



Effective date	ESA Amendment	Description	Questions for employers to consider
November 27, 2017	Misclassification of employees as independent contractors (s. 5.1)	<ul style="list-style-type: none"> Employers prohibited from misclassifying employees as independent contractors Onus on employers to prove that an individual is an independent contractor rather than an employee 	Do you have “contractors” working for you who might meet the test for being “employees”?
December 3, 2017	Parental Leave (ss. 48-49)	<p>Parental leave, increased from:</p> <ul style="list-style-type: none"> 35 weeks to 61 weeks for employees who took pregnancy leave 37 weeks to 63 weeks for employees who did not take pregnancy leave Employee may begin parental leave no later than 78 weeks after the day the child is born or comes into the employee’s custody, care and control for the 1st time <p>Extended parental leave is consistent with recent amendments to the federal <i>Employment Insurance Act</i> (EI Act). Under the EI Act, employees who have or adopt a baby on or after December 3, 2017, will be able to choose between 2 parental leave options:</p> <p><u>Standard EI Parental Benefits</u></p> <ul style="list-style-type: none"> 55% of average weekly insurable earnings up to a maximum of \$547/week for up to 35 weeks 	Do you offer a top-up plan for employees while on parental leave? If so, does your plan or collective agreement include language that would limit your liability for employees who choose the extended parental option?



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		<p><u>Extended EI Parental Benefits</u></p> <ul style="list-style-type: none"> 33% of average weekly insurable earnings up to a maximum of \$328/week for up to 61 weeks <p>*Note: January 1, 2018 EI maximums shown above. EI maximums typically increase on January 1st each year</p>	
December 3, 2017	Critical Illness Leave (s. 49.4)	<p>New Critical Illness Leave replaces former Critically Ill Child Care Leave</p> <p>Employees who have been employed for 6 consecutive months are entitled to the following periods of leave:</p> <ul style="list-style-type: none"> Up to 37 weeks in a 52-week period to provide care and support to a <u>critically ill minor child</u> (under the age of 18) who is a family member of the employee; and Up to 17 weeks of leave in a 52-week period to provide care and support to a <u>critically ill adult</u> who is a family member of the employee “Family members” is defined broadly Qualified health practitioner issues certificate confirming minor child or adult is critically ill and period during which minor child or adult requires care or support Record keeping obligations regarding this leave in effect: 	



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		<ul style="list-style-type: none"> ○ Retain all notices, certificates, correspondence and other documents given or produced by the employer that relate to an employee taking critical illness leave for 3 years after day on which leave expired 	
January 1, 2018	Application of the ESA (s. 3.1)	<ul style="list-style-type: none"> ● ESA binds the Crown 	
January 1, 2018	Penalties for contravention	<ul style="list-style-type: none"> ● Significant increase to prescribed penalties for contravening of the ESA 	O. Reg. 289/01 – Penalties and Reciprocal Enforcement
January 1, 2018	Record Keeping (s. 15.1)	<p>New record keeping requirements added to the existing requirements:</p> <ul style="list-style-type: none"> ● The dates and times an employee worked (retain for 3 years) ● If the employee has 2 or more regular rates of pay for the employer and in a work week, the employee performed overtime work, the dates and times the employee worked overtime at each rate of pay (retain for 3 years) ● The amount of vacation pay that an employee earned during the vacation entitlement year and how that amount was calculated ● The amount of vacation pay that the employee earned during the stub period and how that amount was calculated 	



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		<ul style="list-style-type: none">• Retention period for vacation time and vacation pay records increased from 3 to 5 years• Substitute holidays, written statement indicating:<ul style="list-style-type: none">○ The public holiday on which the employee worked;○ The date that is the substitute holiday; and○ The date on which the statement was provided to the employee (retain for 3 years)	
January 1, 2018	Overtime (s. 22)	<ul style="list-style-type: none">• If an employee has 2 or more regular rates for work performed for the same employer in a work week:<ul style="list-style-type: none">○ the employee is entitled to be paid overtime pay for each hour of work performed in the week after the total number of hours performed reaches the overtime threshold; and○ the overtime pay for each hour referred to above is 1 ½ times the regular rate that applies to the work performed in that hour	
January 1, 2018	Minimum Wage (s. 23)	<ul style="list-style-type: none">• General minimum wage increases from \$11.60 to \$14.00 per hour• Special minimum wage rates will remain but will increase by the same	



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		<p>percentage as the general minimum wage as follows:</p> <ul style="list-style-type: none"> ○ Liquor servers: \$10.10 to \$12.20 ○ Students under 18, who work part-time during the school year (up to 28 hrs/wk) and on school breaks: \$10.90 to \$13.15 ○ Homeworkers: \$12.80 to \$15.40 ○ Fishing & Hunting Guides who work less than 5 consecutive hours/day: \$58 to \$70/day ○ Fishing & Hunting Guides who work 5 or more hours/day: \$116 to \$140/day 	
<p>January 1, 2018</p>	<p>Public Holiday Pay (ss. 24-32)</p>	<ul style="list-style-type: none"> • New formula for calculating public holiday pay: <ul style="list-style-type: none"> ○ Regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that pay period • Employee is on personal emergency leave or vacation during the entire pay period before the holiday: <ul style="list-style-type: none"> ○ Public holiday pay is to be calculated based on the pay period before the start of that vacation or personal emergency leave 	<p>Employers should be aware that this new formula will result in a significantly greater entitlement for employees who work on a part-time or casual basis than under the current formula. It will also result in inequities as between part-time employees (e.g., an employee who works one full day in the pay period will be entitled to a full day's pay, while an employee who works half days every day in the pay period will only be entitled to a half day's pay).</p>



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		<ul style="list-style-type: none">• Employees who were not employed during the pay period before the public holiday:<ul style="list-style-type: none">○ Public holiday pay is calculated using the regular wages earned by the employee in the pay period that includes the public holiday, divided by the number of days the employee worked in that period• Where an employee is provided with a substitute public holiday, new requirement for employers to provide employees with a written statement before the public holiday indicating:<ul style="list-style-type: none">○ The public holiday on which the employee will work,○ The date that is the substitute holiday, and○ The date on which the statement was provided to the employee○ A construction employee working in the construction industry will be exempt from the public holiday provisions of the ESA if he or she receives:<ul style="list-style-type: none">○ At least 7.7% of his or her hourly wage for vacation pay or holiday	



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		<p>pay, if the employee’s period of employment is less than 5 years.</p> <ul style="list-style-type: none"> ○ At least 9.7% of his or her hourly wage for vacation pay or holiday pay, if the employee’s period of employment is 5 years or more. 	
January 1, 2018	Vacation Leave and Vacation Pay (ss. 33-41)	<ul style="list-style-type: none"> • Employees with 5 years or more of employment: <ul style="list-style-type: none"> ○ 3 weeks of paid vacation ○ Vacation pay - 6% of wages, excluding vacation pay • For employers with an “alternate vacation entitlement year”, new provisions added on determining the “stub period” (the period between the date of hire and the beginning of the first alternate vacation entitlement year) 	How do you calculate a part-time or casual employee’s service and seniority? For purposes of vacation and vacation entitlements, this calculation must be based on “period of employment”, which is the period that has elapsed from the employee’s date of hire.
January 1, 2018	Pregnancy Leave (s. 46-47)	<ul style="list-style-type: none"> • Leave increased from 6 to 12 weeks in the case of a stillbirth or miscarriage. Applies if pregnancy leave begins on or after January 1, 2018 • Broadens definition of “legally qualified medical practitioner” to include registered nurses with extended 	



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		certificates of registration and midwives	
January 1, 2018	Family Medical Leave (s. 49.1)	<ul style="list-style-type: none"> • Extended from 8 weeks in a 26-week period to 28 weeks in a 52-week period • Unpaid leave to provide care or support to designated family members who have a serious medical condition with significant risk of death within a period of 26 weeks • Qualified medical practitioner must issue a certificate • Definition of qualified medical practitioner expanded to include registered nurses with an extended certificate of registration (or individual with equivalent qualification) and prescribed health practitioners • No minimum employment requirement before employees are eligible for this leave 	
January 1, 2018	Child Death Leave (s. 49.5)	<ul style="list-style-type: none"> • Employees, who have been employed for at least 6 consecutive months • 104 weeks of unpaid leave in the event of the death of a child (no longer restricted to crime-related deaths) • To be taken in a single period 	



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January 1, 2018	Crime-related Child Disappearance Leave (s. 49.6)	<ul style="list-style-type: none"> • Employees, who have been employed for at least 6 consecutive months • 104 weeks of unpaid leave in the event of a crime-related disappearance of a child • To be taken in a single period 	
January 1, 2018	Domestic or sexual violence leave (s. 49.7)	<ul style="list-style-type: none"> • New leave • Employees, who have been employed for at least 13 consecutive weeks, may take in each calendar year: <ul style="list-style-type: none"> ○ up to 10 days, and ○ up to 15 weeks • First 5 days of leave are paid, and remainder are unpaid • If employee takes part of a day or week, Employer may deem leave to be taken in entire days/weeks • Employer to ensure mechanisms are in place to protect confidentiality of records given or produced by employee that relate to taking this leave <p><u>Entitlement:</u></p> <ul style="list-style-type: none"> • Employee or child of employee (under age of 18) experiences domestic or sexual violence or threat of domestic or sexual violence and leave is taken for the following purposes: <ul style="list-style-type: none"> ○ to seek medical attention in respect of a physical or 	



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		<p>psychological injury or disability caused by the domestic or sexual violence</p> <ul style="list-style-type: none"> ○ to obtain services from a victim services organization ○ to obtain psychological or other professional counselling ○ to relocate temporarily or permanently ○ to seek legal or law enforcement assistance ○ other prescribed purposes 	
<p>January 1, 2018</p>	<p>Personal Emergency Leave (PEL) (s. 50)</p>	<ul style="list-style-type: none"> ● 50-employee threshold removed. All employees entitled to 10 days of PEL regardless of size of the employer, as follows: <ul style="list-style-type: none"> ○ 2 paid days (where employed for 1 week), and ○ 8 unpaid days ○ 2 paid days must be taken first in a calendar year before any of the unpaid days can be taken ● For 2 paid days, employee entitled to “wages the employee would have earned had they not taken the leave”, excluding any overtime or shift premium ● If employee takes any part of day as paid or unpaid leave, employer may deem employee to have taken 1 day 	<p>Do you have a collective agreement or policy in place that provides more than 2 days of paid leave for the reasons listed in the ESA (personal illness, illness of a child, medical emergency for employee, their child or a parent, etc.)? If you do, then you may be able to argue that the collective agreement or policy gives employees a “greater right or benefit” than the minimums set out in the ESA, in which case those provisions of the ESA do not apply.</p> <p>Whether a “greater right or benefit” claim can be made will depend upon such factors as:</p> <ul style="list-style-type: none"> ● The number of leave days given;



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		<ul style="list-style-type: none"> • PEL is available for any of the following reasons: <ul style="list-style-type: none"> ○ A personal illness, injury or medical emergency ○ Death, illness, injury or medical emergency of defined individuals ○ An urgent matter that concerns a defined individual • Employer may require employees to provide “evidence reasonable in the circumstances” that the employee is entitled to PEL <u>but not entitled to request a medical note</u> • There are special PEL rules for employees in the automotive sector that were adopted in 2016 (O. Reg. 502/06). Under these rules, employees in this sector are entitled to up to 3 unpaid bereavement leave days, and 7 PEL days. These rules have now been amended as follows: <ul style="list-style-type: none"> ○ 50 employee threshold removed; ○ Clarification regarding bereavement leave – entitlement to 3 days for death of prescribed family member not limited to 3 days per calendar year; 	<ul style="list-style-type: none"> • Whether they are with or without pay; • The purposes for which the leave can be taken; • Qualifying criteria to be eligible for the leave.



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		<ul style="list-style-type: none"> ○ Entitlement to pay for first 2 PEL days, unless employee already entitled to 2 or more paid leave days in the calendar year (being vacation days in excess of the ESA, and/or holidays in excess of the ESA or days of for personal illness or personal medical appointments); ○ Employers not entitled to request a doctor’s note to verify entitlement to PEL ● Special PEL rules for construction employees <ul style="list-style-type: none"> ○ If a construction employee who works in the construction industry receives 0.8% or more of his/her hourly rate or wages for personal emergency pay, the employee (a) is not entitled to paid days of leave and (b) is entitled to take a total of 10 days of unpaid PEL 	
<p>January 1, 2018</p>	<p>Notice of Termination of Assignment – Temporary Help Agencies (THA) (s. 74.10.1)</p>	<ul style="list-style-type: none"> ● 1 week’s written notice or pay in lieu of notice if: <ul style="list-style-type: none"> ○ Assignment employee is assigned to perform work for a client; ○ The assignment had an estimated term of 3 months or 	



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		<p>more at time it was offered to the employee; and</p> <ul style="list-style-type: none">○ The assignment terminated before the end of its estimated term● Pay in lieu equal to wages assignment employee would have been entitled to receive if 1 week's notice had been given● Exceptions to 1 weeks' notice, does not apply if<ul style="list-style-type: none">○ THA offers assignment employee a work assignment with a client during the notice period that is reasonable in the circumstances and has an estimated term of 1 week or more○ Assignment employee guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the THA or the client○ Assignment has become impossible to perform or has been frustrated by a fortuitous or unforeseen event or circumstance	



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		<ul style="list-style-type: none"> ○ Assignment is terminated because of a strike/lock-out at location of the assignment ● Record keeping obligations: <ul style="list-style-type: none"> ○ Number of hours worked by each assignment employee for each client of the agency in each day and each week ○ Copy of any written notice provided to an assignment employee 	
<p>April 1, 2018</p>	<p>Equal Pay for Equal Work Regardless of Employment Status (s. 42.1)</p>	<ul style="list-style-type: none"> ● Employers will be required to pay employees the same rate of pay, regardless of their employment status (e.g., full-time, part-time, casual) if they: <ul style="list-style-type: none"> ○ perform substantially the same kind of work in the same establishment; ○ the performance of the work requires substantially the same skill, effort and responsibility; and ○ the work is performed under similar working conditions ● “Difference in employment status” means: <ul style="list-style-type: none"> ○ a difference in the number of hours regularly worked by the employees; or 	<ul style="list-style-type: none"> ● If a collective agreement that is in effect on April 1, 2018 contains provisions that permit differences in pay based on employment status and there is a conflict between those provisions and the ESA, then the provision in the collective agreement will prevail until the earlier of: <ul style="list-style-type: none"> ○ the date the collective agreement expires; or ○ January 1, 2020 ● If you pay regular full-time employees differently than you pay part-time or casual employees, can those differences be justified based



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		<ul style="list-style-type: none"> ○ a difference in the term of their employment, including a difference in permanent, temporary, seasonal or casual status ● “Substantially the same” is defined to mean substantially the same but not necessarily identical ● Differences in pay will be permissible if they are based on: <ul style="list-style-type: none"> ○ a seniority system, ○ a merit system, ○ a system that measures earnings by quantity or quality of production, or ○ any other factor other than sex or employment status ● Employees can request a review of their rate of pay, without reprisal, and: <ul style="list-style-type: none"> ○ employer shall adjust employee’s pay accordingly; or where employer disagrees, provide written response with reasons to employee ● Cannot reduce the rate of pay paid to employees to meet this requirement ● An exemption has been established by Regulation for the following three categories of employees: 	<p>on one of the recognized exceptions?</p>



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		<ul style="list-style-type: none"> ○ A firefighter within the meaning of the <i>Fire Protection and Prevention Act, 1997</i>; ○ A student under 18 who works not more than 28 hours a week or who works during a school holiday; and ○ A person employed in the recorded visual and audio-visual entertainment production industry. 	
April 1, 2018	Temporary Help Agency (THA), Assignment Employee Status (ss. 42.2, 74.12 (1))	<p>Temporary help agencies will be required to pay their employees (“assignment employees”) the same rate of pay as permanent employees of the THA client when:</p> <ul style="list-style-type: none"> • they perform substantially the same kind of work in the same establishment; • their performance requires substantially the same skill, effort and responsibility; and • their work is performed under similar working conditions • This requirement will not apply where the differences in rates of pay are based on factors other than sex or assignment employee status. 	<p>If a collective agreement is in place on April 1, 2018 that permits differences in pay between a client’s employees and assignment employees, then that collective agreement will prevail until a new or renewal agreement comes into effect.</p> <p>This requirement will be quite onerous for temporary help agencies, who aren’t generally privy to information about the wages paid by their clients to that client’s own employees. These changes can be expected to have a significant impact on a temporary help agency’s costs. THAs will want to start thinking now about how these changes will affect the pricing of their contracts, and to take whatever steps they</p>



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		<ul style="list-style-type: none"> • Clients of THAs will not be allowed to reduce the rate of pay paid to their employees to assist THAs to meet this requirement, and nor will a union (or other organization) be allowed to cause or attempt to cause a THA to violate this provision. • Assignment workers will be entitled to inquire about their wage rate <u>or the wage rate of an employee of the client</u>, without repercussions. • Assignment employees will also be entitled to request a review of their wage rate. In the face of such a request, the THA will be required to either adjust their rate of pay or provide a written response explaining their reasons for refusing to so. 	can in advance to prepare themselves for these changes.
January 1, 2019	New Record Keeping Requirements (s. 15 (1))	<ul style="list-style-type: none"> • The dates and times the employee was scheduled to work or to be on call for work and any changes made to the on call schedule • Any cancellations of a scheduled day of work or scheduled on call period of the employee and the date and time of the cancellation 	
January 1, 2019	Minimum Wage (s. 23)	<ul style="list-style-type: none"> • General minimum wage increases from \$14.00 to \$15.00 per hour 	



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		<ul style="list-style-type: none"> Special minimum wage rates will remain but will increase by the same percentage as the general minimum wage as follows: <ul style="list-style-type: none"> Liquor servers: \$12.20 to \$13.05 Students under 18, who work part-time during the school year (up to 28 hrs/wk) and on school breaks: \$13.15 to \$14.10 Homeworkers: \$15.40 to \$16.50 Fishing & Hunting Guides who work less than 5 consecutive hours/day: \$70 to \$75/day Fishing & Hunting Guides who work 5 or more hours/day: \$140 to \$150/day <p>*Annual increase based on CPI changes October 1st each year starting 2019</p>	
January 1, 2019	Right to request change in work schedule or location (s. 21.2)	<ul style="list-style-type: none"> After an employee has been employed for three (3) months, can request in writing a change to their schedule or work location, without fear of reprisal Employers will be required to discuss the request with the employee and notify the employee of the employer's decision within a reasonable time Where request is granted, notice to employee must provide date the 	Do you have a system in place to allow employees to make such requests? Who is responsible to respond to such requests?



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		<p>changes will take effect and their duration</p> <ul style="list-style-type: none"> Where request is denied, notice to employee must provide reasons for the denial 	
January 1, 2019	Three Hour Rule (s. 21.3)	<ul style="list-style-type: none"> Employers will be required to pay employees wages for 3 hours of work if the employee regularly works more than 3 hours a day and is required to present for work and works less than 3 hours, despite being available to work longer Employer to pay employee wages for 3 hours, equal to the greater of the following: <ol style="list-style-type: none"> The sum of, <ol style="list-style-type: none"> the amount the employee earned for the time worked, and wages equal to the employee's regular rate for the remainder of the time Wages equal to the employee's regular rate for 3 hours of work <u>Exception: rule does not apply where:</u> <ul style="list-style-type: none"> The employer is unable to provide work due to fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work 	Note: the current 3-hour rule under O. Reg. 285/01 remains in effect until January 1, 2019.



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January 1, 2019	On Call Rule – Minimum Pay for being on call (s. 21.4)	<ul style="list-style-type: none"> • Employers will be required to pay employees if they are scheduled to be on-call but are either not called in to work or work less than 3 hours, despite being available to work longer. • Employer to pay employee wages for 3 hours, equal to the greater of the following: <ol style="list-style-type: none"> 1. The sum of, <ol style="list-style-type: none"> i. the amount the employee earned for the time worked, and ii. wages equal to the employee’s regular rate for the remainder of the time 2. Wages equal to the employee’s regular rate for 3 hours of work • Employer only required to pay an employee a minimum of 3 hours during a 24-hour period, even if employee is on call multiple times during those 24 hours • <u>Exception: rule does not apply where:</u> <ul style="list-style-type: none"> ○ Employer required employee to be on call to ensure continued delivery of essential public services, regardless of who delivers those services; <u>and</u> ○ Employee who was on call was not required to work 	Collective agreement prevails over new scheduling rules – if a collective agreement that is in effect on January 1, 2019 contains provisions that address payment for being on call and there is a conflict between those provisions and the ESA, then the provisions in the collective agreement will prevail until the date the collective agreement expires or January 1, 2020, whichever is earlier.



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January 1, 2019	Right to refuse (s. 21.5)	<ul style="list-style-type: none"> • Employees have right to refuse request/demand to work or be on call on a day they were not scheduled to work, if the request/demand is made with less than 96 hours' notice, without fear of reprisal. • <u>Exceptions to right to refuse:</u> <ul style="list-style-type: none"> ○ intended to deal with an emergency; ○ to remedy or reduce a threat to public safety; ○ to ensure the continued delivery of essential public services, regardless who delivers those services; or ○ other prescribed reasons • Employee who refuses to notify the employer of the refusal "as soon as possible" • For purposes of this section, "emergency" means, <ul style="list-style-type: none"> ○ a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an 	<p>Collective agreement prevails over new scheduling rules – if a collective agreement that is in effect on January 1, 2019 contains provisions that address an employee's ability to refuse the employer's request or demand to perform work or be on call on a day the employee is not scheduled to work or be on call and there is a conflict between those provisions and the ESA, then the provision in the collective agreement will prevail until the date the collective agreement expires or January 1, 2020, whichever is earlier.</p>



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		<ul style="list-style-type: none"> ○ accident or an act whether intentional or otherwise, or ○ a situation in which a search and rescue operation takes place 	
January 1, 2019	Shift or On Call Cancellation (s. 21.6)	<ul style="list-style-type: none"> ● If an employee’s shift or on call period is cancelled within 48 hours of the scheduled start time, employer required to pay employee for 3 hours of work at employee’s regular rate ● Meaning of cancellation: a scheduled work day or scheduled on call period is cancelled if the entire day of work or on call period is cancelled but not if the day of work or on call period is shortened or extended ● <u>Exceptions, does not apply if:</u> <ul style="list-style-type: none"> ○ the employer is unable to provide work for the employee because of fire, lighting, power failure, storms or similar causes beyond the employer’s control that result in the stopping of work; ○ the employment is weather-dependent, and the employer cannot provide work for weather-related reasons; ○ other prescribed reasons 	Collective agreement prevails over new scheduling rules – if a collective agreement that is in effect on January 1, 2019 contains provisions that addresses payment when the employer cancels the employee’s scheduled day of work or on call period and there is a conflict between those provisions and the ESA, then the provision in the collective agreement will prevail until the date the collective agreement expires or January 1, 2020, whichever is earlier.



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January 1, 2019	Limit (s. 21.7)	<p>New scheduling provisions, limit: Employee only entitled to payment of 3 hours in respect of one scheduled day of work or on call period (3-hour rule, minimum on-call pay, right to refuse, shift cancellation)</p> <p>Under O. Reg. 285/01, prescribed employees in the automotive sector will be exempt from the following scheduling rules:</p> <ul style="list-style-type: none">o entitlement to at least 3 hours pay for being on call;o the right to refuse a shift offered or on call with less than 96 hours' notice; ando the right to at least 3 hours of pay where a shift is cancelled with less than 48 hours' notice. <p>Persons employed in the recorded visual and audio-visual entertainment production industry are exempted from the following scheduling rules:</p> <ul style="list-style-type: none">o the right to refuse a shift offered or on call with less than 96 hours' notice; ando the right to at least 3 hours pay where a shift is cancelled with less than 48 hours' notice	