

# Bill 148 is here. Are you ready?

## Webinar #2

Natasha Persaud & Monina Febria

February 22, 2018



@o\_n\_n | @ONTjobs



Ontario Nonprofit Network



theonnc.ca

OUR  
PEOPLE

OUR  
FINANCING

OUR REGULATORY  
ENVIRONMENT



# Ontario's Nonprofit Sector: Economic Driver

---

- > **55,000** organizations
- > Over **5 million** volunteers
- > **One million** workers
- > **\$50 billion** in economic impact (2.6% of GDP)  
*- community nonprofits only*
- > Bigger contributor to GDP than auto and construction industries combines

Working together towards

**A STRONG  
AND  
RESILIENT  
NONPROFIT  
SECTOR**

# Presentation Overview

---

- 1. Brief review of Webinar 1**
- 2. Equal pay for work of equal value rules**
  - Application of the rule
  - Breaking down the components of the rule
  - Exploring exceptions to the rule
- 3. Requests for review of rate of pay**
- 4. Reprisal and enforcement provisions**
- 5. Employer best practices**

# Disclaimer

---

This is in no way an exhaustive or complete list of changes to the *Employment Standards Act, 2000 (ESA)* or the implications of the new equal pay for work of equal value provisions under the *ESA* or any other law in Ontario.

This presentation is **legal information** relevant to Ontario and it is **not to be used as legal advice**.

This presentation is directed at employers of non-unionized employees. Employers with unionized employees should seek legal advice if they have questions about the compliance of their collective agreements.

# Disclaimer

---

The content in this presentation is accurate as of February 22, 2018. If you are reading or watching this webinar after February 22, 2018 it may not be legally accurate.

There are links to resources in this presentation that are believed to be legally accurate, but we do not guarantee that the information is accurate, timely or complete.

Should you have any questions about your rights or obligations under the *Employment Standards Act, 2000* or any other law we recommend that you seek legal advice.

# **INTRODUCTION**

**Employment Standards Act, 2000**

**& Bill 148**

**(Fair Workplaces, Better Jobs Act)**



# Bill 148

## (Fair Workplaces, Better Jobs Act)

---

- Bill 148 was first introduced on June 1, 2017 in response to recommendations made in the final report of the [Changing Workplaces Review](#)
- The goal of the legislation was to address changes to contemporary workplaces imposed by globalization, technology and the rise of temporary work





# Timeline Summary

Date in effect	Changes to the ESA related to:
<b>Now</b>	<ul style="list-style-type: none"><li>● Independent contractor misclassification</li><li>● Parental and pregnancy leaves</li><li>● Increased minimum wage (\$14/hr)</li><li>● Vacation for some employees</li><li>● Domestic and sexual violence leave</li><li>● Public holiday pay</li><li>● Personal emergency leave</li><li>● Overtime</li></ul>



# Timeline Summary

Date in effect	Changes to the ESA related to:
<b>April 1, 2018</b>	<ul style="list-style-type: none"><li>● New equal pay for work of equal value rules</li></ul>
<b>January 1, 2019</b>	<ul style="list-style-type: none"><li>● New scheduling rules</li><li>● Scheduling - record keeping requirement</li><li>● Increased minimum wage (\$15/hr)</li></ul>

# WEBINAR 1 RECAP - WHAT IS ALREADY IN EFFECT



# Increased Minimum wage

---

Changes to the minimum wage (for most employees)

- **\$14 per hour** on January 1, 2018
- It is scheduled to increase:
  - To **\$15 per hour** on January 1, 2019, and
  - With inflation each October 1 thereafter



# Public Holiday Pay Calculations

---

Determined by dividing the total regular wages earned in the pay period preceding the holiday by the number of days worked in that pay period

**“Regular wages”** Does not include overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, personal emergency leave pay, termination pay, severance pay and termination of assignment pay



# Misclassifying employees as independent contractors

---

*Employment Standards Act* now:

- Specifically prohibits the misclassification of employees as independent contractors
- **Puts the onus on the employer** to prove that the individual is an independent contractor if their classification is in dispute

Ministry of Labour may prosecute an employer and publicize the conviction, and impose monetary penalties if a person was misclassified



# Personal Emergency Leave

---

**Applies to all employers** regardless of size, and all employees covered by the ESA, regardless of employment status (full time, part time, contract etc.)

## WHAT IS THE ENTITLEMENT?

- 10 job-protected days of leave for employees
- If employed 1 week or more, the first 2 days of leave are paid, the remaining 8 are unpaid
- The leave can be used:
  - for personal illness, injury or medical emergency
  - due to illness, injury, medical emergency, death, or [urgent matter concerning certain family members](#)

Employers **CANNOT** require a medical note from a doctor, registered nurse, or psychologist if an employee is taking this leave

- But employers **can** require reasonable non-medical evidence like a death certificate



# Personal Emergency Leave

## How are these different from Sick Days?

Personal Emergency Leave	Sick Days (Outside PEL)
Required under the ESA	Not explicitly required under the ESA, an employer chooses to offer these
2 days paid (if employed a week or more) and 8 days unpaid	Generally all days are paid
Cannot require a medical note from a doctor, RN, or psychologist	Can require a medical note from a doctor, RN or psychologist
Can be used for non-medical purposes	Usually, are only used for medical purposes



# Case Scenario #1

---

When is it permissible to request a medical note to honour a sick day or personal emergency leave request?

**Answer:**

**Depends on the situation and leave requested**



# Pregnancy & Parental Leave

---

The new increases to parental leave can apply if the baby was born or came into the parent's custody and care on or after **December 3, 2017**:

- Increase from 35 weeks to 61 weeks for employees who take pregnancy leave
- Increase from 37 weeks to 63 weeks for employees who do not take pregnancy leave

In event of miscarriage or stillbirth:

- Employee is entitled to 12 weeks of leave (if an employee's leave begins on or after January 1, 2018)



# Other Leaves

---

Domestic or sexual violence leave is a new leave:

- 10 individual days
- First 5 are paid
- Up to 15 weeks each calendar year if the employee qualifies (may include moving arrangements etc.)



# Other Leaves

	<b>Family Caregiver Leave</b>	<b>Family Medical leave</b>	<b>Critical illness leave</b>
<b>Care or Support for:</b>	A specified family member who has a serious medical condition.	A specified family member who has a significant risk of dying within 26 weeks	A specific family member, including someone who thinks of you as family or a child under 18, who is critically ill.
<b>Length/timing</b>	Up to 8 weeks in a calendar year	Up to 28 weeks over a 52-week period	For a child under 18: 37 weeks over a 52-week period For an adult: 17 weeks over a 52-week period
<b>Family member</b>	<a href="#">Family member</a>	<a href="#">Family member</a> incl. someone who thinks of the employee as family	<a href="#">Family member</a> incl. someone who thinks of the employee as family
<b>Medical Certificate Required From</b>	A doctor, RN, or psychologist	A doctor or nurse practitioner	A doctor, RN, or psychologist
<b>Min. period of employment to qualify</b>	None	None	At least 6 consecutive months



# Vacation and Overtime

---

## Vacation:

- Full-time, part-time, and contract employees with a period of employment of at least 5 years are now entitled to:
  - **3 weeks of vacation and 6% vacation pay**
- January 1, 2018 regardless of when your entitlement year ends.
- Employers must record and keep a record for 5 years of various information related to vacation.
- Other record-keeping requirements can be found [here](#).

## Overtime:

Employees who are working overtime must be paid at the rate for the position they are working during the overtime period, even if the employee holds more than one position with the employer.



# Scheduling rules (as of 2019)

---

## CHANGE REQUESTS

- Employees employed for three months will be able to request a change in schedule or location without fear of reprisal

## 3 HOUR RULE

- If an employee works more than 3 hours a day and is scheduled to work but works less than 3 hours, they must be paid wages for 3 hours of work based on specific calculations

## SHIFT REFUSAL

- Employees can refuse the employer's request to work a shift or be on call if given less than 96 hours notice without reprisal

## RECORD KEEPING

- [New record-keeping requirements](#) around scheduling for employers come into effect **January 1, 2019**

# **Changes that are coming into effect April 1, 2018:**

## **Equal pay for work of equal value**



# Equal pay for work of equal value

---

The ESA already provided that an employer **could not pay an employee of one sex at a lower rate of pay** than that of an employee of the other sex when:

- Both employees performed substantially the same kind of work in the same establishment;
- Their performance required substantially the same skill, effort and responsibility; and
- Their work was performed under similar working conditions.





# Equal pay for work of equal value

---

The new provisions add a similar prohibition based on **differences in employment status**.

As of April 1, 2018, the ESA will enforce that:

- Employees who are casual, part-time, temporary or seasonal must receive equal pay for **substantially the same work** performed by full time or permanent workers.
- Temporary help agency employees (also known as assignment employees), who are doing **substantially the same work** as employees, must also be paid the same rate of pay as employees.

**Difference in employment status** means either

- difference in the number of hours regularly worked or
- difference in their term of employment including permanent, temporary, casual or seasonal status.



# Equal pay for work of equal value

---

## Exceptions:

The provisions around equal pay for equal work do not apply to differences in pay rates between employees of the same status (e.g 2 full-time employees performing substantially the same work at different rates – as long as it is not on the basis of sex or any other prohibited ground)

The provisions do not apply to certain individuals, including firefighters, workers under 18 years of age (with weekly hours under 28 hours )



# Equal pay for work of equal value

---

If an employee is paid less than another employee because of a difference in their employment status where:

1. The employees perform substantially the same work at the same establishment;
2. Their performance requires substantially the same skill, effort and responsibility; AND
3. The employees work under similar working conditions

**The employer has likely violated the equal pay for work of equal value provisions.**



# Equal pay for work of equal value

---

**Substantially the same work** means work that is substantially the same, but not necessarily identical.

- The work is similar enough that it could reasonably be considered to fall within the same job classification. The jobs do not have to be identical in every respect, nor do they have to be interchangeable.



# Equal pay for work of equal value

---

**At the same establishment** refers to a location where the employer carries on business. If an employer carries on business at more than one location, a separate location will constitute a single establishment if:

- The separate locations are in the same municipality;
- or
- There are common “bumping rights” for at least one employee across municipal borders.



# Equal pay for work of equal value

---

## Substantially the same skill, effort and responsibility

- **Skill:** refers to the amount or degree of knowledge, physical or motor and capability needed to perform the job.
- **Effort:** refers to the mental or physical exertion needed to perform the job.
- **Responsibility:** measured by the number and nature of the employee's job obligations, the degree of accountability and authority exercised by the employee.

## Similar working conditions

- The environment (office, outdoors, factory, etc).

# Case Scenario #2

---

Rita and Ashok both work for the same non-profit employer and are both paid on an hourly basis. Rita is employed through a temporary work agency while Ashok is employed full-time. Rita works at the employer's location in London, Ontario while Ashok works from the employer's Toronto office. While both Rita and Ashok are classified as "Administrative" staff, Rita handles matters such as filing and data entry while Ashok provides administrative support to a manager and is responsible for scheduling appointments and ensuring that the manager is kept apprised of all office developments among other things. Rita is paid \$3/hr less than Ashok.

**Does Rita's difference in pay violate the equal pay for work of equal value provisions?**

**Answer: Likely no because of a number of factors**

# Case Scenario #3

---

Rita is moved to the Toronto office where she now becomes a part-time employee. While she continues to complete some filing and data-entry tasks, she is now mainly tasked with similar duties as Ashok and now reports to the same manager as Ashok. Rita continues to be paid \$3/hr less than Ashok.

**Does Rita's difference in pay violate the equal pay for work of equal value provisions?**

**Answer: Likely yes because of a number of factors**





# Equal pay for work of equal value

---

## Other exceptions:

An employer may be able to justify differences in rate of pay relying on:

- A seniority system;
- A merit system;
- A system that measures earning by quantity or quality of production;
- Any other difference not based on the sex of the employee or employment status.



# Equal pay for work of equal value

---

## Seniority system

- This implies number of years of service, and includes a system that provides for different pay based on the accumulated number of hours worked.

## Merit system

- Employers should use an objective and a legitimate method of determining merit that is implemented fairly and equally.



# Equal pay for work of equal value

---

## **System that measures earning by quantity or quality of production**

- This should also be measured using objective and demonstrable standards

## **Any other difference not based on the sex of the employee or their employment status**

- This might occur in cases where an employee is demoted, but his or her rate of pay is “red-circled” (i.e. kept the same as in the original position).

# Case Scenario #4

---

Kinza and Natalie have both worked for the same employer since 2008. They perform substantially the same work but Kinza is paid \$2.50/hr more than Natalie. Kinza and Natalie report to different managers but both have annual performance evaluations that impact the pay raises they are entitled to. These annual evaluations are informal meetings with their respective managers and Kinza's manager is known to be much more lenient than Natalie's when it comes to performance assessments.

**Would Kinza's difference in pay be considered an exception?**

**Answer: Likely not an exception**

# Case Scenario #5

---

In evaluating performance, Kinza and Natalie's respective managers, must consider attendance and lateness rates. Kinza has stellar attendance and one late noted on her evaluation. Natalie however, has struggled with attendance throughout her employment is often late for work.

**Under these circumstances, would Kinza's difference in pay be considered an exception?**

**Answer: Likely an exception**



# Request for review of “rate of pay”

---

Casual, part-time, temporary and seasonal employees who believe they are not receiving the same rate of pay as full-time and permanent workers doing substantially the same work are entitled to request a review of their pay.

## **In response employers must either:**

- Adjust the employee’s pay rate; or
- If the employer disagrees- provide a written response giving a reason for the disagreement.

Employers **may not** lower the rate of pay of existing employees performing substantially the same work to comply with the equal pay requirement.



# Request for review of “rate of pay”

---

## REPRISAL

Employers may not carry out reprisals against employees who:

- Make inquiries about rates of pay or
- Disclose their rate of pay for the purpose of determining or assisting in determining whether an employer is complying with the ESA.

# ENFORCEMENT OF THE ESA





# Enforcement & Noncompliance

---

## Ministry of Labour Review

If an Employment Standards Officer (ESO) believes that an employer has contravened the equal pay for work of equal value rule, the ESO may determine the amount owing to the employee as a result of the contravention. That amount will be deemed to be unpaid wages for that employee(s).



# Enforcement & Noncompliance

---

- If an ESO believes that an employer has contravened a provision in the ESA, the ESO may send out **notice of the contravention** specifying an amount to be charged as a penalty for the contravention.
  - [Penalties](#) are determined in accordance with the regulations
- If an employer is deemed to have contravened the ESA **after being issued a notice of contravention**, the Ministry may publish or otherwise make available to the general public the name of the organization, a description of the deemed contravention, and the penalty given.

# EMPLOYER BEST PRACTICES



# Best Practices

---

## Consider your workforce

- Employers should review their workforce and determine if employees of different status are being paid the same rate for performing “substantially the same” kind of work requiring the same skill, effort and responsibility under similar working conditions

## Anticipate requests for review of rate of pay

- Employers should consider increasing pay rates **before** any anticipated requests for review of rate of pay are made
- Consider what procedures will be followed upon receipt of requests for review of rate of pay



# Best Practices

---

## Keep clear records and policies

- Draft job descriptions carefully
- Have clear policies and standard procedures in place to track employee seniority, merit based systems and/or working conditions
- Have fair, objective and equal measures for recording

Changes related to record keeping now require employers to hold to records for **5 years**



# Next steps

---

Next Bill 148 webinar: **March 29, 12-1pm**

For more information visit our FAQ page:

<http://theonn.ca/our-work/our-people/decent-work/bill-148-faqs/>

Send additional questions to [bill148@theonn.ca](mailto:bill148@theonn.ca)

## More information about ONN:

- Website: [www.theonn.ca](http://www.theonn.ca)
- Membership: <http://theonn.ca/membership>
- Subscribe to our e-communications list:  
<http://theonn.ca/subscribe/>