

Ontario Government Introduces Working for Workers Five Act

May 10, 2024

On May 6, 2024, the Ontario Government introduced [Bill 190, Working for Workers Five Act, 2024](#). If passed, Bill 190 will amend, among other things, the *Employment Standards Act, 2000* (“ESA”), *Occupational Health and Safety Act* (“OHSA”) and *Workplace Safety and Insurance Act, 1997* (“WSIA”).¹

Changes to the ESA

a. New requirement for a job posting

Bill 190 will require every publicly advertised job posting to include a statement disclosing whether the posting is for an existing vacancy, as opposed to creating a pool of applicants for a future vacancy. The government may set out exceptions through regulations.

b. “Duty to inform” an applicant whom the employer has interviewed

Bill 190 will create a “duty to inform” an applicant whom the employer has interviewed of certain “prescribed information” — the content of which has not yet been set out. In a [news release](#), the Ontario Government stated the purpose of this provision is to prevent applicants from being “ghosted.” Bill 190 will also require an employer to retain copies of this “prescribed information” for three years.

c. No sick note for ESA sick leave

Bill 190 will prohibit an employer from requiring an employee to provide a sick note from a qualified health practitioner as evidence the employee is entitled to ESA (statutory) sick leave. However, an employer may require “evidence reasonable in the circumstances that the employee is entitled to the leave.”

Note: The prohibition on requiring a sick note for ESA sick leave does not prohibit an employer from requiring information from a qualified health practitioner in other circumstances such as a paid sick leave, or a disability accommodation request.

d. Increased fines

Bill 190 will increase the maximum fine for an individual under the ESA from \$50,000 to \$100,000.

Changes to the OHSA

a. Application to a remote worker

Bill 190 will amend the OHSA so it applies to “telework performed in or about a private residence.”

¹ See our [briefing note on Working for Workers Four Act](#), and all other related briefing notes, [here](#).

b. Remote joint health and safety committee meetings

Bill 190 will allow joint health and safety committee meetings to occur remotely as opposed to only physically in the workplace.

c. Recognition of “virtual” workplace harassment

Bill 190 will expand the definition of “workplace harassment” and “workplace sexual harassment” to include harassment that occurs “virtually through the use of information and communications technology.”

d. Washroom facilities

Bill 190 will require an employer or constructor to ensure that any washroom facility provided by the employer or constructor for the use of workers is maintained in a clean and sanitary condition, and to maintain cleaning records.

On May 6, 2024, the Ontario Government also enacted [O. Reg. 194/24](#) which requires a constructor to ensure menstrual products are provided at a project when: (a) 20 or more workers are regularly employed at the project, and (b) the project is expected to last three months or more. Additional regulations may be enacted with respect to washroom facilities.

e. Electronic posting

Bill 190 will allow an employer to post information in a “readily accessible electronic format” instead of physically in the workplace. This would apply to the requirement an employer post (a) a copy of the OHS Act, (b) any explanatory material prepared by the Ministry of Labour, Immigration, Training and Skills Development of Ontario, and (c) a copy of its occupational health and safety policy.

Posting in a “readily accessible electronic format” means: (a) the employer provides workers with direction on where and how to access the information, and (b) the information is posted in an electronic format that can be readily accessed by workers in the workplace.

Changes to the WSIA

Bill 190 will amend the WSIA to extend presumptive coverage (a) for post-traumatic stress disorder to wildland firefighters and wildland fire investigators, and (b) to prescribed firefighters and fire investigators for primary-site skin cancer if the worker had at least 10 years of service before being diagnosed.

To learn more and for assistance, contact your Sherrard Kuzz lawyer or info@sherrardkuzz.com.

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