Working For Workers Four Act Brings Important Changes For Employers



On 21 March 2024, the Ontario Government passed the *Working for Workers Four Act, 2023* *("Working for Workers Four")*, bringing with it important legislative changes to the *Employment Standards Act, 2000 ("ESA"), Workplace Safety and Insurance Act, 1997 ("WSIA"), Digital Platform Workers' Rights Act, 2022 ("DPWRA")* and the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006 ("FARPCTA")*. While some of the changes take effect immediately, a number of changes (including key changes such as various new requirements for job postings) will not come into effect until either 21 June 2024 or another date to be determined by the government. This gives employers advance notice to prepare for many of these changes.

Amendments to the *ESA*

The largest number, and the most significant, of the changes under *Working for Workers Four* are the amendments made to the *ESA*. A number of these amendments are immediate, while several others will not come into effect until June 21st or another date to be determined by the provincial government.

Under *Working for Workers Four*, the following amendments are now in effect:

- **Trial Periods:** The definition of "employee" under the *ESA* has been amended to include workers who are performing work as part of a "trial period." Trial periods are typically short-term arrangements where a worker provides services to a company on a trial basis before the employer determines whether it will permanently hire them as an employee. In many circumstances, trial periods are also known as probationary periods, though some collective agreements treat them separately.
- **Wage Deductions:** Although the *ESA* previously contained protections against employers deducting wages from employees in connection with a "cash shortage, lost property or [stolen property]," the legislation amends the *ESA* to clarify that owners of restaurants, gas stations, and other businesses cannot deduct wages from employees where a customer leaves the premises without paying.

Effective June 21, 2024, the following amendments to the *ESA* will come into effect:

- **Direct Deposits:** The provisions related to payment by way of direct deposit will be amended to specify that the account in question must be an account of the employee's choice. It will also add the requirement that the account must meet

any criteria "prescribed" by the government, indicating that the government may intend to implement further criteria for direct deposits in the future.
- **Payment of Tips:** The *ESA* will be amended to specify that tips may be paid by way of cash, cheque payable to the employee, direct deposit, or any method that might be prescribed by regulation. Cash and cheques may only be provided to the employee at their workplace, or at another location agreed to by the employee.
- **Tip Sharing:** Where an employer has a tip-sharing policy in place, the employer will be required to post a copy of the policy in the workplace and retain a copy for three years after the policy ceases to be in effect.
- **Timing of Vacation Pay:** *Working for Workers Four* will amend the provisions of the *ESA* related to paying employees vacation pay on a pay period basis, albeit only slightly. In particular, the *ESA* will no longer permit payment of vacation pay each pay period simply "if the employee agrees," and instead will only permit it where "the employee has made an agreement with the employer." Practically, this will require employers to obtain employees' agreements in writing before remitting vacation pay for every pay period.

Effective a date to be determined by the Ontario Government, the following amendments regarding job postings and employers' hiring processes will come into effect:

- **Pay Transparency:** Employers and prospective employers who publicly advertise job postings will be required to include information about the range of expected compensation for the advertised position. The amendments to the *ESA* do not specifically define what qualifies as a "publicly advertised job posting" and state that it will be defined via regulation, but for now employers should assume that it would include any job posting they might issue online, via a newspaper, or any other publicly viewable source. While the legislation permits the Ontario Government to issue regulations (i) creating exceptions to the pay transparency requirement and (ii) imposing specific requirements and other conditions on what needs to be shared, no regulations have been implemented to date.
- **Canadian Experience:** Employers will no longer be permitted to include in any job posting or application form a requirement that a prospective employee have "Canadian experience." This will make it easier for individuals with foreign credentials and work experience to secure gainful employment when they arrive in Canada.
- **Use of AI:** Employers who use AI programs to screen, assess or select applicants for a job position will be required to include a statement to that effect in any publicly advertised job posting for the position. The legislation itself does not define what it means by "AI" in this context, and instead states that it will be defined via a regulation. The government also reserves the right to create exceptions to this requirement via regulation. Regulations on these points have yet to be issued.
- **Retention of Job Postings:** All job postings that qualify as a "publicly advertised job posting" under the *ESA*, along with all associated application form(s), will need to be retained by an employer for a period of three years from the date the posting is removed.

Amendments to the *WSIA*

Working for Workers Four creates several key amendments to the *WSIA*. None of these changes are currently in force and will come into effect on a date that has not yet been determined by the Ontario Government:

- **Oesophageal Cancer:** Any full-time, part-time, and volunteer firefighters and fire investigators who served for 15 or more years and developed primary-site oesophageal cancer will be presumed to have developed the cancer as a result of

their work. Currently, firefighters and fire investigators need to be employed for at least 25 years before they will qualify for the presumption. This change will therefore make it easier for firefighters and fire investigators who are diagnosed with oesophageal cancer to be able to claim benefits from the Workplace Safety and Insurance Board.
- **Enhanced Indexing:** The Ontario Government will be permitted to issue regulations increasing WSIB benefit entitlement amounts beyond the rate of inflation.

Other Legislative Changes

In addition to amending the *ESA* and *WSIA*, *Working for Workers Four* also makes some minor amendments to the *DPWRA* and the *FARPCTA*.

With respect to the *DPWRA*, the legislation is amended to increase the Ontario Government's ability to issue regulations addressing specific aspects of the legislation. In particular, the amendments provide the government the ability to issue regulations prescribing certain limits on recurring pay periods and imposing rules for determining whether minimum wage requirements are being complied with for digital platform workers. Notably, the *DPWRA* is not currently in force, so the changes enacted under *Working for Workers Four* will only come into effect when the *DPWRA* does.

With respect to *FARPCTA, Working for Workers Four* amends the legislation to permit the government to issue regulations establishing what criteria a regulated profession, compulsory trade, or third party engaged by them must comply with in order to satisfy their legislative requirement to assess qualifications in a way that is transparent, objective, impartial and fair. This amendment is not yet in force, and no regulations establishing those criteria are currently available.

Takeaway

We will continue to monitor the status of the various amendments enacted under *Working for Workers Four*, and will release subsequent updates as the various amendments come into effect. In the meantime, **employers should begin reviewing their job advertising and applicant review processes and start developing internal systems** for ensuring that all public job postings, application packages, and tip policies will be retained for the appropriate time period. Employers who pay employees their vacation pay on each pay cheque and want to continue this practice should also consider gathering signed, written agreements from each employee permitting them to continue this practice.

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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