

Report To: Finance Committee, Board of Health
Submitted by: Dr. Nicola Mercer, Medical Officer of Health & CEO
Subject: BILL 148, FAIR WORKPLACES, BETTER JOBS ACT

RECOMMENDATION(S):

- (a) That the Finance Committee makes recommendation to the Board of Health to receive this report for information.

BACKGROUND:

On June 1, 2017, the Government of Ontario introduced *Bill 148, Fair Workplaces, Better Jobs Act, 2017*.¹ The Act, if passed into legislation, will greatly modify the *Employment Standards Act, 2000* as well as the *Labour Relations Act, 1995*. The focus of this report is on the changes reflected in the *Employment Standards Act, 2000* since this Act outlines the legal minimum requirements for all employees (union and non-union), unpaid students and external 3rd party Agency workers for the Province.

As outlined in the 2017 Human Resources Strategy, WDGPH has a blended workforce in a number of ways. It has a mix of union and non-union employees with approximately thirty (30) percent unionized and seventy (70) percent non-union employees. The Agency's unionized employees are nurses and they are regulated by the College of Nurses of Ontario. The non-union workforce is composed of administrative (31%), professional (27%) and management staff (12%). The Agency has both professionally regulated (46%) and non-regulated (54%) employees. Regulated professions include: Physician, Public Health Nurse, Registered Nurse, Chief Nursing Officer, Registered Practical Nurse, Dental Assistant, Dental Hygienist, Dentist, Public Health Nutritionist, Speech Language Pathologist, Canadian Registered Safety and Human Resources.

WDGPH has a wide variety of employment status "types" in the workforce. The Agency has permanent full time, permanent part time, temporary full time, temporary part time, casual (as needed) external (hosted) employees such as the Poverty Elimination Task Force and paid practicum placements for new university graduates as well as soon to be university graduates. The wide variety of employee status types is due to the diverse, complex and unique services that public health provides through limited financial resources.

In addition, the Agency has historically provided unpaid student placement opportunities in compliance with the present *Employment Standards Act, 2000*, to provide practical on-the-job experience for new graduates as well as soon to be university graduates. These unpaid placements are typically provided primarily for the benefit of the student in order to increase their job market

competitiveness as well as in order to meet the requirement to fulfill the work experience requirement of their educational program.

Bill 148, Fair Workplaces, Better Jobs Act, 2017- Employment Standards Act, 2000 proposed changes.

This *Act*, if passed, makes substantial amendments to the employment relationship requirements for employees as well as the non-employee relationship for unpaid students and external 3rd party Agency workers (commonly known as “temp agencies”). The Agency has completed a comprehensive analysis on the key sections of the proposed changes, as outlined below in this report, including pending changes to this Bill as proposed by the Standing Committee on Finance and Economic Affairs proposed on August 21, 2017. This Bill has not received Royal Assent.

Amendment – Definition of Employee – Sec. 1.1

The expansion of the definition of an employee appears to eliminate the ability to offer unpaid student opportunities outside of a formal College/University co-operative agreement. This will impact the Agency by changing the opportunity to use student placements to complete special projects that afford students the opportunity for practical application of their learning. In addition, the revision also raises questions and potential challenges for the use of volunteers. Volunteers are used by the Agency to assist Agency Staff with certain Agency-provided services (e.g. assist in breast feeding clinic as helpers, etc.). The Agency will seek a legal opinion to clarify eligibility for placements to ensure compliance with this legislation.

Amendment – Public Holidays – Sec. 1.1

The addition of Family Day as an additional statutory holiday is currently a fringe benefit offered by the Agency. The Agency is in compliance with the proposed legislation.

Amendment – Employee Classifications (Who is an employee) – Sec. 5.1(1)

Enhanced scrutiny is anticipated by the Ministry of Labour over potential misclassifications of employees that an employer is treating as a non-employee. Unfortunately, the Ministry of Labour has not defined what a “contractor” is nor has it clearly articulated what is deemed to be a misclassification of an employee. The Agency appears to be in compliance with the proposed legislation. The Agency will continue to monitor for clarification of new definitions as they evolve.

Amendment – Records – Sec. 15(1)

The addition of the requirements to maintain detailed records including the tracking of the date and time of any changes to an employee’s established schedules represents a recent amendment to the Bill. Requirements have been introduced which require shift schedule cancellations including the date and time of when the employee was notified of the cancellation. The existing Agency practice is to use the labour collection system to track hours worked and the new requirement will require the Agency to introduce new administrative controls and/or automated software systems in order to comply with this requirement.

Amendment – Records – Vacation Time and Vacation Pay Records – Sec. 15.1

Employers are required to track the amount of vacation pay that the employee earned as well as the calculation of how the vacation pay was calculated. These records must be maintained for a period of 5 years and would be on a go-forward basis. This proposed amendment increases the record requirement from three (3) to five (5) years and this information is currently tracked by the Agency and is in compliance with the proposed legislation.

Amendment – Office Relocation – Sec. 21.2(1)

Employees are permitted to request a change to their work location after three (3) months of employment. The Agency is in compliance with the proposed legislation.

Amendment – Minimum Schedule Pay Sec. 21.3(1)

Employees are eligible to receive three (3) hours of pay at straight time if the employee regularly works more than three (3) hours per day. Agency employees with regular schedules presently work more than three (3) hours per day. The Agency is in compliance with the proposed legislation.

Amendment – On-Call Pay – Sec. 21.4(1)

All non-union on-call employees are required to receive a minimum of three (3) hours of pay for being on-call. This requirement represents a potential cost-increase for providing on-call coverage by non-union employees. Presently non-union employees are compensated for 1.5 hours of pay for being on-call (if no work is performed). This change will increase the cost of employment for the Agency if no changes are made to the on-call process.

Union employees are exempt from this requirement due to their existing Collective Agreement language. The Union exemption for this requirement ends no later than January 1, 2020.

Amendment – Right to refuse schedule if advance notice not provided – Sec. 21.5(1)

The addition of the right for an employee to refuse an employer's request to work if less than 96 hours of notice is not provided by the employer poses significant challenges to the Agency. An exception amendment was added to this Bill in order for an employer to:

- Deal with an Emergency;
- Remedy or reduce a threat to public safety

Given the above exceptions, it appears that issues such as communicable disease outbreaks, influenza outbreaks as well as natural disasters that may require an Agency response will meet the threshold to avoid the advance shift notice requirement.

Amendment – Shift Cancellation Notice – Sec. 21.6(1)

The requirement for an employee receive a minimum of 48 hours of advance notice prior to a work shift being cancelled or a requirement to work on-call be removed poses a potential challenge to the Agency. At present, this requirement does not apply if a work shift is extended or shortened. Should

an employer not provide advance notice, the employee is eligible to receive a minimum of three (3) hours of pay at their regular rate.

An exception amendment was added to this Bill in order for an employer to avoid providing advance shift cancellation notice due to the below factors:

- Inability to provide work because of fire, lightning, power failure, storms or similar causes beyond the employers' control.
- The nature of the employer's work is weather-dependent and is unable to provide work for the employee for weather-related reasons.

The above exemption may permit the Agency to avoid having to provide advance shift cancellation notice or to provide pay in lieu of providing advance notice during declared IMS events that have varying labour demand requirements. Shift cancellations for reasons outside of the above exemptions will increase the Agency's cost structure.

Amendment – Overtime Threshold - 22(1.1)

The requirement to calculate overtime paid at the rate of the job being performed reflects the Agency's current practice. The Agency is in compliance with the proposed legislation.

Amendment – Minimum Wage - 23(1)

There has been extensive media coverage due to the proposed increase to the minimum wage to \$15 per hour. This change will have minimal effect on the Agency as WDGPH is recognized as a Living Wage Leader which is in excess of the minimum wage. WDGPH ensures all direct full-time, part-time and contract employees are paid at least the living wage. There will be a minor cost increase due to the requirement to increase the rate of pay for student youth-test shoppers who work on a casual (as needed) basis. The Agency is in compliance with the proposed legislation.

Amendment – Public Holidays – Sec. 24

The simplification of the Public Holiday Pay Calculation originated due to the fact that the existing requirement is considered complex by many employers as well as difficult for employees to understand.

This change would increase the Agency's cost structure for part-time employees due to the proposed calculation methodology.

Amendment – Public Holiday not a regular day scheduling – Sec. 29.1

The scheduling of statutory holidays that are observed on a day not normally scheduled for work represents a considerable change to existing legislation. Historically employees were given several months to take the statutory holiday when it was convenient for them as well as the Agency. The revised proposal has altered this to mandate that an employee is required to schedule the statutory holiday either before or after the statutory holiday.

This change will require an employee to take their public holiday either directly before or directly after the public holiday. Alternatively, an employee and employer can agree to directly pay out the

public holiday if there is agreement by both sides to do so. The decision to payout would result in additional costs to the Agency.

Amendment – Public Holiday Agreement to work – Sec. 29.1 & 30(2.1)

When there is an agreement between the Agency and the employee to work on a public holiday, the Employer is required to provide a written notification before the holiday outlining the specific day when the employee will take the substitute holiday off. Historically employees were given several months to take the statutory holiday when it was convenient for them as well as the Agency by being able to “bank” the holiday so they could utilize this holiday when they chose to do so. This new requirement will require the Agency to introduce new administrative controls and/or automated software systems in order to comply with this requirement.

Amendment – Vacation with Pay – Sec. 33(1)

Employees have the right to receive vacation time of three weeks of vacation after five years of service with the Agency. The Agency currently hires permanent full-time employees with a minimum of three (3) weeks’ vacation. At present, non-permanent non-union employees receive 4% vacation pay.

The amendment increases the cost structure for the Agency whereby all employees with a minimum of five (5) years of service would be required to receive 6% vacation pay regardless of hours worked.

Amendment – Difference in Employment Status – Sec. 42(2)(d)

The requirement to pay employees similarly regardless of the number of hours they are scheduled to work or regardless if they are permanent, temporary, seasonal or casual in status represents a considerable change to existing legislation. The Agency does not differentiate pay based on employment status. The Agency is in compliance with the proposed legislation.

Amendment – Difference in Employment Status – Temporary Help Agency – Sec. 42.2(1)

The introduction of the requirement that a temporary external help agency employee is required to be paid at least the rate of pay of a WDGPH employee represents a significant legislation change. Temporary help agencies perform a valuable function by being able to provide individuals with unique skills in a short amount of time. In addition, when the work is completed, the individual can be released when required. The Agency utilizes temporary help Agencies to staff for sudden events (i.e. IMS outbreaks and require specialized help with less than 24 hours of advance notice), when there is a lack of internal capacity to fill the position (i.e. specialized skills), when the requirement is for a short duration, or when potentially it is not a core competency of the Agency (i.e. help to transport dental equipment between mobile dental clinics).

Temporary help agencies charge a mark-up percentage of an employee’s pay rate to account for their overhead costs. The revised proposal will introduce the requirement to ensure that temporary help agency personnel are not brought in to perform similar internal job position duties in order to comply with this requirement.

Amendment – Increase of Parental Leave from 35 weeks to 61 weeks – Sec 49(1)

The increase of parental leave from 35 weeks to 61 weeks represents a considerable increase over present legislation. Combined with pregnancy leave, this represents a change from existing job protected leave of 52 weeks to 78 weeks or approximately 18 months. This change parallels the recently amended Federal Government's Employment Insurance program which offer Employment Insurance benefits for 18 months

During job protected leave, the Agency is responsible for continuing eligible employee benefits in force as well as continuing to provide paid vacation during this time period. In addition, this will directly increase the Agency's supplemental unemployment benefit program for up to twenty-five (25) weeks. This extended absence may also result in additional retraining requirements for staff who have been out of the workforce for an extended period of time. This change would increase the Agency's cost structure for employees whom meet the requirements to take Paternal Leave.

Amendment – Increase of Family Medical Leave from 8 weeks to 27 weeks – Sec 49.1(1)

The increase of Family Medical leave from 8 weeks up to 27 weeks represents a significant increase in time from the present legislation. In addition, an employee has the right to extend this leave after the first leave with substantiated medical information.

Ontario currently has nine (9) different types of job protected leaves which enables an employee to be reinstated to the same position they held before the leave, or to a comparable position if it does not exist. In addition, the Agency is responsible for continuing all other benefits including vacation accruals as well as supplementary benefits during this time period. An employee may, depending upon the nature of the leave, qualify for several different types of leave to enable them to take job protected leave for an extended period of time.

This potentially will increase the cost of employment for the Agency as this leave can be extended indefinitely with substantiated medical information.

Amendment – Expansion of Crime Related Death Or Disappearance Leave – Sec. 49.5(1) & 49.6(1)

The separation of Crime Related Death or Disappearance Leave into two separate leaves effectively doubles leave eligibility for this type of leave. This equates to each leave having a total maximum eligibility of 104 weeks for a total potential leave of 208 weeks or four (4) years. The Agency is responsible for continuing all other benefits including vacation accruals as well as supplementary benefits during this time period This potentially will increase the cost of employment for the Agency.

Amendment – Domestic or Sexual Violence Leave – Sec. 49.7

The introduction of Domestic or Sexual Violence Leave represents another job protected leave of up to 15 weeks and 10 days per calendar year. The Agency is responsible for continuing all other benefits including vacation accruals as well as supplementary benefits during this time period. This potentially will increase the cost of employment with the Agency.

Amendment – Introduction of two (2) paid Personal Emergency Leave days for all employees – Sec. 50(5)

The requirement to provide two (2) days of paid emergency leave for all employees represents a significant change to existing legislation. Presently, the *Employment Standards Act*, 2000 provides employees' job protected leave for up to ten (10) days per calendar year. These ten (10) days are presently unpaid and available to all employees regardless of employment status (i.e. permanent, temporary, casual (as needed), practicum placements, etc.).

Personal Emergency Leave may be taken for large and wide variety of reasons including:

- A personal illness, injury or medical emergency.
- The death, illness, injury or medical emergency of an eligible individual.
- An urgent matter that concerns an eligible individual.

Personal Emergency Leave also may be taken for many different eligible individuals as outlined below:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
- The spouse of a child of the employee.
- The employee's brother or sister.
- A relative of the employee who is dependent on the employee for care or assistance.

An exemption to paid emergency leave has been provided removing the requirement to provide paid emergency leave for an employee who has worked for less than one (1) week. It is unclear if this is considered a regular work week (i.e. a total of 35 hours have been worked) or if this is specifically considered to be a calendar week.

The Agency has a large number of different types of paid leave for eligible employees which overlap elements of Personal Emergency Leave. These leaves include paid sick time, bereavement, as well as short term disability depending upon employment status, duration, etc. It is important to note that while some leaves may "overlap", it does not meet the definition of emergency leave and therefore does not count towards these ten (10) days of Personal Emergency Leave.

Presently, the Agency provides paid sick time to eligible permanent employees. This change, if passed, increase the employment cost for the entire Agency as all employees would be eligible for paid emergency leave for the reasons outlined above. Notably, certain casual (as needed) employees which may only work less than 35 hours/one week per year, would potentially be eligible to receive paid time off. This change, if passed, will increase the cost of employment for the Agency.

Amendment – Termination Pay for Temporary External Agency Introduction – Sec. 74.10.1(1)

The requirement to provide an external temporary help agency employee with a minimum of one (1) weeks' notice or pay in lieu of notice represents a significant legislation change. This would be required when a temporary work assignment is ending if the temporary assignment is anticipated to last longer than three (3) months. Temporary help agencies perform a valuable function by being able

to provide individuals with unique skills in a short amount of time. This amendment will potentially increase the cost of utilizing external temporary agency individuals when advance notice of an assignment termination is not possible.

CONCLUSION:

The current *Bill 148, Fair Workplaces, Better Jobs Act, 2017*, as well as the pending amendments by the Standing Committee on Finance and Economic Affairs as proposed on August 21, 2017, introduces substantial changes and introduces a large amount of uncertainty that affect the way the Agency completes its' legislative requirements.¹ As written, the *Act* alters the employment relationship which will increase the cost of employment for the Agency and also restricts Agency flexibility which potentially reduces the capability to respond and meet our Public Health mandate. While this *Act* has only received second reading, it is anticipated that potential implementation dates could potentially be as early as January 1, 2018. These changes will result in additional costs for the Agency. The Agency will continue to monitor the proposed legislation and provide additional costing information when the Bill receives Royal Assent.

APPENDICES:

None.

REFERENCES:

1. Bill 148, Fair Workplaces, Better Jobs Act, 2017. [Intranet]. 2017 [cited 2017 July 31]. Available from:
http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4963&detailPage=bills_detail_the_bill.

Prepared by:
Justin Brown
Manager, Human
Resources

Reviewed by:
Elizabeth Bowden
Interim Director,
Administrative Services

Original Signed Document on File

Approved by:
Dr. Nicola Mercer,
Medical Officer of Health &
CEO