What Ontario Employers Need To Know About Bill 149



On March 21, 2024, Ontario's Bill 149, *Working for Workers Four Act, 2024* ("Bill 149") received royal assent, resulting in amendments to a number of pieces of legislation including the *Employment Standards Act, 2000* (the "ESA"). The amendments place new obligations on Ontario employers around vacation pay, job postings, tip payment, and more.

A number of the Bill 149 amendments have taken immediate effect as of March 21, 2024, some will be implemented on June 21, 2024, and others will come into force on a future date to be named by proclamation.

CHANGES TO THE ESA

1. IMMEDIATE CHANGES TO THE ESA

DEFINITION OF EMPLOYEE

Previously, the definition of "employee" in the ESA included someone who receives training from an employer where the skill that is being trained is used by the employer's employees. As of March 21, 2024, the ESA has been amended to stipulate that training in this part of the definition of employee includes the performance of work by an employee during a "trial period." Employees working during a trial period are now entitled to minimum standards under the ESA.

PROHIBITION ON DEDUCTIONS FROM WAGES

Further, Bill 149 expands the already existing ESA provision that prohibits employers from deducting from an employee's wages any loss of property or cash shortages. The amendment clarifies that an employee's wages cannot be deducted if a customer of a restaurant, gas station or other establishment leaves the establishment without paying for the goods or services taken from, consumed at or received at the establishment.

2. CHANGES TO THE ESA COMING SOON

TIPS AND GRATUITIES

As of June 21, 2024, Bill 149 will bring into the effect the following requirements:

- Employers will be required to pay an employee's tips or gratuities by cash, cheque payable only to the employee, direct deposit, or any other prescribed method of payment. If payment is made by cash or cheque, the employer must ensure that the payment is given to the employee at the workplace, or another place agreeable to the employee;
- Employers that have tip-sharing policies will have to post a copy of the policy in a "conspicuous place in the employer's establishment;" and
- Employers will have to retain copies of written policies on tip and gratuity sharing for three years after such a policy ceases to be in effect.

VACATION PAY

In general, the ESA requires an employer to pay vacation pay to an employee in a lump sum before the employee commences their vacation, unless one of the exceptions in the ESA applies. Most employers will be covered by the exceptions set out in subsection 36(2) of the ESA, which provide that if an employer pays the employee by direct deposit or the employee does not take their vacation in complete weeks, then the employer may pay the employee their vacation pay on or before the pay day for the period in which the vacation falls.

Some employers however may agree with employees under subsection 36(3) to pay vacation pay on the pay day for the pay period during which the vacation accrues or under subsection 36(4) to pay vacation at another time. The Bill 149 amendments clarify that as of June 21, 2024, a written agreement with employees will be required in order for the employer to pay vacation pay under these two subsections of the ESA.

3. FUTURE CHANGES TO THE ESA

Bill 149 introduces new requirements regarding publicly advertised job postings that will take effect on a future date to be named by proclamation:

- Employers will be required to disclose within the job posting if they use artificial intelligence to screen, assess or select applicants for publicly advertised job posts;
- Employers will be required to include information about the expected compensation, or range of expected compensation, of a job position in publicly advertised job postings;
- Employers will be prohibited from including within publicly advertised job postings, and the associated job applications, the requirement that applicants must have prior Canadian work experience; and
- Employers will be required to retain copies of every publicly advertised job posting, and the associated application form, for three years after the post is taken down.

CHANGES TO OTHER LEGISLATION

Bill 149 introduces a number of amendments to other employment-adjacent legislation in Ontario, all of which come into effect at a future date.

1.*WORKPLACE SAFETY AND INSURANCE ACT, 1997*

On a future date to be named by proclamation, Bill 149 provides that firefighters and fire investigators diagnosed with primary-site esophageal cancer will be presumptively entitled to benefits through the Workplace Safety and Insurance Board after 15 years of employment. In addition, the Ontario government will be permitted to implement "super indexing" increases to Workplace Safety Insurance Board benefits above the annual rate of inflation.

2. *FAIR ACCESS TO REGULATED PROFESSIONS AND COMPULSORY TRADES ACT, 2006 ("FARPCTA")*

On a future date to be named by proclamation, Bill 149 mandates that requirements prescribed by regulation will have to be met to ensure that regulated professions assess qualifications in a "transparent, objective, impartial and fair" way pursuant to section 10 of the FARPCTA.

3. *DIGITAL PLATFORM WORKERS' RIGHTS ACT, 2022 ("DPWRA")*

On a future date when the minimum wage provisions of the DPWRA come into effect (date to be determined), the DPWRA will be expanded to allow for: (1) limits on recurring pay periods and pay days; and (2) rules for determining compliance with minimum wage requirements. Both may be prescribed by regulation.

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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