargaining rights when eligible building services are re-tendered to a new service provider.	This section appears likely to remain in place.
Ability to Extend Successor Rights to Service Providers Receiving Public Funds	*LRA*, s. 69.2	Authorized the application of s. 69 to other service providers that directly or indirectly receive public funds, as provided for in the regulations.	This section is repealed. The regulations may not extend s. 69 rights to service providers that directly or indirectly receive public funds who are not covered by s. 69.1.
Rights Following Strikes and Lockouts	*LRA*, ss. 80, 80.1	Section 80(1) of the *OLRA* allows employees who return to work following a lawful strike to be reinstated on the terms agreed upon by the employer and the employee. This right is effectively inextinguishable, no matter how long the strike lasts.	Bill 47 restricts the timeframe for reinstatement to "within six months" following the commencement of a lawful strike. A worker who is on strike for longer than six months thereby loses any right to reinstatement.
Fines for Violating the *LRA*	*LRA*, s. 104(1)	The maximum fine for contravention of the Act is $100,000.	Maximum fine for violations of the Act is now $25,000.