



What's New in HR Law

Changes for Ontario Employers Under the *Working for Workers Five Act, 2024*

November 14, 2024 | By Emily Elder

Bottom Line

As we previously wrote [here](#), Bill 190, An Act to amend various statutes with respect to employment and labour and other matters – or the *Working for Workers Five Act, 2024* – received Royal Assent on October 28, 2024. This Act amends a number of Ontario's key employment-related statutes, most notably the *Employment Standards Act, 2000* (the "ESA"); the *Occupational Health and Safety Act* (the "OHSA"); and the *Workplace Safety and Insurance Act, 1997* (the "WSIA"), bringing a number of immediate and a number of future changes for employers operating in Ontario.

Changes Now In Effect

As of now:

- **Change to the ESA:** Employers can no longer ask employees for a certificate from a "qualified health practitioner" for that employee to get their ESA-protected sick leave days for personal illness, injury, or medical emergency. The ESA guarantees a minimum of three (3) unpaid days of sick leave for any employee after they have worked at least two consecutive weeks for their employer. If an employer provides paid sick leave days under policy or employment contract, the first three (3) of those days are deemed to be sick leave under the ESA, and subject to the same requirements.

This article is for the purposes of only general information and does not constitute legal advice or opinion.

- Practically speaking, this means that no employer operating in Ontario can ask an employee for a medical note from a physician, a registered nurse, or a psychologist for the first three (3) days that they are off sick in any given calendar year.
 - Employers can still ask the employee for “evidence reasonable in the circumstances” to substantiate those days.
 - Employers will want to consider what kind of evidence that might be, and amend any policies or adjust any practices accordingly.
 - Employers may wish to create or update training materials for their supervisory or management staff, to ensure that all relevant personnel are aware of this new prohibition on asking for medical notes.
- **Change to the ESA:** Any individual convicted of a violation under the ESA can now get a fine of up to \$100,000 – doubled from the previous maximum of \$50,000.
 - **Change to the OHS Act:** The OHS Act now explicitly protects workers from virtual workplace harassment and workplace sexual harassment.
 - Note that this may not require any practical changes. However, prudent employers may wish to update their workplace harassment and safety plans, policies, and procedures to make this protection explicit.
 - **Change to the OHS Act:** The OHS Act now covers remote work performed at or near a private residence.
 - **Change to the OHS Act:** The OHS Act has been modernized to allow employers to post certain information in readily accessible electronic format (instead of physically at the work site) – including the workplace health and safety policy, the requisite copy of the *OHS Act* itself along with explanatory materials, and the names and work locations of members of the Joint Health and Safety Committee (JHSC).
 - **Change to the OHS Act:** The OHS Act has also been modernized to allow JHSC meetings to take place remotely, or in locations other than the workplace.
 - **Change to the WSIA:** The WSIA now presumptively covers post-traumatic stress disorder (PTSD) for wildland firefighters and wildland fire investigators (in addition to its previous presumptive coverage for PTSD arising in other categories of first responder).

The *Working for Workers Five Act, 2024* also amends the *Building Opportunities in the Skilled Trades Act, 2021* to allow for future regulations on academic standards, and the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* to place new policy requirements onto regulated professions (among other requirements).

Future Changes Pending

- **Future Change to the ESA:** Employers will have to specify whether or not every publicly advertised job posting is for an existing vacancy.
 - Note that “publicly advertised job posting” will be defined by future Regulations under the ESA.

- **Future Change to the ESA:** Within a prescribed period of time, employers will have to provide certain prescribed information to any applicant that they interview for a publicly advertised job posting, and to retain copies of that information for three (3) years from the date it was provided to the applicant.
 - Note that the government will pass future Regulations under the ESA that specify the relevant time period and information, and may include definitions of what is an interview as well as how employers must provide this information.
 - Practically speaking, employers will need to update their existing information retention systems to include this information.
- **Future Change to the OHSA:** Constructors and employers will be required to keep washroom facilities clean and sanitary, as well as to keep records of cleaning those facilities.
 - Note that the government has made it possible to pass future Regulations under the OHSA about the conditions and provision of washroom facilities.
- **Future Change to the WSIA:** The WSIA will extend its presumptive coverage of skin cancer to certain firefighters and fire investigators who have served for at least ten (10) year before their relevant diagnosis.
 - Note that the government will specify the categories of firefighters and fire investigators in future Regulation.

Reminder: Future Changes Pending from Previous Legislation

Employer may recall that a number of other changes were part of previous legislation – including the previous Working for Workers series. Those changes that have yet to be proclaimed into force include:

- **Future Change to the ESA:** Pay transparency obligations, requiring employers to post expected compensation or a range of expected compensation on each publicly advertised job posting.
- **Future Change to the ESA:** Disclosure obligations, requiring employers to specify on the job posting whether they use any artificial intelligence in the screening, assessment or selection of applicants for a publicly advertised job.
- **Future Change to the ESA:** Prohibitions against requiring Canadian experience: Employers will not be able to include requirements for Canadian experience in any publicly advertised job posting or the application form associated with that posting.
 - Note that this may not any practical changes. Human rights cases have already called into question the Canadian experience requirement, and prudent employers may have already amended their job postings and application forms.
- **Future Change to the ESA:** Employers will have to retain copies of publicly advertised job postings and the associated application forms for three (3) years after the date that the public is no longer able to access the posting.
 - Practically speaking, employers will need to put in place systems to retain this information (as well as the information provided to the applicant, mentioned above, in addition to existing retention obligations).

In addition to these and other changes, the *Digital Platform Workers Rights Act, 2022* will come into force on July 1, 2025. We will provide a summary of that legislation in the coming days.

Takeaways

Employers operating in Ontario should:

- Assess your attendance policies or employee handbooks to decide what documentation (if any) you will ask of an employee to support their request for an ESA-protected sick leave, now that sick notes cannot be required.
- Review your current workplace harassment and violence policies or employee handbooks to ensure that employees are explicitly protected from workplace harassment or workplace sexual harassment that occurs virtually.
- Review your current occupational health and safety policies and consider whether revisions are necessary as a result of changes to the application of the OHSA to private residences or the modernizations to information posting and JHSC meeting locations.
- Prepare to update your information retention systems to include publicly advertised job postings, application forms, and information provided to applicants (as well as the existing information retention obligations under the ESA).
- In advance of January 1, 2025, affected construction employers will want to plan to provide menstrual products on relevant job sites.

Need More Information?

For more information or assistance with complying with new workplace-related legislation, contact your [regular lawyer](#) at the firm.



Toronto
416.408.3221
toronto@filion.on.ca

London
519.433.7270
london@filion.on.ca

Hamilton
905.526.8904
hamilton@filion.on.ca

Kitchener-Waterloo
519.433.7270
kitchener-waterloo@filion.on.ca