



# Building Durham



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ISSUE 6 VOLUME 28

Since 1953

MARCH 2018

THE MONTHLY NEWSLETTER OF THE DURHAM REGION HOME BUILDERS' ASSOCIATION

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## DRHBA members learn about Bill 148



On Tuesday, February 13, the DRHBA hosted a seminar on Bill 148 at Hops House Restaurant in Whitby. Pictured here is DRHBA president Manuel DeSousa (centre) with presenters Patrick Ganley (left) and Keith Burkhardt (right) from Sherrard Kuzz LLP. Learn more on pages 7 and 10.

# Highlights of Bill 148

While the significant raise to the minimum wage is what captured most of the headlines, Bill 148 was actually quite extensive and it will have an impact on businesses of all types and sizes.

On February 13, Patrick Ganley and Keith Burkhard, employment and labour lawyers from Sherrard Kuzz LLP, led a seminar for DRHBA members about Bill 148. The lawyers presented a general overview of the bill and what employers need to be aware of going forward.

## Minimum Wage & Vacation and Public Holidays

The increase to minimum wage was all over the news and heated debates have taken place in the comments section over this hot topic. But the debate is over, at least in the house of commons, and the bill is now law. The minimum wage increased to \$11.60 in October of 2017, increased again to \$14.00 in January 2018 and is set to increase to \$15.00 in January 2019. As of January 1, 2018 employees are entitled to three weeks of vacation time and 6 per cent vacation pay after five years of service with the same employer. The way to calculate public holiday pay has also changed and is now the employee's average regular daily wage (hours of work divided by number of days worked).

## Equal Pay for Equal Work

This portion of the bill will come into effect on April 1, 2018. Equal pay for equal work means that now a part-time, seasonal or casual employee is entitled to be paid the same wage as a "comparable" full-time employee. There are exceptions to this, and your employees can be paid differently if pay is based on a seniority system (including an hours-based seniority system), a merit system, the quantity/quality of production, and other objective factors. This bill also gives employees the right to request information about the wage rate paid

to another employee (but you are not obligated to provide that information, you just can't penalize them for asking), and to request a review of their wages (the employer must provide a wage adjustment or a written explanation of why there will be no adjustment).

## Personal Emergency Leave

Personal Emergency Leave (PEL) is another hot topic of Bill 148. This portion of the bill came into effect on January 1, 2018. Under this bill, the 50 or more employee threshold has been eliminated, and now employees of businesses of any size are entitled to personal emergency leave. This policy provides employees with 10



PEL days per year, and the first two personal emergency leave days are paid. To be entitled to these days, the employee must be employed for one full week. These days may be used for a critical illness, accident or urgent family matter (can involve any family member). While the employer cannot request a doctor's note or medical proof (note from doctor, nurse, psychiatrist), they can require reasonable evidence of the emergency (such as parking receipts from the hospital, receipts for cold medication, etc.). Employers should note that the two paid days must occur first, that a partial day can count as one full day (i.e. if an employee leaves midway through a shift to deal with an emergency, that can count as one day), that the employee must give a reason for using these days, and that

these days do not carry over into the next year.

There are options for construction employees. Employers can choose to provide two PEL days and eight unpaid PEL days, or you can provide 0.8 per cent extra on your employees' hourly wage for personal emergency pay (but your employees are still entitled to 10 unpaid PEL days).

## Scheduling

The scheduling portion of Bill 148 will come into effect on January 1, 2019. Notable changes include that an employee is entitled to be paid for at least three hours (at their regular rate of pay) where they are scheduled to work more than three hours, but attend work and work less; an entire scheduled day of work is cancelled within 48 hours of its start; and if they are on call and not called to work, or called to work for fewer than three hours. Exemptions to this include that there is not entitlement to three hours of pay for a cancelled day of work or on call period where there are extraordinary circumstances, including fire, lightning, power failure or other causes beyond the

employer's control. Employees will also have the right to refuse a shift if the request is made with fewer than 96 hours notice and to request a change to work location or work schedule after three months of employment.

## Documentation

One of the most important takeaways from the seminar is to document everything with as many details as possible. If you are ever faced with a labour board challenge, you want to make sure that you have as much documentation as possible to back up your case. In addition, the government is planning to hire 175 more enforcement officers and their goal is to audit one in 10 workplaces year over year. Be prepared!

Learn more about Bill 148 at <https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148>.

# Changes to Labour Relations Act, 1995

At the Bill 148 seminar with Patrick Ganley and Keith Burkhard, employment and labour lawyers from Sherrard Kuzz LLP, they also touched on changes to the Labour Relations Act, 1995, specifically how it relates to unions. These changes came into effect on January 1, 2018.

## **Union Access to Employee Lists**

Under these changes, if a union can sign up 20 per cent of your staff, they can ask you for all of your employees' contact information (phone numbers and email addresses). The government will be amending their privacy legislation to allow for this.

## **First Contract Mediation/Arbitration**

Under the new law, a union may

apply for a first contract mediation at any point after a "no board" is issued, and 45 days after a mediator's appointment, either party may apply for mediation-arbitration. The board may dismiss the application, order further mediation or order the agreement be settled by mediation-arbitration.

## **Enhanced Just Cause Protection**

With this new law in place, an employee may not be disciplined or discharged without just cause between the date of certification and the date a collective agreement is entered into and between the date that a lawful strike/lockout begins and the date a collective agreement is entered into.

This protection includes probationary employees.

## **Additional Changes**

Bill 148 also includes other changes to areas such as card-based certification in specific industries, remedial certification, successor rights, and bargaining until consolidation.

The DRHBA recommends learning more about how the changes to the Labour Relations Act, 1995 may impact your business.

Learn more here: <https://news.ontario.ca/mol/en/2017/11/modernizing-ontarios-labour-laws-to-create-fairness-and-opportunity-the-fair-workplaces-better-jobs.html>.