



Winter 2018

TOPICS:

Bill 148 - *Employment Standards Act* (“ESA”) Amendments

Page 1

Firm News & Professional Notes

Page 6

Bill 148 Employment Standards Act (“**ESA**”) Amendments

After

more than two years of consultation and over 600 submissions, the controversial Bill 148 was passed on November 27, 2017, in Ontario. This Bill brought the most significant amendments to employment and labour laws in Ontario in over 25 years. While changes were also made to the *Ontario Labour Relations Act*, this article will focus on the changes to the *Employment Standards Act*. We have prepared a summary of the highlights of the amendments for your ease of reference.



Bill 148

Employment Standards Act ("ESA") Amendments

EFFECTIVE NOVEMBER 27, 2017

- Independent Contractors**
- Misclassification of employees now a violation of the ESA
 - Employers will have burden of proof re: proper classification

EFFECTIVE DECEMBER 3, 2017

- Critical Illness Leave**
- Replaces Critically Ill Child Care Leave
 - Up to 17 weeks unpaid job protected leave to care for critically ill adult
 - Up to 37 weeks unpaid job protected leave to care for critically ill minor child
- Parental Leave**
- Increased from 35 weeks to 61 weeks of unpaid job protected leave if taken with pregnancy leave
 - Increased from 37 weeks to 63 weeks of unpaid job protected leave if taken without pregnancy leave

EFFECTIVE JANUARY 1, 2018

- Minimum Wage**
- General rate increased to \$14.00 per hour
 - Student rate (< 18 years of age) increased to \$13.15 per hour
 - Liquor server rate increased to \$12.20 per hour
- Vacation**
- 2 weeks' vacation (4% vacation pay) for the first 5 years of service
 - 3 weeks' vacation (6% vacation pay) after 5 years of service

EFFECTIVE JANUARY 1, 2018 *(continued)*

Public Holiday Pay

- New formula to calculate how to pay for a public holiday based on wages/days worked in prior pay period
- Employer must provide a written and dated notice clearly stating the substitute date for the public holiday

Overtime Pay

- Now calculated based on actual rate of pay for the work performed during overtime hours (not a blended rate)

Personal Emergency Leave

- Now applies to all employers, not just those with 50 or more employees
- Up to 10 days of job protected leave every calendar year (first 2 days paid by the employer)
- Employer can request backup documents, but no longer allowed to require a medical certificate

Domestic or Sexual Violence Leave

- Up to 10 days of job protected leave each calendar year (first 5 days paid by the employer); **PLUS**
- Up to 15 weeks of unpaid job protected leave each calendar year

Pregnancy Leave

- Increased from 6 weeks to 12 weeks unpaid job protected leave for still-birth or miscarriage

Family Medical Leave

- Increased from 8 weeks to 28 weeks of unpaid job protected leave

Child Death Leave

- Replaces Crime Related Child Death Leave
- Up to 104 weeks of unpaid job protected leave

Crime Related Child Disappearance Leave

- Increased from 52 weeks to 104 weeks of unpaid job protected leave

Record Keeping Requirements

- Records must now be kept for 5 years (not 3) and must now include more details to account for the amendments to the ESA (i.e. duties and times various duties worked, on-call schedules, cancelled or changed shifts, documents regarding leaves, etc.)

Temporary Help Agencies

- To terminate services, must provide 1 week of notice or pay if 3+ month assignment ends early

EFFECTIVE APRIL 1, 2018

Equal Pay for Equal Work

- All employees (including part-time, temporary, and seasonal workers) are entitled to equal pay as other employees at the same establishment when performing “substantially the same” kind of work
- Different rates of pay are permissible if based on seniority, merit, productivity, or another factor other than gender or employment status

EFFECTIVE JANUARY 1, 2019

Minimum Wage

- General rate increased to \$15.00 per hour
- Student rate (< 18 years of age) increased to \$14.10 per hour
- Liquor server rate increased to \$13.05 per hour
- Future minimum wage increases will be tied to Consumer Price Index

Requests for Schedule or Work Location Changes

- Employees can request schedule and location changes
- Employer must address requests within reasonable time period
- Employer must provide reasons for denied requests

Scheduling Protections

- Minimum 3 hours of pay at regular rate of pay for shifts < 3 hours
- Minimum 3 hours of pay at regular rate of pay if < 48 hours’ notice of cancelled shift
- Employee can refuse shift or on call if < 96 hours’ notice of shift
- Minimum of 3 hours of pay at regular rate of pay for on call work, even if not called

We are here to assist you with the details or answer any questions.



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Firm News

The 2018 *Lexpert/ALM Guide to the Leading 500 Lawyers in Canada* continues to recognize **Stephen Posen** and **Stephen Messinger** as two of the country's top practitioners in Property Leasing and where **Stephen, Stephen**, and **Christina Kobi** co-authored "Property Leasing: Recent Developments of Importance" with the assistance of **Melodie Eng, Steven Birken**, and **Hayley Larkin** (student).



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Professional Notes

Matt Maurer published five articles including two on *Slaw*, two on *Canada Cannabis Legal*, and "The Future is Now" in *Grow Opportunity's* Fall issue. He was quoted in *Law Times* on Nov. 6, in *Marijuana.com* on Nov. 28, and in "Debate rages over how the cannabis industry should be allowed to promote itself" in the *Ottawa Citizen* on Dec. 3. He was interviewed on *Calgary's News Talk AM770* on the Senate's role in passing cannabis legislation and on *BNN*. Matt spoke at the 2017 MJBizCon on "Canada Rec Update: Regulations, Timeline & Considerations" on Nov. 16 in Las Vegas. **Matt** and **Whitney Abrams** published "Canada's Proposed Cannabis Act: What Restaurateurs Need to Know" on *RestoBiz* on Nov. 1 and "Provincial Adult-use Cannabis Plans: What we know so far" in Dec.'s *Cannainvestor*. **Whitney** also posted twice on *Canada Cannabis Legal* including "New Brunswick Announces Retail Model for Recreational Cannabis" on Oct. 25.

Samantha Prasad published three articles in *The Fund Library* including "More tax credits and deductions to ease tuition shock" on Dec. 12.

She spoke at "Tax Armageddon: Navigating the New Reality" event on Oct. 19. *Lexpert* quoted **Samantha** and **Ken Kallish** in "The Big and the Many" in their Oct. issue.

Eric Hoffstein and **Samantha** hosted an Estates Breakfast Seminar on "Administering Trusts and Estates that Hold Corporate Assets" on Nov. 29. **Eric** also presented to the RBC Estate & Trust Services Group on defensive note-taking skills on Oct. 25.

Reuben Rosenblatt, QC, LSM, spoke at the Superior Court of Justice (Ont.) Fall Education Seminar on "Cases That Really Scare Me" on Nov. 8 and at a Lunch n' Learn at Osgoode Hall on Nov. 2. He was profiled in the *Toronto Star* on Dec. 19.

Steven Pearlstein spoke on "*Kolia v. Marchese*" and **Reuben** spoke on "Cases That Scare Me" at The Six-Minute Real Estate Lawyer on Nov. 21. **Reuben** was a co-chair and spoke on legal and ethical dilemmas and **Steven** presented "Safeguarding the Lawyer" at Safeguarding Real Estate Transactions on Nov. 21.

Danna Fichtenbaum spoke at the Toronto Public Library on “Make a Will” on Nov. 7.

Howard Black spoke on “How to Win an Undue Influence Case” at the Annual Estates and Trusts Summit on Oct. 16. He authored *Wills and Estates: Cases, Text, and Materials* (3rd ed.).

Yosef Adler presented “Should I Say ‘I do’? - The Corporate Marriage & Avoiding Shareholder Disputes” at the Schulich School of Business on Nov. 9.

The Employment and Labour Group hosted two seminars including “*Fair Workplaces, Better Jobs Act, 2017*” on Dec. 12 with **Tracy Kay, Andrew Zinman, and Carrington Hickey**.

Joan Jung spoke on “The Preferred Share Rules and the Private Corporation” at the Ontario Tax Conference on Oct 23 and “Tax Law Update” at the Estates and Trusts Summit on Oct. 17. *STEP Inside* published her article “Ontario Land Transfer Tax Review Announced” in Oct.

Michael Goldberg presented at the 2017 RBC Wealth Management Services Conference on two topics including “What to Do When Your Trust Comes of Age” on Nov 22. He hosted the 2nd session of Tax Talk: Season 5 on Nov. 15. His article “Canada’s New Estate Tax” appeared in the Oct. *Tax Notes*.

Matthew Getzler presented “Taxation in Wills & Estates” at Osgoode Hall on Oct. 26. He spoke on “How the Proposed Changes to the Taxation of Private Corporations May Affect Your Clients (or Even You)!” to National Bank on Nov. 7 and at a Business Tax Seminar hosted by The Leo Baeck Day School on Nov. 27.

Ryan Chua published “When is trading in your TFSA no longer ‘tax free’?” in Oct.’s *CannalInvestor*.

Rachel Moses spoke on “Negotiating the equity of a bankrupt’s house” at the OAIRP Continuing Education Seminar on Oct. 23.

Irvin Schein published three articles on *irvin-schein.com* including “The Latest on Coffee-Spill Lawsuits” on Oct. 2 and “Court Ruling in Coffee-Spill Lawsuit brings Canada One Step Closer to U.S. Experience” in *The Lawyer’s Daily* on Nov. 22.

The Commercial Leasing Group spoke at Lexpert’s “Dealing with the Lease: Specialty Leases” on Nov. 22. **Stephen Messinger** led the seminar, **Stephen Posen, Michael Horowitz, Adam Perzow, Christina Kobi, Boris Zayachkowski, Melodie Eng, Benjamin Radcliffe, and Steven Birken** presented on Restaurant Leases, Gas Stations, Medical Office Leases, Street Retail, Pop-Up and Temporary In-Line Leases, and Unique Locations. They also attended the 2017 ICSC Canadian Convention from Oct. 2-4. **Stephen Messinger** was on the program planning committee and moderated “What Does the Future Hold for Retail?” on Oct. 3. He published “The Only Constant Is Change” in the Nov/Dec *Lexpert* magazine and was quoted in “Office buildings urged to be facilitators of change” in *Canadian Property Management* on Oct. 3.

Timothy Dunn and **Christina Kobi** spoke at Commercial Priorities for Real Estate and Business Lawyers on Oct. 26. **Tim** presented “How to Advise Clients Faced with Insolvent Customers” and **Christina** presented “Leases in Insolvency: What Landlords Need to Know When a Tenant Becomes Insolvent.”

Melissa Muskat represented Urbanspace Property Group as the arts and culture hub at 401 Richmond successfully appealed its property tax assessment and prompted a new tax category for non-profit arts and culture organizations.

Hartley Nathan, QC, and Ira Stuchberry published "Proxies" in Sept.'s *The Directors' Briefing*.

Andrew Elbaz and **Alexander Katznelson** (student), posted "The Real Problem Canadian Capital Markets Regulators Face" on Jan. 3. **Andrew** and **Joseph Jamil** (student), posted "SEC suspends trading of blockchain company 'The Crypto Company'" on Dec. 21. **Andrew** and **Joseph** also posted "Blockchain Valuations: Should Regulators be Concerned?" on Jan. 2. **Andrew, Joseph, and Sasha Toten** published "CSA Announces Disclosure Expectations for

Cannabis Companies Operating in the U.S." in Nov.'s *Cannainvestor*.

Andrew Elbaz, Matt Maurer, and Sasha Toten acted for Sunel Securities Inc. as Indiva Limited closed a \$32 million financing and listed on the TSX Venture Exchange. **Andrew** and **Sasha** acted for Mackie Research Capital Corporation and BayFront Capital Partners, Ltd. in a transaction where Eguana Technologies Inc. closed a \$3 million Brokered Private Placement Financing.

Brian Temins, Benjamin Bloom, Sasha Toten, Jessica Thrower, and Samantha Prasad acted for Etratech Enterprises Inc. and its shareholders including The Shotgun Fund on its acquisition by Gentherm Incorporated.

Matt Maurer, Sasha Toten, and Brian Temins acted for CannaRelief as TerrAscend acquired its patient navigation services on Oct. 16.

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