

Member's Quarterly

Summer 2019 Edition

Feature

Not So Fast: Legislative Developments to Ontario's Employment Landscape

2019 brings more changes and some deja vu for Ontario employers

2018

 was full of legislative developments to the employment landscape in Ontario. Then, just when we thought we were ready to take on the New Year, the Ontario government struck again.

A series of Bills in December brought a slew of even more legislative changes, some of which effectively reversed or revised the changes that had either just come into effect in 2018, or were about to take effect in early 2019.

Confused? It's been hard to keep track, so we thought we would give you the highlights on the latest set of changes which, in some cases, actually means no change at all.

The Employment Standards Act: Out with the New and in with the Old!

As many of you will recall, the Wynne government passed Bill 148 in November 2017, which introduced a number of changes in 2018 and set the course for additional changes in 2019. Key changes included an increase in minimum wage and vacation entitlements, personal emergency leave and equal pay rules.

In the midst of these changes came an election defeat and Bill 47 was tabled by the new Ford government. Bill 47, which passed in December 2018 has a significant impact on some of the key changes made with Bill 148, including:

- Minimum wage will now remain at \$14.00 until at least October 2020, when any further increases will be tied to inflation.
- Personal Emergency Leave, which was established by Bill 148 and consisted of 10 days, 2 of which were to be paid, has been repealed and replaced with a package of eight unpaid annual leave days as follows:
 - ◇ Three unpaid days for personal sick leave;
 - ◇ Two unpaid bereavement days; and
 - ◇ Three unpaid days for "family responsibilities"

We expect this addition will help alleviate some of the confusion employers felt when administering Personal Emergency Days.

- Under Bill 148, employers were not allowed to request medical notes for Personal Emergency Leave. Not anymore! Employers are once again permitted to request a medical note from a qualified health practitioner to establish an employee's entitlement to sick leave and family responsibility leave.
- Bill 148 introduced equal pay for equal work on the basis of employment status (i.e. part-time versus full-time, or temporary versus permanent). Bill 47 eliminates this. However, the requirement for equal pay for equal work on the basis of sex remains the same as it was before Bill 148.



Dan Palayew
LL.B.
Partner,
Borden Ladner
Gervais LLP



Odessa O'Dell
J.D.
Associate,
Borden Ladner
Gervais LLP

Feature continued

The Countdown to Pay Transparency has stalled... for now.

On April 26, 2018, Ontario became the first province in Canada to pass legislation aimed at increasing transparency in hiring and compensation.

A number of new obligations under the *Pay Transparency Act, 2018*, were supposed to be phased in starting on January 1, 2019. Key requirements included:

- Employers must include a salary rate or range on all publicly advertised job postings;
- Employers with more than 100 employees (or otherwise, as prescribed) must prepare and submit an annual Pay Transparency Report to the Ministry of Labour;
- Employers are prohibited from seeking information regarding past compensation history from a candidate, either directly or through an agent;
- Reprisals are prohibited against employees who inquire about compensation, disclose their compensation, and/or provide information with respect to their employer's compliance with the legislation.

As employers across the province were preparing for impact, the implementation of the *Pay Transparency Act, 2018* was paused indefinitely in December thanks to Bill 57. The date of commencement is now delayed from January 1, 2019 to a day to be named by proclamation of the Lieutenant Governor. Of note, Bill 57 has not altered any of the requirements which will eventually be expected of employers.

In addition to these most recent changes in the legislation, more appear to be on the way and are currently working their way through the legislative process. Be sure to stay tuned!

Dan Palayew is Partner/Regional Leader Labour & Employment Group with Borden Ladner Gervais LLP and can be reached at dpalayew@blg.com.

Odessa O'Dell is an Associate with Borden Ladner Gervais LLP and can be reached at oodell@blg.com.