

Amendments To Ontario Laws Put A Clamp On Requesting Doctors' Notes



The *Working for Workers Five Act*, 2024, proposes another wave of employee-friendly amendments to Ontario employment laws.

On May 6, 2024, Ontario's legislature introduced Bill 190, the *Workers for Workers Five Act*, 2024. It is the latest in a series of amendments to the Province's employment laws designed to enhance employee workplace protections and, at the same time, impose additional obligations on employers.

Doctors' notes

Of the amendments introduced, the most significant is a prohibition from seeking documentation from a qualified health practitioner as evidence to support an employee taking the protected sick leave under the *Employment Standards Act*, 2000 (the "ESA"). Sick leave under the ESA provides employees with three unpaid days off per year for personal illness, injury or medical emergency.

This means that Ontario employers cannot seek a doctor's note or other medical practitioner documentation for the first

three sick days an employee takes each year. Other evidence of the leave can be requested (such as an employee attestation). However, from a practical perspective, it will make confirming the validity of these sick days far more difficult for employers. After an employee has missed three days, an employer could return to its practice of requiring a medical note for future days missed due to sickness or injury. As a result, employers will need to be diligent in tracking sick time taken throughout the year.

Job postings

Bill 190 also proposes to amend the ESA to implement the laws respecting job postings that are the first of their kind in Canada. Specifically, it would require employers to disclose in publicly-advertised job postings if there is actually a vacancy for the position posted, and to respond to applicants who interview for job postings. If adopted, the government has indicated that it intends to consult with employers with respect to the implementation of these new rules.

Bad actor employers

Finally, Bill 190 aims to crack down on “bad actor” individuals and employers who violate the ESA. The legislation seeks to increase the maximum fine for individuals found to have committed an offence and convicted under the ESA from \$50,000 to \$100,000. This is the highest limit in Canada and the same as a maximum fine that a corporation can be fined in the same circumstances. This maximum fine would apply broadly to violations of the ESA. However, it can only be issued where an individual has been convicted of a violation, which requires they be prosecuted by a special division of the provincial government’s prosecutions office. These fines are not issued by employment standards officers, who only have the jurisdiction to issue penalties.

In that connection, Ontario Regulation 189/24 which was

introduced at the same time as Bill 190 and came into force on May 6, 2024, increases the penalty from \$1,000 to \$5,000 for repeat offenders (including employers) who have violated the same ESA provision three or more times in a three-year period. This new maximum penalty applies to separate incidents as well as a maximum per employee affected, where the violation impacted more than one employee.

Employers should heed this increase carefully as it effectively multiplies the previous penalty amount by five times and can result in very expensive penalties where several or more employees have been subject to the violation.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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