



Legislative Update: Bill 149 – Working for Workers Four Act, 2023

Overview

In last month's [newsletter](#), we wrote about the third installment of the Ford Government's "Working for Workers" legislation, the *Working for Workers Act, 2023*. On November 14, 2023, Bill 149, the [Working for Workers Four Act, 2023](#) (the "Act") had its first reading in Ontario's legislature. The Act amends the yet to be proclaimed in force *Digital Platform Workers Rights Act, 2022* (the "DPWRA"), the *Employment Standards Act, 2000* (the "ESA"), the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* (the "FARPCTA"), and the *Workplace Safety and Insurance Act, 1997* (the "WSIA").

Among other things, the Act expands workers' rights and places new duties on employers in relation to job postings, regular pay days for digital platform workers ("gig workers") and dine & dash situations.

These changes are not yet in force. The Bill passed at second reading and was referred to the Standing Committee on Social Policy on November 23, 2023.

Working for Workers Four Act, 2023 – Proposed Legislative Changes

While the Act includes many legislative updates, the following list contains the most significant changes proposed:

a) Regular pay day and pay periods for gig workers

The DPWRA was introduced in 2022 but has yet to be proclaimed in force. The Act will amend the DPWRA before it is enacted requiring gig workers to have regular recurring pay days and regular pay periods. The Lieutenant Governor may promulgate regulations setting a maximum number of days in a gig worker's pay period, and the maximum number of days between a gig worker's regular pay days.

b) Regulations to the DPWRA have the potential to limit gig workers' rights

The DPWRA will also be amended to allow for regulations regarding minimum wage and how it is calculated for gig workers. Such regulations



could include requiring the calculation of minimum wage to be paid “other than on a per work assignment basis”.

c) *Workers on trial periods are employees*

Currently the definition of “employee” includes “a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer’s employees”. Bill 149 amends the ESA to provide that “training” includes a trial period.

d) *Job posting requirements*

If Bill 149 is passed:

- all publicly advertised job postings must include information regarding the expected compensation, or range of expected compensation for the role. This requirement may not apply for certain positions that meet criteria set out in a regulation. A range of expected compensation is subject to such “conditions, limitations, restrictions, or requirements as may be prescribed by regulation.
- Publicly advertised job postings may not contain any requirements related to Canadian experience unless a regulation prescribes otherwise.
- Publicly advertised job postings must disclose whether artificial intelligence will be used to screen, assess or select applicants for the position unless a regulation prescribes otherwise.
- All job postings must be retained for 3 years after the posting is no longer available.

The requirement to include compensation information in publicly advertised job postings will be an incremental change for Ontario employers that is far less onerous than the new requirements in British Columbia which are detailed below.

e) *Dine & dash deductions*

The prohibition under the ESA on deducting amounts from employees’ pay will apply to restaurants, gas stations, and other such businesses when customers leave the establishment without paying.



f) Employee tips

Bill 149 will add to the section of the ESA that addresses tips and gratuities by specifying the permissible methods of paying out employee tips: cash, cheque, direct deposit, and any other method prescribed by regulation.

Employers with tip-sharing policies will be required to post their policies somewhere where they will come to the attention of the employees.

Tip-sharing policies will be required to be retained by someone other than the employer for 3 years after the policy is no longer in effect.

g) Vacation payout

Bill 149 will amend the ESA to require a written agreement to pay out vacation pay on each pay or to pay it at a time other than when it is due which is usually when vacation is taken.

h) Fairness in professional regulation

If the Bill is passed, the FARPCTA will be amended to require professional regulatory bodies to meet any requirements that are prescribed by regulation to ensure that any decisions based on candidates' qualifications and third-party assessments are "transparent, objective, impartial and fair".

i) Prescribed diseases

A number of changes will be made to the WSIA relating to certain diseases.

Firefighters with over 15 years of experience who are diagnosed with esophageal cancer will be presumed to have contracted the disease as a result of their work, absent evidence to the contrary.

Pay Transparency

As noted above, if the *Working for Workers Act Four, 2023* passes, publicly advertised job postings in Ontario will have to disclose the compensation ranges available for the position.

British Columbia's [Pay Transparency Act](#), assented to on May 11, 2023, took a different approach towards the issue of pay transparency. The *Pay*



Transparency Act will require BC employers to create and promulgate pay transparency reports. These reports will set out the differences in pay between certain groups of employees and contain a description of the pay trends between the groups. While the groups themselves are yet to be defined by regulation, employers may be required to disclose their employees' pay trends by gender and minority status. Employers must offer Indigenous governing entities the opportunity to consult on these reports.

BC's new legislation contains strong clauses prohibiting reprisals against employees who make inquiries about pay, disclose their pay rate to their coworkers, request to see a pay transparency report, ask that an employer fulfill its obligations under the *Pay Transparency Act*, or make a report to the Director of pay transparency.

The goal of both BC's *Pay Transparency Act* and of Ontario's proposed pay transparency provisions is to foster openness and transparency in employees' compensation. Both provinces seem to have drafted these changes on the premise that increased openness and transparency in pay will lead to increased pay equity.

BC's *Pay Transparency Act* forms an interesting contrast to Ontario's proposed legislation. Where Ontario's proposed ESA amendments require transparency in the hiring process, BC's new legislation places substantive and ongoing duties on employers in the course of employment.

Even where employees from marginalized groups are hired at the same rate of pay as their coworkers, there is no requirement for Ontario employers to indicate whether those employees are receiving comparable raises and promotions. Conversely, BC's *Pay Transparency Act* provides for ongoing comparative pay disclosure.

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