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Legislation Update Information Report

Report Number: Human Resources Report #2019-01
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In accordance with the Procedure By-law, any member of Council may make a request to the Town Clerk that this Report be placed on an upcoming portion of an agenda for discussion.

Purpose

This report serves to provide Council with an update on recent legislation changes to the Fair Workplaces, Better Jobs Act (Bill 148), Pay Transparency Act (Bill 3), and Making Ontario Open for Business Act (Bill 47). In addition the Ontario Government has introduced two other Bills, Restoring Trust, Transparency and Accountability Act, 2018 (Bill 57) and Restoring Ontario's Competitiveness Act, 2018 (Bill 66).

Background

On January 1, 2018, the former Liberal Government introduced the Fair Workplaces, Better Jobs Act (Bill 148), which made a number of changes to the Employment Standards Act, 2000 (ESA), namely:

- Minimum wage increase from \$11.60 to \$14.00 (January 1, 2018) and \$15.00 on January 1, 2019
- Personal Emergency Leave (January 1, 2018)
- Equal Pay for Equal Work (April 1, 2018)
- Scheduling (January 1, 2019)
 - Schedule/Location Changes
 - Three-Hour Rule
 - Minimum On-Call Pay
 - Right to Refuse Work
 - Minimum Shift Cancellation Pay

On April 26, 2018, the Pay Transparency Act (Bill 3) was enacted which aimed to advance women's economic equality in Ontario. Bill 3 was to be effective January 1, 2019.

On October 23, 2018, the current Ontario Government introduced Making Ontario Open for Business Act, 2018 (Bill 47). Bill 47 received Royal Assent on November 21, 2018 and took effect on January 1, 2019. Bill 47 reverses several changes (and proposed changes) of the former government's Bill 148, Fair Workplaces, Better Jobs Act, 2017.

Discussion

Bill 47 – Making Ontario Open for Business Act, 2018

The introduction of Bill 148, Fair Workplaces, Better Jobs Act, 2017, largely affected casual/seasonal/sessional/contract (C/S/S/C) wages. In particular, there were two key changes; the first was the increase to the minimum wage from \$11.60 to \$14.00 on January 1, 2018 which saw an average rate increase of 15% for all C/S/S/C staff. The second was the introduction of ten Personal Emergency Leave (PEL) days of which the first two days were to be paid.

Bill 47 reversed most of Bill 148 as noted in Appendix A attached. What is particularly noteworthy of Bill 47 is:

- No change to the minimum of \$14.00
- Removal of the first paid two PEL days to 10 **unpaid** days per year
- Repeal of the entire provision of Scheduling
- Removal of the requirement for employers to pay the same rates of pay based on employment status (casual/seasonal/sessional/contract/part time) if said workers are performing substantially the same kind of work in the same establishment requiring the same skill, effort, responsibility and working conditions. Employers are still prohibited from pay differentials based on gender.

For further clarity, please see the attached:

- Bill 47 – Making Ontario Open for Business Act, 2018 – Comprehensive overview (Pre-Bill 148, Post-Bill 148, Post-Bill 47)
- Bill 47 – Making Ontario Open for Business Act, 2018 - Post-Bill 47 only

Bill 57 – Restoring Trust, Transparency, and Accountability Act, 2018

The Pay Transparency Act, 2018 (Bill 3) was scheduled to take effect on January 1, 2019. The introduction of Bill 57 is delaying the implementation of the Pay Transparency Act, 2018 (Bill 3) from January 1, 2019 to a date yet to be named through proclamation of the Lieutenant Governor.

Some of the provisions of Bill 3 include:

- Prohibit an employer to inquire into an applicant's compensation history
- Employer obligation to include information about compensation in public job postings

- Require employers to report on compensation practices by gender which was set for 2020.

At present, we do not foresee this Bill affecting our hiring or compensation processes and practices as we are and have been firmly committed in supporting fair, transparent and equal opportunity to all individuals who apply or work for the Town of Newmarket.

Bill 66 – Restoring Ontario’s Competitiveness Act, 2018

In early December, the Ontario Government tabled Restoring Ontario’s Competitiveness Act, 2018 (Bill 66). Key changes of this Bill will affect the Labour Relations Act, 1995 and Employment Standards Act, 2000. It is expected for this Bill to receive Royal Assent in the Spring. Further updates will be provided as appropriate.

We foresee this Bill having very limited budget impact.

Conclusion

At present we are continuing to review and update our Policies to ensure our compensation policies and practices remain competitive and fiscally responsible and continue to monitor the legislation landscape.

Business Plan and Strategic Plan Linkages

Well-balanced, Well-equipped and managed, and well-planned and connected.

Consultation

This report was prepared in consultation with the Director, Financial Services and Supervisor, Payroll Services

Human Resource Considerations

Not applicable

Budget Impact

Two of the pieces of legislation, Bill 57 – *Restoring Trust, Transparency, and Accountability Act, 2018* and Bill 66 – *Restoring Ontario’s Competitiveness Act, 2018*, are not expected to have any measurable budget impact.

Bill 148 - *Fair Workplaces, Better Jobs Act, 2017* was a significant budget driver. The initial estimate was an incremental cost of \$1,650,000, of which \$1,570,000 would need to be included in the tax-supported budget (\$80,000 in the rate-supported budgets). Bill 47 – *Making Ontario Open for Business Act, 2018* has reduced the overall expense by \$970,000, but still leaves a tax impact of \$680,000.

Attachments

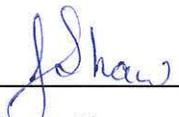
Appendix A

- Bill 47 – Making Ontario Open for Business Act, 2018 – Comprehensive overview (Pre-Bill 148, Post-Bill 148, Post-Bill 47)
- Bill 47 – Making Ontario Open for Business Act, 2018 - Post-Bill 47 only

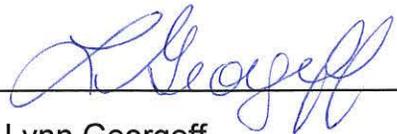
Contact

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APPENDIX A

Pre-Bill 148, Post-Bill 148, Post-Bill 47 – Making Ontario Open for Business Act, 2018

Effective January 1, 2019

On October 23, 2018, the Ontario Government introduced *Bill 47, Making Ontario Open for Business Act, 2018* (Bill “47”). Bill 47 received Royal Assent on November 21, 2018, and will take effect January 1, 2019.

Bill 47 reverses several changes (and proposed changes) of the former government’s *Bill 148, Fair Workplaces, Better Jobs Act, 2017* (Bill “148”) as noted below.

ESA Provision	Pre-Bill 148 (i.e., ESA in 2017)	Post-Bill 148 (i.e., ESA in 2018)	Post-Bill 47 (i.e., ESA in 2019)
Personal Emergency Leave	<ul style="list-style-type: none"> Up to 10 unpaid days per year to deal with a personal emergency. Only available to an employee if the employer has at least 50 employees. Employer had ability to require an employee to provide a medical note in support of leave. 	<ul style="list-style-type: none"> Ten days, but two of the days must be paid. Available to all employees, regardless of the size of the workplace. Employer can require “reasonable evidence” of a need to take this leave but could no longer require a medical note. <i>(As of January 1, 2018)</i> 	<p>The personal emergency leave provisions are repealed and replaced by the following unpaid days:</p> <ul style="list-style-type: none"> Three days for “sick leave” (personal illness, injury or medical emergency); Three days for “family responsibility leave” (illness, injury, medical emergency or other urgent matter concerning prescribed individuals); Two days for “bereavement leave” (related to the death of prescribed individuals). <p>Employers may also require employees to provide “evidence reasonable in the circumstances” for leaves (i.e., which includes</p>

ESA Provision	Pre-Bill 148 (i.e., ESA in 2017)	Post-Bill 148 (i.e., ESA in 2018)	Post-Bill 47 (i.e., ESA in 2019)
Minimum Wage (General)	\$11.60 per hour <i>(as of November 2017)</i>	<ul style="list-style-type: none"> • \$14.00 per hour <i>(as of January 1, 2018)</i> • \$15.00 per hour <i>(as of January 1, 2019)</i> 	<p>providing a medical note).</p> <p>General minimum wage will be held at \$14.00 per hour until October 1, 2020. Annual increases to minimum wage will restart in October 2020, and will be based on inflation.</p>
Scheduling, Being “On Call” and Cancellations	No relevant provisions.	<ul style="list-style-type: none"> • Minimum of three hours’ pay for being on-call (even if not called to work). • Employees can refuse an employer’s request to work or be on call for an unscheduled day if the request is made less than 96 hours before the time the employees are expected to start work or be on call. • Right to receive wages for three hours of work if a scheduled work day or on call period is cancelled with less than 48 hours’ notice. • Employees can request changes to schedule or work location after three months of employment. 	These provisions are completely repealed.
Public Holiday Pay Formula	$\frac{\text{(Total regular wages earned during the four weeks before the week of the public holiday + vacation pay, if any)}}{20}$	$\frac{\text{(Total regular wages earned during the pay period before the public holiday)}}{\text{Number of days worked in the prior pay period}}$	<p>Reversion to the pre-Bill 148 formula. (Note: This had already been amended by regulation in July 2018)</p>

ESA Provision	Pre-Bill 148 (i.e., ESA in 2017)	Post-Bill 148 (i.e., ESA in 2018)	Post-Bill 47 (i.e., ESA in 2019)
Equal Pay for Equal Work	Employers must pay men and women performing similar work equally.	<p><i>(Effective April 1, 2018)</i> Employers cannot pay different “rates of pay” based on “employment status” (i.e., part-time, full-time, fixed-term, seasonal or casual) where:</p> <ul style="list-style-type: none"> ▪ employees perform substantially the same kind of work in the same establishment; ▪ their performance requires substantially the same skill, effort and responsibility; and ▪ they work under similar working conditions. 	<ul style="list-style-type: none"> • Equal pay for equal work provisions related to gender will remain. • Equal pay for equal work provisions related to “employment status” and “assignment employee status” are repealed. • Employees’ right to request a review of their rate of pay is also repealed.
Employee/Contractor Classification	No express prohibition on misclassification of employees.	Statutory prohibition on misclassification of employees added and “reverse onus” for employer to prove that a person is a contractor and not an employee.	The prohibition on the misclassification of employees will remain, but, the “reverse onus” provision of Bill 148 is repealed.

Post-Bill 47 – Making Ontario Open for Business Act, 2018 (“Bill 47”)

Effective January 1, 2019

On October 23, 2018, the Ontario Government introduced *Bill 47, Making Ontario Open for Business Act, 2018* (Bill “47”). Bill 47 received Royal Assent on November 21, 2018, and will take effect January 1, 2019.

Bill 47 reverses several changes (and proposed changes) of the former government’s *Bill 148, Fair Workplaces, Better Jobs Act, 2017* (Bill “148”) as noted below.

Amendments to Employment Standards Act, 2000 (“ESA”)	Making Ontario Open for Business Act, 2018 (Bill “47”)
Minimum Wage	Minimum wage will not increase on January 1, 2019 Minimum wage will remain at \$14/hour until October 1, 2020
Leaves of Absence	After two weeks of employment, an employee will be eligible for: <ul style="list-style-type: none">• Sick Leave – three (3) unpaid days per calendar year in the event of a personal illness, injury, or a medical emergency• Family Responsibility Leave – three (3) unpaid days off per calendar year in the event of an illness, injury, medical emergency or other urgent matter involving prescribed family members.• Bereavement Leave – two (2) unpaid days off per calendar year in the event of the death of certain prescribed family members <p><i>Part of a day taken off will be counted as a full day</i></p> <p><i>Prescribed family member includes:</i> Spouse, parent or step-parent, child or step-child, foster child, grandparent, step-grandparent, grandchild, or step-grandchild, spouse of the employee’s child, brother or sister of the employee, relative of the employee with whom is dependent on the employee for care or assistance.</p>

Amendments to Employment Standards Act, 2000 (“ESA”)	Making Ontario Open for Business Act, 2018 (Bill “47”)
Medical Notes	An employer will be able to request that an employee provide a medical note reasonable in the circumstances to substantiate his/her medical leave of absence.
Equal Pay for Equal Work	<ul style="list-style-type: none"> • Employers prohibited from assigning different rates of pay to employees based on their gender. • Removes the requirement for employers to pay part time, casual, or temporary employees at the same rate as full-time employees.
Scheduling	<p>Employees will NO longer be entitled to receive the following rights on January 1, 2019:</p> <ul style="list-style-type: none"> • The right after three (3) months) of employment to request changes to their schedule or work location. • The right to receive a minimum of three (3) hours’ pay for being on-call, if the employee was available to work but was not called into work, or if they were called in but worked fewer than three (3) hours. <i>This does not affect the “three hour rule” where an employee who regularly works more than three (3) hours a day must be paid for three (3) hours of work in the event they are required to report to work but work fewer hours than three (3) hours.</i> • The right to refuse requests or demands to work or 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. • The right to receive three (3) hours’ pay in the event that a scheduled shift is cancelled or an on-call shift is cancelled within 48 hours of the start of that shift.

Amendments to Employment Standards Act, 2000 (“ESA”)	Making Ontario Open for Business Act, 2018 (Bill “47”)
<p>Employee vs Independent Contractor</p> <p>Factors to be considered are:</p> <ul style="list-style-type: none"> • The organization’s control over the performance of the contractor’s work (e.g. whether the individual hires their own employees or determines the timing and manner in which services are rendered) • The ownership of the equipment required to perform the work • Whether the contractor is economically dependent on the organization • Whether the contractor has a meaningful chance of profit or risk of loss • The operational integration between the contract and the organization (including whether the individual is incorporated) 	<p>Employers no longer have to prove that an individual classified as a contractor is NOT an employee.</p> <p>The onus reverts back to the Independent Contractor to establish they are an employee of the organization.</p>
<p>Public Holiday Pay – No change</p>	<p>Public Holiday Pay will continue to be calculated in accordance with the old formula by taking the total amount of regular wages earned in the four work weeks prior to the work week in which the public holiday occurred, divided by 20.</p>
<p>Vacation Pay – No Change</p>	<p>After five years of service, an employee’s vacation pay entitlement will increase from 4% to 6%.</p> <p>Payroll Services will continue to monitor and apply the 6% vacation pay to eligible employees.</p>