



Bill 148 - *Fair Workplaces, Better Jobs Act, 2017*

Submission to the Standing Committee on Finance and
Economic Affairs

July 19, 2017

All of Ontario's 444 municipal governments support improving our employees' lives through better working conditions, more predictable income, and access to needed personal time. We have already acted on these goals and, as employers, we are proud of the work that we do to provide great employment opportunities for thousands of Ontario workers. In fact, communities generally see municipal governments as an "employer of choice". Municipal governments operate in a transparent environment and are directly accountable to the residents and businesses we serve in each community.

As we review Bill 148, we would observe that the focus of the government's proposed reform initiatives appear to be aimed at non-municipal sectors that provide for employment that is different from that commonly found in the municipal sector. That may include workers engaged in precarious employment, although defining precarity is a challenging task unto itself. Regardless of the definition, precarity is not a characteristic common to the employment relationships found in the municipal sector.

Municipal governments provide most of the needs of daily life as well as emergency services to our communities. On the face of this proposed legislation, we are concerned that municipal employers will be disproportionately impacted given our large range of mandated services. We are therefore 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 (238,000) and 1 in 30 employed Ontarians works for a municipal government. About 70% of these employees are bargaining unit members and the majority of the balance of staff have employment conditions that mirror collective agreement entitlements. In our 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 we support the public policy spirit behind this Bill, this submission focuses on areas that are the most significant concern of municipal governments. Specifically, we would like to underscore our proposed changes to the *Employment Standards Act*, the impact that Bill 148's proposed changes would have on volunteer fire services and two changes to the *Labour Relations Act*.

There is an appendix that provides all of AMO's proposed amendments for easy reference as well as further statistical background on municipal governments.

Specific Concerns and Proposed Amendments

Employment Standards Act:

1. **Scheduling (4 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 municipal statutory obligations are for public health and safety reasons. We are concerned that many of these obligations will work at cross-purposes or conflict with this proposed Bill.

The Special Advisors who prepared *The Changing Workplaces Review - Final Report* recommended that:

“90. Recognizing the need for predictable schedules for employees in certain sectors and the variability of scheduling requirements, the government should adopt a sector-specific approach to the regulation of scheduling.”

We agree with this recommendation, and ask that, as this Bill and future regulations under Bill 148 are developed, these real operational concerns be addressed in detail through consultation so that there are no conflicting statutory requirements that municipal employers would struggle to manage.

AMO asks that the Bill be amended to:

- 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 4-day scheduling requirement 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).
2. **On-call provisions (Part VII.2)**

In our 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. As the first line of action for emergency services and the provider of essential services to vulnerable populations, municipal governments have staff prepared to step in should a boiler fail, the water pumps stop, a fire start or an elderly resident go missing from a facility.

Working with employees to fairly manage both their time and urgent situations has been a part of municipal business for decades. The cost implications of changing to a 3-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 3-hours’ pay at their regular rate provision be included as soon as their collective agreement is opened for renegotiation.

As an example, we have calculated that this one proposed change alone will have a system impact of approximately \$2 million annually for just one paramedic to be on-call for each of the 52 EMS services in the province. The cost rises significantly if you expand the list to include all others who provide 24/7 emergency services and other municipal services that are required to have an on-call system for public health and safety reasons. This includes police, water operations, snowplowing, road maintenance, long-term care (nurses, personal care workers), and public health.

Further, AMO requests that the Bill be clarified to explicitly state that management employees, with respect to paid on-call, are exempt from this entitlement. We have reviewed conflicting legal opinions on this issue. Clarity is necessary to avoid any confusion should you proceed with this particular amendment, given that on-call duties regularly form part of the scope of duties and responsibilities of our members' management group.

Additionally, municipal governments contract many emergency-related services. These contracts will need to be reviewed to understand the implications of these proposed operational and fiscal impacts on these services. For example, approximately 323 municipal governments contract with the Ontario Provincial Police to provide policing services and snowplowing is often done through tendered third party contracts. We also request that the timeframes for implementation be extended to ensure that changes to services under contract will be sufficient to enable renegotiation of service levels and proper budgeting.

AMO asks that the Bill be amended to:

- Provide an exemption from s. 21.4 for all municipal employees who are required to be on call to provide statutorily mandated public safety services.
- Provide a clear exemption for management employees with respect to paid on-call.

3. **Personal Emergency Leave:** Section 50 speaks to Personal Emergency Leave. Ontario's municipal governments provide their employees with a wide variety of leaves including Sick Leave. Given the scope of existing leave entitlements already provided to municipal workers, we are concerned about the establishment of a new entitlement that will sit directly on top of a range of entitlements that are already fair and reasonable. It is our recommendation that Bill 148 should specifically clarify where and when a greater right or benefit exists in order to avoid the cost associated with topping up already reasonable leave entitlements in this sector.

AMO asks that the Bill be amended to:

- 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.

This will eliminate confusion, avoid unnecessary greater right or benefit litigation, and will reduce the administrative burden of altering language in agreements to reflect the intent of the legislation (where employers are already meeting or exceeding the objectives of the proposed personal emergency leave entitlement).

4. **Equal Pay:** Section 23 of the Bill deals with Part XII of the Act, Equal Pay. Municipal governments have been subject to the ESA's equal pay provisions and the *Pay Equity Act* for several years and we are committed to the principle of equal pay for work provided.

Based on the feedback that we have been able to collect in the very short period of time we have been given to gather it, we are concerned that the Bill as drafted will have a significant impact on parks and recreation, and to some extent long-term care homes and public works who employ many part-time and seasonal employees.

Annually, each municipal government submits a Financial Information Return (FIR). Table 1 is a summation of all municipal submissions indicating the number of employees by service area and full-time, part-time, or seasonal status.

TABLE 1:

FIR2015: PROVINCIAL SUMMARY		Schedule 80 STATISTICAL INFORMATION for the year ended December 31, 2015		
		Full-Time Funded Positions 1 #	Part-Time Funded Positions 2 #	Seasonal Employees 3 #
1. Municipal workforce profile				
Employees of the Municipality				
0205	Administration	18,379	2,166	535
0210	Fire	12,241.88	3,717.22	377.50
0211	Uniform	10,778.65	2,024.46	180.00
0212	Civilian	1,463.23	1,692.76	197.50
0215	Police	24,573.35	1,037.30	1,103.00
0216	Uniform	17,972.35	313.00	866.00
0217	Civilian	6,601.00	724.30	237.00
0260	Court Security	456.85	126.10	0.00
0261	Uniform	154.65	36.00	0.00
0262	Civilian	302.20	90.10	0.00
0263	Prisoner Transportation	306.80	22.40	2.00
0264	Uniform	54.00	3.00	2.00
0265	Civilian	252.80	19.40	0.00
0220	Transit	22,364.50	677.56	601.00
0225	Public Works	24,617.57	2,374.07	2,757.01
0227	Ambulance	6,011.53	1,913.87	6.30
0228	Uniform	4,837.60	1,862.61	2.00
0229	Civilian	1,173.93	51.26	4.30
0230	Health Services	5,628.34	767.89	359.03
0235	Homes for the Aged	8,652.99	10,369.76	154.90
0240	Other Social Services	10,342.85	1,800.55	173.36
0245	Parks and Recreation	10,295.92	25,052.36	12,789.02
0250	Libraries	3,442.91	4,747.13	321.30
0255	Planning	5,060.17	347.12	191.50
0290	Other	7,080.29	2,814.90	773.35
0298	Subtotal	159,454.76	57,924.83	20,142.61

Seasonal employees can be difficult to assess in relation to full-time comparators. In some cases, there are no full time comparators. In other cases, the jobs are somewhat different and the level of responsibility is not exactly comparable. If this review does result in upward pay adjustments, it is very possible that there will be fewer parks and recreation programs to provide vital community services or user fees will need to increase to cover these costs and could limit access.

5. Volunteer Fire Fighters

Ontario has a unique regime of municipal firefighters that we do not believe has been considered in the development of Bill 148. There are: full-time salaried firefighters; voluntary firefighters who are on-call; part-time firefighters; and, managerial and other non-union fire service employees. All full-time firefighters and managerial firefighters are employees under the *Employment Standards Act (ESA)* and the *Ontario Labour Relations Act (OLRA)*. All volunteer firefighters are employees under the *OLRA*. The law is unclear as to whether or not a volunteer firefighter is an employee under the *ESA*. However, 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. The 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.

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.

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 (visiting a friend 200 km away);
- 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*.

The average voluntary firefighter's wage is \$25 per hour once they are at the scene. This could mean that if a volunteer firefighter is not exempted from the proposed changes to on-call pay the cost of volunteer firefighter services will increase to \$27,375 per volunteer firefighter per year (\$75 per day x 365 days per year). If a municipality had 200 volunteer firefighters, this proposal alone will cost \$5,475,000 per year without any increase in service to the community. This cost 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.

AMO is requesting that the existing special exemptions under the ESA regarding firefighters be amended to included exemptions in the following areas:

- 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*. It is our submission that the rate of compensation provided to firefighters already recognizes the on-call component of the job; and
- 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.

Labour Relations Act:

1. Amendments to Section 6.1 of the Act, which would require the provision of employee contact information to an applicant union once they reach a 20% bargaining unit threshold is a change we suggest that is running headlong in the wrong direction given the prevailing legal trends in privacy law. This is a change, we submit, that is contrary to the government's own stated public policy objectives of protecting the privacy interests of Ontario citizens (e.g. changes to the rules regarding prosecutions and enforcement in PHIPPA). The best evidence of this is the unfortunate need in Bill 148 to expressly override the common law (the tort of intrusion upon seclusion) and the existing statutory regime in order to allow this change to occur. We understand the Bill's intent is to afford a bargaining agent with more information to allow it to try and organize. We believe that there is a way to balance this interest with the privacy interests of our member's employees.

AMO asks that the Bill be amended to:

- Require that an employee first provide express consent to their employer prior to its disclosure pursuant to a Board order or, in the alternative, allow the employee to opt out of having the employer provide contact information at the time of hire or any time thereafter upon written request to their employer.

This amendment is proposed because it would still contemplate the possibility for personal information to be shared but only with consent. It would afford a bargaining agent with the means to access certain information but would balance that interest with protecting an employee from an unwanted invasion of their privacy. We submit that this is a reasonable balance of interests given that this proposed change would put Ontario on the map as the first jurisdiction in North America to produce personal information prior to a certification application for the express purposes of promoting unionization.

2. While seeking clarification about Section 69.1 and 69.2, successor rights provisions of the draft Bill, we understand this section is intended to only apply to provincially funded services. However, there is confusion surrounding what publicly funded means. Where would grants or partial operating funding from the Province fit into this definition? Municipal funds are also “publicly funded”.

AMO asks that the Bill be amended to:

- Clarify that successor rights only apply to those services contracted by the Province and funded through provincial public funds.

Educational and Interpretative Supports Needed:

Any changes to the *Employment Standards Act* or *Labour Relations Act* will require educational and interpretive supports for all employers. In particular, municipal governments and other employers will need clear and timely Ministry of Labour interpretation bulletins well before provisions of the Act, if passed, come into force.

Extensive training sessions in person across the province and on-line will be needed to address questions and provide guidance. We are hopeful that the timely production of publicly published materials will help reduce what we anticipate will be a significant amount of litigation arising out of the interpretation and application of these changes. Additionally, given the scope and complexity of the legislative changes proposed, provincially facilitated training sessions delivered on a regional basis throughout the province would be appropriate.

Conclusion and Summary:

Local governments are on the frontlines of public service and we see firsthand how insufficient resources and supports can impact people and families in need. We know that a lack of affordable housing, food insecurity, and the inability to move ahead in life is touching greater numbers of our citizens. We also know meaningful changes take time and careful planning. Unfortunately, prosperity cannot be simply legislated.

A healthy society also needs to be affordable and should not reduce the ability of local governments to provide critical daily and emergency services to our communities. Healthy communities must be able to absorb the costs of change – not be burdened by duplicate requirements. The gains we are making in creating Ontario attractive for investment should not be forfeited by moving too quickly as we strive for social changes.

Although we have not provided comments on the proposed minimum wage increases in the body of our submission, it is a significant concern for municipal employers. Its impact will be seen as municipal collective agreements are renegotiated and there is pressure to increase all wages to maintain the current measure between the minimum wage and the wages under each agreement. It will also cause compression within salary grids. One local government, serving a population of just over 50,000, has estimated that the proposed minimum wage increases in 2018 and 2019 will cost over an additional \$500,000.

For all of these concerns, we ask the Standing Committee to call for a review of the cumulative impact of Bill 148, WSIB work-related Chronic Stress policy, and other provincial legislative or regulatory workplace changes that affect municipal governments and their communities before Bill 148 receives Second Reading.

We know that many employers, organizations and associations, such as the Ontario Chamber of Commerce, are saying that these proposed changes have not undergone an economic analysis and that there are too many workplace changes coming too quickly. AMO agrees.

For all the economists who say that there is nothing to fear from Bill 148, there are others equally qualified who disagree. There is a significant concern that Ontario may become an economic field experiment, with years before we have the data to fully understand the impact. Ontario should not move forward without the critical economic analysis required to meet the best practice of evidence-based policy. Recent news out of Seattle demonstrates that any change must be thoughtful and well planned. There the minimum wage was increased over time to the detriment of the very people it was designed to help – the most unskilled.

Legislators must recognize that municipal budgets cannot simply rise to meet the needs imposed by the Bill; even if budgets could rise, the amount of municipal revenue generated is limited. For 50% of municipal governments a 1% property tax increase generates \$50,000 or less new revenue. In those local governments, without amendment, this Bill may make local public and emergency services unaffordable.

Local governments are also responsible for economic development and the overall health of our communities. We are therefore also keenly aware of the potential negative impacts of this Bill on the smaller businesses that are the driving force of local economies. While better pay will benefit individuals, it will also impact the businesses that provide the jobs.

We understand that the Bill anticipates staggered implementation dates, however, these timeframes do not seem to be rooted in an economic perspective of the time required to phase in major changes. We look to the members of the Standing Committee on Finance and Economic Affairs to seek the best evidence while considering amendments to Bill 148 and the appropriate implementation dates for its sections to take force.

On behalf of our members, municipal governments throughout Ontario, we appreciate the public policy principles this Bill seeks to address but strongly advise that critical exemptions and amendments are necessary. There should be a solid analysis and understanding of the cumulative economic impact before the legislation advances. The legislation, once passed, will require a thoughtful and a phased approach with frequent reviews to ensure successful outcomes for both employees and employers across the province.

APPENDIX

Proposed Amendments:

- 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 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).
- 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.
- Provide clear exemption for management employees with respect to paid on-call.
- 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.
- 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* as it is built into their work responsibilities and collective agreements; and
- 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.
- 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.
- Clarify that successor rights only apply to those services contracted by the Province and funded through provincial public funds.

Municipal Government Statistics:

Municipal governments work hard to deliver services in the most cost effective ways. Council members are keenly aware that any increases to the cost of delivering services immediately translates into increased taxes.

The size and capacity of municipalities is equally broad as the services they deliver. Eighteen percent have a population of under 1,000; that is fewer people than many urban high schools. Seven percent have populations over 100,000. Table 2 below shows the number of municipalities by population.

TABLE 2: Population Classes in the Province of Ontario		No. of Municipalities
0-250		11
251-500		21
501-1,000		48
1,001-2,000		36
2,001-5,000		74
5,001-10,000		81
10,001-15,000		40
15,001-25,000		40
25,001-50,000		28
50,001-100,000		31
100,001-500,000		24
500,000+		10
*Source: Financial Information Return Schedule 80		

Table 3 illustrates the varying capacity that municipal governments have to manage the introduction of changes. About 43% of municipalities have less than six full-time administration staff to cover statutory duties (clerk, treasurer) and general reception, bookkeeping and perhaps a chief administrator. It is highly unlikely that there would be a human resource expert on staff. This service would have to be purchased from an external source.

TABLE 3: Average number of Municipal Administrative Staff by size of municipality		Administrative Staff	
Population Classes ↓	# of munic.	FT	PT
0-250	11	1.2	0.7
251-500	21	2.0	0.8
501-1,000	48	4.0	1.2
1,001-2,000	36	4.4	1.0
2,001-5,000	74	5.9	0.9
5,001-10,000	81	9.3	2.0
10,001-15,000	40	11.8	2.7
15,001-25,000	40	21.6	5.2
25,001-50,000	28	35.9	5.9
50,001-100,000	31	58.9	7.7
100,001-500,000	24	170.3	34.3
500,000+	10	853.3	79.5
*Source: Financial Information Return Schedule 80			