


**Caregiver's Guide to Engaging Support Workers**  
Bill 148 - Implications for Families

Presented by  
**Lutheran Community Care Centre**

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**Agenda**

1. Employment Law 101
2. Bill 148
  - Why is this happening?
  - What does it mean?
3. Application to Families
4. Informed Choices and Best Practices for implementation
  - Option 1 - Independent Contractors
  - Option 2 - Employment Relationships
  - Option 3 - Temp Agency Workers
  - Option 4 - Novel Care Arrangements
5. When and Where to Get Help

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**Employment Law 101**

1. Common law
  - Court decisions or "precedents"
  - Foundation for tests of employee vs. "self-employed" independent contractor
2. Contract
  - Restricted by "common law"
  - Provides opportunity to opt out of certain aspects of common law
3. Employment Standards Act, 2000 (and Bill 148)
  - Minimum requirements imposed by legislature
  - Restrict/limit contracts and common law but can't "opt out" of ESA
  - Applies to Employees, however, broad scope and application due to mandate
  - Covers:
    - Minimum wage, public holidays, vacation, overtime, hours of work, leaves of absence etc.
    - Exemptions from certain requirements apply for live-in support workers
    - Generally applies to all employees (regardless of whether part time, full time, occasion etc.)
    - Generally applies to all employers (regardless of corporate status, number of employees, business, etc.)

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### WHY BILL 148

- Changing workplaces review 2015-2017
- Vulnerable workers
  - Part-time, casual, temporary, season workers
  - No job protection/perilous employment
  - Often denied employment standards rights
- Objective to create “good, full-time jobs”
- Willing to impose penalties to encourage movement away from practices that make workers vulnerable

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### Bill 148 - Key Changes and Dates

<b>Amendment</b>	<b>In force</b>
• Employee Misclassification	November 27, 2017
• Critical Illness Leave	December 3, 2017
• Minimum Wage	January 1, 2018 (\$14.00)
	January 1, 2019 (\$15.00)
• Method of Payment	January 1, 2018
• Temporary Help Agency Amendments	January 1, 2018
• Paid Vacation	January 1, 2018
• Public Holiday Pay	January 1, 2018
• Record Keeping	January 1, 2018
• Personal Emergency Leave	January 1, 2018
• Leaves of Absence	January 1, 2018
• Equal Pay for Equal Work (incl. THA)	April 1, 2018
• Scheduling	January 1, 2019
• Right to Request Changes	January 1, 2019

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### New Prohibition on Mischaracterizing Workers

(Effective November 27, 2017)

- Mischaracterization of a worker who is actually an employee as a non-employee now an offence.
- Families characterizing workers as “self-employed” or “independent contractors” at risk if worker doesn’t meet the “test”
- Burden of proof on the “employer”
- Fines and penalties
- Increased focus, public awareness and scrutiny
- Sadly claims already being made by workers against families

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### Key Changes for Families Engaging Workers

Law	Details
<b>New Prohibition on Misclassifying Employees</b>	<ul style="list-style-type: none"> <li>Offense to treat a worker as an independent contractor or volunteer when they are actually employee.</li> <li>Burden of proof on "Employer"</li> </ul>
<b>Minimum Wage</b>	\$14/hr 01/01/18 \$15/hr 01/01/19
<b>Vacation/ Vacation Pay</b>	After 5 years* 3 weeks/6%
<b>Public Holiday Pay</b>	Total of <b>regular wages</b> earned in last pay period divided by number of days worked in that period <ul style="list-style-type: none"> <li>Pay period is whatever you have established</li> <li>If no regular wages due to PEL or vacation, then look at pay period preceding</li> </ul>
<b>Personal Emergency Leave</b>	2 days paid, 8 days unpaid per employee per calendar year <ul style="list-style-type: none"> <li>No sick notes may be required</li> <li>Pay based on lost wages</li> <li>Available for:                             <ul style="list-style-type: none"> <li>Illness, injury, medical emergency, of worker, or close family, or death or other urgent matter related to close family member</li> </ul> </li> </ul>


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### Scheduling

(Effective Jan. 1, 2019)

**3 Hour Rule**

- 3 hours at regular wage when regularly scheduled for more than 3 hours but sent home after less than 3 hours;

**Requesting Scheduling and Location Changes**

- Right to request, discuss and written reasons
- Freedom from retaliation

**Right to Refuse Shifts**


- Right to refuse a shift or a request to be on-call when request is made with less than 4 days (96 hours) notice

**Cancellation Pay**

- Minimum 3 hours at regular rate if shift cancelled on less than 48 hours notice (except where unavailable due to factors beyond employers control)

**On-call Pay**

- Minimum 3 hours on-call pay for every on-call period of up to 24 hours.


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### Leaves of Absence

Leave	Current (Jan. 2018 or earlier)	Previously
Pregnancy leave (still-birth or miscarriage)	12 weeks	6 weeks
Parental	61-63 weeks	35-37 weeks
Family Caregiver	No change	8 weeks
Family Medical	28 weeks	8 weeks
Critical Illness	17 weeks for adults 37 weeks for children	"Critically Ill Childcare leave" - 37 weeks
Reservist	No change	No limit
Organ Donor	No change	13 weeks
Child death leave	104 weeks Death of child for any cause	"Crime related child death leave" - 104 weeks
Crime-Related Child Disappearance Leave	104 weeks	52 weeks
Sexual and Domestic Violence Leave	5 days paid, 5 unpaid days + 13 weeks unpaid <small>Provisions related to evidence, eligibility, disclosures, &amp; mandatory confidentiality mechanisms (recommend policy)</small>	No separate leave available for these grounds

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### Other Changes with Limited Application to Families

- Equal Pay for Equal Work (Effective April 1, 2018)**
  - Prohibition on distinctions based on status (FT v PT / casual / temp) where employees perform the same work
  - Numerous permissible distinctions (seniority, quality/quantity of work, "any other reason")
  - Right to review and reasons
- Temporary Help Agencies (Effective Jan. 2018)**
  - New notice requirements (1 week)
  - New information and documentation entitlements (from "client" and THA)
  - New record keeping obligations (on "client" and THA)
  - Equal Pay (effective Jan. 1, 2018)
- Record Keeping Obligations (Effective Jan. 2018)**
- Simulated Work Exemption Eliminated (Effective Jan. 2019)**
- On-the-job training Exemption Eliminated ((Effective Jan. 2018)**



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### Application to Families

- 1. How does this apply to Families?**
  - Families engaging workers subject to same laws as businesses and regular employers.
  - If the worker is an employee as opposed to a true independent contractor
- 2. Why is this issue important now?**
  - Continuous
  - Increased individualized funding
  - Publicized and politicized issue
  - New offence and increased enforcement
- 3. When does this issue come up?**
  - Audit
  - Injury
  - Claim



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### When Are Families "Employers"?

#### Independent Contractor vs. Employee?

1. Intent of the parties
2. Four Factor Test
  - Control
  - Ownership of Tools
  - Risk of Loss
  - Chance of Profit
3. Other Practical Factors for Families
  - Duration
  - Dependency/Exclusivity
4. List of factors that relate specifically to families

At the end of the day, if it walks like a duck and quacks like a duck its probably a duck!



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### What are the risks?

**Depends on "forum"**

1. Revenue Canada
  - Employment Insurance Premiums
  - Canada Pension Plan premiums
  - Income Tax
  - Interest, Fines or Penalties
2. Ministry of Labour (ESA)
  - Minimum wage, vacation, public holiday pay
  - Termination pay
  - Interest, fines and penalties
3. WSIB
  - Unpaid premiums
4. Civil Liability
  - Wrongful dismissal damages
  - Damages for personal injury (of worker or 3<sup>rd</sup> party)

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### Now What? Informed Choices

**Options:**

1. Independent Contractor
2. Employee
3. Staffing Agency
4. Novel Models of Support

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### Option 1 - Independent Contractor

**Status Implications for Caregivers**

- No Income Tax, CPP, or EI deductions or reporting obligations
- Independent contractor required to be reporting their earnings
- No restrictions or obligations as to Paid Holidays, Vacations, Hours of Work, Overtime etc.
- No employment law reasonable notice of termination requirements (but beware the dependent contractor)
- No WSIB
- No OHSA
- No Human Rights

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### Option 1 - Independent Contractor

#### Recommendations for Caregivers

- Vulnerable sector screening, reference check
- Contractor agreement properly reflects the relationship
- Include insurance requirements (especially around driving) and consider requiring WSIB Independent Operators Insurance
- Include expectations and obligations for worker to deduct/remit and report earnings
- Include factors favouring contractor relationship (control, resources, work for others etc.)
- Address termination
- If your relationship changes over time (ex. hours increase/worker takes on more characteristics of an employee) change your arrangement
- Require invoices (not timesheets)
- Keep records

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### Option 2 -Employment Relationships

#### Status Implications for Caregivers

- Must ensure valid SIN
- Must deduct and remit Income Tax, CPP, EI, file T1, T4, T4A and provide ROEs on termination
- Must comply with ESA
  - Provide ESA poster
  - Provide Paid Holidays, Vacations, comply with hours of work and overtime requirements (plus new obligations under Bill 148) subject to exemptions for certain workers
  - Record Keeping
- Must provide notice of termination (statutory and common law in the absence of a contractual restriction)
- Purchase WSIB (unless exempt)
- Meet OHS requirements (mandatory training, workplace harassment and violence policies and training)
- Meet Human Rights requirements (note exemptions for caregivers)

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### Option 2 -Employment Relationships

#### Recommendations for Caregivers

- Vulnerable sector screening
- Written agreement to limit liability on termination and clearly communicate expectations
- Know your obligations under the ESA (vacation, public holiday pay, overtime etc.)
- Consider exemptions (Residential Care Worker and Domestic Worker)
- Avoid reprisals
- Register with WSIB if appropriate (or obtain alternative insurance/ensure adequate vehicle insurance)
- Register for a business payroll number
- Deduct, remit, report (consider Ceridian and ADP, and smaller support orgs, many small family run organizations helping other families for this type of work)
- Keep records

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### Option 3 - Agency Workers

**Status Implications:**

- Temporary help agencies legislation
- Responsibilities as a client
- Exposure

**Recommendations:**

- Reputable agency
- Ensure agency treats workers as employees
- Require WSIB
- Appropriate agreement with warranties/indemnity for non-compliance
- Keep records (hours per day, days per week)
- Notice requirements
- Equal pay requirements
- Insurance

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### Option 4 –Novel Care Relationships

**Examples**

- Homesharing
- Microboards

**Recommendations**

- Homeshare
  - Careful paying fees to homesharer
  - Careful when mixing roles
- Microboards
  - May change exemptions under ESA and WSIB
  - Board member personal liability
- Generally
  - Employment law is for the protection of workers
  - If it looks like a duck and quacks like a duck, it's a duck, even if you call it a goose.

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### When to Get Help...

- If you aren't sure of status or obligations (ounce of prevention)
- If you need assistance understanding a contract;
- In the event of an injury or accident;
- In the event that a worker asks for accommodation of some kind (ex. in the event of pregnancy, disability, religious holidays, etc.);
- In the event that the worker asks you about or makes demands related to their work and you aren't sure how to respond (leaves of absence, vacation, public holiday pay etc.);
- In the event that you would like to terminate the relationship with the worker (another ounce of prevention)
- Your worker files a complaint or indicates they are considering doing so;
- In the event that you are contacted by a government agency (HRSDC, Revenue Canada, Human Rights Tribunal, Ministry of Labour, WSIB, etc.).

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### What is the Government's Role?

1. Individualized Funding ↑
2. Insufficient to meet legal obligations
3. Risk of crisis ↑
4. Pressure = New Funding
5. How to get involved:
  1. [Family Alliance Ontario](#)
  2. [Oasis Ontario](#)
  3. [Community Living Ontario](#)
  4. [MPPs](#)
  5. [Dr. Helena Jaczek](#) (Minister of Community and Social Services)

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### Resources – Government of Canada

- [Employee or Self-Employed Guide](#)
- [Determining the Employee/Employer Relationship](#)
- [Recruiting and Hiring Workers in Canada](#)
- [T-4 Information for Employers](#)
- [T-4A Information for Payers \(including of self-employed commissions\)](#)
- [Issuing a Record of Employment on Termination or Interruption of Earnings](#)
- [Payroll Deductions Online Calculator Tool](#)

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### Resources – Ministry of Labour ESA Compliance

- [Fact Sheet – Difference between an Employee and an Independent Contractor](#)
- [ESA Poster](#)
- [What Businesses Need to Know](#)
- [ESA Online Compliance Tools](#)
- [Online Mandatory Training](#)
- [Domestic Workers](#)
- [Special Rules for Residential Care Workers \(Live-in\)](#)

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## Resources – WSIB

- [Protecting Domestic Workers](#)
- [Domestic Worker Policy](#)
- [Domestic Services Policy](#)
- [Independent Operators](#)

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## Resources – PooranLaw

### Free Resources for Families and Service Providers in the DS Sector From PooranLaw

- **PooranLaw Webinar Series and Newsletter**
  - Visit [www.pooranlaw.com](http://www.pooranlaw.com) to see all upcoming webinars, registration link included
- **PooranLaw ESA Compliance Tool**
  - Released today our ESA Compliance Tool for the DS Sector
  - Will help you determine what your obligations
  - [PooranLaw ESA Compliance Tool](#)
- **Inspiring Possibilities Planning Guide**
  - Free E-book by PooranLaw in collaboration with CLO
  - <http://planinspiringpossibilities.com/>

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## QUESTIONS



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