

Ontario Open To Feedback On Working Even More For Workers: Comment On Bill 190, The Working For Workers Five Act, 2024



Bottom Line

The Ontario government continued its Working for Workers Act series of legislative updates with the introduction of [Bill 190, Working for Workers Five Act, 2024](#) (the “Bill”) on May 6, 2024. The Bill’s present version proposes amendments to the following employment-related acts: *Employment Standards Act, 2000* (the “ESA”); *Occupational Health and Safety Act* (the “OHSA”); and *Workplace Safety and Insurance Act, 1997* (the “WSIA”). The Bill also proposes changes to a number of other acts.

As of May 16, 2024, the Bill passed Second Reading and is presently at the Standing Committee on Finance and Economic Affairs. This means the Bill may still change before it passes – and the government is asking for feedback on the *ESA* and *OHSA* amendments until June 10, 2024.

Bill 190 Proposes Changes to the *ESA*, the *OHSA*, and the *WSIA*

Bill 190's amendments introduce new obligations for employers under the *ESA* and extend the scope of the *OHSA* and the *WSIA*.

Proposed Changes to the *ESA*

If passed, Bill 190 includes several new obligations for employers under the *ESA*.

- **Medical certificates for *ESA* sick leave:** Most significantly, when an employee takes one of the three days of unpaid *ESA*-protected sick leave, Bill 190 prohibits their employer from requiring a medical certificate from a "qualified health practitioner," which includes a physician, registered nurse, or psychologist. Future regulations may add other classes of health practitioners to this list. Employers can still ask employees to show evidence "reasonable in the circumstances" that they are entitled to this leave. What is reasonable in the circumstances will vary, but could include positive COVID-19 test results that are time and date stamped or additional information regarding symptoms or an illness.
- **Disclosure of vacancies and retention of job postings:** Bill 190 requires employers to state in each "publicly advertised" job posting whether that posting is for an existing vacancy.
- **Communicating with interviewees:** Bill 190 requires employers to give "prescribed information" to any candidate that they interview for a "publicly advertised" posting. At this time, there has been no guidance or definition as to what "prescribed information" must be given to interviewees. Employers will also have to keep copies of that information for three years following the date it is given to the employee.

- **Maximum fines for *ESA* violations increased:** Bill 190 increases to \$100,000 the maximum possible fine for an individual found guilty of an *ESA* violation. If, for example, an individual employer refuses to pay overtime, that person could both be ordered to pay the overtime wages and, if charged and convicted of the offence, given a fine of up to \$100,000.

In its present form, Bill 190 leaves key terms undefined. We expect that either future regulations or future versions of this legislation will define “publicly advertised” and any exceptions to these new job posting obligations as well as the “prescribed information” to interviewees.

Updated Health and Safety Requirements

Bill 190’s proposed changes to the *OHSA* aim to modernize its application to reflect the digital and virtual aspects of the modern world of work.

- **Workplace harassment includes “virtual” harassment:** Bill 190 updates the definitions of “workplace harassment” and “workplace sexual harassment” to explicitly include “virtual” conduct. Employers should review their policies and practices to check whether their workplace harassment, workplace sexual harassment, and workplace violence policies are currently compliant with this change given the realities of hybrid and virtual workplaces.
- **Modernizing the *OHSA*:** Bill 190 includes the following changes to the legislation:
 - The *OHSA* will specifically apply to telework in private residence(s).
 - Required postings under the *OHSA* may be posted electronically “in a readily accessible electronic format”, including: work locations of members of the Joint Health and Safety Committee, the copy of the *OHSA*, and the employer’s occupational health

and safety policy.

- Joint Health and Safety Committee meetings can be held virtually.
- Employers and constructors must provide sanitary washroom facilities for certain specified projects and to maintain sanitization records.

Expansion of the *WSIA* for Wildland Firefighters

Bill 190 expands the *WSIA* to provide presumptive coverage for post-traumatic stress disorder for wildland firefighters and wildland fire investigators.

It also provides presumptive coverage to firefighters and fire investigators (wildland or otherwise) for primary-site skin cancer, provided that the individual worked as a firefighter or fire investigator for 10 years before being diagnosed.

Other Proposed Changes

Bill 190 also proposes changes to certain statutes governing skilled trades and regulated professions.

Building Opportunities in the Skilled Trades Act, 2021

- Provides alternative criteria for academic standards in skilled trades may be established via regulation.

Fair Access to Regulated Professions and Compulsory Trades Act, 2006

- Requires regulated professions to have a policy setting out acceptable alternative types of documentation of qualifications, where an applicant cannot access documentation for reasons beyond their control.
- Requires regulated professions to have a policy addressing enabling multiple concurrent registration processes.
- Mandates the submission of these policies and plans to the Fairness Commissioner for review and approval.

These have less wide-ranging implications for employers. However, if these do impact your workforce or workplace, please consult your regular lawyer at Fillion to discuss the potential impacts.

New Regulated Obligation for Constructors

Also on May 6, 2024, the government introduced Ontario Regulation 190/24 under the *OHSA*. This regulation requires constructors to provide menstrual products on construction projects with twenty or more workers expected to last three or more months, as of January 1, 2025. These menstrual products include both tampons and menstrual pads, which also must be kept clean and hygienic and must be made accessible to workers in reasonably private locations.

Takeaway

Although the proposed amendments in Bill 190, *Working for Workers Five Act* are not yet in force, employers may wish to begin preparing for some of the amendments by doing the following:

- Review your current workplace harassment and violence policies or employee handbooks to ensure that employees are protected from virtual harassment.
- Review your attendance policies or employee handbooks to see whether revisions are necessary as a result of the changes to the *ESA* regarding sick leave.
- Consider what alternative documentation may be required in the event of an *ESA*-protected sick leave.
- Review your current occupational health and safety policies and consider whether revisions are necessary as a result of changes to the application of the *OHSA* to private residences and the new posting requirements.
- In advance of January 1, 2025, affected construction employers may want to plan to provide menstrual products on relevant job sites.

In addition, employers are invited to provide feedback on the proposed changes to the [ESA](#) and [OHSA](#), until June 10, 2024. Talk to your regular Filion lawyer about what these amendments might mean for you, and what input you should provide to the government.

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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