

Municipality Of Chatham-Kent
Corporate Services
Human Resources and Organizational Development
Information Report

To: Mayor and Members of Council
From: Cathy Hoffman, General Manager, Corporate Services
Date: January 16, 2018
Subject: Bill 148, the Fair Workplaces, Better Jobs Act, 2017

This report is for the information of Council.

Background

On June 1, 2017, the Government of Ontario introduced Bill 148: the *Fair Workplaces, Better Jobs Act, 2017* (the “Bill”). The Bill was a response to the “Changing Workplaces Review”, which was undertaken by special advisors appointed by the Minister of Labour, to assess Ontario workplaces and review current employment and labour standards.

Bill 148, *the Fair Workplaces, Better Jobs Act, 2017* is now in force, having received Royal Assent on November 27, 2017. The Bill brings major changes to the *Employment Standards Act, 2000* and the *Labour Relations Act, 1995*, of which the most significant and relevant to the Municipality are summarized below.

Comments

The two legislative changes that most significantly impact the municipal budget are the increase in minimum wage and the equal pay for equal work components. The budget impact of the minimum wage increase has been mitigated through base budget reductions, increases in user fees and staffing reductions, etc. resulting in a net zero budget impact.

In addition, administration has identified other items in the Bill that will have a financial impact on annual budgets without the same options to offset and in some cases the ability to forecast for budget purposes. A summary of these items are provided on the following pages.

Employment Standards Act, 2000 (“the ESA”)

Changes in force January 1, 2018

1. Minimum Wage

The general minimum wage increased to \$14.00 an hour on January 1, 2018. Bill 148 did not eliminate any of the special minimum wage rates, and they will increase by the same percentage applied to the general minimum wage.

2. Public Holiday Pay

There will be a new formula for the calculation of “public holiday pay”, which divides the wages earned in the pay period immediately preceding the pay period of the public holiday by the number of days actually worked to earn those wages. The most significant impact will be on part-time and casual employees who may see a substantial increase in their public holiday pay entitlement.

3. Vacation with Pay

Employees will now be entitled to 3 weeks of paid vacation where the employee has been employed for 5 years or more. Corresponding changes have been made to the calculation of stub periods (engaged where employers establish an alternate vacation year) and to the rules governing the timing of vacations.

Vacation pay will increase to 6% of wages where the employee has a period of employment of more than 5 years.

4. Leaves of Absence

a. Pregnancy Leave

Bill 148 extends pregnancy leave which is available for employees who suffer a still-birth or miscarriage from 6 weeks to 12 weeks after pregnancy loss occurs. These new rules will apply only where the pregnancy leave began on January 1, 2018 or later. The Bill also creates a new definition of “legally qualified medical practitioner”, which will now include nurses with extended certificates of registration and midwives.

b. Family Medical Leave

Family medical leave is a leave of absence without pay to provide care or support to certain family members where the individual has a serious medical condition with a significant risk of death within 26 weeks. This leave has been extended from up to 8 weeks within a 26-week period to a leave of up to 28 weeks within a 52-week period.

c. Crime-Related Child Disappearance Leave and Child Death Leave

The current “Crime-Related Child Death or Disappearance Leave” has been divided into two separate leaves: (1) a Crime-Related Child Disappearance Leave, which will provide up to 104 weeks of leave without pay where a child disappears and it is probable that the disappearance was the result of a crime; and (2) a Child Death Leave, which will provide up to 104 weeks leave without pay for the death of a child for any reason. Employees must have been employed for at least 6 consecutive months to be eligible for either leave.

d. Domestic or Sexual Violence Leave

This new leave entitles an employee who has been employed for at least 13 consecutive weeks to a leave of absence where that employee or the employee’s child experiences domestic or sexual violence or the threat of sexual or domestic violence. The first 5 days of the leave must be paid in accordance with a new “domestic or sexual violence leave pay” calculation.

e. Personal Emergency Leave

Bill 148 makes significant changes to the personal emergency leave provisions of the ESA, most notably that the first 2 days of the 10-day entitlement will be paid leave. This will result in additional costs particularly for those divisions who have part-time and casual employees.

5. Record-Keeping Requirements

Several new record-keeping requirements have been added to the range of records currently required to be maintained by employers, including in relation to dates and times employees work or were scheduled to work or be on call, cancellations of shifts or on call periods, vacation pay and other matters. The text of the revised ESA should be consulted for specific details.

6. Temporary Help Agencies – Notice of Termination of Assignment

A temporary help agency must provide an assignment employee with one week’s written notice or pay in lieu where the assignment employee is assigned to perform work for a client, the assignment has an estimated term of 3 months or more at the time it was offered to the employee and the assignment is terminated before the end of its term, subject to certain exceptions. There are corresponding record-keeping obligations.

Changes in force April 1, 2018

7. Equal Pay for Equal Work

a. Difference in Employment Status

Bill 148 will enact a new provision that prohibits employers from paying different rates of pay to their employees because of a difference in employment status, where the employees perform substantially the same

kind of work in the same establishment, the performance of the work requires substantially the same skill, effort and responsibility, and the work is performed under similar working conditions.

“Difference in employment status” means either (1) a difference in the number of hours regularly worked by the employees, or (2) a difference in their term of employment including a difference in permanent, temporary, casual or seasonal status. “Substantially the same” is defined to mean substantially the same but does not mean “necessarily identical.” (This latter definition will also apply to the existing provision that prohibits differential pay rates based on “sex”.)

A differential pay rate can be justified on objective grounds, including systems that are based on seniority, merit, where earnings are measured by quantity or quality of production or on any other factor other than sex or employment status.

b. Difference in Assignment Employee Status

This new provision will prohibit temporary help agencies from paying an assignment employee who is assigned to perform work for a client at a rate of pay less than the rate paid to an employee of the client where they perform substantially the same kind of work in the same establishment, their performance requires substantially the same skill, effort and responsibility, and their work is performed under similar working conditions.

As with the prior provision, “substantially the same” is defined to mean substantially the same but does not mean “necessarily identical.” This prohibition does not apply where the difference in the rate of pay is made on the basis of any objective factor other than sex, employment status or assignment employee status.

There will be other changes brought on by the Bill that will take effect in 2019 and we will report on those in next year's budget.

Consultation

The Chief Financial Officer/Treasurer and Director, Budget & Performance Services were consulted for the determination of anticipated costs associated with the impact of these legislated changes that are now in effect.

Financial Implications

Administration estimates that the impact to the municipality of the minimum wage increase to be \$302,864 which has been offset by changes in levels of service and user fee increases that will be detailed in the 2018 Budget documents. The other items in the Bill have been estimated to cost an additional \$534,000. Additional potential costs are

being identified as more information and interpretations flow from the Province. If these costs prove significant, administration will return to Council to request the use of reserve funds for 2018 and will incorporate the annual cost in the 2019 Budget. An increase to minimum wage of up to \$1 per hour is expected for the 2019 Budget as well.

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