



Ontario Association of Fire Chiefs

Briefing Note and Position Paper: Bill 148 – *Fair Workplaces, Better Jobs Act*

September 27, 2017



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

INTRODUCTION

On June 1, 2017, [Bill 148](#), the *Fair Workplaces, Better Jobs Act*, was introduced. If passed, Bill 148 would introduce a range of changes to the *Employment Standards Act, 2000* (ESA) and the *Labour Relations Act, 1995* (LRA). Those changes are highlighted in the “Overview” section below.

While Bill 148 supports the creation of better working conditions, more predictable incomes and improved access to personal time for thousands of Ontarians, some provisions proposed in the Bill – specifically in regards to equal pay for equal work and scheduling/on-call pay, could result in significant and costly unintended consequences for the public sector.

The Association of Municipalities (AMO), as the fire service’s employer, has already formed a [position on Bill 148](#). The Ontario Municipal Human Resources Association (OMHRA) has also formed a position, which supports AMO’s position in its entirety.

AMO suggests that if the Bill is implemented as-is, this could result in negative implications for the emergency services sector, with most marked consequences for volunteer/part-time firefighters and the composite and volunteer departments in which they are employed. AMO suggests that if the Bill becomes law without amendments to exclude emergency services from *some* provisions, municipalities could be forced to re-evaluate the level of emergency services they can provide, raising concerns about public safety and protection.

As such, AMO has suggested a series of amendments to Bill 148, which the OAFCh is in agreement with, to ensure municipalities and municipal employees are not negatively affected if the Bill becomes law. On page three, the OAFCh has noted additional points of clarification that relate to the fire service, in regards to Bill 148 and AMO’s position.

The OAFCh’s Bill 148 position statement begins on page nine.

BACKGROUND

Bill 148 was introduced by the provincial government in an effort to create more opportunity and security for workers in Ontario. However, municipal governments across the province have raised concerns with the draft legislation. Some proposed changes outlined in Bill 148 could negatively impact the emergency services system, and ultimately public safety.

If passed in its current state, AMO suggests that Bill 148 could force municipalities to reduce the level of service they are able to provide to their communities, including volunteer firefighting, due to the costs associated with maintaining the current service model. Of the 449 municipal fire services in Ontario, all, except for 32, rely on volunteer firefighters in some capacity in order to provide adequate and effective fire protection services to the communities in which they serve.

Bill 148 would implement a general rule that no employee may be paid less than what is paid to full-time employees of the same employer who perform the same job. The rule would apply to part-time, casual, temporary and seasonal employees, unless there are objective reasons to justify a differential wage rate, 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.



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

Bill 148 would also implement an obligation of employers to provide three hours' pay at the regular rate if a shift is cancelled within 48 hours of its scheduled start. This obligation would also apply if an employee is scheduled to be "on call", but that status is cancelled within the same 48-hour window. The Bill also seeks to implement a new minimum "on call" payment – three hours' pay at the regular rate – if an employee is placed on call and not called into work. This applies to each day of "on call" status, but would only apply once per day.

AMO's amendments to Bill 148, as it relates to the fire service, include:

- Specifically state the relationship to other legislation and that Bill 148 requirements do not override statutory obligations that municipal governments are required to provide for public safety.
- Provide an exemption to the four-day scheduling requirement (s.21.5) for public safety needs, including, but not limited to, snowplowing, child care, long-term care, water operations, emergency landing at municipal airports, emergency services (police/fire/EMS), emergency management (e.g. floods, fire, safety threats, extreme weather events).
- Provide an exemption from s. 21.4 for all municipal employees who are required to be on call to provide legislated obligated public safety services.
- No minimum three-hours pay for being on call (s. 21.4) for all firefighters as defined by section 1(1) of the *Fire Prevention and Protection Act* (FPPA), as it is built into their work responsibilities and collective agreements.
- Different rates of pay for full-time and volunteer firefighters continue be allowed (s. 42.1) as full-time firefighters must respond when on duty and that volunteer firefighters have the ability to decline to any given request for service.

The OAFCA has noted the following additional points of clarification that relate to the fire service, in regards to Bill 148 and AMO's position.

- It is misleading to average the wage of volunteer firefighters, as noted in AMO's position paper, because volunteer firefighter wages vary across jurisdictions and are based entirely on a municipality's ability to pay.
- Volunteer firefighters are not "on call" – they are paid **per** call, and have the ability to decline to respond to any request for their service, whereas career firefighters must respond while on duty. Thus, the proposed Section 12 of Schedule 1 of Bill 148 regarding on-call work, cannot be applied to volunteer firefighters, if passed.
- If passed, Bill 148's proposed amendments to the LRA – notably s.15.2 – will cause problems as it relates to bargaining units. In the Bill, s.15.2 provides "*that where existing bargaining units are no longer appropriate for collective bargaining, either party may apply to the Board to consolidate, restructure, reconfigure or create new bargaining units or amend bargaining certificates.*" The OAFCA observes a two-fold issue with this provision.
 - First, if the proposed firefighter/paramedic pilots, to be carried out by the Ministry of Health and Long-Term Care in 2018, are fully implemented beyond the pilot sites, issues will arise between the firefighter's trade union – the Ontario Professional Fire Fighters Association (OPFFA), and one/all of the many unions representing paramedics.



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

- Second, if the volunteer fire service formally unionizes, issues could arise between those unions and the OPFFA.

OVERVIEW – Bill 148

(Adapted from Hicks Morley)

Increased Minimum Wage

Bill 148 would significantly increase the general minimum wage to \$14.00 per hour on January 1, 2018, and \$15.00 per hour on January 1, 2019.

The government does not intend to eliminate any of the special minimum wage rates, but they will be increased by the same percentage applied to the general minimum wage. Once the minimum wage rate reaches \$15.00 per hour, the ESA will revert to its existing process of annual increases based on changes in the Consumer Price Index (CPI).

Equal Pay for Part-time, Casual, Temporary and Seasonal Employees

Bill 148 would implement a general rule that no employee may be paid less than what is paid to full-time employees of the same employer, who perform the same job. This is accomplished by prohibiting differential pay where this is based on "difference in employment status." The rule would apply to part-time, casual, temporary and seasonal employees, unless there are objective reasons to justify a differential wage rate, 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. Employees would have a right to request a review of their wages, and employers would be required to respond by either increasing the wage rate or providing a written explanation of the differential. Bill 148 contains anti-reprisal protections for such requests. These rules would come into effect on April 1, 2018.

Scheduling

Bill 148 would implement a range of measures related to the scheduling of work:

- A new employee right to request schedule or work location changes without reprisal (available to any employee with at least three months' service).
- Amending the three-hour reporting rule to require payment at the regular rate of pay (as opposed to the minimum wage rate as the current rule has been interpreted as requiring).
- An employee right to refuse a shift or to refuse being placed "on call" without reprisal if there is less than four days' notice provided.
- An obligation to provide three hours' pay at the regular rate if a shift is cancelled within 48 hours of its scheduled start. This obligation would also apply if an employee is scheduled to be "on call", but that status is cancelled within the same 48-hour window.
- A new minimum "on call" payment – three hours' pay at the regular rate – if an employee is placed on call and not called into work. This applies to each day of "on call" status, but would only apply once per day.

There would be some leeway for collective agreements to override the new rules. These provisions would come into effect on January 1, 2019.



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

Vacation and Public Holidays

Vacation entitlement would increase to three weeks' vacation time and six per cent vacation pay after five years of service with an employer. Bill 148 makes a range of complementary changes to the ESA to take into account this new entitlement.

There are several important changes to the public holiday provisions of the ESA, including:

- A new formula for the calculation of "public holiday pay" designed to better ensure that the calculation reflects an employee's regular wages that they would have earned but for the holiday. The new calculation divides the wages earned in the pay period immediately preceding the public holiday by the number of days actually worked to earn those wages. This is very different from the current formula which effectively prorates holiday pay for employees who work less than five days per week. Under the new rule, an employee who works three days per week, eight hours per day, will be entitled to eight hours' pay for the holiday, whereas under the current rule, the employee would only be entitled to 4.8 hours' pay.
- Where an employee works on any public holiday, payment will be public holiday pay plus premium pay for the hours worked. Thus, Bill 148 would remove the option of providing employees with a substitute day off in this circumstance.
- Where a public holiday falls on an employee's day off, and the employee does not agree to work on the holiday, the general rule will be that the employer must provide a substitute day off with public holiday pay. However, Bill 148 would require the substitute day to be either the last work day prior to the public holiday or the first work day after (the current ESA has greater scheduling flexibility). Employers and employees can still agree to forego the substitute day off and just pay public holiday pay for the holiday.

Both of these sets of changes would come into effect on January 1, 2018.

Personal Emergency Leave

Bill 148 would make significant changes to the personal emergency leave provisions of the ESA, including:

- Maintaining the 10-day entitlement, but requiring that 2 of the days be paid leave (the two paid days must be granted before the eight unpaid days).
- Eliminating the 50-employee threshold so that personal emergency leave will apply in all workplaces.
- Expanding coverage to include domestic or sexual violence or the threat of such violence.
- Prohibiting employers from requiring an employee to provide a medical note to substantiate any claim for personal emergency leave.

This last change will significantly limit an employer's ability to ensure that personal emergency leave is taken for appropriate reasons and to manage employee attendance. While Bill 148 does not go so far as prohibiting an employer from asking for a medical note, employers will not be able to require them to be provided. These changes would take effect on January 1, 2018.



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

Other Leaves of Absence

Bill 148 would increase the length of family medical leave from eight weeks in a 26-week period to 27 weeks in a 52-week period, and would create a new leave applying to the death of any child (this is an expansion of the existing crime-related child death leave). These changes would also take effect on January 1, 2018.

Temporary Help Agency Employees

Bill 148 would implement several changes related to the use of assignment employees by temporary help agencies and their clients. First, the ESA would be amended to include “equal pay for equal work” principles, requiring assignment employees to be paid equally to employees of the agency’s client where: they perform substantially the same work in the same establishment; they utilize substantially the same skill, effort and responsibility; and the work is performed under similar working conditions.

It appears that this equal pay obligation will apply from the first day of the assignment. The new requirement would not apply if the difference in pay rate is based on “any factor other than sex, employment status or assignment employee status.” Assignment employees will have the right to inquire about their own rate of pay and the rate provided to employees of the client, without fear of reprisal. Agency employers would have an obligation to reply. There appears to be no mechanism, however, to require a client to provide pay-related information to the agency.

Second, Bill 148 would amend the ESA to require one week’s notice of termination of an assignment that was scheduled to last more than three months and is ended early. If notice is not provided, the agency would be required to provide pay in lieu of notice equal to the wages that the assignment employee would have earned had the notice been given. Pay in lieu would not be owed in limited circumstances, including situations where the agency offers a reasonable alternative assignment during the one-week period.

The change related to equal pay would take effect on April 1, 2018. The change related to termination of an assignment would take effect on January 1, 2018.

Application of the ESA

On May 30, the government announced that it will not add “dependent contractors” to the definition of “employee” under the ESA. However, Bill 148 would amend the ESA to prohibit the misclassification of employees. This prohibition is primarily aimed at the misclassification of employees as independent contractors. The employer will have the onus to prove that an individual is an independent contractor and not an employee. Therefore, employers will want to ensure that they conduct appropriate due diligence when engaging contractors to ensure that they can meet this new onus. This provision will begin to apply when Bill 148 is passed into law.

Bill 148 will eliminate most of the exclusions that apply to Crown employees, and will make the ESA applicable to trainees. However, individuals working through an experiential learning program run through a university, college (including a registered private career college) or high school would continue to be excluded.

Miscellaneous

There are a range of other changes, including:

- Clarification and expansion of the related employer provision of the ESA
- Allowing for the use of electronic agreements



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

- Eliminating the blended overtime rate for employees who work different jobs at different rates for the same employer
- Increased penalties for non-compliance (primarily through increased amounts for notices of contravention and authority to publish more data on individuals found to be in contravention)
- Improved wage collection measures
- A new ability for the Director to provide and revoke “recognition” of employers who meet prescribed criteria presumably for compliance with the ESA, but the Bill is not very descriptive of what an employer can be given recognition for having done.
- The government has also pledged to hire an additional 175 employment standards officers to enforce the ESA, and will launch a new education program aimed at both employees and small to medium-sized businesses.

OVERVIEW – AMO POSITION

Municipal governments provide most of the needs of daily life, as well as emergency services to communities. On the face of this proposed legislation, AMO is concerned that municipal employers will be disproportionately impacted given the large range of mandated services they provide. AMO is concerned that in its effort to aim relief at a targeted segment of the labour market, this legislation will overshoot the mark and result in significant and unnecessarily costly unintended consequences.

Municipal governments employ just under a quarter of a million employees. About 70 per cent of those employees are bargaining unit members, and the majority of the balance of staff have employment conditions that mirror collective agreement entitlements. In AMO's view, municipal governments are responsible employers who understand that stable and fair employment enables our staff to contribute to the local community and its economy. Municipal governments are also prohibited from having operating deficits.

While AMO supports the public policy spirit behind Bill 148, its position paper focuses on areas that are the most significant concern of municipal governments. In the submission, AMO underscores its proposed changes to the ESA, the impact that Bill 148's proposed changes would have on volunteer fire services, and two changes to the LRA.

AMO's proposed amendments to Bill 148 (items related to the fire service are highlighted in **red**):

1. Specifically state the relationship to other legislation and that Bill 148 requirements do not override statutory obligations that municipal governments are required to provide for public safety.
2. Provide an exemption to the 4-day scheduling requirement (s.21.5) for public safety needs including, but not limited to, snowplowing, child care, long-term care, water operations, emergency landing at municipal airports, emergency services (police/fire/EMS), emergency management (e.g. floods, fire, safety threats, extreme weather events).
 - Supporting evidence (items 1 and 2): Scheduling (four-day requirement) (Part VII.2) in the Bill creates uncertainty regarding the primacy of other statutory obligations. Municipal governments are obligated to provide services and programs in accordance with over 200 Ontario statutes and even more provincial regulations. Many of the



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

municipal statutory obligations are for public health and safety reasons. AMO is concerned that many of these obligations will work at cross-purposes or conflict with this proposed Bill.

3. Provide an exemption from s. 21.4 for all municipal employees who are required to be on call to provide legislated obligated public safety services.
 - Supporting evidence: In AMO's view, the language of Section 21.3 and 21.4 is problematic. Municipal governments plan and deploy resources to manage all manner of urgent and emergency services that support public safety on a 24-hour basis. The cost implications of changing to a three-hour at regular time on-call regime may prove cost prohibitive and may result in municipalities having to scale back services. Many of these services have collective agreements that have on-call provisions within them. It is a likely expectation that every bargaining unit will require that the Bill 148 minimum on-call of three hours' pay at their regular rate provision be included as soon as their collective agreement is opened for renegotiation.
4. Provide clear exemption for management employees with respect to paid on-call.
5. Specifically exempt employers that already provide two or more paid sick days, personal leave days or paid days off with a similar intent per year.
6. No minimum three-hours pay for being on call (s. 21.4) for all firefighters as defined by section 1(1) of the FPPA, as it is built into their work responsibilities and collective agreements.
7. Different rates of pay for full-time and volunteer firefighters continue be allowed (s. 42.1) as full-time firefighters must respond when on duty and that volunteer firefighters have the ability to decline any given request for service.
 - Supporting evidence (items 6 and 7): All full-time firefighters and managerial firefighters are employees under the ESA and the *Ontario Labour Relations Act* (OLRA). All volunteer firefighters are employees under the OLRA. AMO suggests that the law is unclear as to whether or not a volunteer firefighter is an employee under the ESA. However, AMO notes that voluntary firefighters have very different work expectations than those of full-time firefighters, as all voluntary firefighters know that they can be on-call 24 hours per day, seven days per week when they take the job – in reality, this is the essence of this job. AMO states that a volunteer firefighter is primarily motivated to be part of a voluntary fire service as their civic duty to the community that they and their families live in, not for monetary compensation.
 - There are 400 municipal fire departments in Ontario: 32 full-time departments; 190 composite departments (both full-time and volunteer); and 178 volunteer departments. It is understood that about half of the composite departments have a full or part-time chief, while the firefighters in the service are all voluntary. There are just over 11,000 full-time firefighters, about 340 part-time firefighters, and over 19,000 voluntary firefighters.
 - Currently the legislation recognizes that firefighters have unique schedules, hours of work and compensation systems. At present, full-time firefighters, volunteer firefighters, part-time firefighters and managerial firefighters are exempted by Regulation from the application of the following sections of the ESA: hours of work and eating periods; overtime pay; and public holiday pay.



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

- AMO states that volunteer firefighters have higher and greater flexibility in their work relationship that makes them not comparable to full-time salaried firefighters. Full-time firefighters must respond when they are on duty whereas voluntary firefighters have the ability to decline to respond to any request for their service.
 - AMO further clarifies that due to the nature of their employment, volunteer firefighters have the flexibility to decide if they will respond to or decline a specific call. The reasons for declining to respond can be that: they are working at their regular employment and their employer does not allow them to leave work; they are geographically too far away from the incident; they have been consuming alcohol and therefore are not fit for duty; they have a personal commitment already scheduled, as determined by the individual volunteer firefighter; or any reason that would entitle a volunteer firefighter to a personal emergency leave day pursuant to the ESA.
 - AMO suggests that the cost to pay volunteer firefighters the same rate as career firefighters is wildly prohibitive for the small, rural and northern municipal governments and may likely force municipal councils to reduce the level of service they are able to provide to their communities, if this is implemented without AMO's requested exemption.
8. That employees need to provide consent or, in the alternative, have the ability to opt out of having the employer provide contact information to a union or withdrawing consent for any time and reason.
9. Clarify that successor rights only apply to those services contracted by the Province and funded through provincial public funds.

RECOMMENDATION – POSITION

The OAFCh is aligned with AMO on the issue of Bill 148, and has developed the following position.

- The OAFCh respects and values the contributions of all firefighters in Ontario's fire service – career and volunteer.
- Volunteer firefighters are integral to ensuring Ontarians' continued safety, with over 19,000 volunteer firefighters working alongside 11,000 full-time counterparts to protect communities across the province.
- It is misleading to average the wage of volunteer firefighters, as noted in AMO's position paper, because volunteer firefighter wages vary across jurisdictions and are based entirely on a municipality's ability to pay.
- When interpreting Bill 148, it is important to understand the distinction between on-call and *per call* pay for volunteer firefighters. Volunteer firefighters are paid *per call*, having the choice to respond to or decline a request for service. Thus, volunteer firefighters cannot be considered "on call," which would otherwise imply mandated responsibility to respond to request for service. As such, the proposed Section 12 of Schedule 1 of Bill 148 regarding on-call work, cannot (and should not) be applied to volunteer firefighters, if passed.
- The scope and responsibilities of volunteer versus career firefighters warrant different compensation rates and models for each group. This is well understood within the fire service. As such, the fire service should be exempt from Bill 148's "equal pay for equal work" provisions.



ONTARIO ASSOCIATION OF FIRE CHIEFS

Leading innovation and excellence in public and life safety

- The nature of emergency situations requires urgent, dynamic responses. As such, the Bill 148 provision of a four-day scheduling requirement would be nearly impossible to uphold for services deployed in response to public safety needs. Many of these services have collective agreements that have on-call and scheduling provisions within them.
- If passed, Bill 148's proposed amendments to the *Labour Relations Act* – notably s.15.2 – will cause problems as it relates to bargaining units.
- The O AFC is aligned with AMO on this issue, supporting the Bill 148 amendments put forth in AMO's position paper.
- The O AFC believes that without amending Bill 148 to include provision exemptions for emergency services, as AMO outlined in its position paper, public safety will be at significant risk, and thousands of committed, compassionate people may not be able to serve their communities in the capacity of volunteer firefighters.

CLOSING STATEMENT

While the O AFC supports the essence of Bill 148, aimed at the creation of better working conditions, more predictable incomes and improved access to personal time for thousands of Ontarians, some provisions proposed in the Bill could negatively impact the emergency services system, and ultimately public safety, if passed. As such, the Government of Ontario should consider the O AFC's above suggestions and AMO's proposed amendments to the Bill in order to reduce or mitigate its unintended, but far-reaching negative impact on the public sector, municipal employees and taxpayers.

The O AFC will continue to monitor this Bill as it develops.