



ONTARIO ASSOCIATION OF FIRE CHIEFS

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ONTARIO ASSOCIATION OF FIRE CHIEFS MEMBER BRIEFING NOTE BILL 148 PASSES SECOND READING

TO: Active members

FROM: Stephen Hernen, President

DATE: October 26, 2017

SUBJECT: Bill 148 passes second reading

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). In response, OAFCh developed a [Bill 148 position paper](#), which was shared with members on September 29. OAFCh's position endorsed and built on the proposed amendments set forth by AMO, outlined in [AMO's Bill 148 position paper](#).

Bill 148 passed its second reading on October 18, 2017, and has now been sent to standing committee. Some amendments to the Bill during its second reading support OAFCh's position; however, key components of the Bill that could adversely affect the fire service, and the broader public sector, were not amended in the Bill 148 during its second reading. As such, the OAFCh has taken action to engage the provincial government in order to ensure our voices are heard, advocating for further amendments to Bill 148 to protect the interests of the Ontario fire service.

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.

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.

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



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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.

OVERVIEW

Below, OAFCA and AMO’s proposed amendments to Bill 148 are listed, with clarification as to whether or not the amendments were integrated into the Bill during its second reading.

Proposed Amendment 1 (AMO only)	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.
Outcome of second reading	This is <u>not</u> explicitly stated in the Bill.
Current wording in Bill	N/A

Proposed Amendment 2 (OAFCA and AMO)	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).
Outcome of second reading	This proposed amendment has only been partially adopted by the exception listed below in section (1.1).
Current wording in Bill	<p><i>s. 21.5 (1) An employee has the right to refuse an employer’s request or demand for work or be on call on a day that they were not scheduled to work or be on call if their request is made less than 96 hours before the time he or she would commence work or commence being on call, as applicable.</i></p> <p><i>Exception (1.1) Subsection (1) does not apply if the employer’s request or demand to work or be on call is: (a) to deal with an emergency; (b) to remedy or reduce a threat to public safety; or (c) made for such other reasons as may be prescribed.</i></p>

Proposed Amendment 3 (OAFCA and AMO)	Provide an exemption from s. 21.4 (minimum pay for being on call) 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 <i>Fire Prevention and Protection Act</i> (FPPA), as it is built into their work responsibilities and collective agreements.
Outcome of second reading	This amendment has not been adopted. However, the Committee amendments altered the collective agreement override clause, as listed below in s.21.4(3).



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Current wording in Bill	<p><i>S. 21.4 (1) An employer shall pay an employee wages equal to the employee’s regular rate for three hours of work if the employee is on call to work and the employee is: (a) not required to work; or (b) is required to work but works less than three hours, despite being available to work longer.</i></p> <p><i>(3) If a collective agreement that is in effect on January 1, 2019 contains a provision that addresses payment for being on call and there is a conflict between the provision of the collective agreement and this section, the provision of the protective agreement prevails.</i></p>
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Proposed Amendment 4 (O AFC and AMO)	<p>With respect to the new equal pay for equal work provision, 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.</p>
Outcome of second reading	<p>Section 42.1 has <u>not</u> been amended to provide exclusions for equal pay for equal work provisions for volunteer firefighters.</p>
Current wording in Bill	<p><i>s.42.1 No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when: (a) they perform substantially the same kind of work in the same establishment; (b) their performance requires substantially the same skill, effort and responsibility; and (c) their work is performed under similar working conditions.</i></p> <p><i>Exception (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of: (a) a seniority system; (b) a merit system; (c) a system that measures earnings by quantity or quality of production; or (d) any other factor than sex or employment status.</i></p>

Proposed Amendment 5 (O AFC only)	<p>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 21.3 of Schedule 1 of Bill 148 regarding on-call work, cannot be applied to volunteer firefighters, if passed.</p> <p>Note: 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.</p>
Outcome of second reading	<p>There has been a minor amendment to section 21.3 (as listed below), but it does not address the issue raised by the O AFC.</p>
Current wording in Bill	<p><i>s.21.3 (1) An employer shall pay an employee wages equal to the employee’s regular rate for three hours of work if the employee: (a)</i></p>



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	regularly works more than three hours a day; (b) is required to work; and (c) works less than three hours, despite being available to work longer.
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Proposed Amendment 6 (OAFChiefs only)	<p>If passed, Bill 148's proposed amendments to the LRA – notably s.15.2 in Schedule 2 – will cause problems as it relates to the restructuring and reconfiguring of bargaining units. In the Bill, s.15.2 provides <i>“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.”</i> The OAFChiefs observes a two-fold issue with this provision.</p> <ul style="list-style-type: none"> ○ First, <i>if</i> 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. ○ Second, <i>if</i> the volunteer fire service formally unionizes, issues could arise between those unions and the OPFFA.
Outcome of second reading	Section 15.2 in Schedule 2 has been entirely removed from the Bill, <u>in support of</u> our position. However, note that section 15.1 of Schedule 2 with respect to the consolidation of bargaining units, remains.
Current wording in Bill	N/A

RECOMMENDATION

That the OAFChiefs engages government officials at the Ministry of Labour, requesting consultation, in order to advocate for the association's proposed amendments to the Bill before it passes third reading.

CLOSING STATEMENT

If passed in its current state, Bill 148 could force municipalities to re-evaluate the level of emergency services they can provide, raising concerns about public safety and protection. It is imperative the OAFChiefs continues to advocate for further amendments to this Bill, outlined in the association's position paper.