MAKE IT FAIR

Amendments to Bill 148, *Fair Workplaces, Better Jobs Act*

Submission to the Standing Committee of Finance and Economic Affairs • July 2017


ONTARIO
FEDERATION OF
LABOUR

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Standing Committee
Finance and Economic Affairs
Ontario Legislature
111 Wellesley St W
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Dear Committee Members,

On behalf of the 54 affiliated unions and one million workers the Ontario Federation of Labour (OFL) represents, we want to commend the government on its efforts to modernize Ontario's outdated labour and employment laws.

We join with the millions of Ontarians who will benefit from Bill 148, *Fair Workplaces, Better Jobs Act*, in congratulating the government for undertaking their review of the changing nature of work and for proposing a suite of improvements that aim to assist the most vulnerable among us, including those who are precariously employed.

For far too long, it has been clear that the changing nature of work in Ontario has increasingly left far too many workers and their families behind – with the laws failing to recognize and protect workers in precarious employment situations.

The introduction of the *Fair Workplaces, Better Jobs Act* is a result of many hard-fought struggles and the collective voice of millions demanding immediate action to modernize our labour and employment laws.

There is still, however, more work to be done.

This legislation has the potential to greatly improve and positively impact the lives of Ontario's working people today and for generations to come. Through the provisions outlined in Bill 148, Ontario workers will make significant gains in the world of work. This includes progress towards implementing a $15 general minimum wage; mandating equal pay for equal work for temp agency and part-time workers; introducing improved scheduling practices; expanding just cause protection for unionized workers; facilitating workers' right to join a union when an employer contravenes labour laws and removing the restriction for workers to return to work after a strike.

The government must ensure that this legislation does in fact succeed in its overarching and stated objectives: raising the standard of work and improving the lives of Ontario workers and their families.

The Ontario Federation of Labour is pleased to advance and advocate for amendments to the *Fair Workplaces, Better Jobs Act* that will contribute to a legislative framework for decent work in the province.

Respectfully submitted,

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President

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LABOUR RELATIONS ACT

The Supreme Court of Canada has recognized and affirmed that under the Canadian Charter of Rights and Freedoms, every Canadian is afforded the right to associate and pursue collective workplace goals. In other words, everyone has the right to access unionization, the right to organize, the right to engage in meaningful collective bargaining, and the right to strike. Ontario labour laws, however, fall short of upholding these fundamental rights and freedoms. It is therefore imperative that Bill 148 increase access to unionization for all Ontario workers and strengthen protections for unionized workers.

Remove all exemptions to the Labour Relations Act

Despite Bill 148's purported commitment to strengthen workers' right to democratically engage in collective bargaining, the legislation fails to address the reality that several classes of workers in Ontario are not covered by the LRA. Currently, several occupations including licensed professionals (e.g., members of the architectural, dental, land surveying, legal, or medical profession), agricultural, horticultural, and domestic workers are exempt from the Act. Given that the Supreme Court of Canada has ruled that "freedom of association ... stands as an independent right with independent content, essential to the development and maintenance of the vibrant civil society upon which our democracy rests,"[i] it follows that excluding workers from accessing their fundamental freedom to associate meaningfully in pursuit of collective workplace goals is unjustifiable. Bill 148 should eliminate current occupational exclusions, including licensed professionals as well as domestic, agricultural, and horticultural workers.

RECOMMENDATION(S):

Repeal clause 1 (3) (a); clause 3 (a); clauses 3 (b), (b. 1) and (c) of the LRA.

Prohibit combining bargaining units where bargaining rights are held by different unions

One of the most critical decisions in the certification process is determining the appropriate bargaining unit. Ontario is one of the few jurisdictions in Canada to not provide its labour board with explicit power to revise, vary, amend, and consolidate bargaining units. This limits the ability of the Ontario Labour Relations Board (OLRB) to create stable collective bargaining relationships and conditions for effective organizing in sectors where unionization has not taken hold.

Bill 148 proposes empowering the OLRB to change the structure of units within a single employer, where the existing units are "no longer appropriate for collective bargaining". This will permit the OLRB to consolidate, restructure, or reconfigure units; determine which union will be the bargaining agent of resulting units; and amend bargaining unit descriptions in any collective bargaining agreement. It is, however, the position of the OFL that the involuntary consolidation of different bargaining units represented by different bargaining agents will cause significant instability and create less harmonious labour relations in the province. Positioning unions against each other will fail to facilitate viable and stable collective bargaining. Rather, it will cause serious labour relations problems by requiring unions to expend resources in

expensive representation disputes. Further, the legislation does not propose a similar provision that allows for the consolidation of bargaining rights among different employers. It is both unfair and illogical that workers will be treated differently where there are different unions in the workplace. More importantly, providing the OLRB with the power to deny workers continued representation by their own union and instead compel them to join another union undermines workers' right to choose their own bargaining agent. It is unfair and unjustifiable that workers will be treated differently where there are different unions in the workplace. Bill 148 should therefore restrict the Board's ability to consolidate varying bargaining units to instances where workers are represented by the same bargaining agent.

RECOMMENDATION(S):

Amend subsection 15.2 (1) of the LRA to add the following:

3. The same union holds bargaining rights for all of the affected bargaining units.

Combine bargaining units of franchisees of the same franchisor

It is widely acknowledged that change is needed to give meaningful access to collective bargaining – a constitutional right – to vulnerable workers. Given that collective bargaining constitutes a fundamental aspect of Canadian society which "enhances the human dignity, liberty, and autonomy of workers by giving them the opportunity to influence the establishment of workplace rules and thereby gain some control over a major aspect of their lives, namely their work"[ii], the collective bargaining process must evolve to address the fissured workplace.

Bill 148 rightly allows for the OLRB to consolidate newly certified bargaining units with other existing bargaining units under a single employer, where those units are represented by the same bargaining agent. This proposal enables units to be certified on a smaller basis and then varied or consolidated afterwards. Such a measure further extends meaningful access to collective bargaining for workers – particularly for vulnerable workers who have historically been underrepresented by unions in areas of the economy that have been traditionally difficult to organize.

The collective bargaining process must evolve to address the fissured workplace.

The legislation, however, does not go far enough – especially for those working in a franchise. As the Special Advisors of the Changing Workplaces Review point out "Collective bargaining cannot be meaningful if it is limited to a single franchisee location. It is likely that no single bargaining unit for a single location of a franchisee has sufficient leverage to improve terms and conditions of employment when, in the same geographic area, there are many other locations selling the exact same product at the same or similar price. The only way to bargain effectively is to be able to bargain collectively with multiple locations involved with that brand in that geographic area."[iii] For collective bargaining purposes, franchisees of a common franchisor should be treated like a single large employer with multiple locations. Furthermore, without such a provision, franchised operations will have an unfair advantage compared to owner operated multi-location operations. Bill 148 should therefore extend the right of a union to apply to consolidate its bargaining rights at multiple locations of the same employer to multiple locations of the same franchisor.

RECOMMENDATION(S):

Amend section 15.1 of the LRA to add the following:

Franchisees

(8) For the purposes of this section, the franchisees of the same franchisor shall be deemed to be the same employer.

The legislation also limits the practice of consolidating bargaining units at certification or three months thereafter. This provision needlessly imposes a restriction on consolidation, which will make it impossible to consolidate existing units or to consolidate units in the future where no new certification application is made. Bill 148 should permit an application to consolidate at any time.

RECOMMENDATION(S):

Amend 15.1 (1) of the LRA to reflect the following:

15.1 (1) If the Board certifies a trade union or council of trade unions as the bargaining agent of the employees in a bargaining unit, the Board may review the structure of the bargaining units if all of the following conditions are met:

The employer, trade union or council of trade unions makes an application to the Board requesting the review at the time the application for certification is made, or at any time thereafter.

The same trade union or council of trade unions that is certified as the bargaining agent of the employees in the bargaining unit already represents employees of the employer in another bargaining unit at the same or a different location and holds the bargaining rights for all of the affected bargaining units.

Provide greater access to workplace information

Currently, Ontario workers seeking to form unions have no right to employee information until their organizing campaign has resulted in the filing of an application for certification. Bill 148 makes significant improvements in this respect by providing access to workplace information (i.e., employee names, phone numbers, and personal email addresses) – provided that unions can demonstrate membership evidence for 20 per cent of workers in a bargaining unit that the OLRB determines can be appropriate for collective bargaining. The ability to access needed information, however, remains limited.

Without information about job classifications and an employer's organizational structure during an organizing campaign, unions and supportive employees are forced to formulate bargaining unit descriptions based on incomplete information. Further, litigation before the Board at the time of the filing of an application for certification may be reduced by giving unions more information about the workplace earlier in an organizing campaign. Namely, this allows unions to more accurately craft an appropriate bargaining unit description prior to the filing of an application for certification.

As written, Bill 148 also requires a union's application for certification to exactly mirror its initial application for workplace information. Such a provision undermines part of the purpose of providing unions with workplace information early in a union organizing campaign: to give unions a better understanding of the structure of the employer's operation. This permits a union to alter its organizing drive as required to craft an appropriate bargaining unit.

To the extent that Bill 148 aims to address concerns about unions obtaining an employee list for a large bargaining unit of an employer, and then applying for a smaller unit of that same employer, this issue has already been addressed by

requiring unions to obtain a significant threshold of support (20 per cent) in a unit that can be appropriate for collective bargaining before being entitled to any workplace information. Moreover, even where the list is obtained, the Board still must find a union's proposed bargaining unit to be appropriate for collective bargaining before it will certify the union for a unit of employees of the employer.

Given that the amendments serve no labour relations purpose and are needlessly restrictive, they should be removed.

RECOMMENDATION(S):

Repeal subsections 6.1(12) and 6.1(13) of the LRA.

Because of the barriers to organization, there is often uncertainty around the total number of workers employed at any given time in a worksite. Once unions access workplace information, it may be the case that their initial understanding of the bargaining unit does not reflect the employer's total list of workers. This results in the inability of the union to apply for certification. To avoid situations where the employer may inflate the list of employees to prevent unions from reaching the proposed 20 per cent threshold, Bill 148 should require employers to provide statutory declarations respecting the number of employees they employ rather than permitting an estimate.

RECOMMENDATION(S):

Amend clause 6.1(5)(b) of the LRA to reflect the following:

(b) a statutory declaration setting out the number of individuals in the bargaining unit described in the application under subsection (1), if the employer disagrees with the trade union's estimate.

To strengthen workers' right to organize, Bill 148 should also permit unions to access – in addition to full names, phone numbers, and personal email addresses – employees' mailing addresses, job classification, employment status (i.e., full-time or part-time and permanent or temporary), and an organizational chart that outlines the relationship of the employees in the proposed unit to other employees and the lines of authority between management, supervisors, and subordinate employees. It is important to note that this information is provided by employers in the federal jurisdiction at the time they respond to a union's application for certification.

RECOMMENDATION(S):

Amend subsection 6.1(9) of the LRA to reflect the following:

(9) If the Board directs an employer to provide a list of employees of the employer to the trade union under subsection (7), the list must include,

a) the name of each employee in the proposed bargaining unit;

b) a phone number, personal email and mailing address for each employee in the proposed bargaining unit, if the employee has provided that information to the employer;

c) each employee's department, job title and classification, if applicable;

d) each employee's employment status, as of the date of application, the relationship of the employees in the proposed bargaining unit to the other employees, and the lines of authority between managerial and other employees;

e) an organization chart showing, as of the date of application, the relationship of the employees in the proposed bargaining unit to the other employees, and the lines of authority between managerial and other employees; and

f) any other information specified by the Board in its direction.

Extend card-based certification to all sectors

A fundamental element in the collective bargaining process is the mechanism available for workers to express their interest to freely associate with others for the meaningful pursuit of collective workplace goals – in other words, the manner in which a union is certified. Bill 148 proposes to extend card-based certification for the temp agency industry, the building services sector, as well as the home care and community services industry. If passed, only four sectors (including the male-dominated construction industry) will permit workers to unionize through card-based certification in the province. It is imperative that the LRA facilitate access as well as remove barriers to unionization – not for some, but for all workers. Given that women, racialized workers, youth, and newcomers represent a significant proportion of the Ontario workforce, the proposal to restrict card-based certification to certain extremely limited sectors significantly impedes their ability to join a union. In fact, union certification success rates in card-based regimes are approximately 20 percentage points higher than under compulsory vote systems.[iv] All Ontario workers – with no exceptions – deserve the same protection of their constitutional right to unionize.

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It is important to emphasize that the current two-step mandatory vote system fails to recognize that from the first show of support to when the ballots are cast, the situation can drastically change. With this certification process, employers have a sizeable opportunity to interfere with workers' choices – to engage in threats and intimidation. Although employer opposition and misconduct can be overt (e.g., illegal terminations), in many cases it is subtle but no less effective. Practices include captive audience speeches[1]; small group meetings held by the employer; the distribution of anti-union literature; employer promises of increased wages and benefits; tightening work rules; threats against union supporters; and interrogating workers.[v] Conversely, card-based certification recognizes that when a worker signs a union card, they are expressing their desire to join a union. Given that the Supreme Court of Canada has recognized that "the function of collective bargaining is not served by a process which undermines employees' rights to choose what is in their interest and how they should pursue those interests"[vi], Bill 148 should repeal the mandatory vote system and extend card-based certification to all sectors in Ontario.

RECOMMENDATION(S):

Amend 15.3 of the LRA by striking out subsections (1), (2) and (3).
Amend subsection 15.3 (4) of the LRA by striking out "specified industry".
Amend section 15.3 of the LRA to add the following:

Non-application to construction industry

(25) This section does not apply with respect to an employer as defined in subsection 126(1).

[1]Captive audience speeches are a compulsory gathering of employees in a workplace during which an employer delivers anti-union messages or information.

Provide greater access to automatic first contract arbitration

In principle, all workers are guaranteed the right to associate for the purposes of meaningful collective bargaining. In reality, this right remains limited as a result of the barriers to establishing a first collective agreement. Bill 148 proposes that if a union is remedially certified, the OLRB must then order mediation-arbitration unless the union has aggravated the process (i.e., refused to bargain, bargained in bad faith, or took an uncompromising position without reasonable justification). In all other first agreement situations, however, the OLRB may grant the request, dismiss the application on limited grounds, or order the parties to engage in further mediation. It is important to note that employers often delay reaching a first collective agreement in an effort to weaken the resolve of newly organized workers. Inevitably, workers grow frustrated with lengthy delays while their working conditions worsen. This undermines their right to access meaningful collective bargaining. Bill 148 should therefore provide automatic access to first agreement arbitration.

RECOMMENDATION(S):

Amend paragraph 4 of subsection 43.1 (5) of the LRA to reflect the following:

In the case of an order under clause (2) (a), a dismissal under clause (2) (b), a party may make a second application under subsection (1) and the Board shall direct the settlement of a first collective agreement by mediation-arbitration if the Board is satisfied that, since the Board made its original decision under subsection (2), the applicant has taken all reasonable steps to engage in good faith collective bargaining with the assistance of a mediator.

Amend subsection 43.1 (6) of the LRA by adding "or paragraph 4 of subsection (5)" after "clause (2) (c)".

Extend successorship rights to all contracted services

Ontario employers in the private and public sector are bound by successorship rights legislation when a business or a portion thereof is sold. This, however, is not the case for employers who sub-contract services. This includes building services (e.g., security, cleaning, and food services), homecare (e.g., housekeeping and personal support services), and contracted school bus services – among others. This means unionized contract workers often lose both their collective agreement and their bargaining rights if the service contract covering their worksite changes hands. This is the case even if the new contract provider hires the same employees to perform the same work in the same location. In response, the legislation proposes to extend successorship rights only to the building services industry and allows for regulations to potentially extend successorship rights to publicly funded services – although exemptions can be made through regulations. It should not matter whether workers are employed in a publicly or privately funded contracted service – all workers deserve protections against contract flipping[2]. Bill 148 should extend successorship rights to all contracted services.

It should not matter whether workers are employed in a publicly or privately funded contracted service – all workers deserve protections against contract flipping.

[2] Contract flipping refers to a practice by employers of awarding contracts to different service providers every few years. Workers must then re-apply for their jobs, often losing any wage increases and benefits earned under their previous employer.

RECOMMENDATION(S):

Amend subsection 69.1 (1) of the LRA to reflect the following:

Successor rights, contracted services

69.1 (1) This section applies with respect to services provided directly or indirectly by or to a building owner or manager or occupant, or by or to an enterprise owner or manager or occupant, that are related to providing services at or to the premises, occupant or enterprise, including cleaning or housekeeping services, food services, security services and homemaking or personal support services, and any other kind of contracted services.

Repeal subsection 69.1 (2) of the LRA.

Amend clause 69.1 (3) (a) of the LRA by adding "or, in the case of homemaking services or personal support services, at premises where the employees regularly provide the services" at the end of the clause.

Amend clause 69.1 (3) (c) of the LRA to reflect the following:

(c) if substantially similar services are subsequently provided, whether at the same or different premises, under the direction of another employer.

Repeal section 69.2 of the LRA.

Repeal subsection 13 (1) of the *Fair Workplaces, Better Jobs Act*.

Repeal subsection 13 (3) of the *Fair Workplaces, Better Jobs Act*.

Prohibit replacement workers

It is important to understand that it is not often that workers exercise their right to strike. They do so, however, when they feel that they are not being heard by their employers and that the conditions under which they are working are unfair. The law should not undermine workers who are fighting for decent work and exercising their constitutional right to withdraw their labour. The failure to place restrictions on the use of replacement workers in such circumstances can reduce the willingness or ability of both parties to engage in meaningful and effective collective bargaining. More importantly, the Supreme Court of Canada has established that the right to exercise economic sanctions is an important part of the collective bargaining process.[vii] A union's primary economic sanction (i.e., the right to strike) is effectively negated by allowing employers to use replacement workers. Bill 148 should prohibit the use of replacement workers during strikes and lockouts.

RECOMMENDATION(S):

See Appendix for the amendments.

EMPLOYMENT STANDARDS ACT

The OFL champions the rights of all workers – both unionized and non-unionized – in this province. Currently, standards of work in Ontario fail to reflect the transformative change occurring in the labour market. The dramatic restructuring of workplaces has shifted the distribution of risks, costs, benefits, and power between employers and employees, leaving many in precarious situations. Given that the ESA is meant to establish the minimum terms and conditions of employment for all workplaces across Ontario, it is imperative that Bill 148 raise the bar for decent work for all workers.

The OFL stands in solidarity with the Workers' Action Centre and Parkdale Community Legal Services as well as with the Equal Pay Coalition, supporting and endorsing their recommendations on the changes to the ESA under Bill 148.

Extend Employment Standards Act coverage to dependent contractors

Bill 148 fails to recognize that the changing nature of work has created a spectrum of different workers – ranging from the traditional employee (i.e., those completely protected by the ESA) to so-called independent contractors (i.e., those outside of the ESA's protections). The Ontario Court of Appeal has concluded that an intermediate category between the traditional employee and independent contractor exists, "which consists, at least, of those non-employment work relationships that exhibit a certain minimum economic dependency, which may be demonstrated by complete or near-complete exclusivity [of the ESA]. Workers in this category are known as 'dependent contractors'…"[viii] The LRA rightly recognizes this class of workers, defining them as a "person who performs work or services for another person for compensation or reward on such terms and conditions that the [employee] is in a position of economic dependence upon, or under an obligation to perform duties for, that person". Bill 148 should apply a similar broad definition of employees and ensure ESA coverage extends to dependent contractors.

RECOMMENDATION(S):

Amend Subsection 1 (1) of the ESA to add the following:

"dependent contractor" means a person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor; ("entrepreneur dépendant")

Amend subsection 1 (3) of the Fair Workplaces, Better Jobs Act to reflect the following:

(3) Clause (c) of the definition of "employee" in subsection 1 (1) of the Act is repealed and the following substituted:

(c) a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer's employees,

(c.1) a dependent contractor, or

Strengthen equal pay for equal work legislation

Bill 148 acknowledges the fundamental principle that workers who are doing similar work should be paid the same. Specifically, employers will be required to pay part-time, temporary, seasonal, casual, temp agency workers the same rate of pay as full-time employees – unless employers can justify grounds for differential pay (i.e., seniority, merit, quantity or quality of employee production, or "other factors"). It should be noted that this change is a significant step forward for female workers, particularly for Indigenous, racialized, immigrant, younger, and women with disabilities who are disproportionately represented in insecure work.

Equal pay for equal work is a significant step forward for female workers, particularly for Indigenous, racialized, immigrant, younger, and women with disabilities.

Although the right to equal pay for equal work has been in the ESA for nearly 50 years, it has provided very limited protection for female workers. The law states that males and females (and other genders) doing "substantially the same" work should be paid the same; this creates an incentive for employers to establish or maintain minor differences between jobs performed by different genders in an effort to maintain pay differences. Unfortunately, Bill 148 borrows this language, necessitating stronger statutory language. The legislation should instead speak to "similar work" because it avoids the narrow focus associated with "same" duties and better prevents the ability of employers to manipulate job duties to evade equal pay obligations.

Furthermore, for equal pay protections to be effective, workers must be aware of the wage structure in their workplace. Although the legislation proposes providing workers with the right to request a review of their own rate of pay, without access to the overall wage structure, workers cannot ascertain whether they are receiving equal pay for equal work. Bill 148 should require employers to have a proactive obligation of pay transparency that requires them to post wage rate information in the workplace and to report this information to the Ministry of Labour. Workers must also be protected from reprisal when requesting and discussing wage rates.

It is also important to note that the inclusion of grounds for differential pay, namely "a system that measures earnings by quantity or quality of production" as well as the ambiguous "other factors", undermines the intent behind equal pay for equal work. Bill 148 should repeal both exceptions to equal pay and mirror the exemption language in the *Pay Equity Act,* which requires an employer to show that differential pay is both objective and does not discriminate based on sex.

RECOMMENDATION(S):

See Appendix for the amendments.

Prohibit parties from contracting out of the Employment Standards Act

Bill 148 sets a dangerous precedent. On two separate occasions, the legislation allows a collective agreement to violate the proposed minimum standards. No party, including unions, should be able to contract out of the basic provisions of the ESA. The principle of mandatory compliance with minimum standards is fundamental to ensuring that workers can access basic protections in the workplace.

The amendments to equal pay for equal work allow collective agreements that are in effect on April 1, 2018 to remain non-compliant with the new equal pay standards for the duration of the collective agreement. In other words, if a collective agreement is signed prior to April 1, 2018 and contains a provision that allows part-time, temporary, seasonal, casual, or temp agency workers to be paid less than their full-time counterparts, the collective agreement prevails and is not considered in breach of the proposed pay equity laws. Although this is a transitional provision, vulnerable workers should not be forced to wait for years before they receive the minimum standard of equal pay for equal work. Bill 148 should repeal this provision.

RECOMMENDATION(S):

Repeal subsections 42.1 (7), (8) and (9) of the ESA.

Repeal subsections 42.2 (7), (8) and (9) of the ESA.

Bill 148 introduces several important protections for workers on scheduling practices. The current uncertainty around work scheduling contributes to making work precarious (e.g., unpredictable incomes). Moreover, the current imbalance of power, where employers can demand a constant flexibility in schedules from their workers, is such that workers are forced to be economically dependent on a low-wage, insecure job. In response, Bill 148 proposes requiring employers to pay on-call employees at least three hours of pay if they are not called in or are called in for fewer than three hours; requiring employers to pay workers for at least three hours of work if the employer cancels a shift with less than 48 hours notice; and providing workers with the right to refuse a request to work or be on-call if the employer asks less than four days prior to the scheduled date. Under the legislation, however, unionized workers may not be able to access the basic rights relating to the notice of cancellation, the refusal of work, and being on call. Namely, if there is a provision in the collective agreement that violates the proposed scheduling laws (i.e., even if the collective agreement provides a lesser right than that of the ESA), the collective agreement will prevail. Bill 148 should repeal this provision.

RECOMMENDATION(S):

Repeal subsection 21.4 (3) of the ESA.

Repeal subsection 21.5 (3) of the ESA.

Repeal subsection 21.6 (4) of the ESA.

It is important to understand that in both circumstances, unionized workers are unfairly disadvantaged. As written, the legislation penalizes these workers for having secured a collective agreement and undermines one of the primary purposes of unionization – the ability to collectively bargain protections above minimum standards. Unionized workers, like non-unionized workers, should be able to access the minimum protections afforded under the ESA and not be forced to work under conditions deemed to be lower than the minimum. It is worth repeating: Bill 148 should repeal provisions under the sections on equal pay for equal work and scheduling that allow the collective agreement to prevail – even if it violates the proposed amendments to the ESA.

Remove all exemptions to the minimum wage

In 2016, nearly 30 per cent of Ontario workers earned less than $15 an hour. In fact, Canada's biggest labour market has more people working at low wages than any other large economic engine (i.e., Quebec, British Columbia, Alberta) within the country.[ix] Bill 148 rightly proposes implementing a $15 general minimum wage in 2019 and embedding the minimum wage in the ESA. This meaningful increase to the minimum wage recognizes that no one should work full-time and still live in poverty. Bolstering the minimum wage also translates to bolstering the economy from the bottom up because lower income households tend to spend a vast majority of their money in the local economy (e.g., food, health care, education, and housing).

In 2016, nearly 30 per cent of Ontario workers earned less than $15 an hour.

It is important to note, however, that not all Ontario workers will benefit from the increase to a $15 general minimum wage. There are several workers, including liquor servers and students, who will continue to receive a lower minimum wage. For liquor servers, it is argued that the complement of tips will augment earnings to meet or exceed the general minimum wage. This is predicated on the idea that it is customary for patrons to tip – which is not a mandated practice. Research shows that 20 per cent of liquor servers earn less than the general minimum wage after tips.[x] It is also important to note that women constitute nearly 75 per cent of liquor servers[xi]. This exemption to the minimum wage further reinforces the need for some to tolerate sexual harassment or other harassment from customers to get tips in an effort to make ends meet.

Furthermore, the legislation maintains the fact that Ontario is currently the only province in the country with a lower minimum wage for students. The Ministry justifies the student minimum wage as a means "to facilitate the employment of younger persons, recognizing their competitive disadvantage in the job market relative to older students who generally have more work experience and may be perceived by employers as more productive".[xii] Instead of addressing inequity in the labour market, this provision further embeds discrimination. It suggests that the work of youth is valued less than that of others, promoting age bias and potentially violating the Charter. Given the significant amendments around equal pay for equal work, maintaining differential pay – which disproportionately affects women and youth – runs contrary to the intent of the proposed legislation. Bill 148 should eliminate exemptions to the minimum wage, including for liquor servers and students.

RECOMMENDATION(S):

Amend subsection 23.1 (1) of the ESA to reflect the following:

Determination of minimum wage

(1) The minimum wage is the following:

1. On or after January 1, 2018, but before January 1, 2019, the amount set out below for the following classes of employees:
   i. For employees who are homeworkers, $15.40 per hour.
   ii. For any other employee, $14.00 per hour.

2. On or after January 1, 2019 but before October 1, 2019, the amount set out below for the following classes of employees:
    i. For employees who are homeworkers, $16.50 per hour.
    ii. For any other employee, $15.00 per hour.
3. From October 1, 2019 onwards, the amount determined under subsection (4).

Repeal subsections 23.1 (2) and (3) of the ESA.

Extend just cause protection for all workers

Bill 148 rightly extends just cause protection for unionized workers between certification and the first collective agreement as well as between a legal strike/lockout and the end of a new collective agreement. These provisions provide unionized workers with greater protection from employers who seek to "clean house" following a union organizing campaign and a strike/lockout. The legislation, however, fails to protect non-unionized workers from unjust dismissal. Currently, the ESA does not require employers to have "just cause" when terminating workers. Generally, an employer can dismiss an employee for any reason – subject to anti-reprisal and Human Rights Code protections. Although these workers do have access to pursue remedies for wrongful dismissal at common law, they are not eligible for "make whole" remedies (e.g., workers cannot be reinstated even if they were dismissed without cause). Extending just cause protection to all Ontario workers will provide workers with greater job security because they will be safeguarded against arbitrary and unfair terminations. It is also important to note that it is only when workers feel secure in their employment will they feel safe enough to ensure that their employer is complying with other minimum standards. In short, just cause protection is an indispensable part of the goal to ensuring better enforcement of the ESA. Bill 148 should therefore provide for unjust dismissal protection in the ESA after a worker has been employed for three months with the same employer.

RECOMMENDATION(S):

See Appendix for the amendments.

Legislate seven paid Personal Emergency Leave days

Bill 148 rightly proposes extending Personal Emergency Leave (PEL) to all workers in Ontario – granting access to the 1.7 million Ontario workers[xiii] who are currently ineligible because they are employed by a small business. If passed, the legislation will provide workers with two paid sick days – without a medical note requirement – within the confines of the ten job-protected PEL days. The number of days allocated to personal illness is unreasonable and inadequate. No one is immune from getting sick. Taking time off when sick is known to speed up recovery, deter further illness, and reduce overall health care costs.[xiv] People should not be forced into a position where they must either compromise their own health and the welfare of others or risk losing wages. Workers not only require the right to take time off when sick, but that leave must also be paid to make it a viable option. Bill 148 should provide workers with seven paid PEL days.

RECOMMENDATION(S):

Amend subsections 50 (5) of the ESA to reflect the following:

(5) An employee is entitled to take a total of seven days of paid leave and three days of unpaid leave under this section in each calendar year.

Establish a designated leave for survivors of domestic and/or sexual violence

For women that have experienced domestic and sexual violence, stable employment is imperative. The financial security associated with employment provides them with the economic independence needed to leave a destructive relationship. Survivors of domestic and/or sexual violence should not be forced to choose between their safety and their job. Instead of creating a separate leave for survivors of domestic and/or sexual violence, Bill 148 creates a new entitlement to PEL. By requiring these workers to use their personal emergency days, it further shortens their leave entitlement and restricts their ability to use it for other purposes such as illness and bereavement. It is also important to note that Bill 148 currently proposes only two paid days, which is severely inadequate to help address issues associated with leaving an abusive relationship and ensuring their own safety. Bill 148 should create a designated leave for survivors of domestic and/or sexual violence – namely, ten paid days of job-protected leave, followed by 60 days of job-protected unpaid leave. It must be emphasized that the creation of this leave alone will not be sufficient to help survivors of sexual and domestic violence. It is a first step and many more need to be taken, such as creating greater access to transitional housing, medical services, and counseling.

RECOMMENDATION(S):

See Appendix for the amendments.

APPENDIX

Prohibit replacement workers

RECOMMENDATION(S):

Amend Section 78.1 of the LRA by adding the following:

Definitions

78.1 (1) In this section,

"employer" means the employer whose employees are locked out or are on strike and includes an employers' organization or person acting on behalf of either of them; ("employeur")

"person" includes,

(a) a person who exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations, and

(b) an independent contractor; ("entrepreneur dépendant")

"place of operations in respect of which the strike or lock-out is taking place" includes any place where employees in the bargaining unit who are on strike or who are locked-out would ordinarily perform their work. ("lieu d'exploitation à l'égard duquel la grève ou le lock-out a lieu")

Application

(2) This section applies during any lock-out of employees by an employer or during a lawful strike that is authorized in the following way:

1. A strike vote was taken after the notice of desire to bargain was given or bargaining had begun, whichever occurred first.
2. The strike vote was conducted in accordance with subsections 79(7) to (9).
3. At least 60 per cent of those voting authorized the strike.

Interpretation

(3) For the purposes of this section and section 78.2, a bargaining unit is considered to be,

(a) locked-out if any employees in the bargaining unit are locked-out; and

(b) on strike if any employees in the bargaining unit are on strike and the union has given the employer notice in writing that the bargaining unit is on strike.

Use of bargaining unit employees

(4) The employer shall not use the services of an employee in the bargaining unit that is on strike or is locked out.

Use of newly-hired employees, etc.

(5) The employer shall not use a person described in paragraph 1 at any place of operations operated by the employer to perform the work described in paragraph 2 or 3:

1. A person, whether the person is paid or not, who is hired or engaged by the employer after the earlier of the date on which the notice of desire to bargain is given and the date on which bargaining begins.

2. The work of an employee in the bargaining unit that is on strike or is locked out.
3. The work ordinarily done by a person who is performing the work of an employee described in paragraph 2.

Use of others at the strike, etc., location

(6) The employer shall not use any of the following persons to perform the work described in paragraph 2 or 3 of subsection (5) at a place of operations in respect of which the strike or lock-out is taking place:

1. An employee or other person, whether paid or not, who ordinarily works at another of the employer's places of operations, other than a person who exercises managerial functions.
2. A person who exercises managerial functions, whether paid or not, who ordinarily works at a place of operations other than a place of operations in respect of which the strike or lock-out is taking place.
3. An employee or other person, whether paid or not, who is transferred to a place of operations in respect of which the strike or lock-out is taking place, if he or she was transferred after the earlier of the date on which the notice of desire to bargain is given and the date on which bargaining begins.
4. A person, whether paid or not, other than an employee of the employer or a person described in clause 1(3)(b).
5. A person, whether paid or not, who is employed, engaged or supplied to the employer by another person or employer.

Prohibition re replacement work

(7) The employer shall not require an employee who works at a place of operations in respect of which the strike or lock-out is taking place to perform any work of an employee in the bargaining unit that is on strike or is locked out without the agreement of the employee.

No reprisals

(8) No employer shall,

(a) refuse to employ or continue to employ a person;

(b) threaten to dismiss a person or otherwise threaten a person;

(c) discriminate against a person in regard to employment or a term or condition of employment; or

(d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of the person's refusal to perform any or all of the work of an employee in the bargaining unit that is on strike or is locked out.

Burden of proof

(9) On an application or a complaint relating to this section, the burden of proof that an employer did not act contrary to this section lies upon the employer.

Definition

78.2 (1) In this section, "specified replacement worker" means a person who is described in subsection 78.1 (5) or (6) as one who must not be used to perform the work described in paragraphs 2 and 3 of subsection 78.1(5).

Permitted use of specified replacement workers

(2) Despite section 78.1, specified replacement workers may be used in the circumstances described in this section to perform the work of employees in the bargaining unit that is on strike or is locked out but only to the extent necessary to enable the employer to provide the following services:

1. Secure custody, open custody or the temporary detention of persons under a law of Canada or of the Province of Ontario or under a court order or warrant.
2. Residential care for persons with behavioural or emotional problems or with a physical, mental or developmental handicap.
3. Residential care for children who are in need of protection as described in subsection 37(2) of the *Child and Family Services Act*.
4. Services provided to persons described in paragraph 2 or 3 to assist them to live outside a residential care facility.
5. Emergency shelter or crisis intervention services to persons described in paragraph 2 or 3.
6. Emergency shelter or crisis intervention services to victims of violence.
7. Emergency services relating to the investigation of allegations that a child may be in need of protection as described in subsection 37(2) of the *Child and Family Services Act*.
8. Emergency dispatch communication services, ambulance services or a first aid clinic or station.

Idem

(3) Despite section 78.1, specified replacement workers may also be used in the circumstances described in this section to perform the work of employees in the bargaining unit that is on strike or is locked out but only to the extent necessary to enable the employer to prevent,

(a) danger to life, health or safety;

(b) the destruction or serious deterioration of machinery, equipment or premises; or

(c) serious environmental damage.

Notice to trade union

(4) An employer shall notify the trade union if the employer wishes to use the services of specified replacement workers to perform the work described in subsection (2) or (3) and shall give particulars of the type of work, level of service and number of specified replacement workers the employer wishes to use.

Time for giving notice

(5) The employer may notify the trade union at any time during bargaining but, in any event, shall do so promptly after a conciliation officer is appointed.

Idem, emergency

(6) In an emergency or in circumstances which could not reasonably have been foreseen, the employer shall notify the trade union as soon as possible after determining that he, she or it wishes to use the services of specified replacement workers.

Consent

(7) After receiving the employer's notice, the trade union may consent to the use of bargaining unit employees instead of specified replacement workers to perform some or all of the proposed work and shall promptly notify the employer as to whether it gives its consent.

Use of bargaining unit employees

(8) The employer shall use bargaining unit employees to perform the proposed work to the extent that the trade union has given its consent and if the employees are willing and able to do so.

Working conditions

(9) Unless the parties agree otherwise, the terms and conditions of employment and any rights, privileges or duties of the employer, the trade union or the employees in effect before it became lawful for the trade union to strike or the employer to lock out continue to apply with respect to bargaining unit employees who perform work under subsection (8) while they perform the work.

Priority re replacement workers

(10) No employer, employers' organization or person acting on behalf of either shall use a specified replacement worker to perform the work described in subsection (2) or (3) unless,

(a) the employer has notified the trade union that he, she or it wishes to do so;

(b) the employer has given the trade union reasonable opportunity to consent to the use of bargaining unit employees instead of the specified replacement worker to perform the proposed work; and

(c) the trade union has not given its consent to the use of bargaining unit employees.

Exception re emergency

(11) In an emergency, the employer may use a specified replacement worker to perform the work described in subsection (2) or (3) for the period of time required to give notice to the trade union and determine whether the trade union gives its consent to the use of bargaining unit employees.

Application for directions

(12) On application by the employer or trade union, the Board may,

(a) determine, during a strike or a lock-out, whether the circumstances described in subsection (2) or (3) exist and determine the manner and extent to which the employer may use specified replacement workers to perform the work described in those subsections;

(b) determine whether the circumstances described in subsection (2) or (3) would exist if a strike or lock-out were to occur and determine the manner and extent to which the employer may use specified replacement workers to perform the work described in those subsections;

(c) give such other directions as the Board considers appropriate.

Reconsideration

(13) On a further application by either party, the Board may modify any determination or direction in view of a change in circumstances.

Idem

(14) The Board may defer considering an application under subsection (12) or (13) until such time as it considers appropriate.

Burden of proof

(15) In an application or a complaint relating to this section, the burden of proof that the circumstances described in subsection (2) or (3) exist lies upon the party alleging that they do.

Agreement re specified replacement workers

(16) The employer and the trade union may enter into an agreement governing the use, in the event of a strike or lock-out, of striking or locked-out employees and of specified replacement workers to perform the work described in subsection (2) or (3).

Formal requirements

(17) An agreement under subsection (16) must be in writing and must be signed by the parties or their representatives.

Idem

(18) An agreement under subsection (16) may provide that any of subsections (4) to (11) do not apply.

Term of agreement

(19) An agreement under subsection (16) expires not later than the earlier of,

(a) the end of the first strike described in subsection 78.1 (2) or lock-out that ends after the parties have entered into the agreement; or

(b) the day on which the parties next make or renew a collective agreement.

Prohibited circumstances

(20) The parties shall not, as a condition of ending a strike or lock-out, enter into an agreement governing the use of specified replacement workers or of bargaining unit employees in any future strike or lock-out. Any such agreement is void.

Enforcement

(21) On application by the employer or trade union, the Board may enforce an agreement under subsection (16) and may amend it and make such other orders as it considers appropriate in the circumstances.

Filing in court

(22) A party to a decision of the Board made under this section may file it, excluding the reasons, in the prescribed form in the Superior Court of Justice and it shall be entered in the same way as an order of that court and is enforceable as such.

Strengthen equal pay for equal work legislation

RECOMMENDATION(S):

Amend Section 42.1 of the ESA to reflect the following:

Equal pay for equal work: Employment Status

42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

Same

(1.1) For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

Exception

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of,

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code.

Reduction prohibited

(3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1).

Organizations

(4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1).

Deemed wages

(5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee.

Written response

(6) An employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the employee's employer, and the employer shall,

(a) adjust the employee's pay accordingly; or

(b) if the employer disagrees with the employee's belief, provide a written response to the employee setting out the reasons for the disagreement.

Amend section 42.2 of the ESA to reflect the following:

Equal pay for equal work: Difference in assignment employee status

42.2 (1) No temporary help agency shall pay an assignment employee who is assigned to perform work for a client at a rate of pay less than the rate paid to an employee of the client when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

Same

(1.1) For the purposes of s. 42.2(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

Exception

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of,

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code.

Reduction prohibited

(3) No client of a temporary help agency shall reduce the rate of pay of an employee in order to assist a temporary help agency in complying with subsection (1).

Organizations

(4) No trade union or other organization shall cause or attempt to cause a temporary help agency to contravene subsection (1).

Deemed wages

(5) If an employment standards officer finds that a temporary help agency has contravened subsection (1), the officer may determine the amount owing to an assignment employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that assignment employee.

Written response

(6) An assignment employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the temporary help agency, and the temporary help agency shall,

(a) adjust the assignment employee's pay accordingly; or

(b) if the temporary help agency disagrees with the assignment employee's belief, provide a written response to the assignment employee setting out the reasons for the disagreement.

Amend section 42.3 of the ESA to add the following:

Equal pay for Equal Work: Pay transparency

42.3 (1) No later than May 15 of every year, each employer shall file an annual Pay Transparency Report with the Minister.

Contents of report

(2) The annual Pay Transparency Report referred to in subsection (1) shall disclose the following information relating to the prior 12-month period ending on March 31 of each year:

(a) annual individual compensation of male employees, categorized by each classification and job status within the establishment,

(b) annual individual compensation of female employees categorized by each classification and job status within the establishment,

(c) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of male employees categorized by each classification and job status within the establishment,

(d) if an employee's compensation is expressed as an hourly rate, the hourly wage rate and the annual compensation of female employees categorized by each classification and job status within the establishment,

(e) the number of steps in a pay range by each classification and job status within the establishment,

(f) the rate of progression through a pay range by each classification and job status within the establishment.

Report to be made available

(3) The employer shall post the Pay Transparency Report in prominent places in each workplace for the establishment to which the document relates in such a manner that it may be read by all of the employees in the workplace.

Prohibitions

(4) No employer or temporary help agency may do any of the following:

(a) require, as a condition of employment, that an employee refrain from disclosing the amount of their wages;

(b) require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of their wages.

Reprisal

(5) Section 74 applies to this Part with no exceptions.

Extend just cause protection for all workers

RECOMMENDATION(S):

Amend section 62.1 of the ESA by adding the following:

Termination without just case

62.1 (1) Where the period of employment of an employee with an employer is three months or more, an employer shall not discharge that employee without just cause.

Complaint

(2) An employee who is discharged without just cause may make a complaint to the Ministry in accordance with section 96(1) within • days from the date on which the employee was dismissed.

Reasons for dismissal

(3) Where an employer dismisses a person described in subsection (1), the person who was dismissed or an employment standards officer may make a request in writing to the employer to provide a written statement giving the reasons for the dismissal, and any employer who receives such a request shall provide the person who made the request with such a statement within fifteen days after the request is made.

Officer to assist parties

(4) On receipt of a complaint under subsection (2), an employment standards officer assigned to investigate the complaint shall endeavour to assist the parties to the complaint to settle the complaint, and any settlement reached shall be governed by section 101.1.

Where complaint not settled within reasonable time

(5) Where a complaint is not settled under subsection (4) within such period as the employment standards officer endeavouring to assist the parties pursuant to that subsection considers to be reasonable in the circumstances, the employment standards officer shall, on the written request of the person who made the complaint request that the complaint be referred to an adjudicator under subsection (6),

(a) report to the Minister that the endeavour to assist the parties to settle the complaint has not succeeded; and

(b) deliver to the Minister the complaint made under subsection (2), any written statement giving the reasons for dismissal provided pursuant to subsection (3) and any other statements or documents the employment standards officer has that relate to the complaint.

Reference to adjudicator

(6) The Minister shall, on receipt of a report pursuant to subsection (5), appoint a Chair or Vice-Chair of the Ontario Labour Relations Board or an arbitrator on the Minister of Labour approved list of arbitrators as an adjudicator to hear and adjudicate on the complaint in respect of which the report was made, and refer the complaint to the adjudicator along with any statement provided pursuant to subsection (3).

Hearing to be held

(7) An adjudicator to whom a complaint has been referred under subsection (6) [shall consider the complaint within 30 days of his or her appointment].

Powers of adjudicator

(8) An adjudicator to whom a complaint has been referred under subsection (6) shall determine the procedure to be followed, and has all of the powers of an arbitrator under section 48(12) of the *Labour Relations Act, 1995.*

Decision of adjudicator

(9) An adjudicator to whom a complaint has been referred under subsection (6) shall,

(a) determine whether the dismissal of the person who made the complaint was unjust and render a decision thereon; and

(b) send a copy of the decision with the reasons therefore to each party to the complaint and to the Minister.

Where unjust dismissal

(10) Where an adjudicator decides pursuant to subsection (9) that a person has been unjustly dismissed, the adjudicator may, by order, require the employer who dismissed the person to,

(a) pay the person compensation not exceeding the amount of money that is equivalent to the remuneration that would, but for the dismissal, have been paid by the employer to the person;

(b) reinstate the person in his or her employ; and

(c) do any other like thing that it is equitable to require the employer to do in order to remedy or counteract any consequence of the dismissal.

Exception

(11) This section does not apply to a person who is a member of a bargaining unit governed by a collective agreement which provides protection against unjust dismissal.

Amend section 42 of the ESA to reflect the following:

Equal pay for equal work: Sex

42.(1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

Same

(1.1) For the purposes of s. 42(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

Exception

(2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of,

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code.

Reduction Prohibited

(3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1).

Organizations

(4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1).

Deemed Wages

(5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee.

Establish a designated leave for survivors of domestic and/or sexual violence

RECOMMENDATION(S):

Amend Section 29(1) of Schedule 1 of the Bill by deleting proposed paragraph 50(1)(4) of the ESA.

Strike out Section 29(2) of Schedule 1 of the Bill.

Add the following Section 50.0.1 to the ESA:

Domestic or sexual violence leave

50.0.1 (1) An employee is entitled to a leave of absence because of sexual or domestic violence, or the threat of sexual or domestic violence, experienced by the employee or an individual described in section 50(2).

Advising employer

(2) An employee who wishes to take leave under this section shall advise his or her employer that he or she will be doing so.

Same

(3) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning.

Limit

(4) An employee is entitled to take a total of 10 days of paid leave and 60 days of unpaid leave under this section in each calendar year.

Leave deemed to be taken in entire days

(5) If an employee takes any part of a day as paid or unpaid leave under this section, the employer may deem the employee to have taken one day of paid or unpaid leave on that day, as applicable, for the purposes of subsection (4).

Paid days first

(6) The 10 paid days must be taken first in a calendar year before any of the unpaid days can be taken under this section.

Domestic or sexual violence leave pay

(7) Subject to subsection (8), if an employee takes a paid day of leave under this section, the employer shall pay the employee,

(a) either,

(i) the wages the employee would have earned had they not taken the leave, or

(ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee had they not taken the leave; or

(b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

Domestic or sexual violence leave on public holiday

(8) If a paid day of leave under this section falls on a public holiday, the employee is not entitled to premium pay for any leave taken under this section.

Evidence

(9) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee's entitlement to leave.

Leave under ss. 49.1, 49.3, 49.4, 49.5, 49.6 and 50

(10) An employee's entitlement to leave under this section is in addition to any entitlement to leave under sections 49.1, 49.3. 49.4, 49.5, 49.6 and 50.

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MAKE IT FAIR AMENDMENTS TO BILL 148, *FAIR WORKPLACES, BETTER JOBS ACT*
Submission to the Standing Committee on Finance and Economic Affairs, Government of Ontario

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