FTR Now

Ontario Introduces *Working for Workers Four Act, 2023*

Date: November 15, 2023

On November 14, 2023, the Ontario government introduced Bill 149, *Working for Workers Four Act, 2023*. Bill 149, if passed, would amend several statutes, including the *Employment Standards Act, 2000* (*ESA*) and the *Workplace Safety and Insurance Act, 1997* (*WSIA*). This *FTR Now* reviews some of Bill 149's key features of particular interest to employers.

Amendments to the *ESA*

Job Postings and Pay Transparency

Bill 149 would add a new part to the *ESA* centred on the content of job postings.

Under this part, employers who post "publicly advertised job postings" would be required to include, as part of the posting, information about the expected compensation for the position or the range of expected compensation. What constitutes a "publicly advertised job posting" would be defined by regulation.

Other proposed requirements regarding publicly advertised job postings and application forms include:

- banning employers from imposing any requirements related to Canadian experience
- requiring employers to disclose whether they use artificial intelligence to "screen, assess, or select applicants"

Bill 149 would also amend the *ESA* to require employers to retain copies of all publicly advertised job postings and "any associated application form" for three years after the posting is removed.

Trial Periods and Prohibited Deductions

If passed, Bill 149 would add a new section to the *ESA* specifying that individuals performing work during a trial period would fall under the *ESA*'s definition of an "employee." Practically, this means, among other things, that those individuals must be paid for their work during the trial period.

Bill 149 would also add a new provision to the section of the *ESA* which stipulates that deductions cannot be made from an employee's wages when the customer of a restaurant, gas station or other establishment leaves the employer's establishment without paying for their goods or services.

Tips and Gratuities

Bill 149 would amend the *ESA* to stipulate the permitted methods for paying an employee their tips or other gratuities. If passed as drafted, an employer may pay tips by cash, cheque payable to the employee, direct deposit, or any other prescribed method of payment. If paid by cash or cheque, the employee must receive the payment at the workplace or some other agreeable location. An employer can pay tips by direct deposit only if the account:

- is chosen by the employee
- is in the employee's name
- is accessible only to the employee or a person authorized by the employee

- meets any other prescribed criteria

The *ESA* would also be amended to specify that any employer with a tip-sharing policy must post the policy and keep it displayed in at least one conspicuous place at the workplace where it is likely to come to employees' attention. If the employer retracts the policy, it must retain a copy of it for at least three years after the policy ceases to be in effect.

Vacation Pay

Bill 149 would amend the *ESA*'s provisions relating to vacation pay and "alternate pay arrangements." Generally speaking, an employer is required to pay an employee their vacation pay in a lump sum *before* an employee begins their vacation, though employers and employees can agree to an alternate pay arrangement (i.e., agree to pay the employee vacation pay in a different form and/or at a different time). Bill 149 would clarify that alternate pay arrangements be "set out in an agreement."

Temporary Help Agency and Recruiter Licensing

While not addressed in Bill 149, readers should also note that on November 10, 2023, the government published a regulation amending O. Reg. 99/23 (Licensing – Temporary Help Agencies and Recruiters) to extend the permitted time frame for licensing applications from January 1, 2024 to July 1, 2024. We will continue to monitor for developments in relation to the new licensing requirements.

Amendments to the *WSIA*

"Super Indexing"

If passed, Bill 149 would amend the *WSIA* to enable "super indexing" increases to Workplace Safety and Insurance (WSIB) benefits. This would be achieved through the creation of a new regulation-making power to create regulations setting out indexing increases above the annual rate of inflation.

Firefighters and Esophageal Cancer

Bill 149 would lower the total duration of employment needed for firefighters and fire investigators to receive presumed compensation for esophageal cancer from 25 years to 15 years.

Other Statutory Amendments

If passed, Bill 149 would also amend the *Digital Platform Workers' Rights Act, 2022* to provide that certain limits on recurring pay periods and pay days may be prescribed by regulation, among other things.

The assessment of qualification provisions of the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* would also be amended such that a determination of the assessment of qualifications "in a way that is transparent, objective, impartial and fair … must, at a minimum, meet the requirements prescribed by regulation." Similar requirements would apply to third party assessments. Bill 149 would provide for the corresponding regulation-making authority.

The amendments made by Bill 149 would come into force on various dates.

We will continue to monitor the progress of Bill 149 through the legislative process. In the meantime, please feel free to reach out to your regular Hicks Morley lawyer should you have questions about the changes proposed by Bill 149.