Sharing an article by Jordan Kirkness and Susan MacMillan, Baker McKenzie on Bill 47: Ontario Government Introduces Bill 47 to Reverse Most of Bill 148.

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Ontario Government Introduces Bill 47 to Reverse Most of Bill 148

On October 23, 2018, the Ontario government introduced Bill 47, *Making Ontario Open For Business Act*, 2018, to repeal numerous provisions of the previous government's *Fair Workplaces, Better Jobs Act, 2017* (Bill 148). The government indicated that the proposed amendments are designed to "remove the worst burdens that prevent Ontario businesses from creating jobs while expanding opportunities for workers." We outline the key provisions of Bill 47 below.

Key takeaways

At this time, employers should not take action to update their policies or practices to reflect Bill 47. Even if Bill 47 comes into force, employers should approach any future changes to Bill 148 entitlements with caution. The employer will be at risk of a constructive dismissal claim if it did not preserve the right to change the entitlement to correspond with its legal obligations. Legal advice should be obtained before any changes are made that would reverse or reduce Bill 148 entitlements.

Generally speaking, unionized employers who amended their collective agreement language to reflect Bill 148 requirements are likely without recourse until they negotiate again. Whereas employers who haven't made changes to their language may have more flexibility. Employers who are currently engaged in bargaining should ensure that, where possible, they use language that limits the employer's obligations to compliance with its legal obligations.

Proposed changes to the Employment Standards Act (ESA)

Bill 47, if implemented, would amend the ESA as follows:

Minimum wage	Minimum wage would remain at $14 per hour (instead of increasing to $15 per hour on January 1, 2019). Annual adjustments to the minimum wage tied to inflation would restart as of October 1, 2020.
Scheduling	Several scheduling provisions that were slated to come into force on January 1, 2019 would be repealed: • the right to request changes to scheduling after an employee has been employed for at least 3 months; • minimum 3 hours of pay for being on-call; • the right to refuse requests to work or be on-call where the employee was not scheduled with less than 96 hours' notice; • 3 hours of pay where a scheduled or on-call shift is canceled within 48 hours before the shift was to begin; and

	• record-keeping requirements associated with these scheduling provisions.
Personal emergency leave	Current personal emergency leave entitlements would be replaced with a package of annual leave days for workers employed for at least 2 consecutive weeks, comprised of up to 3 days of personal illness, 2 days for bereavement and 3 days for family responsibilities. Employers would be permitted to require evidence of entitlement to leave that is reasonable in the circumstances, including asking employees to provide a medical note from a qualified health practitioner.
Public holiday pay	The prorating public holiday pay formula would be re-adopted, e.g., public holiday pay will be calculated as the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20.
Misclassification	An individual asserting a claim under the ESA would have the onus of establishing they are an "employee" where there is a dispute over classification.
Equal pay for equal work	Employees would no longer be entitled to equal pay for equal work on the basis of a "difference in employment status" (e.g., part-time vs full-time; temporary vs. indefinite) and the related equal pay provisions for temporary help agency employees would also be eliminated.
Penalties	The maximum penalties for a contravention of the ESA would be decreased to $250, $500, and $1000 (i.e., the pre-Bill 148 amounts).

What remains intact under the ESA

The government has indicated that the following changes to the ESA that were introduced under Bill 148 will not be repealed:

- previous minimum wage increases;
- the 3-hour rule, insofar as employers are required to pay employees for 3 hours of work, where an employee who regularly works more than 3 hours a day is required to report to work, but works less than 3 hours;
- 3 weeks of paid vacation after 5 years of employment; and
- leave entitlements in the case of domestic or sexual violence.

The government did not express any intention to repeal the related employer provision introduced under Bill 148. As such, separate legal entities will continue to be treated as one employer if "associated or related activities or businesses" are carried on through multiple entities.

The equal pay for equal work requirement on the basis of sex also remains intact (this requirement pre-dated Bill 148).

Proposed changes to the Labour Relations Act (LRA)

Bill 47, if implemented, would amend the LRA as follows:

Card-based certification	Card-based certification would no longer be in effect in the building services industry, the home care and community services industry or for temporary help agencies.
Employee lists	The current expedited process under which a union with the support of at least 20% of the proposed bargaining unit can apply for a list of employees in that bargaining unit (and their personal information) would be eliminated.
Remedial certification	The test and preconditions for the Ontario Labour Relations Board (OLRB) to certify a union as a remedy for employer misconduct that were in force prior to Bill 148 would be reinstated. The OLRB would also be required to determine whether a vote or new vote would be a sufficient remedy, or whether certification of the union would be the only sufficient remedy.
Successor rights	Successor rights in contract tendering for publicly-funded services would no longer apply.
Structure of bargaining units	The OLRB would no longer have the power to review and consolidate newly certified bargaining units with existing bargaining units. The OLRB would have the power to review the structure of bargaining units where the OLRB is satisfied the bargaining units are no longer appropriate for collective bargaining.
Return-to-work rights	Employees' right to reinstatement following the start of a strike or lock-out would be reduced to six months (as was the case prior to Bill 148).
First collective agreements Mediation and mediation-arbitration	The mediation and mediation-arbitration provisions as well as provisions for educational support relating to first collective agreements would be repealed. Instead, pre-Bill 148 conditions for access to first agreement arbitration would be implemented.
Fines	The fines for offences under the LRA would be decreased to $2000 for individuals and $25,000 for organizations (i.e., the pre-Bill 148 amounts).
Streamlining processes	Expediting certain OLRB proceedings would be facilitated; the publication of certain documents (e.g. collective agreements, arbitration awards) would be required; and alternative means of communication would be recognized, such as e-mail and facsimile for various documents.