

Changes to the ESA

Late last month, Bill 148 was passed by the Ontario Government, amending both the Employment Standards Act, 2000 (“ESA”) and the Labour Relations Act, 1995 (“LRA”), as a result of the “Changing Workplaces Review” report. This review extensively studied the state of labour and employment law in the province, with a particular view to protecting workers who are considered “vulnerable”, or are in part-time, temporary or “contractual” roles.

How will some of the changes of Bill 148 and the Employment Standards impact you and your business?

Minimum Wage Increases

There has been much attention paid to the increase in minimum wages. The general minimum wage will increase to \$14 per hour on January 1, 2018, and to \$15 on January 1, 2019. There will also be increases to other minimum wages, such as those paid to students and servers. While many businesses do not employ large numbers of minimum wage workers, there may be a management issue created by the “rising tide lifts all boats” factor.

Employee or Independent Contractor?

Employers must be certain that employees are properly classified as such. Individuals who are associated with a company in a relationship that has the attributes of employment – substantially all the money they earn is from one source, they use the “tools” of that employer – business cards, physical office facilities, computer equipment – must be treated as employees. Not only is the onus on the employer to prove that the employee is properly classified, but the penalties for misclassification are significant.

Scheduling – More Structure Around Call-In, On-Call, Shift Changes

The “Changing Workplaces Review” identified that part time workers were experiencing difficulties around short notices for shift cancellations, being on-call and not receiving reasonable notice for requests to come to work. There are a number of changes surrounding these issues, and the maintenance of documentation and records concerning scheduling.

Leaves

Employees with more than five years’ service will now be entitled to the equivalent of three weeks’ vacation pay, or 6% vacation pay per year. This applies to all full-time, part-time and casual workers with more than five years’ service.

Bill 148 also extends Paid Emergency Leave (“PEL”) to employers with fewer than 50 employees. Employers are required to provide ten days’ leave in the case of personal or family illness or emergency. Two of these days must be paid, and employers cannot request a doctor’s note from employees who use the PEL.

A new leave was introduced under Bill 148 to provide for time off for an employee who is dealing with any of the ramifications of domestic abuse, to themselves or to a child. The employee must have at least 13 weeks’ service. The amount of allowable leave is somewhat ambiguous, but 15 weeks and 10 days per calendar year is mentioned.

Other Changes

There are also changes with respect to how overtime rates are calculated for employees with more than one rate of pay, and the calculation of public holiday pay.

For further information on the changes to the ESA, or to discuss how company owners and managers can integrate them into existing policies and practices, please contact the leader of our HR Consulting Practice, Susan Hodkinson.

Connect with the Author

Susan Hodkinson, BA, Chief Operating Officer, Crowe Soberman LLP

Susan leads the HR Consulting Group and she is the Chief Operating Officer at Crowe Soberman, where she has management responsibility for the operations of the firm, including finance, information technology, human resources, facilities and marketing.

Connect with Susan at: 416.963.7172 or susan.hodkinson@crowesoberman.com.

Specific professional advice should be obtained prior to the implementation of any suggestion contained in this article.