Swift action needed – New employment legislation changes for Ontario employers

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Taylor Swift mania has taken hold of Canada, and alongside it comes important changes to employment and employment-related legislation that Ontario employers need to understand and implement both immediately and in the near future.

"Track 5" of the Ontario government's employment legislation comes in the form of Bill 190, officially titled the *Working for Workers Five Act, 2024*. Bill 190 makes several amendments to Ontario's employment standards legislation (ESA) as well as other legislation such as the *Occupational Health and Safety Act* (OHSA).

Coming into force at the workplace

Below is a high-level summary of when some of the key Bill 190 ESA and OHSA amendments come into force.

1. **Immediate**: Certain amendments to the ESA and OHSA come into force with immediate effect as of Oct. 28, 2024, which means employers must take immediate steps to be in compliance with these requirements:
    a. Previously, an employer could require a medical certificate as evidence for the three sick leave days permitted under the ESA. Effective immediately, employers cannot require an employee to provide a medical certificate from a qualified health practitioner. An employer may still request another form of evidence from the employee that is reasonable in the circumstances.
    b. Harassment that occurs virtually is now expressly included in the concepts of workplace harassment and workplace sexual harassment under the OHSA.
    c. It is crystal clear now that the OHSA applies to telework performed in or about a private residence.
    d. Certain OHSA postings are now permitted to be posted in an electronic format provided certain measures are taken such as workers are directed on where and how to access the information and the information is in a readily accessible format.
    e. Joint health and safety committee meeting generally can now occur remotely.

f. New duties have been imposed on constructors and employers with respect to the maintenance of washroom facilities.
g. The “stick” of the maximum fine for an individual for a “first-time” general offence under the ESA has doubled, increasing to $100,000.

2. “**On a date to be proclaimed**”: A bit harder for planning purposes, some other notable amendments will come into force at a later date to be announced. This means that employers will have to stay tuned but should be “on their way” to planning how to comply.
   a. Publicly advertised job postings will need to include in the posting a statement disclosing whether the posting is for an existing vacancy or not and any other prescribed information, subject to certain prescribed exceptions. Such information and exceptions are to be determined in (future) regulations.
   b. All interviewed applicants for a publicly advertised job posting must, within the prescribed time period, be provided (by the employer) prescribed information and such information must be retained for three years after the day the information was provided. Such time period and information are to be determined in (future) regulations.

Other Bill 190 legislation changes

Bill 190 also amends, with varying coming into force dates, the following legislation:

- The *Workplace Safety and Insurance Act, 1997* to include two new categories of workers to which who are entitled to benefits under the insurance plan for posttraumatic stress disorder arising out of and in the course of the worker’s employment and that the posttraumatic stress disorder is presumed to have arisen out of and in the course of the worker’s employment, unless the contrary is shown,
- The *Workplace Safety and Insurance Act, 1997* to establish a presumption in respect of primary-site skin cancer for certain firefighters and certain fire investigators under sections 15.1 and 15.2 of that legislation,
- The *Building Opportunities in the Skilled Trades Act, 2021* to provide that the regulations may set out alternative criteria for academic standards,
- The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* to add new sections requiring regulated professions to have alterative documentation of qualification policies and plans of how to enable multiple registration processes to concurrently take place, and
- The *Ontario Immigration Act, 2015* to provide that an individual who is appointed to conduct an internal review may delegate the individual’s powers or duties under the appointment.

Swift action needed – preferably before Taylor Swift departs Canada!

Employers will need to take both immediate and future steps to comply with the newly passed legislation, including but not limited to reviewing (and amending as appropriate) sick leave policies to not be in violation of the medical certificate “ban”, workplace harassment and violence policies to integrate the new definitions, and OHSA policies

and operations to align with the implications that telework performed in or about a private residence is covered by the OHSA.

In relation to this, especially since the legislation has received royal assent, it would be an opportune time to consider a legal update of related employment policies and documents, including employment agreements.

We will continue to monitor developments of this newly passed legislation. Please contact your BLG lawyer or any member of our Labour and Employment Group for any questions about this bill, including steps to take to be compliant with the new changes. Do not feel that "You're on Your Own", as we would be pleased to assist, whether Swiftie or not.

By

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