

# Employment Law Changes Coming Into Force on January 1, 2019

By Ashley Winberg



On November 21, 2018, Bill 47 (Making Ontario Open for Business Act, 2018), which was introduced by the Ontario government on October 23, 2018, passed the Third Reading and received Royal Assent.

Bill 47 amends some of the changes to the *Employment Standards Act, 2000* (the "ESA") that were introduced under Bill 148 (Fair Workplaces, Better Jobs Act, 2017), some of which came into force on January 1, 2018, and others that were scheduled to come into force on January 1, 2019.

## **Bill 148**

The changes introduced by Bill 148 that impacted condominium corporations in 2018 are summarized below:

	<b>Bill 148</b>
Personal Emergency Leave	As of January 1, 2018: <ul style="list-style-type: none"> <li>• employees have been entitled to take up to 10 days of personal emergency leave each calendar year;</li> <li>• employees have been entitled to pay for the first 2 days of personal emergency leave taken in each calendar year; and</li> <li>• employers have been prohibited from requiring that employees provide a note from a physician, registered nurse or psychologist to prove that they are entitled to take personal emergency leave.</li> </ul>
Vacation Pay	As of January 1, 2018, after 5 years of employment, employees were entitled to 3 weeks of paid vacation.
Public Holiday Pay	As of January 1, 2018, public holiday pay was calculated by dividing the total amount of regular wages earned by an employee in the pay period immediately preceding the public holiday by the number of days that the employee worked in that period.
Minimum Wage	As of January 1, 2018, the minimum wage was \$14/hour and the same was scheduled to increase to \$15/hour on January 1, 2019.
Minimum Pay	As of January 1, 2018, if an employee who regularly worked more than 3 hours a day was required to report to work, but worked less than 3 hours, they were entitled to 3 hours of pay.
On-Call Work	Under Bill 148, as of January 1, 2019, employees would have been entitled to the following: <ul style="list-style-type: none"> <li>• 3 hours of pay when a scheduled on-call shift was cancelled less than 48 hours before the start of the shift;</li> <li>• 3 hours of pay for being on-call;</li> <li>• a right to request scheduling or work location changes; and</li> <li>• a right to refuse work requests or on-call requests made less than 96 hours in advance.</li> </ul>

## **ESA as of January 1, 2019 (Bill 47)**

As Bill 47 passed the Third Reading and received Royal Assent, the changes introduced under Bill 47 will come into force on January 1, 2019.

Bill 47 amends some of the changes to the ESA that were introduced under Bill 148, some of which came into force on January 1, 2018, and others that were scheduled to come into force on January 1, 2019. Below is a summary of the amendments to the ESA introduced under Bill 148 as amended by Bill 47, which will come into force on January 1, 2019, and impact condominium corporations with employees:

	<b>Bill 148 as amended by Bill 47</b>
Personal Emergency Leave	As of January 1, 2019: <ul style="list-style-type: none"> <li>employees will be entitled to take up to 8 unpaid sick days, up to 3 days of sick leave, up to 3 days of family responsibility leave, and up to 2 days of bereavement leave each calendar year; and</li> <li>employers will be permitted to ask employees for a note from a physician, registered nurse or psychologist to prove that they are entitled to take leave.</li> </ul>
Vacation Pay	As of January 1, 2018, after 5 years of employment, employees will still be entitled to 3 weeks of paid vacation. <b>Thus, Bill 47 does not introduce any changes with respect to vacation pay.</b>
Public Holiday Pay	As of January 1, 2019, public holiday pay will be calculated by dividing the total amount of regular wages earned and vacation pay payable to an employee in the 4 work weeks before the work week in which the public holiday occurs by 20.
Minimum Wage	As of January 1, 2019, the minimum wage will still be \$14/hour and the same will be subject to annual inflationary adjustments commencing on October 1, 2020.
Minimum Pay	As of January 1, 2019, if an employee who regularly works more than 3 hours a day is required to report to work, but works less than 3 hours, they will still be entitled to 3 hours of pay. <b>Thus, Bill 47 does not introduce any changes with respect to minimum pay.</b>
On-Call Work	None of the entitlements with respect to on-call work that was scheduled to come into force on January 1, 2019, under Bill 148, will come into force on January 1, 2019, under Bill 47.

## **Key Takeaways**

### *3-Hour Rule for On-Call Work*

Had the entitlement to a minimum of 3 hours of pay for being on-call that was introduced by Bill 148 not been repealed by Bill 47, as of January 1, 2019, if a condominium corporation's superintendent was on-call to work but was not required to work or was required to work for less than 3 hours, the condominium corporation would have been required to pay the superintendent wages for 3 hours of work.

However, since Bill 47 has repealed the 3-hour rule for on-call work that was scheduled to come into force on January 1, 2019, in the New Year nothing will change with respect to on-call work and as such, if a condominium corporation's superintendent is on-call to work and is not required to work or is required to work for less than 3 hours, the condominium corporation will not have to pay the superintendent wages for 3 hours of work.

### *Seek Legal Advice*

As it is always recommended that condominium corporations obtain formal legal opinions from their solicitors whenever contemplating an employment change, and prior to taking any action that would reverse or reduce an employee's entitlements. Thus, prior to changing an employee's entitlements so that same reflect the changes to the ESA that will come into effect on January 1, 2019, it is advised that condominium corporations contact their solicitors in order to ensure that by doing so they will not be at risk of a potential constructive dismissal claim, which can arise when an employer makes a change to a fundamental a term of an employee's employment contract unilaterally without providing the employee with reasonable notice of same.

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