



# What's New in HR Law

## Regulatory Developments in Ontario's Long-Term Care Sector

October 31, 2023 | By [Anja Djogo](#)

### Overview

On September 15, 2023, Ontario published changes to the qualifications of individuals hired as personal support workers (“PSWs”) or to those hired to provide personal support services in long-term care homes. Noting the important role that resident support personnel play in long-term care homes and the burden that exists on PSWs and nurses, the Ministry of Long-Term Care has temporarily extended the staffing qualifications flexibility provision under the *Fixing Long-Term Care Act, 2021* to allow long-term care staff (i.e. PSWs or staff providing personal support services) without the requisite training to continue providing low-risk support to long-term care residents. This change is in effect as of October 11, 2023 and will remain in place until July 1, 2024.

### Background Information

On April 11, 2022, the [Fixing Long-Term Care Act, 2021](#) (the “Act”) was proclaimed into force to regulate Ontario's long-term care home sector. The Act included a *General* regulation, [O. Reg. 246/22](#), which introduced several key changes, including:

- Enhancing emergency planning requirements to support greater sector preparedness in the event of an emergency, including outbreaks, epidemics and pandemics;

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- Defining “caregiver” and requiring all long-term care homes to have a visitor policy that respects the Residents' Bill of Rights and ensures that caregivers continue to have access to long-term care homes during an outbreak;
- Updating palliative care requirements to align with a shift in practice towards an approach that is not solely focused on end-of-life care;
- Expanding and clarifying infection prevention and control roles and requirements to improve resident safety and quality of life;
- Defining the calculation method for direct care targets as part of the commitment to increase the system average of direct care provided by nurses and personal support workers to four hours per resident, per day in four years, and to increase the system average of allied health care to 36 minutes per resident, per day;
- Clarifying the roles/responsibilities of medical directors to improve oversight;
- Additional protections for whistleblowers;
- Addressing the amounts and criteria for issuing administrative monetary penalties as deterrents for non-compliance with the Act; and
- Updating and adding definitions to increase transparency and accountability within the licensing process.

Notably, [section 52](#) of O. Reg. 246/22 outlines the necessary qualifications for PSWs, requiring licensees of long-term care homes to ensure that every person hired as a PSW or hired to provide personal support services, regardless of their title, has successfully completed an accredited PSW program and has provided the licensee with proof of graduation issued by the provider of the program.

## Recent Changes to Qualifications of PSWs

On September 15, 2023, via [O. Reg. 314/23](#), Ontario published changes to the qualifications outlined in section 52. The following is a list of the amendments under this section, all of which are effective as of October 11, 2023:

- A licensee of a long-term care home will not be required to comply with the qualification requirements set out in section 52 until July 1, 2024, as long as the person hired as a PSW or to provide personal support services, in the reasonable opinion of the licensee, has the skills, training, and knowledge to perform the duties required of that position.
- Licensees must cease to employ a person hired as a PSW or to provide personal support services if this person does not meet the applicable qualification requirements under the Act and in O. Reg. 246/22 on or before August 1, 2024.

- Licensees must keep accurate records of all persons hired as PSWs or to provide personal support services but who do not meet the qualification requirements set out in section 52 of O. Reg. 246/22, and licensees must provide these records to the Director monthly or upon request. At a minimum, the records must include the following information:
  - a. the number of persons working in the home who were hired as PSWs or to provide support services but who do not meet the qualification requirements in section 52; and
  - b. the position(s) held by these persons.

As of November 11, 2023, O. Reg. 314/23 will also revoke the various transitional staffing qualification provisions that were originally found in [section 388](#) of O. Reg. 246/22. However, until July 1, 2024, these provisions will be incorporated under section 52.

### **Open Consultation on the Scope of the Resident Support Personnel Role**

In light of the aforementioned changes, and to ensure the appropriate use of resident support personnel beyond July 1, 2024, the Ministry of Long-Term Care recently issued a [consultation](#) on the scope of the resident support personnel role in Ontario's long-term care sector. The Ministry will use the input received to provide guidance to the sector and to make amendments to the Act or O. Reg 246/22, if and where necessary.

As part of the consultation, the Ministry invites stakeholders to provide feedback on any or all of the following:

- Should resident support personnel be permitted to permanently provide low-risk personal support services when the flexibility provision expires on July 1, 2024? Why or why not?
- What tasks can be done safely without personal support worker training or education, and why?
- What is the nature of certain tasks that make them higher risk and require personal support worker training or education?
- Do any tasks have any added risk depending on the resident's health concerns / needs? If so, which ones and why?
- Are there any additional activities or tasks that should be in- or out-of-scope for resident support personnel?
- Do you have any other feedback related to the contribution of resident support personnel in long-term care homes and their role into the future?

The consultation document will be available until November 20, 2023.

## Check the Box

Under the current regulatory framework, long-term care homes will no longer be able to leverage resident support personnel to assist with low-risk personal support services after July 1, 2024. Employers in Ontario's long-term care sector must be aware of these new obligations and plan for the impact these obligations may have on current and future staffing needs. Employers are strongly encouraged to consider submitting relevant feedback to the Ministry prior to the close of the consultation period.

## Need More Information?

For more information, contact [Anja Diogo](mailto:adjogo@filion.on.ca) at [adjogo@filion.on.ca](mailto:adjogo@filion.on.ca) or your regular lawyer at the firm.



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