

Key Takeaways from Ontario's Working for Workers Act Four, 2023

June 20, 2024

In November 2023, the Government of Ontario passed Bill 149, the *Working for Workers Four Act, 2023* (the “**Act**”). The Act places new obligations and prohibitions on employers, and intends to strengthen Ontario’s employee entitlements and workers’ compensation benefits. The Act received royal assent on March 21, 2024, and implemented amendments to the *Employment Standards Act, 2000* (“**ESA**”), the *Digital Platform Workers Rights Act, 2022*, the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, and the *Workplace Safety and Insurance Act, 1997*. The Act includes a variety of legislative changes which will impact employers. Some of the more salient changes include the following:

Amendments to the *Employment Standards Act, 2000*

1. Definition of ‘Employee’ Expanded

This amendment is currently in full force and effect. The definition of “employee” under the ESA is amended to include any work performed during a trial period, which is regarded as training. Consequently, this means that an employer must pay any employee who is completing a trial period or shift before they begin permanent employment.

2. Gratuitous Tips

These amendments will come into full force and effect on June 21, 2024, and are intended to ensure workers in the hospitality and service industries understand how their tips are calculated and distributed. An employer must pay an employee’s tips or other gratuities by cash, cheque payable only to the employee, or by direct deposit. If paying by direct deposit, the account must be selected by the employee and in their name, no other person except the employee can be authorized to access the account, and the account may be required to meet other prescribed criteria under the Regulations, if any are implemented.

If an employer has a policy in place where the employer or a director or shareholder of the employer share in the distribution of tips or gratuities through a “pool,” the employer must post and keep posted a copy of the policy in at least one conspicuous place in the employer’s establishment. An employer must keep copies of this written policy for three years after the policy ceases to be in effect. It is important for employers to review their policies and introduce any necessary changes to ensure compliance with the law. Failure to do so could lead to employment claims and risk a workplace inspection by an Employment Standards Officer.

3. Vacation Pay

This amendment will come into full force and effect on June 21, 2024. If an employer is going to pay vacation pay that accrues during each pay period rather than pay it out in a lump-sum before an employee takes their vacation, the employer must have a written alternative agreement with the employee. Such agreement must outline the alternative method of distributing the employee’s accrued vacation pay.

4. Job Postings

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These amendments will come into full force and effect on proclamation by the Lieutenant Governor. The Act amends the ESA to require Employers to include an expected compensation or a range of compensation for any 'publicly advertised job posting'. Additionally, employers are no longer permitted to require applicants to have Canadian experience in a publicly available job posting. Every employer who uses AI to screen, assist or select applicants for a position shall include a statement disclosing the use of AI. Employers also have an obligation to retain copies of any publicly advertised job postings for three (3) years after removing access to the posting from the general public.

Amendments to the *Workplace Safety Insurance Act, 1997*

The *Workplace Safety and Insurance Act* is amended in two aspects: (1) to create a presumption of an occupational disease for certain firefighters and fire investigators who are diagnosed with primary-site esophageal cancer; and (2) to establish an additional indexing factor which can be prescribed by Regulations, allowing an increase to WSIB benefits to an amount greater than the annual rate of inflation for injured workers.

Amendments to the *Digital Platform Workers' Rights Act, 2022* ("DPWRA")

The DPWRA will come into force on a day to be named by proclamation of the Lieutenant Governor. Amendments to this legislation will only impact Employers who hire/retain individuals who meet the definition of "worker" under the legislation, which is someone who performs digital platform work through an online platform. The purpose of the legislation is to provide certain rights and protections for digital platform workers who provide ride-share, delivery, or courier services for payment and are offered work assignments by an operator through the use of a digital platform. The Act amends the DPWRA in the following categories:

- To provide that certain limits on recurring pay periods and pay days may be prescribed by regulation
- Rules for determining compliance with the minimum wage requirements of the Act may be prescribed by regulation

Amendments to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* ("FARPCTA")

Regulated occupations are controlled by provincial law and governed by a regulatory body or apprenticeship authority. The amendments to the FARPCTA only apply to individuals who work in Ontario's regulated professions and compulsory trades, collectively defined under the act as "regulated professions." The purpose of the FARPCTA is to help ensure that regulated professions and individuals applying for registration by regulated professions are governed by practices which are transparent, objective, impartial and fair. The Act amends the FARPCTA to provide for prescribed requirements which must be met when evaluating whether a regulated profession assesses qualifications in a way that is transparent and objective, including to any third party who enters into a contract to make assessments of any regulated profession.

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