

# April 1, 2018 & Beyond Equal Pay and Scheduling

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Ontario Nonprofit Network



theonn.ca

OUR  
PEOPLE

OUR  
FINANCING

OUR REGULATORY  
ENVIRONMENT



# Ontario's Nonprofit Sector: Economic Driver

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- > **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

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- 1. Brief review of Webinar #2 - Equal pay for work of equal value**
- 2. Introduction to Scheduling changes**
  - The 3-hour rule
  - Minimum pay for on-call work
  - Shift cancellation pay
  - Right to refuse work
  - Requests for changes in schedule or location
- 3. Enforcement of the ESA**
- 4. Employers Best Practices**

# Disclaimer

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

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The content in this presentation is accurate as of March 29, 2018. If you are reading or watching this webinar after March 29, 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.

# OVERVIEW

## **Employment Standards Act, 2000 & the Fair Workplaces, Better Jobs Act (Bill 148)**



# 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 2 RECAP

## Equal pay for work of equal value

in effect April 1, 2018



# Equal pay for work of equal value

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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

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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

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**Substantially the same work** means work that is somewhat 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

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**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

# Case Scenario #1

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Anita, Santosh, Luke and Mariam are all Supervisors who work for a nonprofit. Anita (full time) works in the Child and Youth Department, Santosh (part time) works in the Programs Department and Luke (full-time) and Mariam (part time) work in the Outreach Department.

As Supervisors, they have similar job duties although some of their tasks are unique to their respective departments. Their employer uses “pay bands” that are connected to a merit system based on their performance. Anita and Luke are in the “Supervisor” pay band but Santosh and Mariam are not.

**Is this a violation of the equal pay for work of equal value provisions?**

**Answer: Yes it is likely a violation but...**



# Request for review of “rate of pay”

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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.**

Temporary help agency employees are also allowed to ask their employer to review their rate of pay if they believe they're not receiving the same rate of pay as employees of the agency's client (who perform substantially the same work).





# Request for review of “rate of pay”

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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 decision.

Employers **may not** :

- Lower the rate of pay of existing employees performing substantially the same work to comply with the equal pay requirement
- Penalize employees who request a review of their pay rate or who disclose their rate of pay in order to determine if an equal pay for work of equal value violation has been made

# SCHEDULING CHANGES

In effect January 1, 2019



# Three-hour rule

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If an employee regularly works more than 3 hours per day and is scheduled to work but works less than 3 hours, despite being available to work longer, he or she is **entitled to be paid for 3 hours of work**

If employees are sent home before they start working or are sent home early, they are deemed to have worked 3 hours and **entitled to be paid for that time.**

**Exceptions:** This does not apply if the employer was unable to provide work because of fire, lightning, power failure, storms or similar causes beyond the employer's control



# Calculating wages

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**Wages for 3 hours** under the 3-hour rule and minimum pay for on call work rule refers to wages for 3 hours **equal to the greater of:**

1. The employee's regular rate for 3 hours of work; or  
OR
2. The sum of:
  - The amount the employee earned for the time worked
  - The employee's regular rate for the remainder of the time.

If the employee is entitled to a form of premium pay (e.g. overtime pay) while working, the employee keeps this entitlement



# Minimum pay for on-call work

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If an employee is scheduled to be on-call but is not called in to work OR works less than 3 hours, the **employer is required to pay them regular wages for 3 hours.**

This applies for each 24-hour period in which the employee is on call (beginning at the start of the first time in that period that the employee is on call), even if the employee is on call multiple times during a single 24-hour period.

**Exceptions:** Does not apply if employee is required to be on call to ensure the continued delivery of essential public services, regardless of who delivers those services

# Case Scenario #2

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Johan is employed as an administrative support staff with a local nonprofit. The organization has been exceptionally busy for the past two weeks and he has been scheduled to work 3 hours of overtime on Wednesday evening. He arrived at work on Wednesday but only worked 2 hours, rather than the scheduled 3 hours.

**Under the new provisions, what is Johan's employer obligated to pay him?**

- a) 3 hours of overtime pay
- b) 3 hours of regular pay
- c) 2 hours of overtime pay
- d) 2 hours of overtime pay and 1 hour of regular pay

**Answer: D**



# Shift Cancellation Pay

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If the employer cancels the employee's scheduled day or work or on call period **with less than 48 hours notice** prior to the start time, the **employer must pay the employee wages equal to 3 hours of pay at the employee's regular rate.**

**Exceptions:** This rule does not apply if the employer was unable to provide work because of :

- Fire, lightning, power failure, storms or similar causes beyond their control; or
- Employee's work is weather-dependent and the employer is unable to provide work for weather-related reasons.
- Such other reasons as may be prescribed by the Ministry of Labour

# Case Scenario #3

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Christina is a staff member with a community hub in Mississauga. She is usually scheduled to work on Mondays, Wednesdays and Thursdays between 10am and 3pm.

As she was scheduled to work her usual shift on Thursday, she arrived at 10am but ended up working only one hour as the centre was exceptionally quiet that day. When she received her next pay stub, she realized that she was only paid for 1 hour for that day and raises it with her employer. Her employer maintains that she only worked for 1 hour and should only be paid for 1 hour.

**Is Christina's employer in violation of the new scheduling provisions?**

**Answer: Yes, this is a violation**



# Case Scenario #4

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Ray is one of Christina's colleagues. He provides outreach to clients who are homeless which requires him to be outside on most days. He works similar hours as Christina, as he is usually scheduled for 5 hour shifts, 3 days per week.

During one of his scheduled shifts, he only ends up working 2 hours rather than his usual 5 hours as his employer cancelled the balance of his shift due to a severe winter storm. Ray's employer only pays him for the two hours he worked that day.

**Is Ray's employer in violation of the scheduling provisions?**

**Answer: No this is not a violation**



# Maximum Entitlement

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**Employee's maximum entitlement** for each scheduled work day or 24-hour call period is limited to 3 hours' pay

Even if more than one scheduling cancellation occurs in a single day (24-hour period) the employee's maximum entitlement is no more than 3 hours pay calculated appropriately



# Right to Refuse Work

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Employees can now refuse their employer's request to work without fear of reprisal if they were not originally scheduled to work and if the **employer's request is made less than 96 hours (4 days) notice before the start of the shift.**

If employees refuse to attend at their shift, they must notify the employer of their refusal as soon as possible.

**Exceptions:** Employees cannot refuse a shift if the employer's request is to:

- Deal with an emergency
- Remedy/reduce a threat to public safety
- Ensure the continued delivery of essential public services
- Other reasons deemed by the Ministry of Labour



# Right to Refuse Work

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Employers are not required to give employees their schedule in advance, but providing more than 96 hours notice would protect employers from the risk that some employees might refuse to attend at work

**“Emergency”** means

- A situation that constitutes a danger that could result in serious harm to people or substantial damage to property and that is caused by the forces of nature, disease or other health risk, an accident or an act, or
- A situation involving a search and rescue operation

# Case Scenario #5

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Hiba and Monica work as recreation coordinators for a nonprofit in Oshawa. They work primarily with elderly clientele. Hiba generally works Monday to Thursday from 12 to 8pm while Monica works the same hours between Friday and Sunday.

On Wednesday evening, the employer received a call from Hiba's sister advising that Hiba was very ill and had been admitted to the hospital for treatment. As Hiba could not attend her Thursday shift, the employer called Monica and advised that she had been scheduled to work the Thursday in addition to her usual shifts.

**Is this employer in violation of the new scheduling provisions?**

**Answer: Not a violation but...**



# Collective Agreements

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Collective agreements that are in effect on January 1, 2019 will prevail where there is a conflict over the following amendments:

- Minimum pay for being on call
- Shift cancellation
- Right to refuse work

**Collective agreements will prevail until the expiry of the collective agreement or by January 1, 2020 whichever occurs first.**



# Requests for Changes

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Employees who have been employed for at least 3 months can **make a request in writing for a change related to their schedule or work location** without fear of reprisal

Employers who receive such request are required to

- Discuss with the employee the request
- Notify the employee of their decision within a reasonable time



# Requests for Changes

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Responding to the request for a change:

- If the employer **grants** part or all of the request, it must specify the date the change will take effect and the duration
- If the employer **denies** the request, they must explain why





# Record Keeping Requirements

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Starting **January 1, 2018** employers must keep the following **new** records:

- Dates and time that an employee worked;
- If an employee has multiple regular rates of pay and the employee worked overtime in a given week, the dates and times that employee performed overtime work and the applicable rate of pay; AND
- The amount of vacation pay that an employee earned and how it was calculated

More details can be found on the [Ministry of Labour website](#)



# Record Keeping Requirements

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Starting **January 1, 2019** employers must keep the following **new** records:

- Dates and time of any cancellation of a scheduled day of work or scheduled on-call work
- Dates and times that an employee was scheduled to work or be on-call; AND
- Any changes to the on-call schedule

These records must be kept for three (3) years

# **ENFORCEMENT OF THE ESA**



# Enforcement & Noncompliance

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## 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

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- 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.



# Enforcement & Noncompliance

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- 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



# **BEST PRACTICES: EMPLOYERS & BOARD OF DIRECTORS**



# Best Practices

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- Employers should ensure that managers, human resource personnel and others responsible for scheduling are aware of the income changes
- Employers should handle scheduling with care and foresight so that if changes are needed, employees are provided with ample notice:
  - More than 48 hours' notice to cancel a work shift or on call period
  - More than 96 hours' notice to request employee attendance at a work shift or on call period.





# Best Practices

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- Employers should carefully consider staffing needs to avoid the application of the 3-hour rule when sending employees home before 3 hours of work.
- Employers should have back-up plan in the event an employee refuses a shift scheduled on short notice.
- Employers should implement standardized procedures for how an employee might request a schedule or location change, and how those requests will be decided and communicated.



# Best Practices

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- Review current policies in light of the new scheduling provisions and revise as needed
- Develop processes to address requests for shift and location changes (e.g. what factors to be considered to make these decisions)
- Consider developing standardized request and response forms



# Next steps

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**ONN's Bill 148 FAQ page:**

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

**Stay tuned for follow up email with the Bill 148 webinars & slides**

**Contact the Ministry of Labour** for further information and clarification

**More information about ONN:**

- Website: [www.theonn.ca](http://www.theonn.ca)
- Membership: <http://theonnn.ca/membership>
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