



More Changes to Ontario's Employment Laws: From Delaying Temporary Help Agency Licensing Requirements to Establishing Pay Transparency Obligations

November 2023 Employer Alert

Over the last few years, the Ontario government has made multiple changes to employment laws, including prohibiting non-competition agreements and introducing a requirement to have a workplace electronic monitoring policy. As a result, employers have had to keep keenly apprised of their new and ever evolving obligations. During the past few days these changes to employment laws have continued, with several new changes to Ontario employment laws having recently been announced and some having taken effect. This emailer will review the most significant of these changes.

Temporary Help Agency and Recruiter Licensing Delayed

As a result of recent amendments to the *Employment Standards Act (the "ESA")*, all staffing companies and recruiters who provide staffing services in Ontario will need to be formally licensed. To be licensed, staffing companies and recruiters will need to submit an application via the Ontario Ministry of Labour's [online portal](#). The application must include a substantial amount of information regarding the business, including the names and addresses of all officers, directors, and partners, criminal record details for all officers, directors, and partners, and the address of each location of the business inside and outside of Canada. The application must also be accompanied by an electronic irrevocable letter of credit of \$25,000, as issued by a Canadian bank or credit union. There is also an application fee of \$750. The licensing process was detailed in our [previous emailer](#).

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Originally, all staffing companies and recruiters were required to be licensed by January 1, 2024. However, the Ontario Ministry of Labour has pushed out the deadline after concern was raised by staffing companies and recruiters. In particular, on Friday November 10th, the Ontario Ministry of Labour announced it was pushing out the licensing deadline from January 1st to July 1st, 2024. An amending **regulation** was published to that end. Between now and July 1st, the Ministry of Labour will review and consider potential changes to the licensing requirements.

Information for New Hires

As a result of a **recent amendment to the ESA**, the Ontario government can now publish regulation that will require employers to provide prospective employees with certain written information about their job. Based on the **media backgrounder** published by the Ontario government, this forthcoming regulation will likely require employers to share in writing the prospective employee's pay, work location, and hours of work. For employers, this forthcoming regulation will only reinforce the need for written employment agreements. A carefully drafted and enforceable employment agreement can satisfy multiple employer obligation, restrict employer obligations, establish multiple employer entitlements, and avoid unnecessary disputes/issues. As a simple example, with an enforceable employment agreement, an employer can reduce termination obligations from 24+ months' compensation, to only 8 weeks' compensation.

Military Reservist Leave

As a result of a **recent amendment to the ESA**, the job-protected leave for military reservists is now expanded to include time off to recover from physical/mental injuries due to military duties. Of course, employers should be mindful that pursuant to the *Ontario Human Rights Code* an employee with a disability is entitled to an indefinite leave, until they can return with or without accommodation or until the employer is able to establish frustration (i.e. the employee cannot perform their job for the foreseeable future).

New Mass Termination Obligations

When a business dismisses 50 or more employees within a four-week period at the employer's "establishment", then certain mass termination entitlements are triggered. In particular, if 50 – 199 employees are dismissed, then their minimum statutory termination pay entitlement is 8 weeks' notice, if 200 – 499 employees are dismissed, then their minimum statutory termination pay entitlement is 12 weeks' notice, and if 500 or more employees are dismissed, then their minimum statutory termination pay entitlement is 16 weeks' notice.

The **ESA has now been amended** to provide that a remote worker's private residence is included in definition of an employer's "establishment". As such, remote employees are now expressly eligible for the enhanced mass termination notice entitlements.

Beyond mass termination obligations, this amendment may have wide reaching implications. In particular, this amendment suggests that Ontario employment legislation does not extend to a remote employee's home, unless the legislation's definition of a workplace expressly includes a remote employee's home.

Increased Fines for Employers

The Ontario Government has recently passed two legislative amendments that have increased fines for employers who fail to comply with their legal obligations. First, the *Occupational Health and Safety Act* has been amended to increase the maximum fine for corporations convicted of an offence from \$1.5 million to \$2 million dollars, per count. Second, the *Employment Protection for Foreign Nationals Act, 2009* has been amended to increase the maximum penalty if an employer withholds a foreign national's passport or work permit.

Pay Transparency

In Ontario, the previous Liberal government **passed legislation** that would have established pay transparency obligations and restrictions. This legislation though was not proclaimed into force before the Conservatives came into power. Earlier this year, the

British Columbia government effectively mirrored this legislation by way of the *Pay Transparency Act*. As such, as of May 2023, British Columbia employers are:

1. Required to include a salary rate or range with all job advertisements
2. Required to track compensation to ensure pay equity in regards to gender and other diversity characteristics (applies as of Nov 2024 to employers with 1000+ employees; applies as of Nov 2025 to employers with 300+ employees; and applies as of Nov 2026 to employers with 50+ employees)
3. Required to file an annual pay transparency report with the Ministry of Labour and post it in the workplace or on the company's intranet (applies as of Nov 2024 to employers with 1000+ employees; applies as of Nov 2025 to employers with 300+ employees; and applies as of Nov 2026 to employers with 50+ employees)
4. Prohibited from asking job candidates about their past compensation
5. Prohibited from disciplining or firing employees for talking about their compensation with colleagues

On November 6th, the Ontario government **announced** that it will be shortly introducing legislation that will require employers to include expected salary ranges in job postings. The Ontario government has not indicated if the planned legislation will go beyond establishing this job posting obligation.

While Ontario does not yet have pay transparency obligations, Ontario and other jurisdictions do have pay equity obligations. These obligations mean that all employers should be engaging in company-wide compensation reviews and have compensation matrices that ensure compensation is equitable, across the board. The compensation matrixes can also assist with avoiding a multitude of issues, including losing good talent due to uncompetitive compensation, overcompensating an employee despite a role change, and awarding bonuses without reflection.

In light of these pay transparency changes, employers should be

ready to handle compensation conversations, including those raised due to pay equity concerns.

For strategic advice on addressing the above, including applying for staffing and recruiter licenses, drafting enforceable employment agreements, addressing mass terminations, and handling pay transparency/equity obligations, **please contact our firm.**

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