Employment & Labour: Mid-Year Review

As we approach the second half of 2025, the pace of change in Ontario employment law shows no signs of slowing. Ontario continues to lead the charge with sweeping legislative reforms under a "Working for Workers" banner, introducing new pay transparency rules, expanded leave entitlements, and enhanced employer obligations.

Meanwhile, Ontario courts have weighed in on key issues such as inducement, termination clauses, and contractual issues surrounding temporary layoffs, offering both cautionary tales and much-needed clarity for employers. In this article, we highlight the most significant legislative and case law developments from the first half of 2025 in Ontario, with a focus on what employers need to know now to stay compliant and ahead of the curve.

Statutory Changes

Bill 149, Working for Workers Four Act, 2024

Beginning January 1, 2026, Ontario employers will be subject to new pay transparency requirements under the *Employment Standards Act, 2000* (the ESA), which were introduced through the *Working for Workers Four Act, 2024*. These rules apply to publicly advertised job postings and: (a) mandate the disclosure of expected compensation, or range of expected compensation (up to a maximum $50,000 range); (b) prohibit references to "Canadian experience"; (c) require employers to state whether a job vacancy exists; (d) require employers to disclose the use of artificial intelligence in hiring; and (e) require employers to retain job posting records and associated application forms for at least three years. Employers with fewer than 25 Ontario-based employees are exempt from these requirements. Jobs that pay $200,000 or more annually are also exempt.

For more information on Ontario's pay transparency requirements and our discussion on how to prepare your workplace for the new regime, please see our most recent commentary here.

Bill 229, Working for Workers Six Act, 2024

Ontario's *Working for Workers Six Act, 2024* (Bill 229) received Royal Assent on December 19, 2024. Among other changes to employment-related legislation, Bill 229 introduced two new unpaid, job-protected leaves to the ESA. Cassels previously reported on these two new leaves of absence here.

Effective June 19, 2025, employees who have worked for at least 13 weeks are entitled to up to 27 weeks of unpaid, job-protected leave within a 52-week period for a serious medical condition. This long-term illness leave must be supported by a certificate from a qualified health practitioner (e.g., a physician, registered nurse or psychologist). The long-term leave does not have to be taken consecutively; however, each absence must be supported by new medical evidence.

The "placement of a child" leave – which provides for 16 consecutive weeks for adoptive parents or recipients of a child via surrogacy – has been introduced by Bill 229; however, its effective date has yet to be announced.

In addition, Ontario Regulation 477/24, amending Ontario Regulation 285/01: *When Work Deemed to be Performed, Exemptions and Special Rules*, introduces new obligations for Ontario employers with 25 or more employees. Effective July 1, 2025, employers must provide the following employment details to employees, in writing, either before or shortly after commencing employment:

- The employer's name and contact information (i.e., address, telephone number and one or more contact names);
- The employee's compensation (including pay rate, salary and/or commissions, as applicable);
- Location from which the employee provides their services to the employer;
- Details with respect to the employee's pay period and pay day(s); and
- The number of hours the employee is required to work for the employer.

Assignment employees and employers with fewer than 25 employees in Ontario are exempt from the above requirements.

Bill 30, Working for Workers Seven Act, 2025

On May 28, 2025, the Government of Ontario introduced the *Working for Workers Seven Act, 2025* (Bill 30).

Bill 30 proposes amendments to several statutes, including the ESA, *Occupational Health and Safety Act,* and *Workplace Safety and Insurance Act, 1997, Municipal Act, 2001, Ontario Immigration Act, 2015, Planning Act,* and the *City of Toronto Act, 2006.*

Below, we have summarized the key employment-related changes proposed in Bill 30.

1. Proposed Amendments to the ESA

If passed, Bill 30 would:

- **Create a new unpaid leave**. The ESA would be amended to create a new unpaid leave for employees who receive notice of termination as part of a group termination (e.g., where 50 or more employees receive notice of termination). Employers would be required to provide employees with up to three days of unpaid leave during the leave to engage in activities related to obtaining employment. Employers will be permitted to request reasonable evidence of an employee's entitlement to this leave and partial days may be counted as full days of leave. Employees will not be entitled to the leave if they receive pay in lieu of notice for more than 25% of the notice period.
- **Extend temporary layoffs.** Generally, in most circumstances under the ESA, a temporary layoff is 13 weeks in any period of 20 consecutive weeks. In certain cases, layoffs may be extended to 30 weeks within a 52-week period.

Bill 30 proposes amending the ESA to permit layoffs for more than 35 weeks within a 52-week period, but not 52 or more weeks in any period of 78 consecutive weeks.

Extended layoffs are permitted if the employer and employee agree to it, and the Director of Employment Standards approves the proposal. The proposed amendments would also mandate written agreements to specify the latest date the employer intends to recall the employee.

- **Job posting platforms.** Operators of job posting platforms will be required to have a mechanism or procedure for users of the platform to report fraudulent publicly advertised job postings to the person operating the job posting platform. Operators will also be required to have a written policy with respect to fraudulent publicly advertised job postings.

2. Proposed Amendments to the *Occupational Health and Safety Act* (OHSA)

If passed, Bill 30 would make the following changes to OHSA:

- **Reimbursement for defibrillators.** Automated external defibrillators will be mandatory on construction projects with 20 or more workers and that have a projected duration of at least three months. A program through the Workplace Safety and Insurance Board would allow for eligible constructors to be reimbursed for the purchase of the defibrillator.
- **New administrative penalty scheme.** Bill 30 proposes a new administrative penalty scheme for contraventions or failing to comply with OHSA. For example, the administrative penalty scheme would allow inspectors to impose monetary penalties for OHSA contraventions. The penalty amounts will be prescribed by regulation.

3. Proposed Amendments to the *Workplace Safety and Insurance Act, 1997* (WSIA)

If passed, Bill 30 proposes the following amendments to WSIA:

- **False or misleading statements.** The proposed amendments add a new section to WSIA, prohibiting an employer from making a false or misleading statement or representation to the Workplace Safety and Insurance Board in connection with any person’s claim for benefits under the insurance plan. Violations of this clause may result in penalties.
- **Failure to pay premiums.** A failure to comply with WSIA premium payment obligations will be treated as an offence and may be subject to administrative penalties.
- **Increased Penalties.** Persons who are convicted of two or more counts of the same offence in the same legal proceeding may be fined up to $750,000 for each conviction.
- **Aggravating factors.** Bill 30 stipulates aggravating factors that will be considered for the purposes of determining a penalty under WSIA as follows:
    - The defendant was previously convicted of an offence under WSIA;
    - The defendant has been convicted of two or more counts of the same offence in the legal proceeding to which the determination of the penalty relates; and
    - The defendant has a record of prior non-compliance under WSIA.

4. Consultations

The government’s announcement suggests an intention to consult on employers’ access to electronic information, including current access practices, and potential privacy restrictions. It also suggests that consultations will take place to enhance protections and regulatory approaches to talent managers, managers, and representatives.

Key Takeaways

The proposed amendments impose increased obligations on employers. We will continue to monitor the introduction of this new legislation and provide information as further information becomes available. In the interim, please reach out to a member of the Cassels Employment & Labour team should you have any questions.

Case Law Updates

Ontario Superior Court Finds Inducement, Awards 14 Months' Notice to Short Service Employee

In *Miller v. Alaya Care Inc.*, 2025 ONSC 1028, the employer, AlayaCare Inc. (AlayaCare), recruited the plaintiff from her previous long-term employer to join the company, then subsequently terminated her employment after 7 months.

In terminating her employment, AlayaCare provided Miller with four months' salary in lieu of notice. However, Miller claimed she was entitled to more under the common law because: (a) the termination provisions of her employment agreement violated the ESA: and (b) AlayaCare had induced her to leave her prior employer of 12 years to join the company. Miller sought 22 months of pay in lieu of notice (including compensation for lost benefits, bonuses and equity in AlayaCare).

The Court agreed that Miller's termination clause was unenforceable and also found that AlayaCare had induced her to leave her prior, secure employment. She was awarded 14 months of pay in lieu of notice, including damages for lost benefits, bonuses and equity.

The Court also provided helpful commentary regarding inducement, citing AlayaCare's discussions with Miller that went beyond the normal "courtship" between an employer and a prospective employee. Specifically, the Court noted the following key factors in support of its conclusion that AlayaCare induced Miller for employment:

- AlayaCare contacted Miller first (and not the other way around);
- Miller received representations from AlayaCare that her professional experiences would drive the company's growth;
- AlayaCare asked Miller about her existing compensation package in order to "lure" her employment;
- The above tactics by AlayaCare were consistent with the company's "aggressive growth" strategy at the time; and
- AlayaCare's willingness to indemnify Miller if her previous employer pursued legal action following her departure was a clear sign that AlayaCare seriously intended to pursue Miller for employment.

This decision serves to underscore three important lessons for employers:

- **Avoid ambiguity by consolidating employment terms.** Employers should refrain from using offer letters (or "side" letters) together with employment agreements as multiple documents can create inconsistencies or ambiguities, especially around termination provisions. If challenged, courts are likely to interpret unclear or conflicting terms against the employer, potentially invalidating key contractual protections.
- **Routinely review and update termination provisions in employment agreements.** Given the dynamic nature of employment law in Ontario, employers should routinely review and update termination provisions in employment agreements and templates. To mitigate legal risk and ensure enforceability, employers should treat the review of termination clauses not as a one-time task,

but as a regular and proactive compliance measure.
- **Exercise caution when recruiting employees from stable employment.** When recruiting new employees, particularly senior employees, consideration should be given to recruiting activities that may be viewed as "inducement" and the legal implications of such actions on potential notice entitlements in the event of early termination.

Ontario Court of Appeal Confirms Employers Can Enforce Termination Provisions Limiting Employees' Entitlements to Statutory Minimums

On May 16, 2025, the Court of Appeal for Ontario released its decision in *Bertsch v. Datastealth Inc.*, 2025 ONCA 379 upholding the lower court's ruling that the employer's termination provision was enforceable.

In brief, this case was about whether the employer, Datastealth Inc., could legally enforce the provision of a former employee's employment agreement. The termination provision purported to limit the plaintiff's termination entitlements to the ESA minimums.

In this case, the employee was terminated without cause after 8.5 months and received four weeks' pay – more than the one week required under the ESA. Despite this, he sued for 12 months' pay, arguing the termination clause was void because it did not explicitly align with the ESA's higher standard for termination without notice (i.e., "wilful misconduct").

The Superior Court of Ontario (SCJ) found the clause to be clear, unambiguous, and compliant with the ESA. It also emphasized that, while employment agreements are interpreted in favour of employees due to the power imbalance, this only applies when there is ambiguity – which was not the case here. The SCJ also noted that complexity alone does not render a clause unenforceable. The Ontario Court of Appeal agreed and upheld the decision of the SCJ.

This is a significant decision for employers given the recent and ongoing trend of courts striking down such clauses for ambiguity or non-compliance with the ESA.

For more details on the decision, please see our previous commentary available here.

Ontario Superior Court Rules That a Temporary Layoff Provision is Not a Termination Provision

In *Taylor v. Salytics Inc.*, 2025 ONSC 3461, the plaintiff, Taylor, was placed on a temporary layoff in accordance with the temporary layoff provision under his employment agreement. Upon recall, Taylor argued that his layoff amounted to constructive dismissal because the layoff provisions in his employment contract were located within the "termination" section (which he also argued were unenforceable).

The Court rejected this argument, clarifying that a valid layoff clause did not equate to termination. The Court also emphasized that the substance of the clause, not its placement, determines its nature. Since Mr. Taylor's employment agreement explicitly allowed for temporary layoffs, and the ESA recognizes such layoffs as being distinct from terminations, the Court upheld the provision.

This ruling is a significant win for employers, reinforcing that properly drafted layoff provisions can shield against wrongful and constructive dismissal claims, even when other termination clauses are unenforceable.

Other Updates

Mandatory Mediation at the Human Rights Tribunal of Ontario

Effective June 1, 2025, mediation is mandatory for all new applications filed on or after June 1, 2025 with the Human Rights Tribunal of Ontario (HRTO). Previously, mediation at the HRTO was voluntary.

The HRTO has released revised Rules of Procedure. Following a preliminary jurisdictional review, every application filed on or after June 1, 2025 will automatically be scheduled for mediation.

Failure to attend mediation by an applicant may result in the dismissal of the application. Respondents who fail to attend mediation may lose their right to participate in the proceedings.

Within 14 days of mediation, the parties must either file a Form 25 (Confirmation of Settlement) or confirm their intention to proceed. If neither occurs, the Tribunal may close the application without notice to the parties. It may be reopened by the written request of one or more of the parties within 30 days.

Information Required to Give Employees in the Context of Mass Terminations

On June 10, 2025, Ontario Regulation 116/25 was filed, amending Ontario Regulation 288/01: *Termination and Severance of Employment* under the ESA. This is the Regulation that prescribes the information employers are required to provide employees affected by mass terminations.

As of July 1, 2025, employers who terminate the employment of 50 or more employees at the employer's establishment within a four-week period must provide those employees with information about available "provincial employment services." Guidance on what qualifies as acceptable "provincial employment services" has not yet been issued. We continue to monitor for further updates.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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