

# Ontario HR Year in Review: Top 10 Stories in Ontario HR Law in 2016



## 1. Ontario Draws a New Line on Sex Harassment & Workplace Violence

The year's most significant piece of new legislation was Bill 132 which took effect on Sept. 8. The law adds stringent new harassment and violence obligations to the OHS laws, including the requirement that employers implement a full-blown written workplace harassment program equivalent to the one already required (under Bill 168) for workplace violence.

## 2. New Tip Deduction Rules

On June 10, it became illegal to withhold or deduct from tips and gratuities to cover damage, losses, spillage, breakage, etc. or cause employees to return tips and gratuities, with exceptions for "tip pooling," i.e., collecting and redistributing tips and gratuities and redistributing the money among employees.

## 3. Ontario Adopts the ORPP

The most important development in pension law happened in June when Ontario finally adopted legislation (Bill 186) requiring employers without "comparable pension plans" to offer employees the right to participate in the Ontario Retirement Pension Plan. Phase-in schedule:

Type of Employer	2018 Contribution	2019 Contribution	2020 Contribution	2021 Contribution
Wave 1: Large employers (500 or more employees) without registered workplace plan	0.8%	1.6%	1.9%	1.9%
Wave 2: Medium employers (50 to 499 employees) without registered workplace plan	0.8%	1.6%	1.9%	1.9%
Wave 3: Small employers (49 or fewer employees) without registered workplace plan	0%	0.8%	1.6%	1.9%

Wave 4: Employers with registered workplace plan that doesn't cover all employees or meet comparability threshold test	0%	0%	1.9%	1.9%
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#### **4. The Battle over Without Cause Termination Notice Limits**

The year's most hotly litigated issue was whether employers could enforce contractual provisions purportedly limiting employees to ESA termination notice in the event of termination without cause. More often than not, courts ended up siding with employees. Representative cases:

- Contract term requiring active employment when the bonus is paid, without more, doesn't take away employee's right to receive bonus after without cause termination [*Paquette v. TeraGo Networks Inc.*,]
- Wrongfully terminated employee gets not just ESA notice but incentive bonus despite provision saying terminated employees don't qualify for bonuses [*Lin v. Ontario Teachers' Pension Plan*]
- In a rare case won by an employer, the court said that a clause limiting employee to ESA termination notice was reasonable and ordered the employee to pay \$10,000 for contesting it [*Oudin v. Centre Francophone de Toronto*].

#### **5. The Year's Most Important New OHS Laws**

As usual, Ontario adopted several significant new safety laws, including:

- Tough new workplace harassment requirements (see Item 1 above)
- New Joint Health and Safety Committee member certification training rules which took effect in March
- New noise protection rules which took effect in July
- Revisions to WHMIS regulations which will be phased in through 2018.

#### **6. High Court Sets High Bar for Off-Duty Conduct Termination**

One of the most important cases of the year was the Feb. ruling by the Ontario Court of Appeals (the highest court in the province) that criminal charges of sexual assault aren't enough to justify termination for off-duty conduct. The employer must also show a link between the conduct and the job, said the Court in awarding the employee \$41,666 in damages [*Merritt v. Tigercat Industries*].

#### **7. New Guidance on Troublesome Discrimination Issues**

2016 was a busy year for the Ontario Human Rights Commission which issued new guidance for employers addressing a trio of pressing workplace discrimination issues:

- Religious discrimination in response to rising prejudice against Muslim (Jan.)

- Dress codes and gender discrimination (Mar.)
- Drug and alcohol testing of employees (Nov.).

## 8. Major Pension Reforms Proposed

The ORPP wasn't the only big development in pension law. In Nov., a major reform bill (Bill 70) was proposed that would, among other things, consolidate FSCO, expand plan portability, broaden pay-in exemptions during wind-up and create new administrative monetary penalties for pension offences.

## 9. The TTC Twitter Harassment Stunner

In a case with potentially far-reaching implications, an Ontario labour arbitrator extended the employer's duty to prevent workplace harassment to cyberspace. Toronto Transit Commission (TTC) employees brought the case claiming they were subjected to years of abuse, workplace harassment and threats by the Twitter trolls on TTC's Twitter customer service profile [*Amalgamated Transit Union, Local 113 v. Toronto Transit Commission (Use of Social Media Grievance)*, [2016] O.L.A.A. No. 267, July 5, 2016].

## 10. The Minimum Wage Hike

Major minimum wage increases took effect on Oct. 1:

Minimum Wage	Current Hourly Rate	Rate as of Oct. 1, 2016
General	\$11.25	\$11.40
Student	\$10.55	\$10.70
Liquor Servers	\$9.80	\$9.90
	\$56.30 for less than 5 consecutive hours in a day	\$56.95 for less than 5 consecutive hours in a day
Hunting & Fishing Guides	\$112.60 for 5 or more hours in a day (whether or not hours are consecutive)	\$113.95 for 5 or more hours in a day (whether or not hours are consecutive)
Homeworkers	\$12.40	\$12.55