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Professional
Accountants

Bill 148 Webinar

RLB LLP

Background

Bill 148: Fair Workplaces, Better Jobs Act

- June 1, 2017 Introduction
- Fall 2017 Passed Second Reading
- Largely intact November 22, 2017 Passed



Agriculture Special Rule for Entitlement and Exemptions

- All areas have:
 - PEL's
 - Termination pay
 - Severance pay
- Others have minimum wages, others do not
- Fresh Fruit and Vegetable Processor - almost all are entitled to most, OT after 50 hours

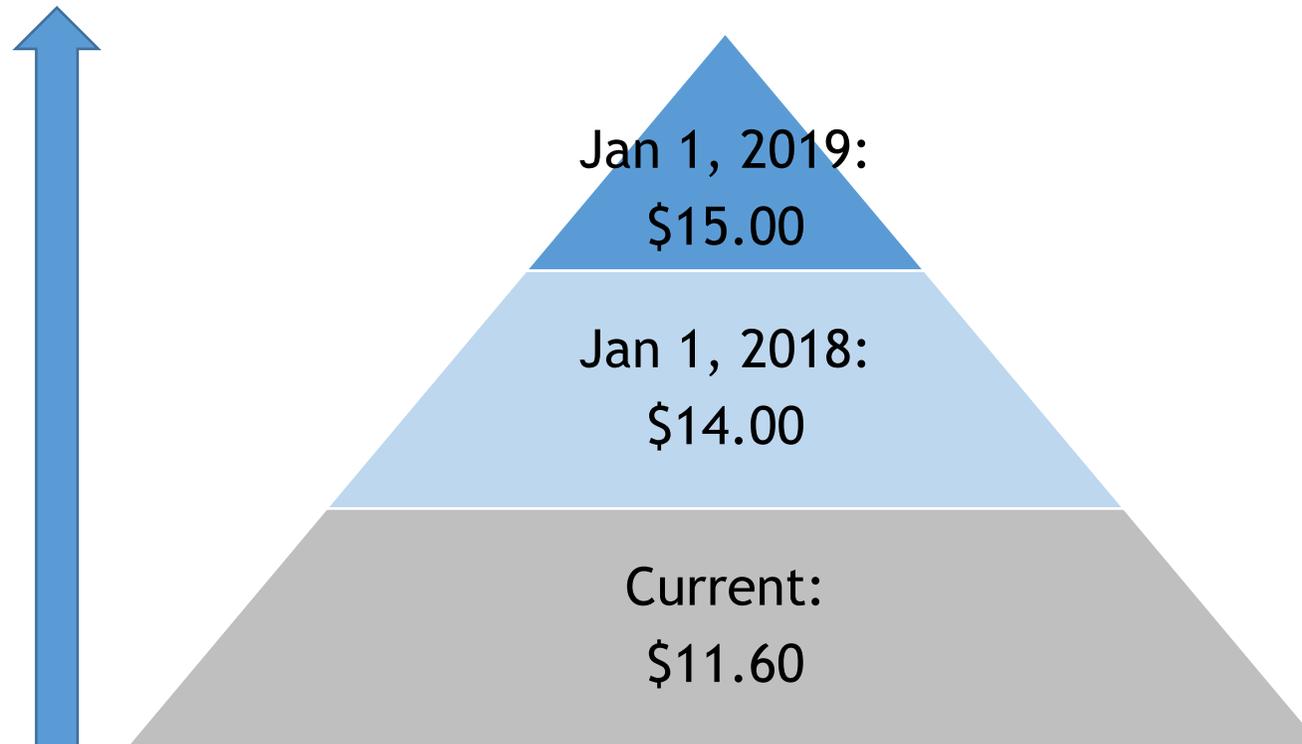
Agriculture – Special Rule for Entitlement and Exemptions		
Type of Work	Entitlement	Exemptions or Special Rule
Farm Employees Work on a farm growing or producing eggs, milk, grain, seeds, fruit, vegetables, mushrooms, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, rattles, bison, rabbits, game birds, wild boar and cultured fish.	You are entitled to: <ul style="list-style-type: none"> personal emergency leave notice of termination/termination pay severance pay 	You are not entitled to: <ul style="list-style-type: none"> minimum wage hours of work daily rest periods time off between shifts weekly/bi-weekly rest periods eating periods overtime public holidays vacation with pay
Fruit, Vegetable and Tobacco Harvesters This does not apply to you if you work on a farm growing or producing eggs, milk, grain, seeds, fruit, vegetables, mushrooms, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, rattles, bison, rabbits, game birds, wild boar and cultured fish. It does apply if you work on a farm harvesting fruit, vegetables or tobacco for wholesale, retail sale or storage.	You are entitled to: <ul style="list-style-type: none"> personal emergency leave notice of termination/termination pay severance pay 	You are not entitled to: <ul style="list-style-type: none"> hours of work daily rest periods time off between shifts weekly/bi-weekly rest periods eating periods overtime public holidays and public holiday pay if you work for the same employer for at least 13 consecutive weeks
Fishers Work in growing flowers for wholesale and retail sale.	You are entitled to: <ul style="list-style-type: none"> personal emergency leave notice of termination/termination pay severance pay 	You are not entitled to: <ul style="list-style-type: none"> minimum wage hours of work daily rest periods time off between shifts weekly/bi-weekly rest periods eating periods overtime public holidays vacation with pay
Flower Growers Work in growing flowers for wholesale and retail sale.	You are entitled to: <ul style="list-style-type: none"> minimum wage personal emergency leave 	You are not entitled to: <ul style="list-style-type: none"> hours of work daily rest periods time off between shifts

Agriculture – Special Rule for Entitlement and Exemptions		
Type of Work	Entitlement	Exemptions or Special Rule
Fresh Fruit and Vegetable Processors If you are a seasonal employee and work in the canning, processing, packing or distribution of fresh fruit or vegetables.	You are entitled to: <ul style="list-style-type: none"> vacation with pay notice of termination/termination pay severance pay 	You are entitled to: <ul style="list-style-type: none"> weekly/bi-weekly rest periods eating periods overtime public holidays
Growing, Transporting or Laying Sod	You are entitled to: <ul style="list-style-type: none"> minimum wage personal emergency leave vacation with pay notice of termination/termination pay severance pay 	You are not entitled to: <ul style="list-style-type: none"> hours of work daily rest periods time off between shifts weekly/bi-weekly rest periods eating periods overtime public holidays
Tree and Shrub Growers	You are entitled to: <ul style="list-style-type: none"> minimum wage personal emergency leave vacation with pay notice of termination/termination pay severance pay 	You are not entitled to: <ul style="list-style-type: none"> hours of work daily rest periods time off between shifts weekly/bi-weekly rest periods eating periods overtime public holidays

Information as per <https://www.ontario.ca/document/industry-and-job-exemptions-or-special-rules/agriculture-growing-breeding-keeping-and-finishing> updated January 11, 2018.

For more information on other types of work and further details refer to the link above.

Minimum Wage



Changes do not eliminate special minimum wage rates (students, servers, hunting), but those wages will be increased by the same percentage.

Students Under 18

Students under the age of 18, who work part time during the school year (up to 28hrs/week) and on school breaks, will see an increase from \$10.90 per hour to:

\$13.15/hr January 1, 2018

\$14.10/hr January 1, 2019

Wage increases after 2019:

- Tied to annual adjustments as per Ontario's Consumer Price Index

*Students who work more than 28 hours a week when school is in session are entitled to the general minimum wage.



Minimum Wage

Fruit, vegetable and tobacco harvesters:

You are generally entitled to minimum wage. However, you can pay less than minimum wage if:

- You pay on a piece work basis and the rate is high enough that you could earn at least minimum wage with reasonable effort, or

- Gives the employee room and board and you deduct the costs from their pay
- You cannot deduct more than the maximum amounts set out in O. Reg. 285/01



Vacation Changes

Current: 2 weeks/4%

Change:

- 3 weeks paid vacation for employees with at least 5 years of service/6%
- Can have Greater Benefit Of ESA
- Flower growers, Fresh fruit and vegetable processors, Growing,

transporting and laying sod and Tree and shrub growers do have to pay vacation pay



Vacation

If you work on a farm harvesting fruit, vegetables or tobacco for wholesale, retail sale or storage, you are entitled to vacation pay if:

- You have worked for the same employer for at least 13 weeks (the weeks do not have to be consecutive).



How is vacation entitlement calculated for seasonal or part time workers in agriculture?

Do agricultural/seasonal businesses have to pay vacation pay?

- Flower growers, Fresh fruit and vegetable processors, growing transporting or laying sod and tree and shrub growers do have to pay vacation pay
- All others do not



Questions:

Do the employees have to work year round to be entitled to vacation pay?

- It depends on the arrangement they have. If employees are put on temporary layoff then this turns into a permanent layoff after 13 weeks.
- If they are seasonal they need to be given one week notice or termination pay. The employment relationship ends. Hence a break in vacation entitlement.
- However if the employer gives a seasonal worker a letter stating when they will rehire them, then this would be considered a full year under vacation entitlement.

Question:

Is the increase in vacation from 4% to 6% for 5 years of service based on the employee doing the same job at the same place or working for the same employer?

- Yes



Question:

The business was sold and has new owners therefore a new employer within those years of service, how is entitlement determined.

- This depends on the details of the sale. If the agreement was to take on the old employees and their seniority then they would be entitled vacation entitlement as per their

original date of hire.

- If they have new employment contracts with the new employer it should state if seniority will be carried over or not.



Questions:

How is a year calculated for seasonal employees who don't work for the same employer year round?

- You concern yourself with only what they work for you
- If there is a break longer than 13 weeks then the employment ceases and restarts each year.
- If a letter is given indicating a

return date then the off period would count toward vacation entitlement



How is vacation entitlement calculated for seasonal or part time workers in agriculture?

Are students who only work a few days of the year entitled to vacation pay?

- Yes, if this is an entitlement under ESA. Check the table.
- Not Fishers, Fruit and Vegetable and Tobacco Harvesters, or Farm Employee classification.



Leaves- Job Protected

Personal Emergency Leave

- 2 paid sick days - first two of year
- 8 non paid
- personal illness, injury or medical emergency
- death, illness, injury, or medical emergency of, or urgent matter relating to, certain family members (ESA)
- normal wages, part of a day = whole day, no overtime or premium pay
- No premium pay if take stat holiday as PEL
- Reasonable evidence provided
- Employer 1 week



Parental Leave

Current:

- 35 and 37 weeks job protected leave

Change:

- Employee entitled to up to 61 weeks (if employee took pregnancy leave)
- Up to 63 weeks if employee did not take pregnancy leave

Effective December 3, 2017



Legislative Leaves

Pregnancy Loss Leave - 12 weeks unpaid

Family Medical Leave - 28 weeks unpaid, medical certificate of family member, significant risk of death, make request in writing

Critical Illness Leave - unpaid, care and support critically ill child (37 weeks) or adult (17 weeks), can have more than one leave

Child Death Leave - after 6 months

employed, up to 104 weeks unpaid, dies or disappears, can't be involved in death or disappearance, written plan, reasonable evidence

Organ Donor - unpaid leave, 13 weeks donating organs, advance written notice of leave

Legislative Leaves

Reservist Leave - military reservists, unpaid, give advanced notice

Domestic or Sexual Violence Leave - 15 weeks, 5 days paid, remainder unpaid, only for purposes described in ESA, reasonable evidence for leave, part day as full day and part week as full week, must be employed for 13 weeks to qualify

Bereavement Leave - No changes
No specified paid dates

Jury Duty - provide notice, unpaid time off, not applicable if team member is the plaintiff, defendant or witness

Questions

How is “one week” calculated in regards to vacation and leave entitlements?

- PEL is required for all the types of agricultural work.
- An employee who has been employed for at least a week with an employer is entitled to be paid.
- A new employee employed for less

than a week may take unpaid days of leave.

- However, the first and second days of leave taken after that first week must be paid if they are taken in the same calendar year.
- Develop a tracking system
- Part days as full days



Personal Emergency Leave

Do these only apply to full time, year round employees?

- PEL's are for part time, fulltime and seasonal workers



Questions - PEL

If an employee only works 6 non consecutive days a year, are they still considered to have worked one week and are therefore entitled to paid personal emergency leave for 2 days?

- Yes
- They can take unpaid days

off but only paid after they have worked the week.

- Use them or lose them



Public Holiday Pay

- New formula for calculation of public holiday pay
- Substitute holidays - written statement requirement (NEW)
- Qualify as soon as start work
- Work regularly scheduled shift day before and after
- PEL - still qualify for stat pay

Public Holiday Pay

- It is based on the regular wages the employee earned in the pay period prior to the public holiday, divided by the number of days the employee worked in that period.
- If new employee - use the current pay period that includes public holiday
- If did not work in previous pay period - go to the last pay period the employee worked (Only go back one)
- If on layoff then may not qualify for stat pay
- It does not matter if an employee is full time, part time, permanent or on a time-limited arrangement
- Only Fresh fruit and vegetable processors are entitled to public holidays
- Online calculator

Overtime

Where an employee has more than 1 rate of pay, overtime rate is 1.5 times the regular rate for the work being performed in that hour (no more blended rates)

- Typical overtime after 44 hrs
- Most agriculture are exempt
- Fresh fruit and Vegetable Processors covered after 50 hours OT

Question

What if a business is agricultural during the summer growing season but retail for a short time?

- Not all of the rules and standards apply to every kind of agricultural employee.
- What rules and standards apply depends on what category of agricultural employee you fall into.
- In some cases, your work may fall into more than one category.
- In that case, how you spend most of your time in any specific work week determines which rules and standards apply.

Overtime

If payroll is done monthly, is overtime still calculated on a weekly basis or a monthly basis?

- Overtime is calculated only:
 - on a weekly basis
 - over a longer period under an averaging agreement
- Averaging hours of work :
 - Only with approval of the Ministry of Labour's Director of Employment Standards

- Employee's electronic or written agreement to average their hours of work

If the business is agricultural, is overtime calculated differently?

- Most are not covered for OT



Equal Pay for Equal Work - April 1, 2018

- Prohibit difference in pay based on employment status, sex or affiliation with a temporary help agency
- Employment status: differences in hours or term of employment (full time vs part time, casual or seasonal employees)
- Other reasons for differentiation are still permissible: seniority, merit, quantity or quality of production
- Employees may inquire about wage rates without fear of reprisal



Equal Pay for Equal Work - April 1, 2018

Are seasonal part time employees who only perform a very limited number of tasks over a few days of employment entitled to the same wage as longer term seasonal employees who work May to December and perform many task throughout their employment?

- Seniority

- Skill and Ability
- Wage bands

Since some of the tasks part times do overlap with the longer term employees on a certain days, would they have to be paid the same wage?

- Not necessarily

Employee versus Independent Contractor - Misclassification

- Employers may not to treat anyone who is an employee as though they are not
- Prohibit improper characterization of worker as an independent contractor
- The employer has the burden of showing that someone is not an employee
- No change to include definition of dependent contractor

Scheduling Requests - January 1, 2019

- Employee has the right to request schedule or location changes after 3 months of employment
- If employer refuses, must provide reasons for the denial
- 3 hour minimum pay for shifts if cancelled within 48 hours of its start or if the worker is not called in when on-call
- Pay for 3 hour minimum must be at regular rate
- Employee has the right to refuse shift requests with less than 4 days' notice

Shift

When a shift is cancelled with less than 48 hours notice, what is the definition of “certain factors beyond the employers control”? Does this include weather dependent retail businesses?

- (a) the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer’s control
- (b) the nature of the employee’s work is weather dependent and the employer is unable to provide work for the employee for weather-related reasons; or
- (c) the employer is unable to provide work for the employee for such other reasons as may be prescribed

Exemptions

Are immediate family members (ie children) exempt from payroll standards (CPP, EI, tax deductions, WSIB) if they are working on the family farm?

- No EI deductions
- CPP and all others yes
- WSIB may be exempt
- No entitlement to leave
- Employment will be insurable only

if it is reasonable to conclude that your employer would have hired a non-related person under a similar contract of employment.

- This is determined by looking at several factors:
 - remuneration paid, terms and conditions of employment, duration and necessity of services performed

Complaints and Penalties

- Range of penalties prescribed by Regulation.
- Employment Standards Officer given discretion to determine penalty within the range prescribed
- Hiring of more Inspectors
- Higher chance of audit



Looking Ahead

- Scheduling
- Equal Pay, equal work
- Case Law
- Record Keeping - Now 5 years



Any Questions?





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