

Cassels

Bill 149, Working for Workers Four Act, 2023 Receives First Reading

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On November 14, 2023, the Ontario Government introduced Bill 149, [Working for Workers Four Act, 2023](#) (the Bill), which amends several employment-related statutes, and expands on legislative changes introduced in the *Working for Workers Act*, [2021](#), [2022](#) and [2023](#). The Bill has received first reading. The Bill addresses several different aspects of employment law in Ontario and has a specific focus on the restaurant industry.

Recruitment and Hiring

If passed, the Bill will result in several important changes to employment legislation in Ontario impacting the recruitment and hiring process. Specifically:

- employers will be banned from requiring Canadian work experience in job postings or application forms;
- employers will be required to disclose expected salary ranges in job postings; and
- employers will be required to disclose if they use Artificial Intelligence (AI) in the hiring process;

To read more about how these changes will impact how Ontario employers approach the recruitment and hiring process, [please see our latest Pay Transparency Update here](#).

Tipping, Wage Deductions and “Trial Shifts”

In addition to the new requirements regarding job posting, the Bill also proposes to address what the provincial government says are persistent issues in the restaurant industry by:

- banning unpaid trial shifts;
- making it clear that employers cannot deduct an employee’s wages in the event of a dine and dash, gas and dash, or any other stolen property;
- stipulating the methods by which an employer must pay employee tips; and
- requiring employers who have a policy of sharing in the tips and gratuities (commonly known as “tip pooling”) provided to employees to post that policy in a conspicuous place in the establishment.

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It should be noted that Ontario's ESA already requires that employees be paid for all hours worked and further allows only three kinds of deductions to be made from an employee's wages (statutory deductions, court orders, and by written authorization). Accordingly, the bans on trial shifts and deductions for lost revenue or property appear to be more in the nature of clarifications than any real change.

Further, although the Bill will require employers who already have tip pooling policies to post such policies, the Bill does *not* require employers to take steps to develop a written policy, nor does it actually prevent employers from requiring employees to pool their tips.

However, the Bill does impose new requirements regarding the payment of tips to employees. In its current form, the Bill sets out the only permitted methods of paying an employee's tips or other gratuities, namely: (a) by cash; (b) by cheque payable only to the employee; (c) by direct deposit; or (d) by any other prescribed method of payment. The provincial government has [explained](#) that these proposed changes are made in response to the rise of digital payment platforms in the service industry, which can include fees for workers to access their funds, as well as technical and security issues. The proposed changes would require employers who pay tips using direct deposit to allow their employees to select the account into which tips are to be deposited. If payment is made by cash or cheque, then the employer has an obligation to ensure that the cash or cheque is given to the employee at their workplace or at some other place agreeable to the employee.

The Bill further provides that an employer may pay an employee's tips or other gratuities by direct deposit into an account of a financial institution if: (a) the account is selected by the employee and is in the employee's name; (b) no person other than the employee or a person authorized by the employee has access to the account; and (c) the account meets any other criteria that may be prescribed by regulation.

Amendments to the Workplace Safety and Insurance Act, 1997 (WSIA)

The Bill will also make certain changes to the WSIA. Specifically, it will enable "super indexing" increases to Workplace Safety and Insurance Board (WSIB) benefits above the annual rate of inflation to increase pay for injured workers, along with improving cancer coverage for firefighters.

If passed, the Bill will amend WSIA to lower the duration of employment needed to receive presumed compensation prior to diagnosis with esophageal cancer from 25 to 15 years. The Bill also amends WSIA to enable "super indexing" increases to Workplace Safety and Insurance Board (WSIB) benefits above the annual rate of inflation. According to the government's [announcement](#), for an injured worker who earns \$70,000 a year, a two per cent increase could mean an additional \$900 annually in addition to cost-of living adjustments, which were 6.5 per cent in 2023.

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More to Come?

In addition to these significant changes, the provincial government also [announced](#) that it will launch consultations to consider the following:

- Potentially creating a new, job-protected leave for critical illnesses (like cancer) to match the length of the new federal Employment Insurance sickness benefits; and
- Restricting the use of Non-Disclosure Agreements (NDAs) in the settlement of cases of workplace sexual harassment, misconduct, or violence.

If the Ontario government decides to proceed with an NDA ban in certain workplace settlements, it may be the first province in Canada to do so.

Conclusion

We will continue to monitor the progress of the Bill and provide updates as further information becomes available. Please contact a member of our Employment & Labour team if you have any questions.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.