

FEBRUARY 2023 MONTH IN REVIEW

Ontario

LAWS & ANNOUNCEMENTS

Labour Standards

Jan 1: High earning business or IT “consultants” are no longer covered by the ESA if: i. they provide services via a corporation or sole proprietorship; ii. there’s a written agreement providing for at least \$60 per hour, not counting bonuses, expenses, benefits and allowances; and iii. the hourly wage covers all time worked under the agreement.

Work Hours

Dec 7: Newly tabled [Bill 55](#) would create a commission to make recommendations on developing a pilot project to determine the effectiveness of a four-day work week and whether Ontario should make it a permanent legal requirement.

Action Point: Find out about the [work hour maximums](#) in each part of Canada

Labour Relations

Feb 1: Effective today, employers must use the [OLRB’s new standard document-naming protocol](#) when submitting documents to the Board. Specifically, each item must have a title that describes what the document is, such as “Grievance letter,” and not just a string of numbers.

New Laws

Jan 19: Ontario plans to introduce new “As of Right” legislation that would allow healthcare workers that are already registered or licensed in another Canadian jurisdiction to practice in Ontario right away without having to first register with one of Ontario’s health regulatory colleges.

Discrimination

Jan 23: The OHRC launched a [new 3-year strategic plan](#) to advance human rights in Ontario. Addressing discrimination in employment is one of the 5 “urgent priority areas” listed in the plan.

Action Point: Beware of [employment practices](#) that inadvertently perpetuate racial discrimination

Privacy

Jan 25: The Ontario Privacy Commissioner sent a [letter](#) asking the Ministers of Labour and Public and Business Service Delivery to work together to create new laws to limit employer surveillance over and strengthen workplace privacy protections of workers. Employer “surveillance can invade an employee’s home and capture intimate details of family life that are not relevant to an employee’s professional capacity,” the letter notes.

Action Point: Find out the 12 things you should do to [prevent data breaches](#) at your workplace

Workers Comp

Jan 24: Legislation ([Bill 46](#)) to cut red tape by establishing new rules for the WSIB to calculate the average earnings of workers who are apprentices and remove drugless practitioners from the definition of “health care practitioner” contained in the *Workplace Safety and Insurance Act* is in Second Reading.

Workers Comp

Mar 31: That’s the deadline for Ontario Schedule 1 employers to submit their 2022 workers comp payroll reports to the WSIB without incurring late fees, interest and penalties.

CASES

Termination: Employee’s Fear of COVID-19 Doesn’t Justify Time Theft

Using GPS data tracking the location of response vehicles, a gas company determined that a technician had billed and received payment for over 153 hours

(23.4% of total hours) of work for which he didn't show up, leaving his partner to do all the work alone. The results confirmed an audit from an earlier period finding 46+ hours of billed but unperformed work. The union claimed the technician did nothing wrong—the work orders were safe and the technician didn't want to spend time in the vehicle with a co-worker due to fear of catching COVID and bringing it home to his vulnerable wife. Instead of firing him, the company should have recognized him as a hero willing to work during the pandemic, the union argued. While agreeing with that sentiment to some degree, the Ontario arbitrator found that the technician "went way too far by taking advantage of the situation while the Company and most employees were scrambling to maintain essential services to the public, at some risk to themselves." **Result:** It found just cause to terminate [[Enbridge Gas Inc. v UNIFOR, Local 975](#), 2023 CanLII 2937 (ON LA), January 24, 2023].

Action Point: Take [6 steps](#) to prevent your employees from committing time theft

Labour Relations: Using Non-Union Workers for Union Work Costs Contractor \$28,000

A union organizer spots what he believes to be 3 non-union workers performing stucco work that the collective agreement assigned to the union at 2 different projects being run by the same masonry contractor, Liberty. He speaks to the workers and confirms that they're non-union and were hired by Liberty; he takes photos of the workers, site and materials. Another union eyewitness confirms the organizer's story. It's an open and shut case and the Ontario arbitrator orders Liberty to pay \$28,000 for violating the collective agreement [[Bricklayers, Masons Independent Union of Canada, Local 1 v Liberty Alliance Stucco Wall Systems Ltd.](#), 2023 CanLII 3004 (ON LA), January 23, 2023].

Health & Safety: Court Nixes Union's Overhead Crane Safety Complaint

The union complained that a construction firm was violating OHS rules by allowing an unlicensed tradesperson operate an overhead crane at a construction project without a Mobile Crane Operator 1 Certificate of Qualification. The MOL inspected but decided not to cite the employer because the crane wasn't an overhead crane but rather equipment (a permanently installed Kone Overhead Crane which runs on rails mounted atop the runway beam in the main building) that didn't require a Certificate to operate. The Ontario Labour Relations Board upheld the inspector's decision. The union appealed but the Supreme Court found the Board ruling's reasonable and refused to overturn it, while also ordering the union to pay roughly \$9,000 for legal costs [[International Union of Operating Engineers, Local 793 v. Aecon Group Inc.](#), 2023 ONSC 586 (CanLII), January 27, 2023].