

## **Bill 148 Employment Standards Act – What’s in Your Collective Agreement?**

### **A Check List**

The Ontario *Employment Standards Act (ESA)* sets out the minimum standards for workers in Ontario. Every CUPE Collective Agreement should be as good as, or better than the *ESA*. \* This Check List covers the Bill 148 amendments to the *ESA*. It does not cover everything else in the *ESA*.

The text of the recently amended *ESA* can be found on-line at:

ENGLISH: <https://www.canlii.org/en/on/laws/stat/so-2000-c-41/latest/so-2000-c-41.html>

FRENCH: <https://www.canlii.org/fr/on/legis/lois/lo-2000-c-41/derniere/lo-2000-c-41.html>

If you want to compare your Collective Agreement to the *ESA*, here is a list of things to check. The **Parts** listed correspond to the **Parts** of the *ESA*.

#### **Part I - Definitions**

**1. Do you have Crown Employees in your Local?**

Crown employees are now covered by the *ESA* (s.1).

**2. Do you have workers in your workplace who are not classified as “employees”?**

Employees must be properly classified (e.g. dependent vs independent contractor) (s.5.1)

**3. Do you have people who receive training from the Employer?**

Now they are considered “employees” while they are being trained.

**4. How do you define “regular wages” in your Collective Agreement?**

Under the *ESA* definition it means wages that are not overtime pay, holiday pay, vacation pay, premium pay, personal emergency leave pay, domestic or sexual violence pay, termination pay, severance pay, termination of assignment pay or any non-regular wages pay under a collective agreement.

#### **Part III - How This Act Applies**

**5. Do you have people who work in your workplace who are working under a program approved by a public or private college (e.g. interns, cooperative terms)?**

The *ESA* still does not apply to them.

6. Do you have people who work in your workplace who are working for the primary purpose of getting individual experience in a workplace or rehabilitation (sometimes called “sheltered workplaces”)?

After **January 1, 2019**, they will be covered by the ESA.

### **Part V - Payment of Wages**

7. How do your members get paid?

In addition to cash or cheque payable to the employee, the amended ESA now permits payment of wages by direct deposit or “any other prescribed method of payment”. (“prescribed” means anything the government puts into regulation.)

### **Part V.1 – Employee Tips and Gratuities**

8. Do you have members who receive tips in your workplace?

If so, read the amended section 14.1 to 14.5 to see how the rules have changed.

### **Part VI – Records**

9. What records does your employer need to keep?

Under the ESA, effective January 1, 2018 they must keep the following information about an employee:

- i) name and address
- ii) date of birth if employee is under 18 or a student
- iii) date employment started
- iv) **dates and times employee worked (new)**
- v) **if employee has more than one regular wage rate, what hours were worked at which rate, and any hours worked over the OT threshold. (new)**
- vi) number of hours worked each day in each week
- vii) Information in written statements required on pay statements (see section 12 and 12.1)
- viii) **amount of vacation pay earned in the vacation year and how calculated (new)**

### **Coming January 1, 2019**

- ix) *Dates and time employee was scheduled to work or “on-call”, and any changes made to the schedule.*
- x) *Any cancelled work or “on call” that was scheduled.*

## **Part VII.1 – Requests for Changes to Schedule or Work Location (Coming January 1, 2019)**

*In many CUPE workplaces this language will not apply because the collective agreement will determine shift time and location. However, this “right to request” may be helpful for workers seeking family accommodations after January 2019. It will allow someone who has worked for the employer for 3 months to ask for a different schedule or work location, the employer has to discuss it and if it is denied explain why.*

## **Part VII.2 – Scheduling (Coming January 1, 2019)**

### **10. What does your collective agreement provide for minimum shift pay?**

In January 2019, the 3-hour rule for minimum hours worked will take effect. If an employee who normally works more than 3 hours a day comes to work, but is sent home early they will get 3 hours pay or paid for the actual number of hours they worked – whichever is more.

This does not apply if the work isn't available because of *force majeure* events.

(Your Collective Agreement might have a better language than the ESA.)

### **11. What does your collective agreement say about pay for being on-call/called in?**

In January 2019, the 3-hour rule for call-ins will take effect. If an employee is on-call but not required to work (not called in) or called in, but works for less than 3 hours, they will get 3 hours pay, or be paid for the actual number of hours they worked – whichever is more.

In a 24-hour period, the employer only has to pay an employee 3-hours pay once for being on-call, even if the employee is on-call more than once in the 24-hour period.

This 3-hour rule does not apply if the employee who was on-call was not called-in, and the work is to provide continued delivery of “essential public services” (regardless of who provides the services).

*If your collective agreement language on January 1, 2019 is worse than the ESA, the Collective Agreement prevails until it expires, or January 1, 2020 – whichever comes first.*

### **12. Does your collective agreement say anything about refusing on-call or call-in assignments?**

In January 2019, an employee will have the right to refuse being on-call on day they weren't scheduled to be at work, if the employer asks less than 96 hours before the employee would be on-call. The employee must say they are refusing as soon as possible.

**BUT:** The right to refuse does not apply if being on-call is to:

- i. To deal with an emergency  
(“emergency” is something that constitutes dangers of major proportions and could result in serious harm to people or substantia damage to property due to natural forces, disease or health risk, an accident or an act whether intentional or otherwise, or when there is a search and rescue operation.)
- ii. To deal with a threat to public safety
- iii. To deliver essential services
- iv. Any reason that is prescribed (“prescribed” means anything the government puts into regulation.)

*If your collective agreement language on January 1, 2019 is worse than the ESA, the Collective Agreement prevails until it expires, or January 1, 2020 – whichever comes first.*

### **13. What does your collective agreement say about cancelled shifts?**

In January 2019, if the employer cancels an entire scheduled shift or scheduled “call-in” period less than 48-hours before the scheduled start time, the employee will be paid 3-hours pay at their regular rate of pay. The employee does not get cancellation pay if the shift was cancelled because;

- i. of a *force majeure*,
- ii. the work is weather dependent, or
- iii. any reason that is prescribed (“prescribed” means anything the government puts into regulation.)

*If your collective agreement language on January 1, 2019 is worse than the ESA, the Collective Agreement prevails until it expires, or January 1, 2020 – whichever comes first.*

## **Part VIII – Overtime Pay**

### **14. What does your collective agreement say about overtime rates?**

The threshold for overtime pay (150% of regular wage rate) under the *ESA* is still 44 hours in a week.

Every hour worked over 44 hours is paid at a rate of 150%.

Now, if the employee has more than one rate of pay (e.g. works some shifts for the same employer as a personal support worker and some shifts as nurse) the *ESA* requires that they get paid the overtime rate as soon as they exceed 44 hours in total hours worked that week. The overtime rate that applies is the one for the job they were doing when the overtime hours were worked.

**Part IX – Minimum Wage**

**15. What does your Collective Agreement say about wages? Do your wage scales meet or exceed the *ESA* minimums?**

There are different minimum wage rates for different kinds of employees. Most CUPE members are in the general minimum wage category.

<b>Employee class</b>	<b>Definition</b>	<b>January 1, 2018</b>	<b>January 1, 2019</b>	<b>October 1, 2019 and after</b>
<b>General</b>	Anyone not covered in classes below	\$14.00/hr	\$15.00/hr	+ CPI
<b>Student</b>	Under age 18, work 28 hours or less a week - or during school holiday	\$13.15/hr	\$14.10/hr	+ CPI
<b>Liquor servers</b>	Regularly serve liquor on licensed premises	\$12.20/hr	\$13.05/hr	+CPI
<b>Homeworkers</b>	Someone who works for pay in their own residence. If a homeworker is also a student, they get this (higher) rate.	\$15.40/hr	\$16.50/hr	+ CPI
<b>Hunting &amp; Fishing Guides</b>	NA to CUPE.	NA	NA	NA

**Part X – Public Holidays**

**16. What does your Collective Agreement say about Public or Statutory Holidays?**

The *ESA* added Family Day to the definition of Ontario Public Holidays. It defines the following as public holidays:

- i. **Family Day (new)**
- ii. Good Friday
- iii. Victoria Day
- iv. Canada Day
- v. Labour Day
- vi. Thanksgiving Day
- vii. Christmas Day
- viii. December 26
- ix. Any day prescribed as a public holiday

It is possible that the specific language in your Collective Agreement creates a better right or benefit, and this amendment to the *ESA* will not change the number of holidays in your Collective Agreement.

**17. What does your Collective Agreement say about how employees are paid for Public or Statutory Holidays?**

Under the *ESA*, effective January 1, 2018 holiday pay (stat not worked) must be the total regular wages earned in the pay period just before the holiday, divided by the number of days the employee worked.

So, if you work 1 shift and made \$98.00, you get holiday pay of \$98.00. If you worked 5 shifts for \$98.00, you also get \$98.00. (There are also provisions for employees who are new hires during the pay period the holiday falls in, and for employees who are on leave the pay period before the holiday).

**18. What does your Collective Agreement say about substituting a Public or Statutory Holiday?**

Under the *ESA*, effective January 1, 2018, if a day is substituted for a holiday, the employee gets written notice of the holiday they will work, the date that will substituted. The delivery date of the notice must be recorded (in writing).

**Part XI – Vacation with Pay**

**19. What does your Collective Agreement say about Vacations?**

Under the *ESA*, effective January 1, 2018, the minimum vacation entitlement is increased for employees who work for the same employer for 5 years. Active and inactive employment are included in calculating service.

0 – 4 years of service	2 weeks vacation	4% of pay
After 5 years	3 weeks vacation	6% of pay

Under the *ESA*, effective January 1, 2018, vacation must be taken within 10 months of the vacation year it was earned in, and can't be taken in less than week-long periods (1 or more weeks combined at a time), unless the employee requests it and the employer agrees.

**Part XII – Equal Pay for Equal Work (coming April 1, 2018)**

**20. What does your Collective Agreement say about pay rates for employees with different employment status?**

Starting April 1, 2018, employees who do substantially the same work (see below) at the same establishment, requiring the same skill, effort and responsibility, under similar working conditions are to be paid the same.

However, there are still exceptions. Under the *ESA*, an employer can still pay employees differently because of:

- i. seniority
- ii. merit
- iii. production rates (e.g. quotas, piece work)
- iv. other factors besides the sex of the worker.

The *ESA* defines “substantially the same” as “*Substantially the same but not necessarily identical*”.

This new provision means temporary help agency workers can make a case for the same pay as regular/directly employed workers.

If using this section of the *ESA* for leverage, a union will still have to argue that part-time or contact employees do work that is substantially the same, but not necessarily “identical” work to get paid the same as full-time employees.

*If your collective agreement language on April 1, 2018 is worse than the ESA, the Collective Agreement prevails until it expires, or January 1, 2020 – whichever comes first.*

## **Part XIV – Leaves of Absence**

### **Pregnancy Leave:**

#### **21. What does your Collective Agreement say about Pregnancy Leave?**

Under the *ESA*, effective January 1, 2018, 6 weeks unpaid pregnancy leaves in certain circumstances is now increased to up 12 weeks.

The definition of a medically qualified practitioner now includes a doctor, a midwife and a nurse who has an extended registration certificate under the *Nursing Act*.

### **Parental Leave:**

#### **22. What does your Collective Agreement say about Parental Leave?**

Under the *ESA*, effective January 1, 2018, unpaid parental leave must begin no later than 78 weeks after child is born or comes into custody of parent - after January 1, 2018. If the parent also took pregnancy leave the number of weeks available is 61, and 63 if not taking pregnancy leave.

## **Family Leave:**

### **23. What does your Collective Agreement say about Family Leave?**

Under the *ESA*, effective January 1, 2018, unpaid family leave is available for up to 28 weeks if a qualified medical practitioner says a family member has a serious medical condition, or risk of death within 26 weeks.

The leave must end the last day of the week when the family member dies, or the last day of the 52<sup>nd</sup> week after the leave began (you don't have to take the 28 weeks continuously). If two employees are in the same family, the total leave they can take between them is 28 weeks in the 52 weeks after the leave first begins.

### **24. How does your Collective Agreement define family members for Family Leave?**

The list of family members is now in the *ESA* at Section 49.1(3). It includes:

- i. employee's spouse
- ii. parent (including step or foster) of employee or spouse
- iii. child (including ward, step or foster) of employee or spouse
- iv. sibling (including step or foster) of employee or spouse
- v. grandparent or grandchild (including step) of employee or spouse
- vi. brother/sister in-law (including step) of employee or spouse
- vii. son/daughter in-law (not including step) of employee or spouse
- viii. uncle/aunt of employee or spouse
- ix. Spouse of employee's grandchild, uncle/aunt/nephew/niece
- x. Person who considers the employee to be a family member

## **Family Care Giver Leave:**

### **25. What does your Collective Agreement say about Family Caregiver Leave?**

Under the *ESA*, effective January 1, 2018, how weeks are counted has been changed.

Now, if an employee takes part of a week, the employer can count it as a full week of this leave.

The Family Caregiver Leave is still in addition to the original leaves in this part, but also the new/renumbered ones in sections 49.5 (Child Death Leave), 49.6 (Crime- Related Child Disappearance Leave), 49.7 (Domestic or Sexual Violence Leave) and 50 (Personal Emergency Leave)

### **26. What does your Collective Agreement say about Death of a Child or Crime-Related Death or Disappearance of a Child?**

Under the *ESA*, effective January 1, 2018, the old section (49.5) about Death of a Child or Crime-Related Death or Disappearance has been renamed "**Child Death Leave**" and limited to situations



where there is a death. There is new separate section that deals with crime-related disappearances.

The definition of a child in both sections now includes a ward, and the number of unpaid weeks available if a child disappears in increased to 104.

## **27. What does your Collective Agreement say about Domestic Violence or Sexual Violence Leave?**

Under the *ESA*, effective January 1, 2018, there is a new leave for instances where an employee who has at least 13 weeks service can get an unpaid leave if they need to:

- i. get medical (physical or psychological) attention for themselves/child as result of injury or disability caused by domestic/sexual violence.
- ii. get services from a victim services agency for themselves/child
- iii. get psychological/professional counselling for themselves/child
- iv. to relocate temporarily or permanently
- v. to get legal or law enforcement assistance, including preparation or attendance in proceeding related to the domestic/sexual violence.

The leave is up to 10 days per calendar year, with the first 5 paid at regular wage rate, and leave of up to 15 weeks per calendar year is also available.

The leave is not pro-rated based on the employee's service in that calendar year. If the employee does not use the 10-day allotment, the first 5 days of the 15 weeks is paid.

A part day taken from the 10 days can be counted as a whole day by the employer. Employees must be paid for any time they worked on that day.

A part week taken as one of the 15 can be counted as a whole week by the employer. However, an employee can work part of a week and also miss work more than one time in a week, and it only counts as one week.

The employee must give notice in advance, unless that isn't possible. Then they must advise as soon as possible.

The leave is not available for employees who commit the violence, e.g. preparation for or appearance at a legal proceeding.

### **Personal Emergency Leave:**

## **28. What does your Collective Agreement say about Personal Emergency Leave?**

Under the *ESA*, effective January 1, 2018, the ten PEL days are maintained. There are three significant differences.

- i. PEL days are now available in any workplace, not just ones that have 50-plus employees.
- ii. The first two days taken off must be paid (at the employee's regular wage rate).

- iii. If any PEL days are taken for sick leave, the Employer cannot ask for a medical note. (They can still ask for reasonable evidence is the PEL day was taken for any other permitted reason.)

**\* Section 5 of the *ESA* says no one can contract out of the *ESA*. However, section 5 also says there is one exception, known as the “better right or benefit” rule. That rule says you can’t contract out of the *ESA*, unless the language in the Collective Agreement on the same subject matter overall contains something that provides a better right or benefit than the *ESA*, even if some part of the Collective Agreement language is worse than the *ESA*.**