No Relief in Sight: Amendments to Bill 148 Provide Little Good News for Ontario Employers

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The Ontario government is proceeding full steam ahead with its plans to push through some significant changes to the province’s labour and employment legislative framework. The government introduced Bill 148 (Fair Workplaces, Better Jobs Act, 2017) in June of 2017, speedily moving it through 1st reading and passing it on to a legislative committee called the Standing Committee on Finance and Economic Affairs for further consideration and possible amendment.

The government has made much of the public consultations undertaken by the Committee throughout the summer. In these consultations, the Committee sought feedback on Bill 148 and its proposed changes from industry stakeholders and the public. Many employer advocates no doubt hoped that the consultations would result in amendments to the employee-friendly legislation that would scale back some of the more extreme provisions or possibly introduce new provisions that would favour employers.
Unfortunately, employers’ hopes in that regard appear to have been misplaced if the Committee’s initial response to the public consultations is any indication. The Committee met during the week of August 21, 2017, to discuss and amend Bill 148, presumably settling upon the version of the bill that will be brought forth for 2nd reading in September of 2017, when the Provincial Legislature will resume. The proposed amendments provided little to no relief with respect to employers’ greatest concerns and, if anything, did the exact opposite. Measures such as rapid minimum wage increases, mandatory paid days for emergency leave, restrictions upon employer use of temporary help agencies, and the expansion of card-based union certification into new work sectors, were not addressed by the Committee, and none of the major suggestions made by employers or employer organizations were adopted.

**Key Amendments**

The Committee did adopt a number of changes to Bill 148, most of which expand and increase the benefits that employers are required to provide employees. Some of the key amendments include the following:

- An increase to the maximum length of parental leave by up to 26 weeks, adding up to 6 additional weeks of leave after the loss of a pregnancy
- The introduction of new, standalone unpaid leave for employees who experience (or whose children experience) domestic or sexual violence or the threat of sexual or domestic violence
- Increased record-keeping requirements for employers and temporary help agencies with respect to issues such as public holidays, leaves, vacation time, and vacation pay
- Increased record-keeping requirements for employers and temporary help agencies with respect to the on-call and shift cancellation provisions provided for in the original version of Bill 148
- A requirement that employers to provide an estimate of the number of employees in the proposed bargaining unit through a **formal statutory declaration** in an application for union certification

The Committee also adopted a number of measures that could be best described as employer-neutral, largely providing clarification on some of the measures previously introduced. Examples of these measures include the following:

- Providing that the Employment Standards Act, 2000 exclusion for certain individuals performing work at public colleges and universities also applies to individuals performing similar work at private career colleges
- Clarifying the terms of employers’ obligations under the new on-call and shift cancellation provisions
- Providing a transitional framework for the enhanced record-keeping requirements
More clearly defining the term “seniority system” with respect to Bill 148’s equal pay provisions

Requiring employers and unions to take reasonable steps to protect confidentiality and privacy of employee information where an employer is required to provide a union with an employee list as part of an organizing drive

The Committee also adopted several amendments to the Labour Relations Act, 1995, which had not previously been part of the Bill 148 mandate. It is not clear that either labour or management advocates indicated prior support for these measures.

For example, the Committee adopted an amendment that would extend the prohibition on job action following the appointment of a first contract mediator from 20 days to 45 days. Another amendment provides that parties engaged in first contract negotiations have the right to request educational support regarding labour relations and collective bargaining. The Committee also removed a provision providing that a first collective agreement mediator has all the powers of a conciliation board, effectively limiting the powers of such mediators.

Finally, the Committee did make minor amendments that employers may find helpful:

- Reinserting the right for employees to take a substitute day in place of a public holiday on which the employee worked
- Placing modest limitations on employers’ new obligations around scheduling
  - For example, employers will not be required to pay the three-hour minimum upon cancelling a scheduled or on-call shift where the employee’s work is weather-dependent and the employer cannot provide work for weather-related reasons.
  - Similarly, employees will not be eligible for minimum three-hour payments for on-call shifts where they were not available to work three hours on the day in question.
  - Providing that employees do not have the right to refuse work requests made within 96 hours of the start of the shift where the work is to deal with an emergency, to remedy or reduce a threat to public safety, or for other prescribed reasons
  - Placing limits upon eligibility for new paid emergency leave by requiring an employee to have worked for an employer for at least one week before entitlement to any paid leave days (although retaining entitlement to unpaid leave during that first week)

Probably the most significant positive from an employer perspective was the rejection of extreme proposals from the lone New Democratic Party representative on the Committee. These proposals ranged from universal application of card-based certification and increases to paid leave and minimum vacation time to broader application of equal pay provisions.

On the other hand, the Committee also rejected the lone proposal made by the
Progressive Conservative members of the Committee, which would likely have received wide employer support. This proposal would have required the government to commit to an economic impact analysis of Bill 148 and its effects, as conducted by an independent financial analyst. Given the widespread criticism and concern about Bill 148 in many circles, it is easy to see the benefits of such a proposal, although many might argue that it is too late for such a measure.

Key Takeaways

The amended Bill 148 will now proceed to 2nd reading for further consideration. Although there appears to be a great deal of urgency by the government to pass this legislation, it is still possible that employer voices may yet be heard and further amendments made.

In light of the bill’s progress, employers may want to:

- remain vigilant about opportunities to communicate their views;
- review the key provisions of Bill 148 and assess the employer’s level of readiness to react to these provisions should they become law, as expected; and
- consider the recent amendments to the legislation and the degree to which they may affect any preparation that needs to be made.


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