

# ONTARIO EMPLOYERS: IMPORTANT CHANGES TO THE ESA AND OHSA NOW IN FORCE

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Ontario employers are getting used to the frequent changes brought on by the “Working for Workers” series of legislation. Certain provisions of the *Working for Workers Five Act* (“**Bill 190**”), recently came into force, amending the *Employment Standards Act, 2000* (“**ESA**”) and *Occupational Health and Safety Act* (“**OHSA**”), and the government has just published regulations on the ESA job posting requirements and OHSA washroom requirements.

The requirements for publicly advertised job postings will come into force on January 1, 2026.

Employers should take note of the key changes, summarized below.

The following amendment to the ESA is currently in force:

- **Doctor’s notes:** Although an employer may still require “evidence reasonable in the circumstances”, an employer can no longer require a certificate from a qualified health practitioner as evidence of an employee’s entitlement to ESA sick leave.

This change only applies to an employee’s entitlement to three days of unpaid sick leave under section 50 of the ESA. Employers may still require a certificate from a qualified health practitioner as evidence of entitlement for other types of ESA leaves, for example, family medical leave or critical illness leave.

The following amendments to the OHSA are currently in force:

- **Virtual harassment:** The definitions of “workplace harassment” and “workplace sexual harassment” now specifically apply to virtual environments and communications.
- **Remote workers:** The scope of the OHSA is expanded to capture telework performed in or about a private residence (i.e., remote work from home).
- **Electronic postings:** An employer may post information required to be posted by the OHSA in an electronic format if the employer provides workers with direction on how and where to access the information and the information can be readily accessed by workers. This includes, for example, the names and work locations of Joint Health & Safety Committee members, a copy of the OHSA and

explanatory information prepared by the Ministry, and the Occupational Health & Safety Policy.

- **Committee meetings:** Joint Health & Safety Committees are permitted to meet virtually.

The following amendments will come into force on the dates noted below:

- **Job postings:** As of **January 1, 2026**, the ESA and the new regulation will require publicly advertised job postings to include a statement indicating whether the posting is for an existing vacancy. Additionally, an employer who interviews an applicant for a publicly advertised job posting must inform the applicant whether a hiring decision has been made within 45 days after the date of the last interview, and must retain a copy of such information for a period of three years.

Additional publicly advertised job posting requirements were introduced through the *Working for Workers Four Act* (Bill 149), including the requirement for an employer to publish a range of expected compensation and a statement disclosing the use of artificial intelligence in the hiring process. These requirements will also come into force on **January 1, 2026**.

These job posting requirements apply to employers with 25 or more employees.

We will be publishing a subsequent bulletin providing further commentary on the new job posting requirements.

- **Washroom facilities:** As of **July 1, 2025**, the OHSA will require employers and constructors to ensure that washroom facilities that are provided by the employer or constructor are maintained in a clean and sanitary condition. Employers and constructors will be required to keep, maintain, and make available records of cleanings. As of **January 1, 2026**, the records must be posted in a conspicuous place in or near the washroom facility where it is likely to come to the attention of workers or posted electronically where it can be accessed by workers.

## Next Steps for Employers

In response to the above amendments, employers should consider the following action items:

1. Revise workplace policies and practices that require an employee to provide a certificate from a qualified health practitioner to justify their entitlement to ESA sick leave. Employers should consider what evidence, if any, the company will require for ESA sick leave that is reasonable in the circumstances. An employer may consider requiring, for example, a written attestation. Employers should also keep in mind that employees can be required to provide a certificate from a qualified health practitioner for absences above the sick leave entitlement in the ESA and to access paid leave or longer-term absences.
2. Revise workplace harassment policies to include the updated definitions of workplace harassment and

workplace sexual harassment. Ensure that reporting and investigation procedures adequately capture virtual conduct.

3. If applicable, consider how the company will meet its responsibilities under the OHSA with respect to remote workers, if it has not done so already. This should include a review of any remote work policies and procedures to ensure that the employer is taking precautions reasonable in the circumstances for the safety and protection of remote workers. Remote workers should also have access to all information required to be posted by the employer pursuant to the OHSA, which may be posted electronically if the requirements listed above are met.

If you have questions about your obligations pursuant to Bill 190, our [Employment and Labour Relations Group](#) would be pleased to discuss.

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#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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