

Potential Health Equity Impacts of the *Making Ontario Open for Business Act (Bill 47)*

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Wellesley Institute works in research and policy to improve health and health equity in the GTA through action on the social determinants of health.

Report

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Statement on Acknowledgement of Traditional Land

We would like to acknowledge this sacred land on which the Wellesley Institute operates. It has been a site of human activity for 15,000 years. This land is the territory of the Huron-Wendat and Petun First Nations, the Seneca, and most recently, the Mississaugas of the Credit River. The territory was the subject of the Dish With One Spoon Wampum Belt Covenant, an agreement between the Iroquois Confederacy and Confederacy of the Ojibwe and allied nations to peaceably share and care for the resources around the Great Lakes.

Today, the meeting place of Toronto is still the home to many Indigenous people from across Turtle Island and we are grateful to have the opportunity to work in the community, on this territory.

Revised by the Elders Circle (Council of Aboriginal Initiatives) on November 6, 2014

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Introduction

The nature of work is changing. More workers are working precarious jobs, being paid unfairly, receiving fewer benefits, and are less protected¹. These working conditions were the catalyst that launched the Changing Workplaces Review in 2017. The Changing Workplaces Review was an independent review of Ontario's Employment Standards Act, 2000 (ESA) and the Labour Relations Act, 1995 (LRA)². In response to this review, the previous Government of Ontario, introduced Bill 148, the *Fair Workplaces, Better Jobs Act*. Among the changes included in Bill 148 were:

- Increasing the minimum wage;
- Introducing equal pay for equal work for part-time, casual and temporary workers;
- Adding basic scheduling protections for workers;
- Introducing two paid and eight unpaid personal emergency days; and
- Increasing enforcement provisions.¹

On October 23rd, 2018, the new Government of Ontario introduced Bill 47, the *Making Ontario Open for Business Act* which repeals nearly all the changes made by Bill 148³.

Wellesley Institute draws on the Ministry of Health and Long-Term Care's Health Equity Impact Assessment (HEIA) tool to identify the potential health and health equity impacts that the proposed changes made by the *Making Ontario Open for Business Act* (Bill 47) will make to the *Employment Standards Act*. This report focuses on the potential health and health equity impacts of changes to the minimum wage, equal pay for equal work, scheduling protections, paid and unpaid leaves, and enforcement (see Table 1 for a summary of the proposed changes to the ESA).

Given the significant impact of income and work on health, the protections found in the *Employment Standards Act* have the potential to limit the harms of unsafe and unfair work and contribute to the health of Ontarians.

Table 1: Summarizing (some) Existing ESA Protections vs. Proposed Bill 47 Changes

Category	Existing ESA Protections	Bill 47 Proposed Changes
Minimum Wage	<p>\$14 per hour for most employees</p> <p><i>Effective January 1, 2019</i></p> <p>\$15 per hour for most employees to be adjusted annually for inflation</p>	<p>Halted minimum wage at \$14</p> <p><i>Effective October 1, 2020</i></p> <p>Minimum wage will be adjusted annually for inflation</p>
Equal Pay for Equal Work	<p><i>Effective April 1, 2018</i></p> <p>Employers can no longer pay one employee less than another, based on employment status, if both people perform equal work.</p>	<p>Repealed. Employers are no longer required to provide equal pay to part-time, casual and temporary workers.</p>
Scheduling	<p><i>Effective January 1, 2019:</i></p> <p>Employees can refuse to work with less than 4 days' notice of their schedule⁴</p> <p>Employees can request a change to their schedule without retaliation⁵</p> <p>If an employee is on-call, but aren't called in, they must be paid a minimum three hours⁶</p> <p>If an employee's shift is canceled with less than 48 hours' notice, they must be paid a minimum three hours⁷</p>	<p>Repealed. There will no longer be any regulations that dictate how much notice an employer must give employees of scheduled shifts.</p> <p>Repealed. Employees are not protected from retaliation if they ask for a scheduling change.</p> <p>Repealed. Employers do not have to compensate employees who are on-call.</p> <p>Repealed. Employers do not have to compensate employees if their schedule shift is canceled with less than 2 days' notice.</p>
Personal Illness, Family Responsibilities, and Bereavement Days	<p>Annually, an employee can take up to:</p> <p>10 days = 2 paid + 8 unpaid = Can be used for personal and family illness, injury or emergencies, and bereavement</p> <p>Medical notes prohibited⁸</p>	<p>Reduced. Annually, an employee can take up to:</p> <p>8 days 3 unpaid personal sick days + 2 unpaid bereavement days + 3 unpaid family responsibility days</p> <p>Medical notes allowed</p>

Health and Health Equity Impacts of Minimum Wage

The minimum wage is the lowest amount employers are legally permitted to pay their workers.

It can be an important tool for reducing poverty and income inequality.⁹ Increases in the minimum wage have been associated with higher job stability and lower turnover.¹⁰ Research also tells us that having a good minimum wage will increase the standard of living, reduce poverty and decrease inequities among workers.¹¹

As Ontario's workforce changes, there are a growing number of workers who are working for the minimum wage. For example, between 2003 and 2011, the share of employees working for minimum wage more than doubled from 4.3 to 9 percent.¹² While the number

is growing, evidence also shows that minimum-wage workers do not earn enough to meet their basic needs. Assuming a 40-hour work week, \$14 per hour works out to \$29,120 before tax. However, the after-tax income is not enough to support health. In fact, recent Wellesley research indicates that living a healthy life in the Greater Toronto Area requires a single adult to make about \$46,186 to \$55,432 annual income after-tax.¹³

In January 2018, the *Fair Workplaces, Better Jobs Act* (Bill 148) increased Ontario's minimum wage to \$14 per hour, with a plan to increase to \$15 in January 2019¹⁴. However, the *Making Ontario Open for Business Act* (Bill 47) proposes freezing the minimum wage at \$14 per hour until October 2020 whereby it would be adjusted to inflation. Using a HEIA lens, we have identified potential health and health equity impacts of repealing increases to the minimum wage.

Health Impacts

An adequate income allows us to meet our basic needs for things such as shelter, food, clothing and health care costs. When workers don't earn enough to meet their basic needs, it can significantly compromise their health. For example, a recent Toronto Public Health report found that women in the lowest income groups were 85 percent more likely to have diabetes, men in the lowest income group were 50 percent more likely to die before age 75 and babies in the lowest income groups were 40 percent more likely to be born with a low birth weight¹⁵. In addition to poor physical health, those living on low wages are more likely to experience poor mental health and psychological distress. For example, Canadians in the lowest income group are up to 4 times more likely to report poor to fair mental health¹⁶ and have a 58 percent higher rate of depression than the Canadian average¹⁷. Overall, workers earning low incomes are more likely to report poorer general health than workers in higher income groups¹⁸.

Health Equity Impacts

In Ontario, some populations are disproportionately impacted by the minimum wage. Recent research tells us that racialized people, women, people with disabilities, Indigenous people, youth, seniors and newcomers are all more likely to be in precarious employment, including working for the minimum wage¹⁹. For example, an Ontario study²⁰ found that women accounted for 57.4 per cent of minimum wage workers while they were 49.3 per cent of all employees. Racialized workers accounted for 34.9 per cent of minimum wage workers while they were 23.9 per cent of all employees. Recent immigrants were also over-represented in the minimum-wage group (15 per cent while they only accounted for 7.1 per cent of all employees). The over-representation of certain groups of workers in minimum wage work is contributing to increasing health disparities across the province.

The Government's plan under *Bill 47* to freeze the minimum wage will result in real income cuts for Ontario workers. According to the \$15 and Fairness Campaign²¹, raising the minimum wage from \$14 to \$15 per hour results in almost \$2,000 annually in the hands of workers. For low income families, an extra \$2,000 a year means more purchasing power for things like food, health care, education and housing which have real impacts on health.

Increasing the minimum wage to \$15 will raise the floor for all Ontario employees and is an important step government can take to show they support all workers.

Health and Health Equity Impacts of Equal Pay for Equal Work

A lack of equal pay for equal work impacts health in two distinct ways:

1. The psychological impacts of unfairness and perceived discrimination; and
2. The health impacts of inadequate pay.

In Ontario, equal pay for equal work laws require that employees are paid the same rate when they are doing “substantially the same kind of work in the same establishment” that requires “substantially the same, skill, effort and responsibility, performed under similar working conditions”²². Establishing standards where individuals performing the same work are compensated equally creates decent and fair working conditions and will support more equitable health outcomes for workers across Ontario.

In 2017, an estimated 1 in 5 workers worked part-time in Ontario, representing 19 per cent of the employed population.²³ However, prior to *Bill 148*, part-time, casual and temporary workers were not legally entitled to the same rate of pay as their full-time counterparts. As of April 1st, 2018, *Bill 148* introduced legislation that requires employers to implement equal pay for part-time, casual and temporary workers. These changes validate that the value of a job is based on an employee's skill, responsibility and working conditions²⁴. However, *Bill 47* proposes repealing equal pay for equal work based on employment status from the *Employment Standards Act*, and as a result, employers will no longer be obligated to compensate employees fairly, which could have significant implications for health and health equity. Applying a HEIA lens, we point to possible health and health equity impacts of retracting equal pay for equal work.

Health Impacts

The health impacts of pay discrimination are significant. Research indicates that the impacts of discrimination can create an increase in multiple forms of stress, cardiovascular diseases and significantly reduce participation in healthy behaviors such as healthy eating and exercise.²⁵ Specifically, one study in the U.S. shows how the gender wage gap has contributed

to disparities between women and men in mental illnesses such as depression and anxiety²⁶. These findings are consistent with a growing body of literature that demonstrates the mental and physical harms caused by workplace discrimination across several different socio-demographic factors including, race, gender, immigration status and age.

Income also plays a significant role in determining health outcomes. In Ontario, part-time, casual and temporary workers are more likely to earn low wages and receive less protections at work²⁷. For instance, the Workers Action Centre indicates that these workers are often paid between 30 and 40 per cent less than full-time/secure workers²⁸. Research consistently shows that those who earn low wages are more likely to experience lower quality of life²⁹, greater risks of mortality³⁰, poorer mental and physical health and social isolation³¹. In addition to low wages, one-third of those who are in precarious work do not have employer-provided health and dental plans, which creates additional barriers to prescription medication and oral health³².

Health Equity Impacts

Increasingly in Ontario, women, racialized and Indigenous groups, seniors, youth and immigrants are overrepresented in precarious work³³. For example, of part-time workers in Ontario, 65 per cent are women and 35 per cent are youth aged 15-24³⁴. Furthermore, most seniors 65 and older who are employed are working part-time³⁵. This overrepresentation has contributed to increasing poor mental and physical health outcomes including experiences of social isolation³⁶. A recent study indicated over 40 per cent of persons in low-income work express that anxiety about employment “often” interferes with their family and personal life and 15 per cent did not have a close friend to talk to³⁷.

Paying workers who have the same qualifications and are doing the same work equal rates of pay is a matter of fairness. Marginalized groups are more likely to be casually employed or work part-time and basing one’s income solely on employment status can create significant inequities.

Every step up the economic ladder matters for health³⁸. In 2015, the pay gap between full-time and part-time workers was \$9.40 per hour³⁹. Closing this gap will increase the income earning potential for part-time workers and boost population health.

Health and Health Equity Impacts of Scheduling Control

Having some notice, predictability and control over work hours allow workers to spend time with their families, schedule medical appointments and child care, and have enough income to meet their basic needs. However, the 2017 Poverty and Employment Precarity in Southern

Ontario (PEPSO) survey of GTHA workers found that 1 in 5 workers did not know their schedule within 24 hours of their shift.⁴⁰ In 2014, a third of Ontario workers had hours that varied from week to week.⁴¹

The new scheduling protections brought in by Bill 148 were intended to reduce scheduling uncertainty for workers.⁴² Effective January 1, 2019, the changes would: allow employees to refuse to work shifts scheduled with less than 4 days' notice; provide employees with 3 hours minimum pay for being on-call; provide employees with 3 hours pay if their scheduled shift is cancelled with less than 48 hours' notice; and give employees the right to ask for different work hours or locations without retaliation (although employer would be able to refuse). These new scheduling protections under Bill 148 would not apply to all workers. The right to refuse work with less than 4 days' notice would not apply to those dealing with emergencies and threats to public safety and those providing continued delivery of essential public services. As well, employees who are on call to ensure delivery of essential public services would not exempt from minimum on call pay requirements. The *Employment Standards Act* does not define essential public services.

The proposed Bill 47 would eliminate these new scheduling protections. This would mean that employers would not be required to give employees any advanced notice of when they must work or if a shift is cancelled. If an employee's shift is cancelled with little notice or they are required to be available to work (i.e. are on-call) but are not called in, employers would not be required to provide any pay. Employees who ask for scheduling changes would not be protected from retaliation from their employers. Employing a HEIA lens, we have highlighted the following health and health equity impacts revoking scheduling control could have.

Health Impacts

Unpredictable scheduling may impact the health of workers and families in two ways:

3. negative health impacts due to scheduling unpredictability, and
4. negative health impacts due to income instability.

Eliminating the modest increases to scheduling control and predictability for workers raises concerns about workers' abilities to balance family responsibilities, care for children and elderly parents, juggle second or third jobs, or go to school.

Having some control over your work schedule (e.g. when and how much you work) is associated with lower levels of conflict between work and family responsibilities, which is associated with lower levels of psychological distress and better general well-being.⁴³

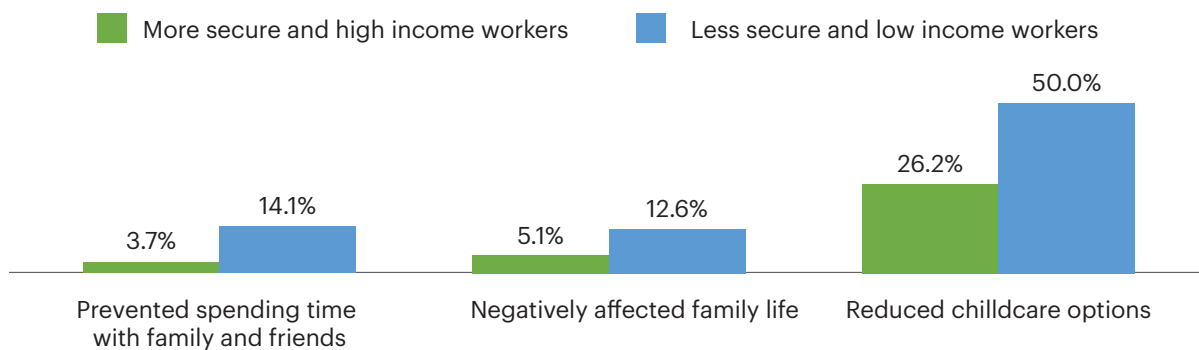
In addition to the potential health harms of scheduling unpredictability, varying hours can contribute to poor income security, which is an important determinant of health. Bill 47 eliminates protections that would have guaranteed workers a minimum 3 hours pay when

they are on-call or if a shift is cancelled last minute. This change could allow for continued income insecurity for workers with varying hours.

Health Equity Impacts

While a third of all Ontario workers experience varying hours, low wage workers are much more likely to experience this variation. In 2014, 62.9 per cent of low wage workers in Ontario had hours that varied from week to week, compared with only 23.4 per cent of higher wage workers.⁴⁴ In addition to low wage workers being more exposed to schedule variation, workers in less secure work appear to be more negatively impacted by this scheduling uncertainty. The 2014 PEPSO survey of 4000 GTHA residents found that those in less secure, lower income work are 2-4 times more likely than more secure, higher income workers to report that schedule uncertainty has a negative effect on family life, limits childcare options, and prevents them from doing things with family and friends (see Figure 1).⁴⁵

Figure 1: Impacts of Scheduling Uncertainty on GTHA Workers and Families, PEPSO 2014



These statistics suggest that the reduction of scheduling protections will likely have a greater negative impact on low wage and precarious workers and families because a) they experience more scheduling uncertainty, and b) scheduling uncertainty appears to impact their families more negatively.

Precarious, low income workers experience 2-4 times the negative impacts of scheduling uncertainty compared with higher income workers. Scheduling that allows for some employee control and provides more predictable hours and therefore more stable income is likely to contribute positively to the health of workers and their families by allowing for more work-life balance and secure income.

Health and Health Equity Impacts of Access to Personal Illness, Family Responsibilities, and Bereavement Days

Ontario workers currently have access to up to 10 personal emergency leave (PEL) days per year, two of which are paid. These are days workers can take off without risking their job for personal or family illness, injury or medical emergency, or bereavement. Employers cannot ask workers who use these days to submit a medical note.

Bill 47 will replace these 10 PEL days with three unpaid personal sick days, two unpaid bereavement days, and three unpaid family responsibility days. Employers will no longer be prohibited from requiring a medical note from an employee who uses these unpaid days. Using a HEIA approach, we look at the possible health and health equity impacts of three parts of this policy change: 1) eliminating paid sick days, 2) reducing the number of overall unpaid, job-protected days off, and 3) allowing employers to require employees who use unpaid sick days to provide medical notes.

Eliminating Paid Days Off

Health Impacts

It is important that workers can take time off without risking their job or income when they are sick, injured, have an emergency or are grieving.

The negative impacts of going to work sick (i.e. presenteeism) on workers' and public health are well documented. When workers go to work sick, they are unable to rest and recover and are more likely to expose coworkers to contagious illnesses. For example, during the 2009 H1N1 pandemic, it is estimated that the lack of paid sick day policies in the U.S. resulted in 5 million additional people getting sick.⁴⁶

Beyond limiting the spread of colds and flu, paid days off allow workers to schedule preventative medical tests and appointments that they might otherwise miss. Through a national survey of U.S. workers, researchers found that workers without paid sick leave were less likely to have been regularly screened for breast, cervical and colorectal cancer.⁴⁷

Health Equity Impacts

Without paid sick days, Ontario workers will be forced to choose between caring for their (and their family's) health, and a smaller pay cheque. This choice is likely to place more burden on low-income workers and families who cannot afford to lose a day's pay and are more likely to not have sick day policies through their employer.

Many employers provide more generous sick day policies than the basic entitlements workers have through the *Employment Standards Act*. However, research from 2014 highlights that only 16.8 per cent of low-wage workers in Ontario, who are disproportionately women and newcomers, had access to paid leave through their workplace, compared with 56.8 per cent of higher wage workers.⁴⁸ The removal of two paid PEL days will likely have a more negative impact on the estimated 83 per cent of low-wage workers and families whose employers do not provide paid leave and who cannot afford to take unpaid days off work.

Reducing Overall Number of Job-Protected Days Off

Health Impacts

In addition to paid days off, job-protected days, while unpaid, allow workers to care for their health and families without risking losing their jobs. Since 2001, most Ontario workers have had access to up to 10 PEL days off per year. The PEL policy provides some flexibility to workers with varying needs to use the days as sick days, to care for family, or to grieve. Bill 47 would substantially reduce the number of unpaid days off workers have access to for personal and family illness and restrict workers' flexibility by introducing separate leaves.

Table 2: Average Work Absences for Ontario Workers (2017)⁴⁹

6.9 days off for illness or disability	1.7 days off for personal and family responsibility	8.6 days off in total
--------------------------------------------------	---------------------------------------------------------------	---------------------------------

With Bill 47, workers will be restricted to three personal sick days and three family responsibility days (as well as two days for bereavement). The proposed 6 days will likely not be enough to cover the days needed for personal and family illness and injury. For example, even a healthy person is likely to be sick for at least 3-7 days if they catch the flu, which could max out a worker's annual 3 personal sick days.⁵⁰ While it is unclear how many days are ideal, Ontario workers were absent 8.6 days due to personal and family illness in 2017 (see Table 2). This suggests that the proposed changes will not be enough.

Health Equity Impacts

Separate personal sick days and family responsibility days will likely have a larger impact on Ontario workers with children, elderly parents and dependents, who have greater caregiving responsibilities.

Low-wage workers whose employers do not provide sick leaves will be more reliant on these minimum entitlements provided from the ESA, and therefore more impacted by this change.

Mandatory Medical Notes

Health Impacts

Requiring employees to obtain sick notes can take time away from their own recovery and increase the risk of making other people sick. In 2014, Dr. Scott Wooder, the president of the Ontario Medical Association (OMA), publicly discouraged employers from requiring sick notes and encouraged workers to instead stay home when sick to rest and reduce the spread of germs.⁵¹

Medical notes can also reduce health care providers' available time to see people who truly need care. Doctors have pointed to the strain that requesting medical notes for sick days can put on health care providers. The Canadian Medical Association (CMA), which represents 85,000 physicians across the country, has highlighted the significant increasing administrative burden on physicians of completing medical forms that can take away time from direct patient care. In 2016, 67 per cent of survey physicians received more than 5 sick note requests per week. CMA's policy states that employers should not require a physician's confirmation when employees take off days due to short-term illnesses that they would not otherwise require medical attention for. The policy specifically highlights the negative impacts these requests have on the health care system:

“Confirmation of a short-term absence from work because of minor illness is a matter to be addressed between an employer and an employee directly. Such an absence does not require physician confirmation of illness and represents an inefficient use of scarce health care resources.”⁵²

While health care providers play an important role in assessing workers' eligibility for longer-term illness and disability leaves, allowing employers to require medical note for employees to take off *at most three unpaid days* per year is likely to place an unnecessary burden on Ontario's health care system and on workers.

Health Equity Impacts

Workers who do not have a regular care provider or who face additional barriers to health care services may face additional challenges obtaining a medical note. More recent immigrants, for example, have less access to a family doctor – only 78 per cent of recent immigrants reported having a family doctor or other primary care provider compared to 88.1 per cent of Canadian-born Ontarians.⁵³

The six proposed unpaid personal and family sick days fall 2.5 days short of what the average Ontario worker needs in a year. Allowing employers to require medical notes from employees for short-term illness is an inefficient use of health care resources that reduces time available for

direct patient care. Ultimately the elimination of paid days off could contribute to the spread of infectious disease and prevent workers from taking time to care for their health and the health of their family.

Compliance and Enforcement of the *Employment Standards Act*

Enforcement of the *Employment Standards Act* (ESA) is an important aspect of protecting workers' rights. When the ESA is enforced, work sites are proactively investigated, wages are paid and those who break the laws are punished. Changes made by the past Government of Ontario introduced new rules to strengthen enforcement such as hiring 175 additional employment standards officers, launching an education program to support business owners and employees, increasing penalties for non-compliance and publishing the names of those who do not meet employment standards⁵⁴. These changes helped secure better working conditions and are especially important for vulnerable workers who are more likely to be in precarious work or work under poor working conditions⁵⁵.

However, Bill 47 will repeal these new enforcement strategies and also reduce non-compliance fines from \$5,000 to \$2,000 for individuals and from \$100,000 to \$25,000 for organizations. Reducing enforcement decreases protections for vulnerable workers and sends the message that government is not serious about workers' rights.

Conclusion

The changes proposed under Bill 47 could have unintended negative health impacts for Ontario workers and families, while exacerbating existing, avoidable health inequities within the population.

It is difficult to quantify the impacts of these policy changes. However, in this report, we draw on the existing international and local evidence to point to the potential health and health equity impacts of five proposed changes to the *Employment Standards Act*:

- Freezing the minimum wage,
- Eliminating equal pay for equal work for part-time, temporary and casual workers,
- Eliminating scheduling protections,
- Reducing paid and unpaid personal and family emergency days off, and
- Reducing enforcement provisions.

Freezing the minimum wage at \$14 until October 2020 with no increase to account for rising costs of living, will make it more challenging for workers and families to meet their basic needs, and is likely to result in negative health impacts. These potential harms to health are

likely to particularly impact women, racialized workers, and newcomers who are more likely to earn the minimum wage.

Repealing equal pay for equal work will impact vulnerable workers who are more likely to be in part-time, casual and temporary jobs. Workplace discrimination has serious implications for health and is directly linked to equal pay for equal work. Repealing these changes could have harmful health consequences, especially for Ontario's most vulnerable.

Eliminating the new basic scheduling protections raises concerns about the impacts of scheduling uncertainty and resulting income insecurity in particular on the health of low-wage workers and their families.

Revoking two paid leave of absence days will most impact the low-wage workers and families who are less likely to have sickness day policies in their workplaces, and who cannot afford to take unpaid time off. Paid leave days allow workers to recover from sickness, schedule preventative cancer screenings, and limit spread of contagious diseases.

Basic employment rights help protect workers from health harms and move toward more decent jobs in Ontario. While we are not able to determine the scale, we believe that by repealing basic workers' protections related to the minimum wage, equal pay for equal work, leaves of absence, and scheduling, Bill 47 could have negative unintended health consequences for Ontario workers and families.

Given the fundamental importance of working conditions on health, we recommend ongoing monitoring of the impacts of Bill 47 on the health and wellbeing of diverse Ontarians.

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5. Note: An employer then needs to consider requests and provide a decision and reason to employee. This protection applies to employees who have worked for at least three months. Section 21.2 of Employment Standards Act, 2000, S.O. 2000, c. 41
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