

Ministry of Labour Hotline Report

Understanding Bill 148 Beyond the Minimum Wage

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Executive Summary

Small- and medium-sized businesses are an influential economic force in Ontario. As of 2015, they comprised 99.7% of all employer businesses in the province. Small- and medium-sized businesses employ 87.3% of Ontario’s private sector labour force.

Bill 148, 2017 (*Fair Workplaces, Better Jobs Act*) brought about major changes to labour laws in Ontario when most of it took effect January 2018. The legislation had a particularly significant impact on small businesses.

This report evaluates the performance of the Ministry of Labour during the summer of 2018 on its dealings with small- and medium-sized enterprises (SMEs) about these changes, and makes recommendations on how the Ministry should respond to any future major legislative changes impacting SMEs.

Background

On June 1, 2017, the previous Government of Ontario introduced the *Fair Workplaces, Better Jobs Act* (Bill 148) as a response to the two-year Changing Workplaces Review (CWR). The bill marked the largest proposed overhaul to the Employment Standards and Labour Relations acts – the two pieces of legislation that govern most workplace interactions – in over two decades. The legislation’s centrepiece was a plan to move Ontario to a \$15 minimum wage – from, at the time, \$11.40 – in an unprecedented 15-month period.

The inclusion of a \$15 minimum wage in the government’s labour reform announcement took small business owners by surprise. The minimum wage had been exempt from the CWR and indexed to inflation through legislation by the same government two years prior after significant consultation across the province. As such, the attention from the media, government, business owners, business organizations, unions, employees and activist groups was almost entirely focused on the “Fight for \$15” right up to the bill’s passing.

Bill 148 passed on November 22, 2017. While the overlooked employment standards changes in it had been raised during committee, they did not begin to receive significant attention until the majority of the bill took effect on January 1, 2018, leaving a little over one month for employers and employees to understand the new rules, including:

- Mandatory Personal Emergency Leave (PEL) days (2 paid and 8 unpaid) that applied to employers of all sizes (previously, 10 unpaid days applied only to employers with over 50 employees);
- New statutory holiday pay formula (later put on hold in May 2018);
- Modified scheduling and new on-call rules;

- Increased vacation to three weeks and vacation pay to six per cent after five years of employment;
- Equal pay for equal work provisions.

Compounding the problem was the fact that the Ministry of Labour frontline staff were not trained on how to answer Bill 148-related questions until December 20, 2017. This left just **five** business days during the busiest time of year for many sectors to ensure their compliance leading up to the January 1, 2018 implementation date.

This report was inspired by the chaos that ensued in the days, weeks and months after Bill 148 came into effect because employers were not sufficiently prepared or educated on the legislative changes.

Interviews with CFIB Business Resources Counsellors

The Business Resources department at CFIB has dealt with around a quarter million inquiries from small businesses since the founding of the organization, and has continued to guide members through the regulatory and compliance issues at all levels of government across the country. They have experience in handling cases regarding business operations, employee hiring, regulations, and taxation.

Between December 2017 and March 2018, there were four full-time Business Counsellors on staff for Ontario working Monday through Friday. In an average year, a counsellor usually has 15 open cases on a daily basis. During the implementation of Bill 148, the case load per counsellor doubled. One member of the team noted, “Usually we get on average a call every 10 minutes. After January, it was every minute.”

On January 2, the first working day of 2018, the team received 86 calls – a 72% increase for what was an average day at the time. These numbers became the new normal through March.

The increase in calls was entirely due to Bill 148. Business Counsellors describe business owners as often feeling highly frustrated and angry that more attention was not spent on all of the changes in Bill 148, instead of just the minimum wage increase. Additionally, they reported callers feeling hopeless, excluded from being consulted on the legislation before its implementation, yet being forced to comply in a short timeframe.

The front line staff of the Ministry of Labour were also overwhelmed and unprepared and understaffed for the tsunami of questions and concerns over the changes Bill 148 made – experiencing a 30 per cent year over year call increase of their own in January¹.

In the opening months, CFIB Business Counsellors did not receive a single call about the minimum wage increase. This is likely due to the fact that it had consistently received

significant attention from government and the media, and its implementation details were clear. Instead, the questions of small business owners focused almost entirely on the new mandatory PEL days for employers of all sizes, the new statutory holiday pay formula, and the increased vacation time and pay.

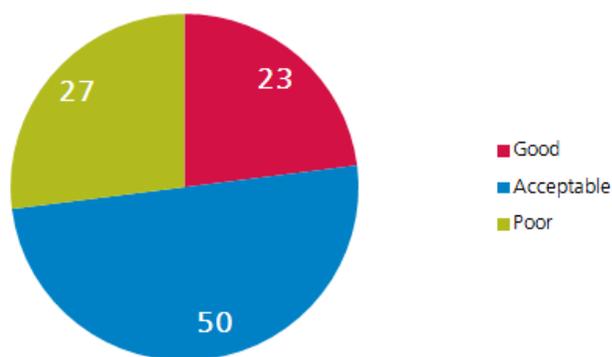
Mystery Caller Survey Findings

Overall, 73% of the mystery calls made to the Ministry were given the rating of 1) “acceptable”, meaning the call met the minimum standards required such as a correct answer to the question and an satisfactory customer service level on the call, or 2) “good”, meaning the correct answer was provided, the customer service level was appropriate, and the agent went above and beyond to ensure the caller understood the answer (Figure 1).

These calls show that the Ministry fared okay, but had room to improve their service level. It should be noted that these findings are a significant improvement compared to earlier in the year, when a much higher percentage of the calls would have been rated “poorly”.

[Figure 1]

Mystery Caller Survey Results

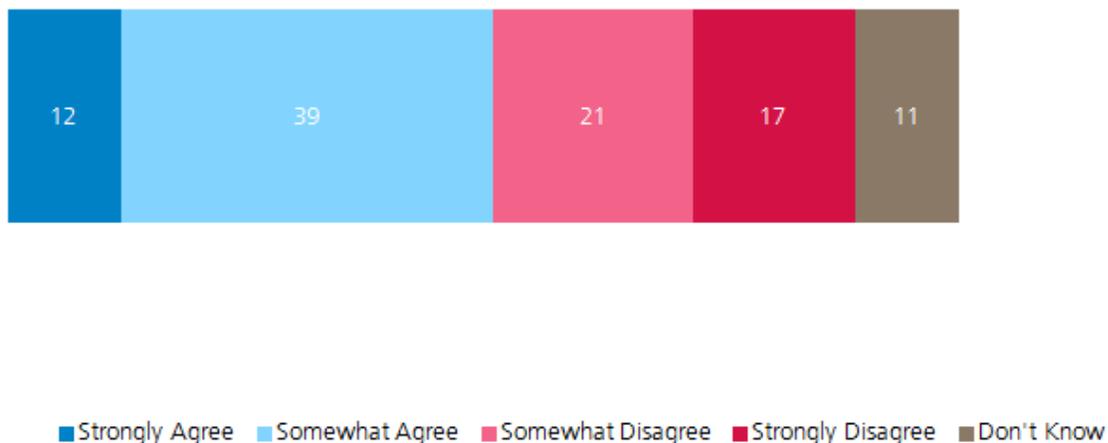


Source: Mystery Shopper calls conducted May 28-July 13, 2018

The percentage of calls rated ‘poor’ in this survey is 27%, meaning the call did not meet the minimum standards and the Ministry respondent gave conflicting or incomplete answers to the questions and/or lacked an acceptable customer service level (Figure 1). For example, Ministry staff gave conflicting answers to questions about the scheduling changes that had been set in Bill 148 to take effect on January 1, 2019.

[Figure 2]

To what extent do you agree with the following statement: The Ministry of Labour treats me with respect?

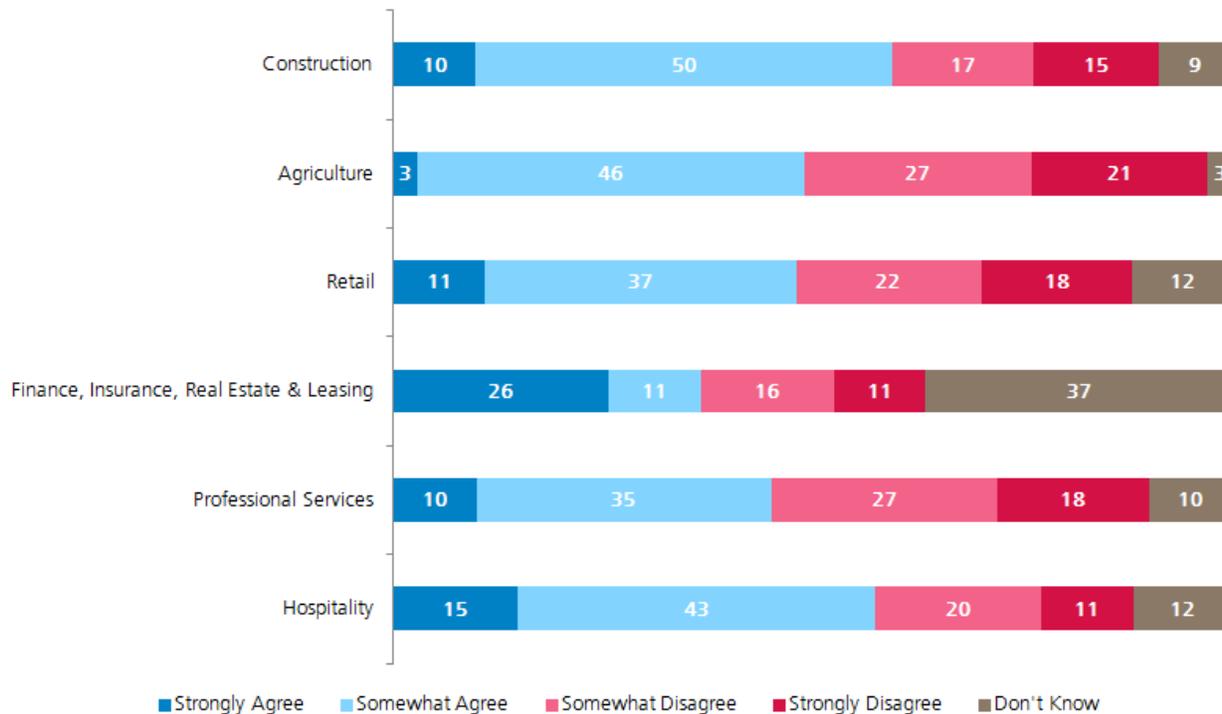


Source: CFIB, Ontario Pre-election Survey 2018, based on 3,587 responses, April 11-May 18, 2018

In a CFIB members' survey, 51% of respondents indicated that Ministry officials have treated them respectfully, while 38% reported to have been treated disrespectfully (Figure 2). However, the responses varied by industry (Figure 3), with the construction and hospitality sectors reporting the highest levels of being treated disrespectfully. The Finance, Insurance, Real Estate and Leasing industry respondents reported the answer 'don't know' with the highest frequency at 37%, possibly indicating that they interact with the Ministry less frequently than the other sectors.

[Figure 3]

**To what extent do you agree with the following statement: The Ministry of Labour treats me with respect?
[Industry Breakdown]**



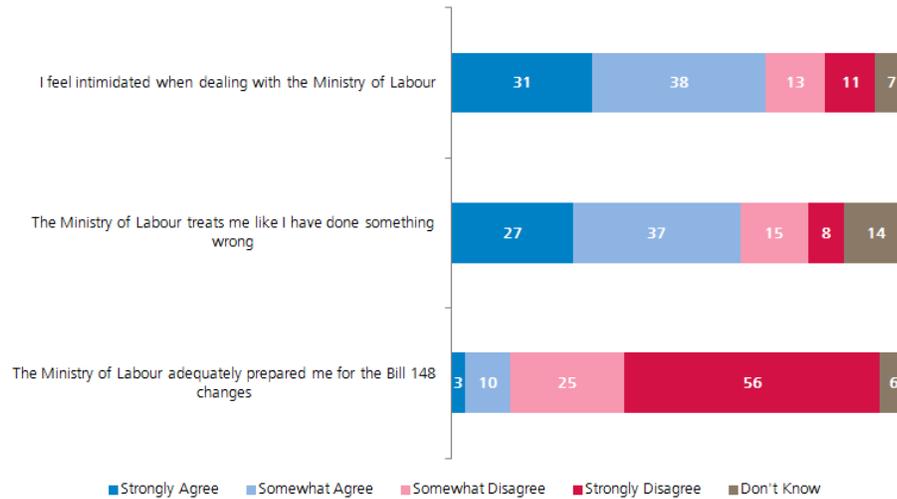
Source: CFIB, Ontario Pre-election Survey 2018, based on 3,587 responses, April 11-May 18, 2018

Member Survey Findings

It is clear through the survey findings that small business owners were blindsided by the broad range of changes under Bill 148. Four out of five small business owners said they did not feel that the Ministry of Labour adequately prepared them for these changes (Figure 4).

[Figure 4]

To what extent do you agree or disagree with the following statements?

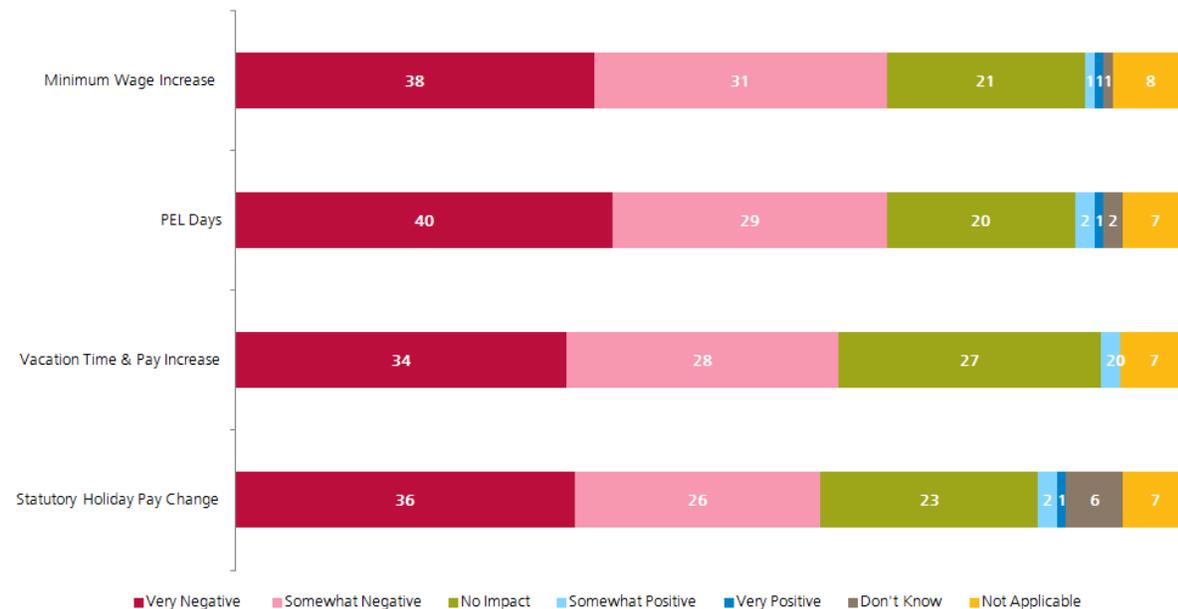


Source: CFIB, Ontario Pre-election Survey 2018, based on 3,587 responses, April 11-May 18, 2018

The Ministry also has a perception problem among small business owners. Even though a slim majority of respondents reported being treated respectfully by Ministry of Labour staff, 64% reported that the Ministry in general treats them like they've done something wrong.

[Figure 5]

How would you rate the impact of the following changes on your business that have already taken effect?



Source: CFIB, Ontario Pre-election Survey 2018, based on 3,587 responses, April 11-May 18, 2018

On multiple occasions, small business owners called a Business Counsellor with issues about their employees possibly using the 10 PEL days to lengthen weekends. For example, a member

called on July 3, the day after the Canada Day long weekend, because half of his staff didn't show up for work. No one called in sick or made any attempt to contact their boss. The business owner felt helpless because of the PEL day rules.

Conclusion

It is clear that Bill 148's changes were very poorly executed, significantly affecting small businesses and their opinion of the Ministry. To avoid a similar result, the newly-elected Government of Ontario should properly educate businesses in a timely manner on any major changes to workplace rules.

The party at fault for the Bill 148 chaos is not the Ministry of Labour and its frontline staff, who were just as frustrated as the Business Counsellors at CFIB, but the provincial government at the time. Bill 148 drastically changed numerous employment standards and labour laws in Ontario, yet education about these changes happened too late, leaving Ministry frontline staff and business owners ill prepared to explain and/or understand them. In addition, the isolated focus on the minimum wage increase meant that education was limited or non-existent from other sources, such as the media.

CFIB recommends that the government adopt the same policy as the Canada Revenue Agency and honour any advice given in writing, whether or not it is accurate. Additionally, the government should consider the training time needed to prepare frontline staff before implementing broad, structural change to everyday rules and regulations, such as employment standards and occupational health and safety rules.

Methodology

A mystery caller survey was conducted over the duration of seven weeks (between May 28 and July 13, 2018), where CFIB called the Ministry of Labour Employment Standards hotline a total of 84 times with questions about the changes in Bill 148. The questions asked were randomly chosen from three categories with equal sample sizes. The three categories related to common issues small businesses were experiencing with Bill 148: upcoming scheduling changes, PEL days, and employment standards exemptions (for which the previous government had started a separate review process).

CFIB's pre-election survey was distributed to Ontario CFIB members in April 2018. A total of 3,587 responses were collected between April 11 and May 18, 2018.

Interviews were conducted over a period of five days in June 2018 with CFIB Business Counsellors for Ontario, including in-person interviews in Toronto, and one Skype interview with an employee in Ottawa. The interview schedule included eight questions that probed the subject's experience handling calls from CFIB members who asked questions about Bill 148 during the period November 2017 to March 2018.