



EMERGING TRENDS IN
EDUCATION LAW 2018
Aligning to the *Fair and
Family-Friendly Workplaces
Act – Bill 17*



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Presented by:



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Bill 17 is the *Fair and Family-Friendly Workplaces Act*.

ESC changes primarily took effect on January 1, 2018.

Today's goals:

1. Understand changes to existing provisions;
2. Overview of new provisions; and
3. Discussion about impact on the workplace.




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OVERVIEW


Overview of Changes to the Employment Standards Code

Changes to Existing Laws <ul style="list-style-type: none">• Compassionate Care• Maternity/Parental Leave• Rest Periods• Compressed Work Weeks• Deductions• Minimum Wage for Persons with Disabilities• Overtime• General Holidays and Pay• Vacations and Pay• Terminations• Layoffs• Youth Employment	New Requirements <ul style="list-style-type: none">• Long-term Illness and Injury Leave• Personal & Family Responsibility Leave• Bereavement Leave• Domestic Violence Leave• Citizenship Ceremony Leave• Critical Illness of a Child Leave• Death/Disappearance of a Child• Enforcement & Administration of the Code
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Rest Periods

- ✓ Existing Rule – Employees are entitled to a minimum 30-minute break within every 5 hours of consecutive work.
- ✓ New Rule - Employer and employee can agree to take break in two 15-minute breaks.

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Deductions, Minimum Wage and Overtime

- ✓ Additions to prohibited deductions: Damage caused by the employee, failure to collect full purchase price, providing/cleaning uniforms;
- ✓ Employers can no longer pay employees with disabilities less than minimum wage (repeals Part 2, Division 10);
- ✓ Overtime Agreements will allow OT to be banked up to 6 months rather than 3 months;
- ✓ Time in lieu of OT will be banked at 1.5x rather than 1:1.

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Compressed Work Week Agreements (AKA "Averaging Agreements")

- ✓ Identify start and end date of term. Cannot be more than 2 years.
- ✓ Average the work hours over 1-12 weeks.
- ✓ Describe the work schedule.
- ✓ Cannot work more than 12 hours per day (Can generally be at regular rate).
- ✓ Cannot work more than 44 hours per week on average.
- ✓ Grandfathering may apply if you have existing Compressed Work Week Agreements.
- ✓ Must be signed by an individual employee, or agreed to by majority of a group.

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Flexible Averaging Agreements

- ✓ No term limit. Can be cancelled by either party on 30 days' notice.
- ✓ Averaging period must be 1-2 weeks.
- ✓ Max 12 hours per day, but only 10 hours per day at regular wage.
- ✓ Only individual agreements.
- ✓ Max 44 hours per week *on average*.
- ✓ Describe the regular work schedule and hours of work.
- ✓ If allowing time off in lieu of overtime, note the mandatory terms of your flex-time agreement.

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General Holidays & General Holiday Pay


- ✓ Intent is to make it easier for employees to determine their eligibility;
- ✓ Removed requirement to have worked for 30 days in the 12 months prior to the holiday;
- ✓ Eliminated distinction between regular and non-regular day of work;
- ✓ GH Pay = flat rate of 5% of wages from the previous 4 weeks worked.

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Vacations & Vacation Pay

- ✓ Counting a break in employment has changed from 3 months to 90 days.
- ✓ Can now take in ½ day increments instead of 1-day increments.

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Leave Eligibility – General

- ✓ Employees will be eligible for current and new leaves of absence after 90 days of employment (ex. Maternity leave).
- ✓ The previous requirement was 52 weeks of employment.
- ✓ Obligation on employers to provide unpaid leave;
- ✓ Obligation on employers to provide job protection during leave and because of leave.

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Compassionate Care Leave

- ✓ Job protection extended to 27 weeks.
- ✓ No longer required to be the “primary” caregiver.
- ✓ Employee must provide medical certificate. Very specific criteria.
- ✓ 2 weeks’ advanced notice of leave (no change) but employers must accommodate absence “as soon as reasonable”.
- ✓ Leave ends when family member passes (following work week) or 27 weeks expires, whichever is first.
- ✓ “Family Member” broadly defined in new Regulation.

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Maternity Leave

- ✓ Maternity leave entitlement after 90 days rather than 52 weeks;
- ✓ Align ESC provisions to the new federal EI changes;
- ✓ Maternity leave is extended to 16 weeks (previously 15 weeks) to allow for the 1-week wait period for EI benefits;
- ✓ Start within 13 weeks of estimated delivery date (previously 12 weeks)
- ✓ If pregnancy "terminates" +16 weeks before due date, mother cannot take maternity leave;
- ✓ If pregnancy "terminates" <16 weeks before due date, mother is eligible for maternity leave (either 16 weeks after leave began or 6 weeks after "termination")

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Parental Leave

- ✓ For the parent taking maternity leave, parental leave still commences upon expiration of the maternity leave;
- ✓ For the other parent, eligible after 90 days of employment;
- ✓ Length of parental leave increased to 62 consecutive weeks (previously 37 weeks) to align to EI changes;
- ✓ Parental leave must be taken within 78 consecutive weeks of the child's birth. (Previously 52 weeks.)

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New Leaves of Absence

Long-Term Illness & Injury Leave (of the Employee):

- ✓ Unpaid leave up to 16 weeks per calendar year;
- ✓ Medical certificate and reasonable notice required.

Personal & Family Responsibility Leave:

- ✓ i.e. "Personal Days";
- ✓ Unpaid leave up to 5 days per calendar year;
- ✓ Used for employee's health or to meet "family responsibilities in relation to a family member".
- ✓ "Family Member" defined in the Regulation.

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New Leaves of Absence Cont.

Bereavement Leave:

- ✓ Unpaid leave up to 3 days calendar per year (not per death);
- ✓ Death of family member, defined in Regulation.

Domestic Violence Leave:

- ✓ Broad definition of domestic violence;
- ✓ Unpaid leave up to 10 days per calendar year for specific purposes listed in Code.

Citizenship Ceremony Leave:

- ✓ Unpaid leave up to ½ day for employees attending their own ceremony.

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New Leaves of Absence Cont.

Critical Illness Leave:

- ✓ Unpaid leave up to 36 weeks for a family member of a critically ill child.
- ✓ Unpaid leave up to 16 weeks for a family member of a critically ill adult.
- ✓ Found in Schedule 3 of the new Regulation.
- ✓ Repeals & replaces “Critical Illness of a Child Leave” created by Bill 17. Beware when you read the Code!

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New Leaves of Absence Cont.


Death or Disappearance of a Child Leave:

- ✓ Unpaid leave up to 52 weeks for employees whose child probably disappeared as a result of a crime.
- ✓ Unpaid leave up to 104 weeks for employees whose child died probably as a result of a crime.

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Resignations by Employees

- ✓ If the employee gives less resignation notice than required, expedite by paying wages for the notice period given.
 - ✓ Ex. Supposed to give 2 weeks but only gave 3 days = pay out 3 days.
- ✓ If the employee gives more resignation notice than required, expedite by paying out the termination notice period that would have been required.
- ✓ Beware of the common law rules!

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Mass Terminations

- ✓ Notice to Minister of Labour if terminating groups of employees:
 - ✓ 50-100 employees: 8 weeks' notice
 - ✓ 101-300 employees: 12 weeks' notice
 - ✓ 301+ employees: 16 weeks' notice
- ✓ Unless employer and employee agree, cannot require employee to use accrued but unused entitlements (vacation, overtime, etc.) during termination notice period.

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Have more questions? Feel free to contact me:

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