

JUNE 2023 MONTH IN REVIEW

Ontario

LAWS & ANNOUNCEMENTS

Leaves of Absence

Apr 27: Paid sick leave may be coming to Ontario. Newly tabled [Bill 104](#) would replace ESA family responsibility, bereavement and sick leave with 10 days' paid personal emergency leave to deal with an urgent matter involving the employee or family member. It would also increase paid infectious disease emergency leave from 3 days to 10 days.

Action Point: Find out about the [current paid sick leave rules across Canada](#)

Labour Standards

May 8: [Bill 79](#), the *Working for Workers Act, 2023*, which would increase the maximum penalties for a conviction of wrongfully withholding a foreign national's passport or work permit to \$500,000 plus 12 months prison for an individual and \$1 million for a corporation, has now passed Second Reading and is likely to make it across the finish line.

Termination

May 8: Under current ESA rules, terminations of 50 or more workers over a 4-week period require "enhanced" notice of up to 8, 12 or 16 weeks. To qualify for enhanced notice, workers must work at the employer's "establishment." If and when it passes, [Bill 79](#), *Working for Workers Act, 2023*, which is now through Second Reading, will make remote workers eligible for the same enhanced notice as in-office workers.

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

New Laws

May 8: [Bill 79](#), *Working for Workers Act, 2023*, which is now through Second Reading, would require employers to provide new hires specific information about their job, pay, work location and hours of work in writing. Currently, employers only have to give new hires the latest version of the ESA employment standards and general information about the law.

Leaves of Absence

May 8: [Bill 79](#), *Working for Workers Act, 2023*, which is now just one step from passage, would provide unpaid military reservist leave to employees who are in treatment, recovery or rehab for a physical or mental health illness, injury or medical emergency suffered as a result of participating in reservist operations or activities.

Action Point: Use the HR Insider [template](#) to create a military reservist leave policy

Health & Safety

May 8: The Assembly is now just one step away from passing [Bill 79](#), *Working for Workers Act, 2023*, to increase the maximum fine for a corporation convicted of an *OHS Act* violation from \$1.5 million to \$2 million, which would be the highest in Canada. Last year, Ontario raised maximum OHS fines to \$500,000 for individuals and \$1.5 million for corporate directors.

Health & Safety

Apr 15: Newly published [changes](#) to *OHS Construction Project Regulations* require that there be at least one women's-only washroom on construction project sites. In addition, portable washrooms must be private, completely enclosed, adequately lit and equipped with a disposal receptacle for sanitary napkins as well as hand sanitizer where running water isn't reasonably possible. The new rules take effect on July 1, 2023.

Health & Safety

Apr 15: The Ontario MOL published [revisions](#) to *OHS Construction Project Regulations* requiring employers to ensure that PPE and protective clothing be properly fitted to women and workers of diverse sizes and body types. The new rules will take effect on July 1, 2023.

Workplace Violence

Apr 20: Second Reading for [Bill 88](#), which would add a new *OHS Act* provision making it mandatory for gas stations in Toronto and other municipalities to require customers to prepay for gasoline before pumping from a pump with prepayment technology between the hours of 9 p.m. to 6 a.m. The measure, which is designed to prevent gas and dash violence incidents, would be phased in over 6 months.

Workplace Violence

May 30: Newly tabled [Bill 114](#), *The Safe Night Out Act*, broadens the *OHS Act* employer duty to prevent workplace violence to include “workplace sexual violence.” The name of the bill refers to the provisions requiring liquor license holders to implement an “evidence-based, trauma-informed sexual violence and harassment prevention training program” for servers, supervisors and security staff.

Action Point: Find out [how to protect your employees](#) from the risk of workplace domestic violence

Workplace Violence

Apr 30: Third Reading for [Bill 88](#), which would add a new *OHS Act* provision making it mandatory for gas stations in Toronto and other municipalities to require customers to prepay for gasoline before pumping from a pump with prepayment technology between the hours of 9 p.m. to 6 a.m. The measure, which is designed to prevent gas and dash violence incidents, would be phased in over 6 months.

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

Employment Benefits

May 11: Despite tough financial times, Ontario pension plans are gaining strength, according to FSRA’s newly released [Q1 2023 Solvency Report](#). During the quarter, the median solvency ratio reached an all-time high of 115%, thanks to a robust 4.3% average return on investment. The percentage of fully funded pension plans jumped 5% to 86%; only 2% of plans had a solvency ratio below 85%, the same as the previous quarter.

Drugs & Alcohol

Apr 25: To prevent youth vaping, newly tabled [Bill 103](#) would amend the *Smoke-Free Ontario Act* to ban the sale or supply of vaping products to individuals under age 21 and limit the sale of such products to specially designated stores.

Action Point: Find out how to [effectively control substance abuse](#) at your workplace

Privacy

May 25: Ontario's Privacy and Human Rights Commissioners issued a joint statement calling on the government to develop "robust and granular rules" on the use of artificial intelligence technologies in the public sector. While AI technologies can greatly benefit society, they also rely on immense volumes of personal information that may not be properly protected, the Commissioners warn.

Action Point: Find out how to implement a legally sound [workplace artificial intelligence use policy](#)

CASES

Discrimination: High Court Finds Oil Company Guilty of Citizenship Discrimination

Although a foreign engineering student had stellar credentials and a 3-year postgraduate work permit, an energy company wouldn't offer him permanent employment without assurance of his eligibility to work in Canada on a "permanent basis." The student claimed he was the victim of discrimination on the basis of "citizenship." The Ontario Human Rights Tribunal agreed but the court reversed the order on appeal. Now, the province's top court has had the final word by finding the original ruling of citizenship discrimination reasonable and faulting the lower court for reversing it. Excluding otherwise qualified individuals from positions simply because they're not Canadian citizens violates the human rights laws even when, as was the situation in this case, the policy does make exceptions for some non-citizens. "Policies that discriminate on the basis of a prohibited ground are not saved on the basis that they only partially discriminate," reasoned the Court of Appeal [[Imperial Oil Limited v. Haseeb](#), 2023 ONCA 364 (CanLII), May 23, 2023].

Action Point: Find out about [citizenship discrimination risks and how to avoid them](#)

Labour Relations: ER Visit Doesn't Count as Hospital Admission for Injury Benefits Purposes

After getting punched in the face by a passenger, a City of Mississauga bus driver goes to the hospital emergency room where he's assessed, advised to take Tylenol for his wounds and sent home. The police confirm that the driver was assaulted. The question is whether he's entitled to benefits for time missed as a result of the incident. At issue is the following language from the collective agreement providing for benefits to an employee that "is absent from work by reason of an on-duty serious physical assault, by a member of the public. . . confirmed by Police and *is admitted to a hospital,*" (emphasis added). The City denied the driver benefits because he wasn't "admitted" and the Ontario arbitrator agreed. Although what happened to the driver was "terrible and life-altering," the fact is that he was never "admitted" to the hospital and thus didn't qualify for benefits. "Admitted" means being assigned a bed and/or room in the hospital for further observation and treatment, the arbitrator reasoned [[*Amalgamated Transit Union Local 1572 v Mississauga \(City\)*](#), 2023 CanLII 44247 (ON LA), May 23, 2023].

Workplace Harassment: Single Incident Enough to Make Employer Liable for Toxic Work Environment

An immigrant from the African country of Eritrea sued his employer for racial harassment after a co-worker called him the N word. A single racial slur made by one union member to another in the heat of an argument where there were no prior allegations of discrimination doesn't constitute harassment, the employer argued. And even if it did, we're not vicariously liable for racial harassment committed by one employee against another. The Ontario arbitrator rejected both arguments and ordered the employer to pay the victim \$15,000 for failing to protect him from a toxic work environment [[*Iron Forming Inc. v Labourers' International Union Of North America, Local 183*](#), 2023 CanLII 39143 (ON LA), May 10, 2023].

Action Point: Use the HRI [template](#) to create your own workplace harassment and violence policy