

MEMORANDUM

TO: Tony Fanelli
CC: Stephen McArthur
FROM: Erich R. Schafer
DATE: November 26, 2018
Subject: Bill 47 - Application to construction employees

Please find below a summary of the amendments in Bill 47 that may affect members of the Construction Labour Relations Association of Ontario (“CLRAO”). This memo only discusses changes that will affect unionized construction employees.

Bill 47 makes a number of amendments to the *Employment Standards Act, 2000* (“ESA”), the *Labour Relations Act, 1995* (the “LRA”), and the *Ontario College of Trades and Apprenticeship Act* (“OCTAA”). Many of the changes to the LRA will not affect the ICI sector of the construction industry. Accordingly, this memo focuses on changes to the ESA and the OCTAA, although it does consider a few of the changes to the LRA.

The changes to the ESA are not effective until January 1, 2019, but the changes to the LRA and the OCTAA took effect on the day that Bill 47 received Royal Assent (November 21, 2018).

AMENDMENTS TO THE *EMPLOYMENT STANDARDS ACT, 2000* (ESA)

Requirement	Status of requirement following passage of Bill 148	Status of requirement under Bill 47
Scheduling	<ul style="list-style-type: none"> On-call employees who were not called in or were called in for less than three hours were also entitled to be paid three hours at their regular rate of pay; Employees had the right to refuse requests to work or be on call if the request was made on less than 96 hours’ notice; and Employees were entitled to 3 hours of wages where a shift or on-call period was cancelled on less than 48 hours’ notice, unless the cancellation was due to factors beyond the employer’s control. 	<p>The scheduling provisions introduced by Bill 148 have been repealed. However, Bill 147 introduces a new rule known as the “three-hour rule”. If an employee who regularly works more than three hours per day is required to attend at work, but works less than three hours, the employer is required to pay the employee for three hours of work at their regular rate. However, this requirement does not apply if the reduction in work is due to weather or similar factors beyond the employer’s control.</p> <p>The new three-hour rule will apply to all employees, regardless of whether they</p>

		are covered by a collective agreement.
Personal emergency leave	<p>Prior to the passage of Bill 148, most employees were entitled to ten days of unpaid personal emergency leave per year, provided the employer employed at least 50 employees.</p> <p>Bill 148 made the following changes to the personal emergency leave provisions:</p> <ul style="list-style-type: none"> • Eliminated the 50-employee threshold as a precondition to entitlement; • A minimum of two days of personal emergency leave had to be <u>paid</u> as long as the employee had at least one week of service; and • Employers retained the right to require evidence to substantiate the reasons for the personal emergency leave, but were <u>prohibited</u> from requiring a medical certificate from a health practitioner. 	<p>Bill 47 eliminates paid personal emergency leave days, but also repeals the entire section related to personal emergency leave. That is, employees are no longer entitled to 10 “personal emergency leave” days each year.</p> <p>In place of the personal emergency leave provisions, Bill 47 contains provisions for “sick leave”, “family responsibility leave”, and “bereavement leave”. These types of leave are described further below, but it is important to note they are all unpaid.</p>
Sick leave / Family responsibility leave / Bereavement leave	<p>Bill 148 did not contain provisions for “sick leave”, “family responsibility leave”, or “bereavement leave”.</p>	<p>Employees who have been employed for at least two consecutive weeks are entitled to take:</p> <ul style="list-style-type: none"> • <u>Sick leave</u>: Three days of <u>unpaid</u> leave in each calendar year for “personal illness, injury, or medical emergency”. • <u>Family responsibility leave</u>: Three days of <u>unpaid</u> leave for an illness, injury, medical emergency, or “urgent matter” concerning certain a family member. • <u>Bereavement leave</u>: Two days of <u>unpaid</u> leave because of the death of certain family members. <p>Employers are permitted to require “evidence reasonable in the circumstances” that an employee is entitled to take sick leave. Bill 148</p>

		<p>prohibited employers from requiring medical certificates from a health practitioner, but that prohibition no longer exists.</p> <p>Notably, Bill 47 states that if an employee takes a leave of absence under an employment contract or collective agreement in circumstances for which he or she would also be entitled to take sick leave, family responsibility leave, or bereavement leave, the employee is deemed to have taken a day of leave under the <i>ESA</i>. This means that employees cannot “double-dip” by exhausting their entitlements under an employment contract or collective agreement before beginning to use their <i>ESA</i> leave.</p>
Classification of Workers as Independent Contractors	Employers were prohibited from treating an employee as if they were not an employee, and bore the onus of establishing that a worker was not an employee.	Under Bill 47, there is still a prohibition against treating employees as if they were not employees. However, the onus no longer falls on the employer to prove that a worker is not an employee.
Related Employers	Prior to the passage of Bill 148, any party alleging that two or more businesses were a single employer for the purposes of the <i>ESA</i> was required to establish that the intent or effect of the arrangement was to defeat the purpose of the <i>ESA</i> . Bill 148 removed the requirement to show that the intent or effect of the arrangement was to defeat the purpose of the <i>ESA</i> .	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Vacations	Bill 148 increased paid vacation entitlements to 3 weeks and 6% after 5 years of service.	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Record-keeping	<p>Prior to the passage of Bill 148, employers were required to keep certain information for three years after the employee ceased to be employed, including: name, address, start date, hours worked (daily and weekly), and certain other information.</p> <p>Bill 148 required that these records be kept for five years. Further, the records were to include: dates and times worked,</p>	<p>Employers are no longer required to keep records of the dates and times that an employee was scheduled to work or be on call for work, or changes made to an on-call schedule. Bill 47 has also eliminated the requirement to keep records of cancellations of a scheduled day of work or a scheduled on call period.</p> <p>The other record-keeping requirements</p>

	on-call schedules, changes made to scheduling (including cancelled shifts), dates and hours worked, dates and times that employees with more than one wage rate worked in excess of the overtime threshold at each rate of pay, substitute holidays, documents for all leaves, vacation pay, and time.	imposed by Bill 148 remain in place.
Pregnancy Leave	Bill 148 increased unpaid pregnancy leave for employees who suffered a miscarriage or stillbirth from six weeks to twelve weeks after the loss occurred.	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Parental Leave	Parental leave was increased from 35 to 61 weeks of unpaid leave for employees who took pregnancy leave. For employees that did not take parental leave, parental leave was increased from 37 to 63 weeks of unpaid leave. Prior to Bill 148, parental leave had to begin no later than 52 weeks after the child was born or came into the employee's custody. This was increased to 78 weeks.	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Family Medical Leave	This was increased by Bill 148 from 8 to 28 weeks of unpaid leave.	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Critical Illness Leave	Before Bill 148 was passed, employees could take up to 37 weeks to provide care to a critically ill child. Bill 148 expanded the leave to apply to all critically ill family members. The entitlement was set at 37 weeks for care of a critically ill child, and 17 weeks to provide care for a critically ill adult related to the employee. This form of leave is unpaid.	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Death or Disappearance of Child	Prior to the passage of Bill 148, employees could take up to 104 weeks of unpaid leave where a child of the employee died and it was probable that the child died as a result of crime. Bill 148 expanded this leave to include any death of a child of the employee.	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.
Domestic or Sexual Violence	Bill 148 introduced this new type of leave, which provided up to 15 weeks of leave if the employee, or employee's child,	<u>No change:</u> The Bill 148 amendments with respect to this issue remain in place.

Leave	experienced domestic or sexual violence (including threats) and the leave was needed to seek medical attention, obtain services from a victim services organization, obtain psychological or other professional counselling, relocate, or seek legal assistance. The first five days of domestic or sexual violence leave are <u>paid</u> .	place.
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AMENDMENTS TO THE *LABOUR RELATIONS ACT, 1995*

Requirement	Status of requirement following passage of Bill 148	Status of requirement under Bill 47
<p>Reinstatement and Just Cause Protection</p>	<p>Prior the passage of Bill 148, there was a time limit of six months for a striking worker to make a request to return to work after the commencement of a strike or lock-out.</p> <p>Bill 148 removed the six-month time limit to return to work. It also provided that employees have a right to bump others who may have worked during the strike, on the basis of the recall provisions contained in the collective agreement, or, if there were no such recall provisions, on the basis of length of service.</p> <p>Further, Bill 148 stated that an employer could not discharge or discipline an employee in an affected bargaining unit during a lawful strike or lock-out.</p>	<p>Bill 47 restores the six-month time limit for striking workers to return to work. Workers returning from a strike no longer have the right to bump others that worked during the strike.</p> <p>Workers still have just cause protection during a lawful strike or lock-out.</p>
<p>Prosecutorial Powers of the OLRB</p>	<p>Bill 148 increased the maximum penalties for contraventions of the Act or of orders made under the Act from \$2,000 to \$5,000 for individuals, and from \$25,000 to \$100,000 for organizations.</p>	<p><u>Repealed:</u> Bill 47 restores the maximum penalties that were in place prior to Bill 148.</p>
<p>Form of Notice</p>	<p>n/a – Bill 148 did not contain any provisions respecting acceptable methods of notice for the purposes of the Act.</p>	<p>Bill 47 states that notices or communications sent for the purposes of the Act may be sent by mail, courier, fax, or e-mail.</p>

AMENDMENTS TO THE ONTARIO COLLEGE OF TRADES AND APPRENTICESHIP ACT

- **Dissolution of College:** The Minister is given various new powers that would allow the Minister to dissolve the College without further legislation.
- **Repeal of OCTAA:** The OCTAA will be repealed on a date to be named later.
- **Journeyman-to-apprentice ratios:**
 - There will no longer be any review panels to make determinations on journeyman-to-apprentice-ratios.
 - The journeyman-to-apprentice ratio for every trade is now set at 1:1, although this can be varied by ministerial regulation.
 - Journeyman candidates are deemed to be apprentices for the purposes of ratios.
- **Moratorium on classification reviews:** Classification reviews were used to determine whether a compulsory trade should be re-classified as voluntary, or vice-versa. There is now a moratorium on classification reviews.