Bill 148, Fair Workplaces, Better Jobs Act, 2017 Consultation Response

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July 20, 2017

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Mr. Eric Rennie
Clerk of the Standing Committee on Finance and Economic Affairs
Room 1405, Whitney Block
Queen's Park, Toronto, ON M7A 1A2

Via email: erennie@ola.org

RE: Written submission in response to *Bill 148, Fair Workplaces, Betters Jobs Act, 2017*

The Canadian Franchise Association (CFA) submits this letter in response to the public hearings being held by the Standing Committee on Finance and Economic Affairs on *Bill 148, Fair Workplaces, Better Jobs Act, 2017.*

CFA has been actively involved throughout the Changing Workplaces Review and agrees with the overall mandate to modernize labour and employment laws to better reflect the changing workplace. However, there are a number of provisions that were included in Bill 148 that will have a significant impact on all Ontario businesses, including our members. In order to understand these impacts, CFA surveyed our membership, and their concerns have been outlined in the body of this submission.

We thank you for the opportunity to make written and oral submissions, and for considering the concerns and issues of the franchise community in Ontario.

Sincerely,

Ryan Eickmeier
Canadian Franchise Association

About the CFA

The Canadian Franchise Association is the recognized authority on franchising in Canada. With over 600 members, including their 40,000 franchisees, CFA represents a diverse cross section of franchise systems (i.e. the franchisor and their franchisees together comprise the franchise system) as well as companies that provide services to the franchise sector. All CFA members are required to abide by CFA's Code of Ethics, disclosure policies, and the highest industry standards.

Contact Information

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Introduction

Following the introduction of *Bill 148, Fair Workplaces, Better Jobs Act*, CFA surveyed our membership to gauge the potential impact on their businesses. The following information represents the aggregated results of 104 responses from members across the franchise industry, as well as commentary to provide detailed explanations as to why and how certain provisions will have negative impacts on their businesses.

Franchising in Ontario

Franchising is a strong and important contributor to the economy in Ontario. Franchise businesses directly and indirectly employ hundreds of thousands of people across the province – in communities of all sizes and in all locations. The franchise business model has provided many entrepreneurs the opportunity to start and operate a successful business, with the support of an established brand and proven model behind them.

When most people think of franchising, they think of large brands. However, franchise businesses vary greatly in size from small local start-ups to mature, well-known, multi-national brands. 33% of CFA members are franchise brands that have fewer than 15 franchise outlets, while less than 20% of CFA members have more than 100 outlets.

Franchises can be found in over 50 different industry sectors that contribute to Ontario's economy. CFA's membership can be broadly condensed and classified into the following thirteen categories:

- Automotive & Truck Services / Products / Rentals – 4%
- Commercial / Residential Services – 11%
- Educational Products & Services – 5%
- Food – Restaurants / Dining Rooms – 15%
- Food – Quick Service Restaurants – 23%
- Hair & Nail Salons / Spas / Tanning – 3%
- Health / Fitness / Nutrition / Weight Loss – 5%
- Home Based Businesses – 2%
- Home – Improvements / Renovation / Restoration / Inspection – 7%
- Hotels / Motels / Campgrounds – 1%
- Retail – 7%
- Seniors Service / Home Care / Transition – 4%
- Other – 13%

All told, franchising is predominantly made up of small business owners, and any actions that might place additional burdens on these businesses will be detrimental to those who contribute to the Ontario economy – both employers and employees.

Minimum Wage

Bill 148, Fair Workplaces, Better Jobs Act lays out the government's plan to raise the general minimum wage to $14 per hour in January 2018, followed by a further increase to $15 per hour in 2019.

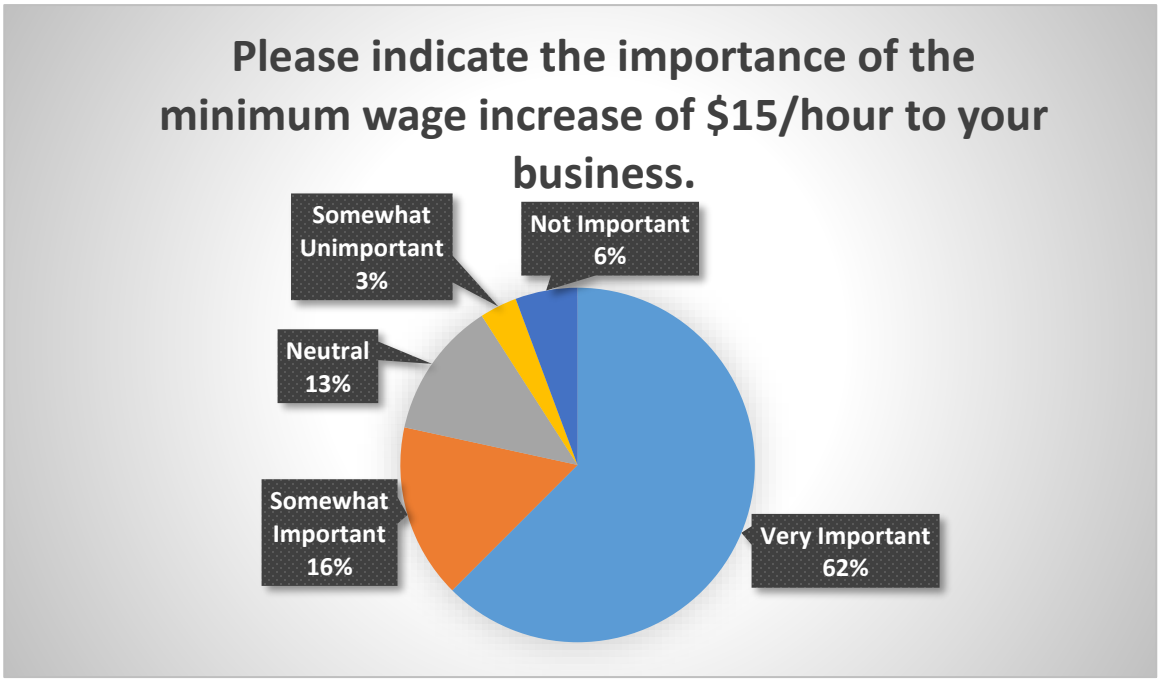
The CFA and its members support a minimum wage policy that is fair, predictable, and transparent, accompanied by open communication and consultations with stakeholders, including the business and franchising communities. We are not opposed to fair increases in minimum wage, but we want to ensure increases are reasonable and don't adversely affect businesses, which in turn hurts employees as well.

Analysis

According to our survey results, a 32% increase to $15/hour in 18 months will have a dramatically negative impact on our members and their businesses, potentially resulting in hiring freezes, price increases, and reduction of employee hours. These are not circumstances in which small businesses can thrive under.

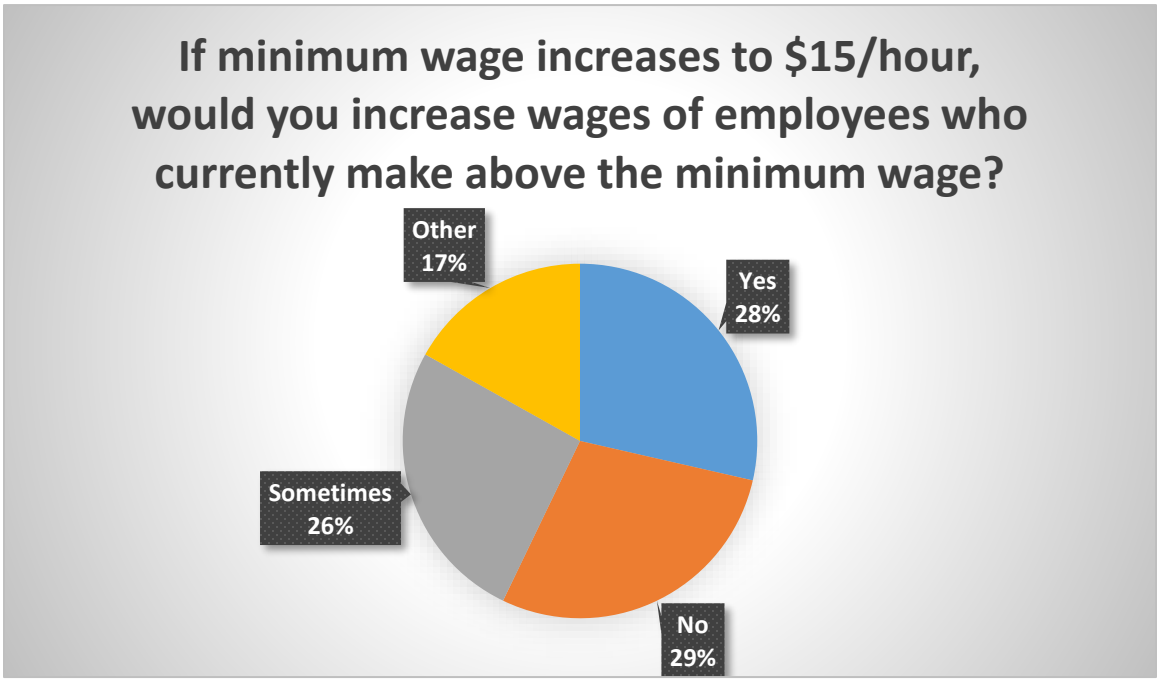
Of those who responded, 78% of our membership indicate that the minimum wage increase is somewhat or very important to them, compared to 9% of our membership who indicate the increase is somewhat unimportant or not important (Figure 1.1).

Figure 1.1



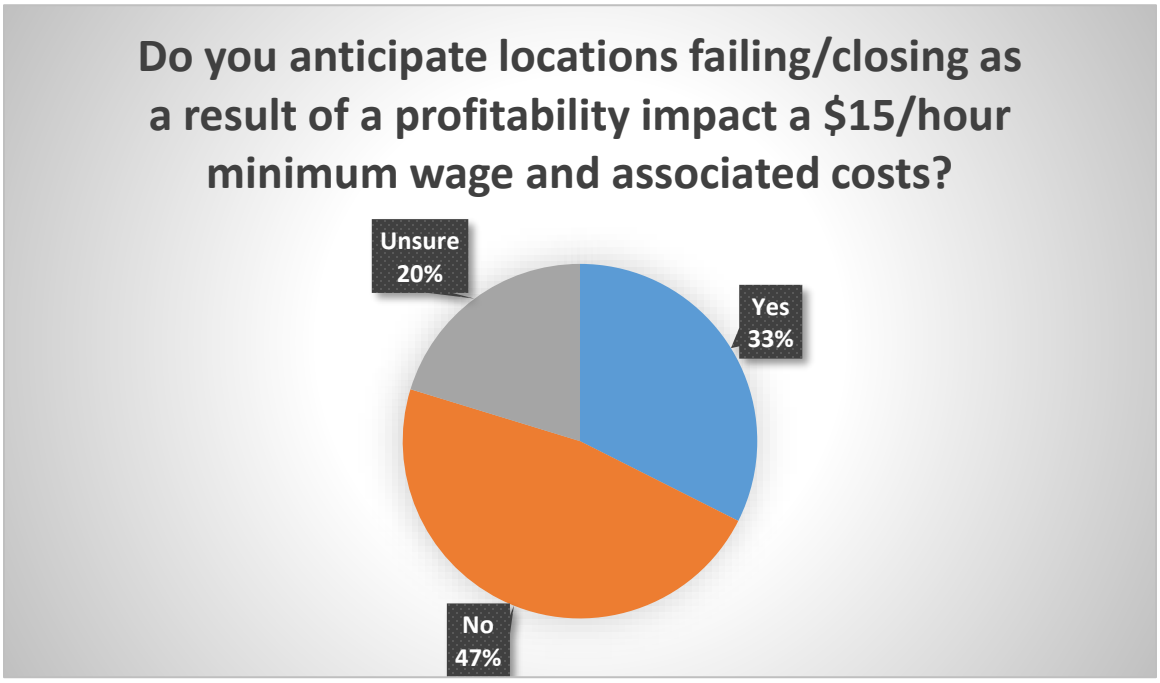
Further, 28% of our membership indicate they would have to increase the wages of employees who currently make above the minimum wage, resulting in an increase in payroll costs above and beyond minimum wage workers (Figure 1.2). Conversely, 29% of our membership indicated they would not increase the wages of employees who currently make $15/hour or more, which would reduce the gap between them and their minimum wage-earning counterparts (Figure 1.2).

Figure 1.2



Perhaps most damaging, 33% of our membership anticipates locations failing or closing as a result of the profitability impact a $15/hour minimum wage would have on their business; another 20% are unsure of their ability to survive under these conditions (Figure 1.3).

Figure 1.3



Commentary

Our members support providing a minimum wage that is fair, measurable and transparent to Ontarians, but the speed of the proposed increase creates an insurmountable hurdle for many small business owners. To sum up much of the commentary received, to accommodate these proposed changes, many businesses will be forced to pass on increases to the consumer or decrease the amount of staff currently employed. Furthermore, it will result in the opposite of what the government intended when low-wage workers lose their jobs rather than gain a raise to $15/hour. The following direct quotes from our members further illustrate this point:

> *"Small foodservice operators are getting squeezed, and our margins are already small with rising food prices with no end on the horizon. The new employment standards hurt us the most, because we will have to raise prices and cut staff to survive. Many of us wont."*

> *"The quick and aggressive changes to minimum wage will decrease our small margins to negative amounts. We are highly concerned about the impact of this change on our business. We will be forced to raise prices or take away non-mandatory perks, like benefits, to keep a profit. It is irresponsible of the government to impose this so quickly. If we raise our prices we will lose clients, as we are a non-essential service company, and the cost will be out of reach since it will have to raise the 30% that minimum wage is raising."*

As previously noted, not only will employers need to raise wages for minimum wage earners, many will be forced to raise wages across the board to satisfy other employees. With the increase in minimum wage and wages of other workers, the compounding impact on employers paying increased payroll taxes will be significant. One respondent indicated they will increases prices to satisfy workers currently making more than minimum wage, but it will be at the expense of hours given. Others are simply not able to do so.

> "*At this point, we couldn't afford to [increase wages for non-minimum wage earners]. We're a labour intensive business, our margins are already very thin. We would need to drastically increase the price to the consumer, and it's just not feasible in many of our smaller/rural markets."*

Potential Offsets

Given the challenges identified above, CFA members were asked what type of government provided offsets would help them and their franchisees cope with a minimum wage increase to $15/hour. Responses varied and more than 40 suggestions were put forward, including, but not limited to:

- Increased implementation timeframe;
- Income tax credits;
- Benefits credits;
- Training allowances/subsidies;
- Uniform purchase credits;
- Student wages;
- Lower payroll taxes;
- Government wage enhancement; and
- Reduced HST.

Ultimately, the leading recommendations are to increase the period of implementation, and to conduct an economic impact study before committing to an increase of $15/hour. Staggering increases over

additional years will allow businesses to better plan to absorb these additional costs, as the general consensus amongst our members is that this increase is far too much, far too quick.

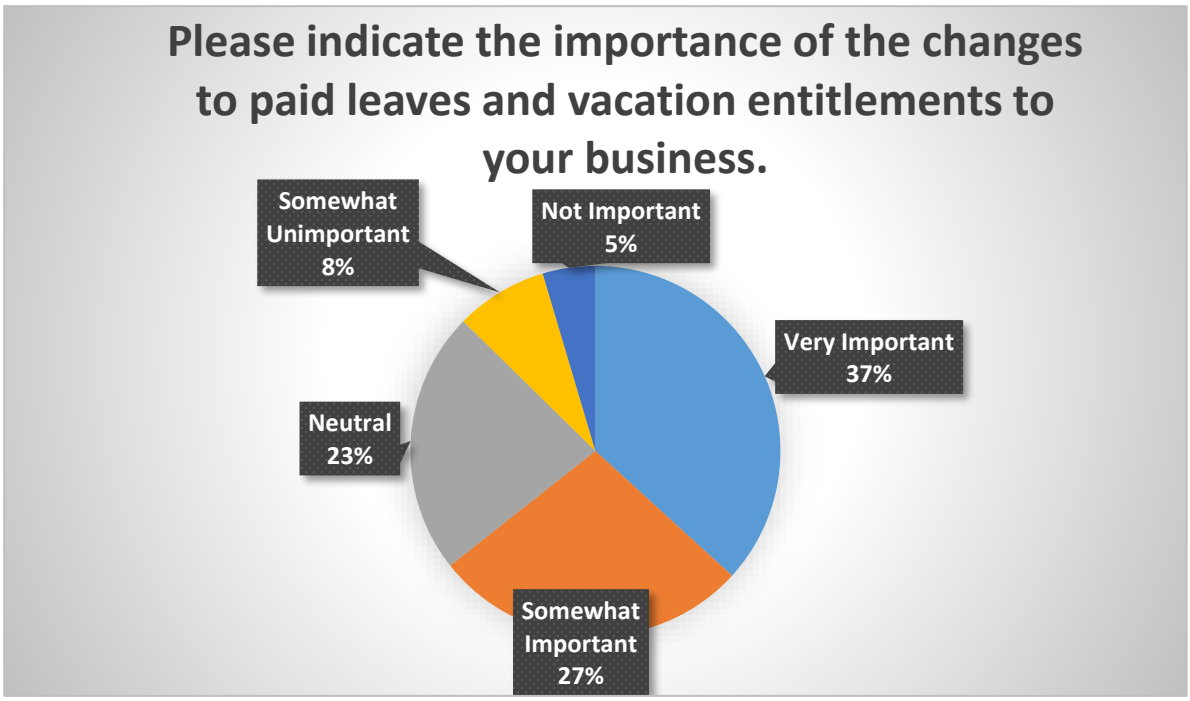
Employment Standards

The proposed changes to Ontario's employment standards will create additional challenges for many Ontarian franchised business owners. From changes to scheduling to increased vacation entitlement, these proposed changes represent additional cost for business owners.

Analysis

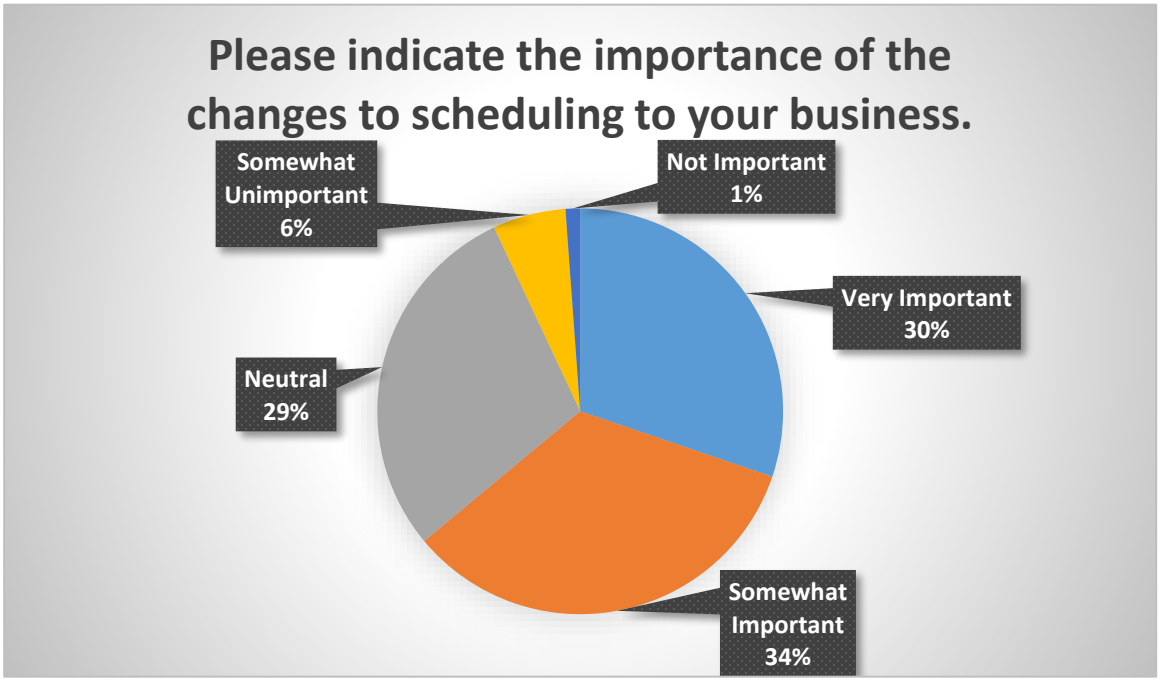
64% of our members indicate the implementation of paid leaves and increased vacation is somewhat or very important, compared to just 13% of our members who believe these new provisions will not affect their businesses negatively (Figure 2.1).

Figure 2.1



As it pertains to scheduling, 64% of our members are concerned about its effects on their businesses compared to 7% of indicate the changes are somewhat or very unimportant (Figure 2.2).

Figure 2.2



Commentary

There are sectors of the Ontario economy that will experience significant impact due to the new employment standards laws proposed in Bill 148, which could lead to less take-home pay, reduced headcount and fewer hours for employees. The following are candid insights from CFA members in regard to specific employment standards policies:

Part-time workers receiving equal pay as full-time workers:

> *"Too much strain on profitability."*
>
> *"We will be forced to reduce labour costs by reducing head counts or hours."*
>
> *"Would be forced to decrease individuals scheduled hours."*
>
> *"We would implement strategy around efficiencies and cutting hours/bodies, as well as increased menu prices to guests."*

Increased minimum vacation to 3 weeks if employed for at least 5 Years:

> *"Will impact the number of employees our franchisees hire and the overall profitability to the point where we may see closures."*
>
> *"Increases payroll burden and overall operating labour costs."*
>
> *"Huge impact for my operation. I'm getting squeezed on every front (min. wage, taxes, COGS, utilities, red tape, etc.)"*

Scheduling rules requiring 3 hours of wages be paid if shift is cancelled without 48 hours' notice:

> *"Huge impact. We operate in a quick change environment. Weather, for example, has a huge impact. Mechanical issues can lead to needing to change shifts."*
>
> *"Too intrusive to business."*

> *"Lack of flexibility with scheduling will cause problems, overscheduling will cost money, under scheduling will cost the employees [hours]."*

> *"Big impact. In our industry, clients change their minds last minute and reschedule services. Paying out 3 hours of labour without revenue will really cut into our profit margin."*

Removal of 50-employee threshold to Personal Emergency Leave (PEL) requirements, including 2 paid days:

> *"Small business cannot afford this when they have no control over the definition of a personal emergency."*

> *"Another expense that will reduce the number of part-time workers we employ."*

> *"Huge impact. The number of no-shows will increase significantly, impacting operation, overall morale (others have to pick up the slack), cost to replace, waste, etc.*

Elimination of Section 4(1)(b) – "Intent or Effect"

Our members have also expressed concern with Bill 148's adoption of the recommendation to eliminate the "intent or effect" requirement of Section 4(1)(b) of the ESA. With the removal of the "intent or effect" requirement, the only test for determining whether or not two entities can be considered one employer is whether "associated or related activities or businesses are carried on by or through an employer and one or more other persons".

It is believed that this provision will cause uncertainty and significant cost increases to doing business in Ontario. Franchisors will be vulnerable to being considered one employer, or a joint-employer, with their franchisees without any proof of control or direction. Further, by removing the "intent or effect" language, Ontario becomes an outlier when compared to other Canadian jurisdictions.

CFA and our members believe this provision is unfair and will result in instances where franchisors become legally liable for the ESA contraventions of their franchisees without reason and/or proof of involvement.

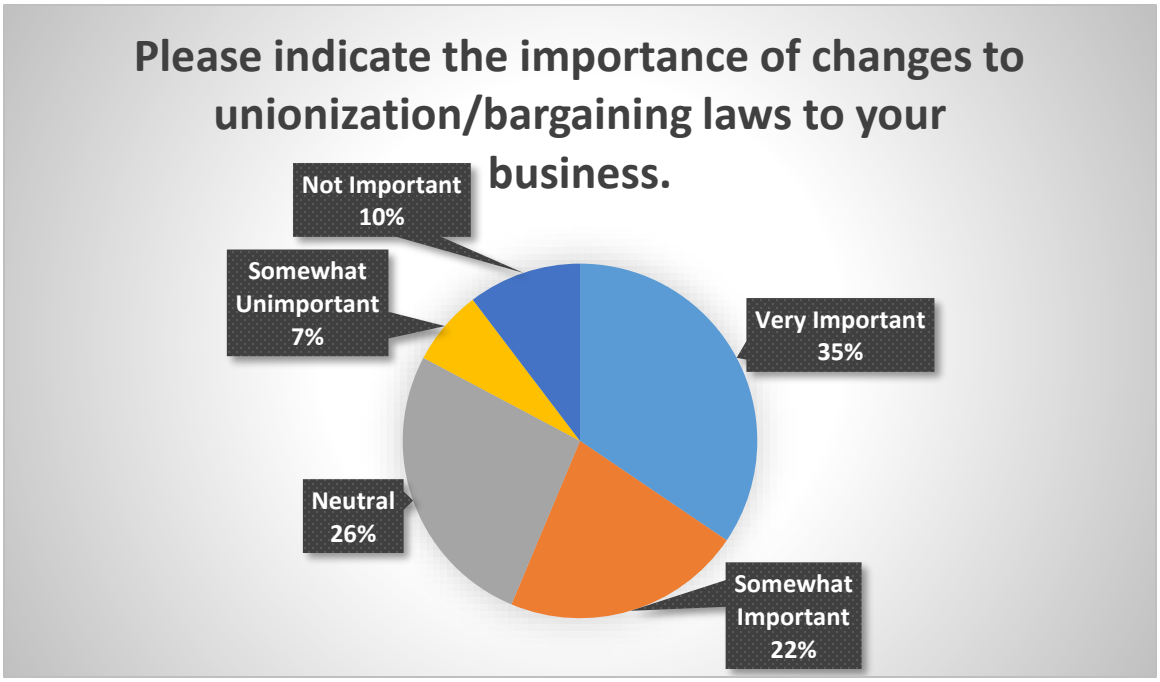
Labour/Unionization

To meet the needs of the evolving workplace, it is essential for Ontario to create policies that support entrepreneurship and small business growth. Our members are deeply concerned about Bill 148's policies that would best serve the interests of large unions and CFA maintains the position that secret ballot voting represents the fairest and most democratic way of labour organization.

Analysis

When surveyed, 57% of our membership agreed that changes to unionization in Bill 148 are somewhat or very important to them (Figure 3.1). Although Bill 148 proposes to make it easier for unions to organize in the private sector workplace by establishing card-based certification in only three sectors, it still proves to be an area of concern for the majority of our members.

Figure 3.1



Commentary

Many of our members believe further changes to unionization and bargaining laws would destroy the franchise industry. Our members believe unionization is unnecessary as the existing labour laws are more than enough to ensure fair and healthy work environments are being provided, as illustrated in the statements below:

> *"Making it easier to unionize will make it harder to do business, harder to sell franchises and harder to get financing [for franchisees]."*
>
> *"I will exit the restaurant industry if unionization becomes the norm."*
>
> *"Ontario's proposed union accessibility regulations will cause us and our clients to pay more, resulting in loss of business."*

Our members have also expressed concern regarding the validity of electronic and phone voting proposals due to the potential for fraud, as well as concerns surrounding privacy as it relates to sharing contact information with unions.

Conclusion

Overall, our members believe that Canada is already a global leader in employment standards, and there is no need to bog down businesses with overly restrictive standards. The majority of our members believe that collectively, an increase in minimum wage by 32% in 18 months, changes to make unionization easier, removal of the flexibility of scheduling, and the implementation of increased vacation and paid leaves will hurt the economy as they will be forced to downsize and in some cases close their businesses. We urge the government to consider our members best interest before implementing Bill 148 and ensure a fair balance between protecting workers and businesses in this fragile global economy.