



Ontario Catholic School
Trustees' Association

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October 24, 2018

MEMORANDUM

TO: Chairpersons and Directors of Education
- All Catholic District School Boards

FROM: Beverley Eckensweiler, President

SUBJECT: **Making Ontario Open for Business Act, 2018 (repeal of Bill 148)**

On Tuesday October 23, 2018 the government of Ontario introduced for first reading the *Making Ontario Open for Business Act, 2018*. If passed, the proposed legislation will appeal key provisions in the former government's amendments *Fair Workplaces, Better Jobs Act, 2017* (or "Bill 148").

KEY AMENDMENTS TO BILL 148

Employment Standards Act, 2000 ("ESA")

Minimum Wage

- Keeping the minimum wage at \$14 on January 1, 2019.
- Not rolling back any previous minimum wage increase.
- Establishing a 33-month pause in minimum wage increases with annual increases to the minimum wage, tied to inflation, to restart in 2020.

Scheduling

Repealing the following scheduling provisions that will come into force on January 1, 2019:

- Right to request changes to schedule or work location after an employee has been employed for at least three months.
- Minimum of three hours' pay for being on-call if the employee is available to work but is not called in to work, or works less than three hours.
- Right to refuse requests or demands to work or to be on-call on a day that an employee is not scheduled to work or to be on-call with less than 96 hours' notice.
- Three hours' pay in the event of cancellation of a scheduled shift or an on-call shift within 48 hours before the shift was to begin.
- The record-keeping requirements that relate to the above-noted scheduling provisions.

Three Hour Rule

- Modifying and moving the existing three-hour rule to a new section of the ESA. Where an employee who regularly works more than three hours a day is required to report to work, but works less than three hours, the employee would be paid for three hours.

Personal Emergency Leave

- Replacing the previous government's Personal Emergency Leave reforms with a package of annual leave days for every worker.
- Enshrining, the right of every worker to take up to three days for personal illness, two for bereavement and three for family responsibilities.
- Preserving the right of every worker in Ontario to receive three weeks of paid vacation after five years.
- Protecting current paid leave provisions for cases of domestic and sexual violence affecting an employee or an employee's child.
- Repealing the provision that prohibits employers from requiring an employee to provide a medical note from a qualified health practitioner. Employers would have the right to require evidence of entitlement to the leave that is reasonable in the circumstances (e.g., a note from a qualified health practitioner).

Public Holiday Pay

- Repealing the averaging public holiday pay formula prescribed by Bill 148 and return to the previous prorating public holiday pay formula.

Misclassification

- Repealing the requirement for the employer to prove that an individual is not an employee ("reverse onus") where there is a dispute over whether the individual is an employee.

Equal Pay for Equal Work

- Repealing equal pay for equal work on the basis of employment status (part-time, casual, and temporary) and assignment employee status (temporary help agency status).
- Maintaining the requirement for equal pay on the basis of gender.

Sheltered Workshops

- Delaying the January 1, 2019 repeal of the exclusion from the ESA of individuals who perform work in a simulated job or working environment if the primary purpose is the individual's rehabilitation. The repeal would instead come into force on proclamation.

Penalties for Contravention

- The government is returning to the previous administrative penalties for contraventions of the ESA by decreasing the maximum penalties from \$350/\$700/\$1500 to \$250/\$500/\$1000, respectively.

Labour Relations Act (LRA)

The government is proposing the following changes to the LRA:

Card-based Certification

- Repealing the rules that forced card-based certification on the workers in home care, building services, and temporary help agencies. Instead the government will preserve the right of these workers to vote through a secret ballot.

Employee Lists

- Protecting Ontarians' privacy and personal information by repealing the rules that forced an employer to hand over their employees' personal information to a union, even if only 20% of the workers showed interest in joining a union.

Remedial Certification

- Reinstating pre-Bill 148 test and preconditions for the OLRB to certify a union as remedy for employer misconduct.
- Requiring the OLRB to determine whether a vote or new vote would be a sufficient remedy, or whether the only sufficient remedy would be to certify the union.

Successor Rights

- Repealing the regulation-making authority to expand successor rights to contract tendering for publicly-funded services such as homecare.

Structure of Bargaining Units

- Repealing the power of the OLRB to review and consolidate newly certified bargaining units with existing bargaining units.
- Empowering the OLRB to review the structure of bargaining units where the existing bargaining units are no longer appropriate for collective bargaining.

Return-to-work Rights

- Returning to the six month limitation on an employee's right to reinstatement following the start of a strike or lock-out.

First Collective Agreement Mediation and Mediation-Arbitration

- Repealing the Bill 148 first collective agreement mediation and mediation-arbitration provisions and provisions for educational support.
- Reinstating pre-Bill 148 conditions for access to first agreement arbitration (where it appears to the OLRB that collective bargaining has been unsuccessful for specified reasons).

Fines

- Returning to the previous maximum fines for offences under the LRA by decreasing the fines from \$5,000 to \$2,000 for individuals and from \$100,000 to \$25,000 for organizations.

Streamlining and Improving Processes

- Expanding and recognizing alternative means of communications under the Act (e.g., facsimile, e-mail) for various types of documents, and deeming the time of the release or receipt of the document.
- Allowing the OLRB to make rules to expedite certain proceedings without the requirement of an order of the Lieutenant Governor in Council to establish a coming-into-force date for the rule.
- Facilitating and requiring the publication of documents (collective agreements and arbitration awards) filed with the Minister, including publication on Government website.

If you have any questions, please contact Steve Andrews at sandrews@ocsta.on.ca.