



What's New in HR Law

Round 3: Ontario Proposes Statutory Amendments Impacting Employers in the *Working for Workers Act, 2023*

March 23, 2023 | By [Cassandra da Costa](#), [Hayley Smith](#) & [Emily La Mantia](#)

On March 20, 2023, the Government of Ontario introduced another omnibus bill impacting employers — [Bill 79, the Working for Workers Act, 2023](#). If passed, Bill 79 will amend multiple employment-related statutes, including, the *Employment Standards Act, 2000* (“ESA”); the *Occupational Health and Safety Act* (“OHSA”); and the *Employment Protection for Foreign Nationals Act, 2009* (“EPFNA”).

Amendments to the *ESA*

Expansion of Reservist Leave

Currently, provincially regulated employees are entitled to an unpaid leave of absence if they are:

- deployed to a military operation outside of Canada;
- deployed to a military operation within Canada to assist with an emergency; or
- participating in military skills training.

To be eligible for this reservist leave, the employee must have been employed by their employer for at least three consecutive months and be a reservist in the Canadian Forces. The aforementioned military operations and training must also be activities of the Canadian Forces.

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

Bill 79 proposes to expand entitlement to reservist leave to employees who are in treatment, recovery, or rehabilitation in respect of a physical or mental health illness, injury, or medical emergency that resulted from their involvement in a Canadian Forces operation or activity. In addition, Bill 79 will relax the eligibility criteria for reservist leave so that employees can take reservist leave after completing at least two months of consecutive service with their employer.

Remote Workers' Homes Included in "Establishment" in Certain Circumstances

The Ontario Government has also proposed changes to the *ESA* to address the proliferation of remote work since the COVID-19 pandemic. If passed, Bill 79 would classify the private residence of an employee as a "location at which the employer carries on business". This amendment only applies to employees who perform work in their private residence and not at any other location where the employer carries on business.

By expanding the *ESA's* definition of "establishment" to include the homes of remote workers, Bill 79 would provide enhanced notice of termination to individuals who work from home in the event the *ESA's* mass termination provisions are triggered. Under the current legislation, an employer is required to provide notice of mass termination only when it terminates the employment of 50 or more employees at the employer's establishment within a four-week period. An employee may be exempt from the current mass termination provisions by virtue of the geographic location of their private residence.

The expanded definition of "establishment" may also affect an employee's entitlement to statutory severance pay. Under sections 63 and 64 of the *ESA*, severance pay may be required in the context of a permanent discontinuance of the employer's business at an establishment. If Bill 79 is passed, the private residence of a home-based worker will be considered an "establishment" for the purposes of these provisions.

Revision to Application for Licensing Temporary Help Agencies and Recruiters

As discussed in [our previous update](#), the *Working for Workers Act, 2021* enacted changes whereby temporary help agencies must hold a valid license to operate. These amendments have yet to be declared in force.

Bill 79 proposes further changes to the laws regulating temporary help agencies and recruiters. If Bill 79 is proclaimed into law, any temporary help agency or recruiter that has ever collected a fee charged to a foreign national in contravention of section 7(3) of the *EPFNA* will not be issued a license or shall have their license suspended or revoked.

Increased Fines under the EPFNA

The *EPFNA* currently prohibits employers of foreign nationals from taking possession of or retaining a foreign national's passport or work permit.

Bill 79 seeks to increase the maximum possible fines for individuals or corporations convicted of this offence. Individual offenders would be liable for a fine of up to \$500,000 and/or imprisonment up to 12 months. Convicted corporations would be liable for a fine of up to \$1 million. These new fines would be in addition to the per-passport/work permit penalties that exist under the *EPFNA*.

At the same time, Bill 79 would allow the Ontario Labour Relations Board to reduce penalties for the offence of withholding passports/work permits where such penalties are excessive or punitive.

Increased Maximum Fines for Corporations under the *OHS*A

Bill 79 will amend the *OHS*A so that the maximum fine for convicted corporations increases from \$1.5 million to \$2 million. If passed, this amendment would make Ontario the Canadian jurisdiction with the highest maximum corporate fines under workplace health and safety legislation. By comparison, \$738,153.81 is the maximum fine for a corporation convicted of a first offence under BC's *Workers Compensation Act*.

Advances in International Credential Recognition

Bill 79 aims to remove barriers faced by internationally trained professionals who seek registration in Ontario's regulated professions. If proclaimed into law, Bill 79 would amend the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* to clarify that a regulated profession may accept Canadian experience in satisfaction of a qualification for registration only if it also accepts alternatives that meet prescribed criteria.

Check the Box

Bill 79 may be subject to change as it moves through the legislative process. We will continue to monitor the status of Bill 79 as it proceeds through the Legislative Assembly of Ontario and provide updates on further developments.

Need More Information?

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