New Year, New Laws: A Summary of Workplace Law Changes, Effective January 1, 2019, in Ontario, Alberta, British Columbia, and Quebec

January 3, 2019

Several changes in labour and employment law have recently been implemented in several Canadian provinces. Below is a summary of the key changes to provincial legislation in Ontario, Alberta, British Columbia, and Quebec that will have an effect on both unionized and non-unionized workplaces. All changes listed below went into effect on January 1, 2019, except changes to the Ontario Labour Relations Act, 1995 (OLRA), which took effect on November 21, 2018.

Ontario

Changes applicable to all workplaces

<table>
<thead>
<tr>
<th>Minimum wage freeze</th>
<th>The minimum wage will remain at $14.00 per hour. The increase to $15.00 per hour that was supposed to come into force on January 1, 2019, has been repealed. Further increases, beginning in 2020, will be tied to inflation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holiday pay</td>
<td>The holiday pay rate will be based on the total amount of regular wages earned and vacation pay payable to the employee in the four workweeks before the workweek in which the public holiday occurs, divided by 20.</td>
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January 3, 2019

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### Scheduling provisions

The following scheduling provisions, which were supposed to come into effect under Bill 148, have been repealed:

1. The employee’s right to request changes to his or her schedule or work location
2. Three hours’ pay for being on call if the employee is available but not called in to work
3. The right to refuse to work on a day the employee is not scheduled to work, if given less than 96 hours’ notice
4. Three hours’ pay for having a scheduled shift cancelled within 48 hours

The following modified scheduling rule took effect January 1, 2019: where an employee who regularly works more than three hours a day is required to come into work but works less than three hours, despite being available to work longer, the employee will be paid wages for three hours.

The entitlement is the greater of these two amounts:

5. three hours of pay at the employee’s regular rate; or
6. the sum of the amount that the employee earned while working, plus the remaining time calculated at the employee’s regular rate.

The rule will not apply where the employer is unable to provide work due to causes beyond the employer’s control, such as fire, lightning, power failure, inclement weather, or other similar circumstances that result in the stoppage of work.

### Leaves of absence

The requirement to offer employees 10 days of personal emergency leave has been eliminated. Effective January 1, 2019, employees will receive a total of **eight unpaid days of leave**, which would be distributed as follows:

7. three days per year for personal illness;
8. three days per year for family responsibilities (illness or other urgent matters concerning a spouse or a child); and
9. two days per year for bereavement leave.

Employers are once again permitted to require a doctor’s note as evidence for entitlement to sick leave.

Similar leaves of absences taken pursuant to an employment contract would be deemed as leave under the Employment Standards Act, 2000 (ESA).
Equal pay for equal work

The requirement of equal pay for equal work on the basis of employment status (i.e., part time or casual) has been repealed. Unequal pay for equal work on the basis of sex remains prohibited.

Employee classification

If there is a dispute as to whether a worker is an employee or an independent contractor, the employer no longer has to prove that an individual is not an employee (the “reverse onus” introduced by Bill 148 has been repealed). The general prohibition against employee misclassification remains.

Pay Transparency Act, 2018

The Pay Transparency Act, 2018 is postponed indefinitely at this time, pending further review.

Canada Pension Plan

**Contribution rate:**

1. Between 2019 and 2023, the contribution rate for employees will gradually increase by one percentage point (from 4.95 percent to 5.95 percent) on earnings between $3,500 and the original earnings limit. Employers will pay the same increase as their employees.

2. In 2019, the contribution rate is 5.1 percent of eligible earnings (up to $57,400 in earnings). In 2020, the contribution rate will be 5.25 percent.

Changes applicable to unionized workplaces

*The changes in this section came into force on November 21, 2018 (the date Bill 47, Making Ontario Open for Business Act, 2018, received Royal Assent).*

<table>
<thead>
<tr>
<th>Employee lists</th>
<th>The provision allowing a union to request an employee contact list if the union could establish the support of 20 percent of employees in the bargaining unit has been repealed.</th>
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<tbody>
<tr>
<td>Remedial certification</td>
<td>The provisions requiring the Ontario Labour Relations Board (OLRB) to order remedial certification if the employer contravened the OLRA and such a contravention resulted in the union not being able to demonstrate 40 percent support have been repealed. The OLRB will once again have the discretion to either certify or order a vote.</td>
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<tr>
<td>First agreement arbitration</td>
<td>The provisions allowing for first agreement mediation or mediation/arbitration in any circumstance have been repealed. The OLRB will impose first agreement arbitration upon application and reasonable justification for failure to make reasonable efforts to agree.</td>
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<tr>
<td><strong>Alternate trade union certification process</strong></td>
<td>The provisions providing for an alternate trade union certification process in the building services industry, the home care and community services industry, and the temporary help agency industry have been repealed.</td>
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<tr>
<td><strong>Review of bargaining units</strong></td>
<td>The OLRB will no longer be able to review the structure of newly certified bargaining units prior to entering a collective agreement. The OLRB can review the structure of a bargaining unit only upon application requesting review and if the OLRB is satisfied that the existing bargaining unit is no longer appropriate for collective bargaining.</td>
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<tr>
<td><strong>Employee reinstatement following strike</strong></td>
<td>Reinstatement of an employee after a strike is possible only if the union makes an application for reinstatement within six months following the commencement of the strike.</td>
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<tr>
<td><strong>Communications and notices</strong></td>
<td>For any proceedings under the Act, all communications and notices will be sent via mail, courier, fax, email, or any other method that may be prescribed.</td>
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</table>
| **Maximum fines** | Maximum fines for offences under the Act have been restored to their previous amounts:  
1. $2,000 for individuals; and  
2. $25,000 for organizations. |
Compressed workweek

An employer’s ability to implement compressed workweeks, in which employees could work fewer work days in the work week but more than eight hours per day without working overtime, has been eliminated.

Compressed workweek arrangements in non-unionized workplaces entered into before January 1, 2018, became invalid on January 1, 2019.

Compressed workweek arrangements entered into through a collective agreement will remain valid until the day a new collective agreement is entered into.

Employers must now obtain employee consent to enter an averaging agreement. Averaging agreements allow employers to schedule an employee to work more hours per day without incurring overtime by allowing the employer to average an employee’s hours of work over a period of a few weeks. Scheduled daily hours cannot exceed 12 hours per day.

There are two types of averaging agreements:

1. Hours of work averaging agreement (applicable to groups of employees or individual employees): up to 12 weeks
2. Flexible averaging agreement (applicable to individual employees only): up to two weeks

Extending the hours of work averaging agreement beyond the 12-week maximum requires a variance from the Director of Employment Standards.

Extending the averaging period of a flexible averaging agreement is prohibited.

Overtime is calculated based on the greater number of hours worked in excess of:

1. eight hours a day (if scheduled for less than eight hours) or daily scheduled hours (if eight or more hours were scheduled); or
2. 44 hours a week (over a one-week averaging period) or an average of 44 hours a week (over a multi-week averaging period).

British Columbia

Employer health tax

A new payroll tax has taken effect. The tax is meant to offset the loss in revenue from medical service plan premiums, which are being phased out. The tax will apply to companies with payrolls over $500,000, and the tax percentage will increase for every $250,000 increment in revenue above $500,000.
In 2018, the British Columbia government announced major changes to the Labour Relations Code and the ESA will be implemented in 2019. A committee has released some recommendations for amendments, and the government is expected to introduce new bills reflecting some of these recommendations in early 2019.

### Quebec

<table>
<thead>
<tr>
<th>Annual vacation</th>
<th>Workers are entitled to three weeks' paid vacation after three years of working for the same employer, instead of five years.</th>
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<tr>
<td>Psychological harassment</td>
<td>All employers are obligated to implement a policy to prevent psychological harassment (which includes sexual harassment) and a method for dealing with complaints. The limitation period for filing a harassment complaint has been increased to two years.</td>
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<tr>
<td>Leaves of absence</td>
<td>The first two days of absence related to family, bereavement, paternity, sickness, organ donation, accident, or domestic violence leave will be paid. Domestic violence has been added to the list of leaves of absence entitling an employee to 26 weeks of unpaid leave.</td>
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<tr>
<td>Right to refuse work</td>
<td>Employees now have the right to refuse to work for more than two hours (instead of four hours) beyond their regular hours in a 24-hour period.</td>
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<tr>
<td>Pay equality and employment status</td>
<td>Employers are prohibited from remunerating an employee at a lower rate than that granted to another employee who performs the same tasks, if the discrepancy is based on employment status.</td>
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