

FEBRUARY 2024 MONTH IN REVIEW

Ontario

LAWS & ANNOUNCEMENTS

Labour Standards

Feb 7: That's the deadline to [comment](#) on proposed ESA changes in [Bill 149](#), which is through Second Reading: i. ban on wage deductions for goods and services stolen by customer; ii. direct deposit payment for employees paid by tips; iii. mandatory disclosure of AI use in job ads; and iv. ban requiring Canadian experience in job postings.

Action Point: Guard against ChatGPT risks by implementing a legally sound [workplace artificial intelligence use policy](#)

Termination

Jan 3: The Ontario MOL revised the [Form 1](#) (Notice of Termination of Employment) to account for recent changes requiring employers to count employees who work from home in determining whether ESA rules requiring group termination notice for terminations affecting 50 or more employees apply.

Action Point: Find out how to [comply with group termination rules](#)

Immigration

Feb 23: That's the deadline to participate in MOL [public consultations](#) on the employer requirements of the Ontario Immigrant Nominee Program and the experience of employers that use the program.

Workplace Violence

Jan 11: The federal government announced that it will furnish up to \$19 million to 34 Ontario-based organizations to support projects designed to prevent gender-based violence and support its victims.

Action Point: Find out about the 10 things you must do to [prevent workplace violence](#)

Health & Safety

Jan 3: The MOL reminded small businesses that the deadline [to apply](#) for Ontario Small Business Health and Safety Training program reimbursement covering the costs of providing mandatory OHS training to workplace health and safety representatives is March 31, 2024.

CASES

Attendance & Absenteeism: Employee Terminated for Innocence Absenteeism Gets Termination Notice

An Ontario arbitrator upheld termination of a hospital employee for nonculpable absenteeism because the broken ankle and complications with pregnancy that kept her out of work for so long weren't disabilities. True, the ailments were unlikely to recur, but the employee had proven herself unreliable and the employer just couldn't trust that her attendance would improve, it concluded. The question then became whether she was entitled to termination notice. The arbitrator said yes. Although the ESA doesn't require termination notice when an employee's contract is frustrated, it provides an exception for when frustration is the result of injury or illness. The arbitrator reasoned that the exception applies even if the injury or illness that leads to frustration isn't a disability [[Unity Health v Ontario Nurses' Association](#), 2023 CanLII 124896 (ON LA), December 19, 2023].

Action Point: Go to the HRI [Attendance & Absenteeism centre](#) for help cracking down on absenteeism at your workplace

Payroll: Time Spent Putting on PPE to Get Ready for Work Doesn't Count as Work Time

The union contended that the employer had to pay Service Technicians, Cleaners

and Yard Attendants for the time spent walking to and from the building entrance, walking to and from the change room, putting on and taking off their coveralls and safety boots, clocking in and out, and walking to and from their workstations. The company disagreed, arguing that the collective agreement expressly recognized the expectation that workers would be ready for work at the start of their shift. The Ontario arbitrator sided with the company, reasoning that the time spent donning PPE and getting ready for work wasn't work time and that under company payroll practices, workers got paid when their shifts began, not when they clocked in [[*International Association of Machinists and Aerospace Workers, Lodge 78 v Vision Truck Group*](#), 2024 CanLII 1693 (ON LA), January 12, 2024].

Action Point: Look up the [maximum work hours and rest requirements](#) in each part of Canada

Progressive Discipline: OK to Suspend but Not to Fire Forklift Driver for Refusing to Use 2-Way Radio

After 3 suspensions failed to do the trick, a company fired a forklift driver for disobeying orders to use a 2-way radio to communicate with his supervisor. The driver claimed that it would be dangerous for him to use the radio while he was operating the forklift; company insisted that use of the radio was essential for productivity and that all the other forklift operators accepted the policy. While finding that some discipline was warranted, the Ontario arbitrator ruled that termination was excessive, especially given the driver's previous 15 year record of no discipline and reduced the penalty to a 3-day suspension [[*Teamsters Local Union 847 \(the Union\) v INOAC Exterior Systems Inc.*](#), 2024 CanLII 427 (ON LA), January 9, 2024].

Action Point: Find out how to implement a legally sound [progressive discipline policy](#) at your workplace