

## MARCH 2023 MONTH IN REVIEW

# Ontario

### LAWS & ANNOUNCEMENTS

#### Labour Standards

Mar 22: As it does each year at this time, Ontario Progressive Conservative government proposed a broad set of employment law changes. One of the highlights of this year's version, [Bill 79](#), the *Working for Workers Act, 2023*, increases 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.

#### Termination

Mar 23: 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." [Bill 79](#), *Working for Workers Act, 2023*, would 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

Mar 23: [Bill 79](#), *Working for Workers Act, 2023*, which is in Second Reading and on its way to almost surefire passage, 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

Mar 23: Proposed ESA changes contained in [Bill 79](#), *Working for Workers Act, 2023*, 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

Mar 23: [Bill 79](#), *Working for Workers Act, 2023*, proposes 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.

## New Laws

Mar 7: Newly tabled [Bill 76](#), would require the government to take steps to ensure that at least 70% of hospital, long-term care home or home care agency employees are permanent and full-time. It would also entitle personal support workers pay of at least \$8.00 above the minimum wage plus health benefits, pensions and sick leave.

## Immigration

Mar 18: With skilled labour in short support, Ontario announced that the federal government is doubling the number of economic immigrants the province can select in 2025 to over 18,000.

## New Laws

Mar 27: From now through May 31, FSRA will be holding [public consultations](#) on a proposal that would change the formula the agency uses to calculate the size of administrative monetary penalties (AMPs) it imposes on those who violate the pensions laws.

## Workers Comp

Mar 22: Newly passed legislation ([Bill 46](#)) to cut red tape establishes new rules for the

WSIB to calculate the average earnings of workers who are apprentices and removes drugless practitioners from the definition of “health care practitioner” contained in the *Workplace Safety and Insurance Act*.

## CASES

### **COVID-19: Refusal to Obey Mandatory Vaccination Policy Frustrates Employee’s Contract**

For the first time, an Ontario court has ruled that an employee’s refusal to comply with an employer COVID-19 vaccination mandate frustrated his employment contract. The case involved a systems technician who refused to disclose his vaccination status, making him ineligible to perform work for the firm’s major client since that client contractually required the firm to verify that all workers sent to work at its site were fully vaccinated. Refusal to abide by the policy was a “supervening” event that made it impossible to fulfill the purposes of the technician’s employment contract, the court reasoned [[Croke v. VuPoint Systems Ltd.](#), 2023 ONSC 1234 (CanLII), February 21, 2023].

### **Termination: Employer Justified to Conclude that Missing Worker Quit**

With the NBA and NHL preparing to resume their seasons, a sports arena recalled a worker on temporary COVID layoff. You need to get your second vaccination dose by Oct. 18, the worker was informed. But he didn’t respond. Nor did he submit his required notice of availability for the months of October and November. If you don’t show up for the scheduled Nov. 10 meeting, we’ll assume you resigned the arena told him. He didn’t and the arena took him off payroll. The worker claimed he never quit and sued the arena for not assigning him any work. The Ontario arbitrator ruled that the arena was justified in concluding that the worker had resigned and dismissed his grievance [[Teamsters Local Union 847 v Maple Leaf Sports and Entertainment](#), 2023 CanLII 18102 (ON LA), March 13, 2023].

**Action Point:** Avoid liability when terminating employees who [disappear while on leave or layoff](#)

### **Health & Safety: OK to Suspend Worker for Not Wearing His Fall Protection Harness**

A construction supervisor spots a worker in an escalator pit who’s not wearing his required safety harness. The worker claims the OHS coordinator gave him permission not to wear a harness but she denies ever saying any such thing. The

worker later contends that he had concerns about his harness getting snagged on parts of the escalator. He gets a 2-day suspension. The union argues that the worker was confused about the harness rule and should have only gotten a warning. The Ontario Labour Relations Board upholds the suspension, finding that the mandatory harness rule was reasonable and that the worker, given his 36 years of experience, was well aware of the safety dangers of violating the rule [[International Union of Elevator Constructors, Local 50 v OTIS Canada Inc.](#), 2023 CanLII 15002 (ON LRB), February 16, 2023].