

PROPOSED WORKING FOR WORKERS ACT, 2023: SECOND READING AND DEBATE ADJOURNED

Posted on March 29, 2023

Categories: Insights, Publications

On March 23, Bill 79, known as the *Working for Workers Act*, 2023, had its Second Reading as it continues to progress towards becoming enacted. The third in a series of legislation passed by the Ontario government to address conditions for workers amidst a scarce labour pool and a pandemic, Bill 79 contains a number of changes to various labour and employment statutes that employers will need to be aware of if it passes in the Ontario legislature.

Changes to Mass Termination Provisions under the Employment Standards Act, 2000

As it stands, the ESA's mass termination provisions offer special rules for notice of termination when the employment of 50 or more employees is terminated at an employer's establishment within a four-week period. The ESA currently defines an 'employer's establishment' as a location at which the employer carries on business. Bill 79 would expand this definition to include an employee's private residence if they perform work from there and no other location where the employer carries on business. In short, remote employees would now be included in the count for the ESA's mass termination provisions, which means that (a) employers may reach 50 employees when previously they could count on the location as a limiting factor and (b) remote workers will receive the same enhanced notice protections as their in-office counterparts - which, depending on the amount of employees terminated, could range from eight to sixteen weeks of notice.

In addition, employers would now have to provide copies of Form 1 to all affected employees on the first day of the notice period, in addition to the current obligation to provide it to the Director of Employment Standards and post it in the workplace.

Reservist Leave under the Employment Standards Act, 2000

Bill 79 advances a couple of new leave protections for reservists of the Canadian Armed Forces. First, the required period of consecutive employment to qualify for reservist leave would be reduced from three to two months. Second, the scope of leave would expand to include time where an employee is in treatment, rehabilitation, or recovering from physical or mental injuries that arose during military training or deployment.



Changes to Fines under the Occupational Health and Safety Act

Bill 79 is once again making high stakes even higher for health and safety violations. At present, the maximum fine that a corporation can receive for a conviction of an offence under OHSA sits at \$1.5 million. Bill 79 would raise this number to \$2 million – making it the highest maximum corporate fine under workplace health and safety legislation in Canada.

Further Protections for Foreign Nationals

With the spotlight being placed on foreign workers in the various labour crises that have arisen during and post-COVID, there are unsurprisingly notable changes and protections offered in this area by Bill 79. Perhaps its most rudimentary additional protection is an increase in fines for individual employers and corporations that withhold migrant workers' passports or work permits under the *Employment Protection for Foreign Nationals Act, 2009*. However, Bill 79 also establishes that these amounts could be reduced by the Ontario Labour Relations Board where the "penalty is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances and if so, the Board shall amend the notice by reducing the penalty".

Other protections include enhanced licensing requirements for recruiters and those who use third parties to assist with the recruitment and employment of foreign nationals under the *Employment Standards Act, 2000*.

Potential Regulatory Changes on the Way

Earlier this month, the Ontario government proposed regulatory changes requiring employers to provide new employees with written information about their position such as wage rate, location, and hours. Bill 79 does not explicitly outline these requirements but paves the way for them to be set out by amending the government's regulation-making authority. Currently, employers are only required to provide new employees with the latest version of the Ontario Government's employment standards poster, which outlines ESA workplace rights and responsibilities.

Key Takeaway for Employers

Bill 79 continues to move towards Royal Assent and McMillan's Employment and Labour Relations team will continue to monitor its progress. Businesses should proactively consider how these changes may affect their current practices if they are passed into law. McMillan's Employment and Labour Relations team is happy to connect should you have any questions on Bill 79 or how it may impact your business practices.

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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A Cautionary Note

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