

Changes Coming to the *Employment Standards Act, 2000* and Other Work-Related Statutes

March 21, 2023

On March 20, 2023, the Government of Ontario introduced Bill 79, the *Working for Workers Act, 2023*. If enacted, [Bill 79](#) will amend various work-related statutes including, the *Employment Standards Act, 2000*, *Occupational Health and Safety Act*, *Employment Protection for Foreign Nationals Act, 2009*, *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, *Ministry of Training, Colleges and Universities Act*, *Ontario Disability Support Program Act, 1997*, and the *Ontario Works Act, 1997*.

This briefing note summarizes key proposed amendments. Regulations will be passed in due course.

For more information or to discuss how the amendments may impact your business, contact your Sherrard Kuzz LLP lawyer, or our firm at info@sherrardkuzz.com.

***Employment Standards Act, 2000* (“ESA”)**

Expanded Reservist Leave

At present, an employee with at least three consecutive months of employment is entitled to an unpaid leave under the ESA if they are a reservist and deployed to a Canadian Forces operation outside of Canada, deployed inside of Canada to provide emergency assistance, or are participating in Canadian Forces military skills training.

Bill 79 will expand reservist leave to an employee in treatment, recovery or rehabilitation for a physical or mental health illness, injury or medical emergency that results from participation in such deployment or training. Bill 79 also entitles an employee to access unpaid reservist leave after two consecutive months of employment (reduced from three). The Government of Ontario, has [publicly stated](#) this eligibility requirement may be eliminated entirely for a reservist deployed to a Canadian Forces emergency operation inside Canada.

Mass Termination Obligations

At present, if an employee terminates 50 or more employees at the employer’s “establishment” in a four-week period, it must provide notice, or pay in *lieu*, in accordance with the O.Reg 288/01 (Termination and Severance of Employment). This regulation provides enhanced “mass termination” notice obligations not based on an individual employee’s length of service, but rather the number of employees terminated within the four-week period. If an employee terminates 50-199 employees in an establishment in a four-week period, eligible employees are entitled to eight weeks’ notice or pay in

lieu. This increases to twelve weeks if the termination impacts 200-499 employees and sixteen weeks if 500 or more employees are terminated.

In addition, if the mass termination obligations are engaged, an employer must provide notice to the Director of Employment Standards in the prescribed [Form 1](#) and post the Form 1 in the employer's establishment on the first day of the notice period. Any statutory working notice is not effective until the Form 1 is received by the Director of Employment Standards.

The ESA currently defines an employer's "establishment" as a location at which the employer carries on business. However, if the employer has multiple locations, all locations within the same municipality are considered one establishment. Similarly, if employees at a location have seniority rights under an employment contract or collective agreement that permit them to displace other employees at another location, those locations are together considered one establishment.

If passed, **Bill 79 will expand the definition of "location at which the employer carries on business" to include a private residence of the 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.** This amendment ensures that an employee who works exclusively from home is not denied mass termination entitlements simply because they do not work at an employer's physical work location. This will require an employer to be mindful of *where* in Ontario their remote employees work, when evaluating if the mass termination provisions of the ESA are triggered by a large workforce reduction.

Bill 79 also amends an employer's obligations with respect to the Form 1. In addition to providing the Form 1 to the Director of Employment Standards and posting a copy in the establishment, an employer must provide the Form 1 to each affected employee on the first day of the notice period.

Information for New Employees

Bill 79 grants the government discretion to enact new regulations to require that an employer provide certain information to an employee or prospective employee. The Government of Ontario has [indicated](#) it will introduce regulatory changes to require that an employer provide new employees with information about their pay, work location and hours of work.

Occupational Health and Safety Act

If passed, Bill 79 will increase the maximum fine for a corporation convicted under the *Occupational Health and Safety Act* from \$1,500,000 to \$2,000,000.

While not part of Bill 79, the Government of Ontario has also [stated](#) it will introduce regulatory amendments to make the skilled trades more accessible to women. These amendments will require at least one women's-only washroom on each construction jobsite, and that personal protective equipment and clothing be properly fitted to women and workers with diverse body types.

Employment Protection for Foreign Nationals Act, 2009 (“EPFNA”)

EPFNA prohibits an employer, recruiter, or person operating on their behalf, from taking or retaining property a foreign national is entitled to possess, including a passport or work permit.

Under Bill 79, an individual convicted of taking or retaining a passport or work permit in contravention of the EPFNA may be fined up to \$500,000, imprisoned for up to 12 months, or both. A corporation may be fined up to \$1,000,000.

Fair Access to Regulated Professionals and Compulsory Trades Act, 2006 (“FARPCTA”)

If passed, Bill 79 will make amendments to FARPCTA to require a regulated profession to work with its responsible Minister (or such other Minister as may be identified) to ensure public access to an adequate number of qualified, skilled and competent regulated professionals. Bill 79 will amend FARPCTA to reduce barriers for internationally trained professionals by stipulating that a regulated profession may accept Canadian experience as a qualification for registration only if it also accepts alternatives to Canadian experience that meet prescribed criteria.

We will continue to monitor Bill 79 and keep our readers updated. For more information or to discuss how the amendments may impact your business, contact your Sherrard Kuzz LLP lawyer, or our firm at info@sherrardkuzz.com.

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