

NOVEMBER 2023 MONTH IN REVIEW

Ontario

LAWS & ANNOUNCEMENTS

Termination

Nov 25: New ESA [regulations](#) revise the group termination notice information that employers must provide the Employment Standards Director and affected employees (under Section 58 of the ESA) when terminating 50 or more employees at the establishment in the same 4-week period and how that information must be provided.

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

New Laws

Nov 30: For the fourth year in a row, Ontario is getting set to pass legislation beefing up employment protections. Among other things, [Bill 149](#), *Working for Workers Four Act, 2023*, support job applicants by requiring employers to disclose salary ranges in job postings and whether they use artificial intelligence (AI) in the hiring process.

Action Point: Implement a [pay transparency compliance game plan](#) at your workplace

Labour Standards

Nov 30: [Bill 149](#), which is working its way through the Assembly and will likely pass before the end of the year, contains new protections for restaurant and hospitality workers, including bans on unpaid trial shifts and deductions from wages or tips in the event of dine-and-dash, gas-and-dash or other incidents involving theft of property by customers.

Action Point: Find out which [source deductions are permitted](#) in your province

Discrimination

Nov 30: Soon to be passed [Bill 149](#) includes provisions that would make Ontario the first province to ban employers from making work experience in Canada a requirement in job postings or application forms. The law clears the way for internationally-trained immigrants who might otherwise be denied work in their field because they lack Canadian work experience.

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

New Laws

Nov 10: Ontario pushed back the date by which temporary help agencies and recruiters must have a licence to operate from January 1 to July 1, 2024. The move gives agencies and recruiters an extra 6 months to apply for a licence.

Labour Relations

Nov 27: The Ontario Assembly defeated anti-scab legislation ([Bill 90](#)) which would have restored provisions that make it illegal for employers from using replacement workers to replace employees during a legal strike or lock-out, except in specifically defined circumstances.

Discrimination

Oct 26: The Ontario Human Rights Commission issued a policy statement condemning the practice of caste-based discrimination. While not specifically banned by human rights laws, the agency notes that excluding, harassing or affording less favourable treatment to persons based on their social caste may constitute discrimination on the basis of grounds that the laws do protect, including ancestry, creed, colour, race, ethnic origin, place of origin and/or family status.

Action Point: Find out [how to create a religious accommodations policy](#) for your workplace

Employment Benefits

Nov 14: FSRA opened public consultations on [revised Guidance](#) designed to clarify the requirements for making amendments to existing pension plans that take effect

retroactively. Deadline to comment: January 19, 2024.

Employment Benefits

Nov 22: Despite challenging economic times, the median solvency of defined benefit pension plans reached an all-time high of 117% during the third quarter of 2023. FSRA also reported that 85% of plans were fully funded on a solvency basis. The bad news is that average investment returns during the quarter were -4.5%.

New Laws

Nov 6: Starting January 1, registered nurses in Ontario will be able to register to receive additional education enabling them to legally prescribe birth control, smoking cessation drugs and travel medications to prevent malaria. Earlier this year, Ontario made it legal for pharmacist to prescribe drugs for common ailments.

Health & Safety

Oct 10: Ontario will create Canada's first-ever Occupational Exposure Registry containing comprehensive records on workers' exposure to health hazards, diagnoses, case histories and other information making it easier to identify and manage occupational illnesses risks. Unions have long advocated for such a Registry. There were 40,185 workers comp occupational disease claims in 2022, according to the WSIB.

Accessibility

Dec 31: That's the final day for businesses and non-profits with 20 or more employees to submit [compliance reports](#) confirming that they've met their obligations under the Accessibility for *Ontarians with Disabilities Act*. So-called AODA reporting for these organizations is required every 3 years.

Action Point: Find out more about [accessibility laws across Canada](#)

Workers Comp

Oct 31: The WSIB announced that Ontario will keep average premiums at \$1.30 per \$100 of insurable payroll in 2024. This is a bit of a surprise given the recent 6.5% cost of living increase to income replacement benefits. The WSIB will also offer double

rebates to small businesses enrolled in the Health and Safety Excellence program.

Workers Comp

Nov 30: If and when it passes, [Bill 149](#), aka, *Working for Workers Four Act, 2023*, will authorize the WSIB to impose annual “super indexing” increases to workers comp benefits for injured workers above the annual rate of inflation. The bill also reduces the minimum duration of employment for firefighters and fire investigators need to benefit from the presumption that esophageal cancer is work-related from 25 to 15 years.

CASES

Termination: Serious Safety Violation Doesn't Cost Sawmill Worker His Job

In 2018, a sawmill plant worker lost his life after getting pinned between a loader and a bundle of wood. The company was also fined \$250,000 for an OHS violation. Almost 5 years from the date after the tragedy, a similar loader incident took place, luckily resulting only in property damage. The company investigated and determined that the accident was caused by the worker operating the loader without the necessary training or authorization. So, it fired him. The union claimed the penalty was too harsh. The Ontario arbitrator agreed. The worker had a history of discipline, the arbitrator acknowledged. But none of those infractions involved safety, other than one incident where the worker was disciplined for not wearing safety goggles. There was no evidence to support the company's contention that the worker was reckless or that he couldn't be redeemed by more experience or training. So, the arbitrator knocked the penalty down to a 4-month suspension while requiring the company to provide him through re-training in safety [[Greenfirst Forest Products \(Qc\) Inc. – Chapleau Sawmill v United Steelworkers, Local 1-2010](#), 2023 CanLII 110265 (ON LA), November 21, 2023].

Action Point: Find out about the [5 ways you can get socked with punitive damages](#) for bad faith termination

Discrimination: Personal Cell Phone Use Ban Isn't Family Status Discrimination

A customer service representative requested an accommodation from a company safety policy banning employee use of personal cell phones at work after her father became gravely ill. The company agreed that she could answer but not make emergency calls relating to her father. Overuse of the cell phone was an issue her boss brought up during the rep's subsequent 3-month performance review. Soon

after that, she was terminated without being given a reason. The rep sued the company for family status discrimination and failure to accommodate. But the Ontario Human Rights Tribunal found no evidence, beyond the rep's own personal suspicions, that the company factored her family situation into the decision to terminate while citing the efforts it had made to accommodate her [[*Brazzoni v. Canway Equipment Mtg. Inc.*](#), 2023 HRT0 1612 (CanLII), October 31, 2023].

Action Point: Find out how far employers must go to [accommodate the scheduling needs of working parents](#)