Human Resources Legislative Update

Ontario Updates Regulation Governing Group Terminations

Date: November 15, 2023

On November 10, 2023, the government of Ontario filed Ontario Regulation 340/23 (Amending Regulation) which amends the Termination and Severance of Employment Regulation (Regulation) made under the *Employment Standards Act, 2000* (*ESA*). The Amending Regulation provides regulatory support for changes to the *ESA*'s group termination provisions made by Bill 79, *Working for Workers Act, 2023* (Bill 79).

Under the *ESA*, employers have an obligation to give notice when they terminate 50 or more employees at "the employer's establishment in the same four-week period."

Among other things, Bill 79 amended the *ESA* by broadening the definition of an "establishment" to include a private residence of an employer's employee if the employee performs work in the private residence and the employee does not perform work at any other location where the employer carries on business. Consequently, employees who work solely from a private residence (Remote Employees) are now eligible for the same enhanced notice provided to on-site employees in the event of group termination.

Bill 79 also amended the information to be provided upon notice of mass termination. It added a new requirement that employers must provide the approved prescribed information to each of the affected employees, in addition to the existing requirements that the notice be provided to the Director of Employment Standards (Director) and that it be posted in the workplace. This new requirement ensures that Remote Employees also receive the notice. (For more information on Bill 79 see our *FTR Now* articles from March 21, 2023 and October 26, 2023.)

The Amending Regulation amends the Regulation by including the information to be provided to the Director regarding Remote Employees. It also amends certain service requirements, both to the Director and to the affected employees. Specifically, the Amending Regulation sets out:

- the prescribed information that employers are required to provide to the Director with respect to Remote Employees who are given notice of a group termination, which includes:
    - the total number of Remote Employees employed on an hourly, salaried or some other basis
    - the number of Remote Employees employed on an hourly, salaried or some other basis whose employment is being terminated
- the employer is not required to provide information about the work locations of the Remote Employees
- employers must now provide the prescribed form to the Director's office, rather than to the Employment Practices Branch of the Ministry of Labour
- the prescribed form may be submitted by personal delivery, mail, fax or email; deemed delivery dates for each method of delivery are prescribed
- the prescribed information must be provided to affected employees in the form approved by the Director and in accordance with the service of document provisions of the *ESA* (s. 95)

The Amending Regulation came into force on November 10, 2023.