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Ontario Passes Fourth Working for Workers Act:

Legislative changes to ESA employment standards and WSIB coverage

March 21, 2024

Ontario's Bill 149, *Working for Workers Four Act, 2023* ("Bill 149") received Royal Assent on March 21, 2024. Bill 149 amends the *Employment Standards Act, 2000* ("ESA") and Workplace Safety and Insurance Board ("WSIB") benefits under the *Workplace Safety and Insurance Act, 1997* ("WSIA").

This briefing note outlines key changes to the ESA and WSIA made by Bill 149. Some of these changes come into force immediately, others will come into force on June 21, 2024, and some will only take effect upon proclamation at a future date.

Amendments to the ESA in force NOW

Effective immediately, Bill 149 amended the ESA to clarify that:

- Any person performing work in a trial period is an employee for the purpose of the ESA.
- An employer cannot deduct an employee's wages in the event of a dine and dash or gas and dash, or in the event of any other stolen property.

These clarifications are consistent with previous interpretations of the ESA.

Amendments to the ESA to come into force on June 21, 2024

On June 21, 2024, the following amendments to the ESA will take effect:

- If an employer has a policy regarding pooling tips – meaning the employer or a director or shareholder of the employer shares in the tip pool – that policy must be posted in the workplace and retained for three years after it ceases to be in effect.
- An employer who pays an employee their tips by direct deposit must allow the employee to select into which account they want this money deposited.
- An employer who pays an employee by cash or cheque must ensure the cash or cheque is given to the employee at their workplace or some other place agreeable to the employee.
- A change in the language of the vacation pay provisions to clarify that a *written* agreement is required if an employer pays vacation pay in any way other than a lump sum. For example, many employers pay out vacation pay as a percentage on each pay cheque. This practice requires a written agreement with the employee.

Amendments to the ESA to come into force at a date of future proclamation

Changes to job posting rules will come into force on a date of future proclamation. This includes:

- Banning the use of Canadian experience as a requirement in a job posting or application form.
- Requiring an employer to disclose a salary range in any publicly available job posting.
- Requiring an employer to disclose if artificial intelligence is used during the hiring process.
- Requiring an employer to retain copies of every publicly advertised job posting and associated application form for three years after public access to the posting is removed.

These changes were discussed in further detail in our November 7, 2023 briefing note.

Amendments to WSIB coverage

Amendments to the WSIA introduced by Bill 149 are not currently in force and will take effect upon future proclamation. These changes are:

- Allowing "super indexing" increases to WSIB benefits, above the annual rate of inflation.
- Reducing the period of employment necessary to trigger entitlement to WSIB benefits arising out of diagnosed esophageal cancer in firefighters and fire investigators, from 25 years to 15 years.

These changes were discussed in our March 4, 2023 briefing note.

Next steps for employers

Employers should review their existing practices and policies to ensure they remain compliant with the new legislative requirements.

To learn more and for assistance, contact your Sherrard Kuzz lawyer or info@sherrardkuzz.com.

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