

Happy Canada Day for Employers: Ontario to Reverse Changes to Public Holiday Pay Legislation

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As we detailed [here](#), the Ontario government in November 2017 passed Bill 148, the Fair Workplaces, Better Jobs Act, 2017, which made a number of changes to the province's labour and employment landscape that were to be unrolled over the course of approximately 12 months. Bill 148 was met with widely divergent responses, with many employers expressing concern that its changes would make it difficult for many Ontario businesses to remain competitive.

Among the changes that caused employers angst was a change to the method by which employees' public holiday pay was to be calculated. Historically, this entitlement was calculated by simply tabulating the amount earned by an employee over the 4 weeks prior to a public holiday and dividing by 20 (days), with the resulting total being the amount to be paid to the employee. This calculation would result in a typical full-time employee being paid eight hours on a holiday and a half-time employee being paid approximately four hours—a result that appealed to both common sense and fairness by tying total hours worked to the entitlement provided.

The new calculation was performed by dividing regular wages earned in the pay period before a public holiday by the number of days worked in that same pay period (generally the preceding two weeks). This change, which ostensibly aimed to disincentivize employers from engaging the services of casual employees, created a number of absurd possibilities. For example, the half-time employee mentioned above who worked five days per week, four hours per day, would still receive four hours' pay for the holiday, whereas a casual employee who worked a single eight-hour shift in the pay period preceding the holiday would receive eight hours of holiday pay. This is obviously an illogical result and one that is clearly unfair to many employees and employers.

While this may appear to be an isolated example, similar scenarios are very much the reality for many employers in areas such as the retail industry that rely heavily on a variety of employee scheduling arrangements. In some cases, employers have been faced with the necessity of cutting employee hours or making layoffs in order to offset the additional expense associated with the change in calculation. Affected employers that had spoken loudly against this change, amongst others, have been rewarded with at least a temporary reprieve.

The official statement of the Ontario government is that it will conduct a review of the public holiday system during the remainder of 2018, but that it understands the problems associated with the calculation change that was unrolled in Bill 148. As such, it has enacted a new regulation, [O. Reg. 375/18](#), which reinstates the public holiday pay formula which had been in place prior to Bill 148. What comes of the government's subsequent review will remain to be seen, but in the near future employers can return to their previous methods.

The regulation and reinstatement will take place on July 1, 2018, and therefore take effect for the purposes of the Canada Day holiday. It should be noted that the regulation will not be in effect for the upcoming

Victoria Day holiday (May 21, 2018), and that employers will need to use the Bill 148 method of calculation in this case.

Conclusion

Employers will—and should—look at this decision as a positive sign that the Ontario government may be willing to reconsider the decisions it made with respect to Bill 148 which, as has been widely argued, appeared in many cases to be poorly considered. While this is a small victory for employers in the grand scheme of things, it does indicate that Ontario's government, with the spectre of an election looming, may be willing to listen to consider further concessions, either with respect to changes that have already taken effect or others that have yet to come into force.

For the time being, however, employers should consider the following:

- Policies that were revised to reflect Bill 148 changes regarding public holiday pay will need to be revised once more.
- If scheduling practices were adjusted to offset the potential harms of the Bill 148 changes, such practices might need to be revisited beginning in July.
- Providing feedback to the Ministry of Labour regarding Bill 148 changes, past or future, may not be a fruitless endeavour after all.
- All employers should keep apprised of the government's review process for public holiday pay and any other Bill 148 provisions that may be considered.