

# Bill 148 is here. Are you ready? Webinar #1

Rebecca Stulberg & Monina Febria

January 26, 2018



@o\_n\_n | @ONTjobs



Ontario Nonprofit Network



theonn.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 toward

**A STRONG  
AND  
RESILIENT  
NONPROFIT  
SECTOR**

# Presentation Overview

---

1. Introduction to the ESA and Bill 148
2. Changes that are currently in effect
3. Changes coming April 1, 2018
  - New equal pay for equal work rules
4. Changes coming January 1, 2019
  - New scheduling rules
  - Scheduling record-keeping rules
5. Enforcement

# Disclaimer

---

This is in no way an exhaustive or complete list of changes to the *Employment Standards Act, 2000 (ESA)* or your rights or obligations 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.

The content in this presentation is accurate as of January 26, 2018. If you are reading or watching this webinar after January 26, 2018 it may not be legally accurate.

# Disclaimer

---

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)**



# Employment Standards Act, 2000 (ESA)

---

- Rights and responsibilities of most employees and employers in Ontario
- Industries and jobs with [exemptions or special rules](#)
- Minimum standards - Greater Benefit Rule
- “Employees” under the ESA



# Bill 148

## (Fair Workplaces, Better Jobs Act)

---

- November 27, 2017: Royal Assent
- Some changes in effect now, some will come later
- Ongoing interpretation – the law is not always black and white
- We are not covering every change to the ESA
- Unionized workers and transitional provisions



# 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

<b>Date in effect</b>	<b>Changes to the ESA related to:</b>
<b>April 1, 2018</b>	<ul style="list-style-type: none"><li>● New equal pay for equal work 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>

**Some changes to the ESA  
that are currently in effect**



# Increased Minimum wage

---

- **\$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

$$\frac{\text{Regular wages earned in the pay period preceding the holiday}}{\text{The number of days worked in the pay period}}$$

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

- The last scheduled work day before the holiday and the first scheduled work day after the holiday
- Employees who would not ordinarily be working on the public holiday

# Example: Public Holiday Pay

---

- Sharon works 1 day/week and her regular wages are \$100/day
- Sharon worked her 2 scheduled work days in the two-week pay period preceding New Years Day 2018
- So, Sharon earned \$200 in the preceding pay period for 2 days worked.

$$\text{\$ } 200 \div 2 = \text{\$ } \underline{100}$$

This means that Sharon will earn a full day's pay for the public holiday



# 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
- Gives the Ministry of Labour the power to commence a prosecution against an employer, publicize a conviction, and impose monetary penalties if a person was misclassified

## Independent Contractors

They are in business for themselves and provide services in exchange for money

They own some or all of the tools and equipment they use to do their work

They can make a profit and have a risk of losing money in their business

They decide how and/or where their work is completed

Their contract for services can be ended by the contracting business or organization

They cannot be disciplined by the organization or business who has contracted them to do work

## Employees

Performs work for the employer in exchange for wages

The employer supervises their work

The employer trains them

The employer can discipline them

The employer decides their hours

The employer decides what the individual does, how much they will be paid, and when the work must be completed

The employer decides where they work

The employer provides the tools, material and equipment to do the work

The individual cannot subcontract their work to someone else



# Personal Emergency Leave

---

## 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, or,
  - due to illness, injury, medical emergency, death, or urgent matter concerning certain family members

## EVIDENCE

- Employers CANNOT require a medical note from a doctor, registered nurse, or psychologist if an employee is taking this leave
- Employers can ask for a note from another health professional like a dentist
- Employers can require reasonable non-medical evidence like a death certificate



# Personal Emergency Leave

---

## WHO DOES THIS APPLY TO?

- **ALL** employers, regardless of size
- **ALL** employees, regardless of full-time, part-time, or contract status unless they are exempt from the ESA



# 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



# Personal Emergency Leave

---

How does the “greater benefit rule” apply here?

- If an employment contract or collective agreement provides a greater right or benefit than what personal emergency leave requires, then the terms of the contract apply instead.
- If the contract or collective agreement does not provide a greater right or benefit, then personal emergency leave applies to the employee.

# Case Scenario #1

---

- You have a contract that provides an employee with 7 paid personal sick days and 5 paid bereavement leave days per calendar year.
- The policy says the sick days can only be used for personal illness and medical appointments, and bereavement days can only be used for bereavement.
- The contract does not require a medical note from a doctor, RN, or psychologist to access the sick days.

**Is this a greater benefit?**

**Answer: Probably not**

# Case Scenario #2

---

- An employment contract provides a benefit plan that includes 13 days of paid leave for illness, bereavement, or any other reason each calendar year. The plan does not require any medical notes.

**Is this a greater benefit?**

**Answer: Yes**

# Case Scenario #3

---

The employer provides employees 10 paid sick days to be used for the employee or someone the employee is caring for. The employer has a policy of requiring a medical note from a doctor after an employee has been sick for 3 days to justify any further days off.

An employee ends up being off sick for 10 days.

**Is this a greater benefit? And what is the impact on this employee's entitlement?**

**Answer: No**



# Pregnancy & Parental Leave

---

- Leave increased in the case of miscarriage or stillbirth:
  - if an employee's leave begins on or after January 1, 2018 they are entitled to at least **12 weeks** of leave after the miscarriage or stillbirth.
- 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



# New or Changed Leaves

---

[Domestic or sexual violence leave](#) is a new leave

- Employees are entitled if:
  - They have been employed for at least 13 weeks
  - They or their child have been the victim of domestic or sexual violence or experience a threat of domestic or sexual violence, AND
  - The leave is take for one of the prescribed reasons in the ESA
- An employee who qualifies for this leave can take 10 days AND up to 15 weeks each calendar year.
- The first 5 days of the leave are paid.

[Learn more on the FAQ page on ONN's website](#)



# New or Changed 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.

**Some changes to the ESA  
that will come into effect  
April 1, 2018**



# Equal Pay for Equal Work

---

An employer cannot pay casual, part-time, temporary, and seasonal employees a rate that's different from that paid to full-time employees if the employees perform **“substantially the same work”**.

**Inquiries:** Employees are allowed to ask employers and coworkers about their rate of pay if they think they are not receiving wages that are equal to full-time employees' rate.

No reprisals



# Equal Pay for Equal Work

---

## “Substantially the same work”

- Not necessarily identical
- Work that could be in the same job classification, but does not need to be interchangeable
- Similar working conditions
- The “same establishment”
- Work that requires substantially the same:
  - Skill
  - Effort
  - Responsibility

# Case Scenario #4

---

Bob and Amer work for the same non-profit employer as Program Managers who are paid an hourly rate. Bob works part-time and is responsible for managing the organization's programs in the east-end of Toronto, while Amer works full-time and is responsible for managing the organization's programs in the west-end of Toronto. The east-end and west-end programs are different, but they both work in similar offices and there is nothing about either of these jobs that requires more skill, effort or responsibility.

**Substantially the same work?**

**Answer: Most likely yes but ...**

# Case Scenario #5

---

Now let's say Amer's programs shift their focus a bit and Bob's job stays the same. Amer starts doing quite a lot of front-line work with people who live on or near the streets. This requires him to be outside during the winter, even on days where it reaches -30 degrees. Also, Amer's participant numbers have increased significantly and the employer has asked him to supervise a junior employee to assist him. Bob and Amer still have the same job title, and they are still both carrying out the employer's programming.

## **Substantially the same work?**

**Answer: Likely no but without the details of Bob's job it's hard to say**



# Equal Pay for Equal Work

---

## Exceptions to the rule

Differential pay for substantially the same work can be justified by:

- A seniority system
- A merit system
- A system that measures earnings by quantity or quality of production
- Any other factor other than sex or employment status, like
  - Number of hours regularly worked by the employees
  - A difference in their term of employment, including permanent, temporary, casual or seasonal

# Case Scenario #6

---

John works full-time in a position that is eliminated during a restructuring in the workplace. As a result, John is demoted into a full-time position also held by Rosa who works part-time. The employer allows John to keep the rate of pay he had in his eliminated position even though this is a higher rate of pay than Rosa.

**Is this allowed under the equal pay for equal work provisions?**

**Answer: Yes because...**

**Some changes to the ESA  
that are coming into effect  
January 1 , 2019**



# Scheduling

---

## CHANGE REQUESTS

- Employees employed for three months will be able to request a change in schedule or location without fear of reprisal
- Employers will have certain obligations in terms of how they respond to requests

## 3 HOUR RULE

- Reporting to work (new calculation)
- Shift Cancellation (within 48 hours of start)
- On-Call employees

## SHIFT REFUSAL

- If an employer asks an employee to work a shift or be on call with less than 96 hours notice, the employee will be able to refuse the employer's request without reprisal

## RECORD KEEPING

- There will be new record-keeping requirements around scheduling for employers in effect **January 1, 2019**

# ENFORCEMENT OF THE ESA



# Enforcement & Noncompliance

---

- 175 more employment standards officers (ESOs)
- ESOs can investigate a workplace in response to an employee complaint OR do proactive investigations
- An ESO can visit your workplace without notice and an employer is required to produce requested records and answer relevant questions
- Bill 148 has increased the flexibility around the monetary orders an ESO can give
- The [Ministry of Labour](#) can also decide to initiate a prosecution in court for violation of the ESA



# Next steps

---

- Next Bill 148 webinar: **February 22 at 12pm**
- 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>
- Workplace Legislation:  
<http://theonn.ca/our-work/our-people/decent-work/workplace-legislation/>