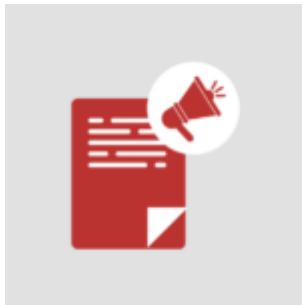


# What Will The Working For Workers Five Act Mean For Employers?



On May 6, 2024, the Ontario Government introduced Bill 190: *Working for Workers Five Act, 2024*.<sup>1</sup> The proposed Bill seeks to provide greater protection for employees by amending the [\*Employment Standards Act, 2000 \(ESA\)\*](#) and the [\*Occupational Health and Safety Act \(OHSA\)\*](#). Most notably, the proposed amendments seek to increase the fines that individuals might face if convicted of an offence under the *ESA*. This blog addresses the potential impact of the proposed legislative changes on employers.

## The Current Statutory Scheme

### ***Under the OHSA***

*OHSA* establishes minimum health and safety standards and practices that all parties in the workplace must follow. The Minister of Labour is responsible for the administration of the Act and appointing inspectors who assess an employer's compliance with the *OHSA*.<sup>2</sup> Pursuant to section 66 of *OHSA*, any person who contravenes or fails to comply with the Act "is guilty of an offence and on conviction is liable to a fine of not more than \$500,000 or to imprisonment for a term of not more than twelve months, or to both."<sup>3</sup> A corporation convicted

of an offence is liable to a fine of up to \$2 million.<sup>4</sup>

## ***Under the ESA***

The *ESA* governs the relationship between most employees and employers in Ontario. The *ESA* sets out minimum entitlements of employees. It is not permissible for an employee and employer to contract out of the *ESA*.

As with the *OHSA*, the Ministry of Labour is responsible for the administration of the Act. The Minister can appoint employment standards officers, who have broad powers to investigate possible contraventions of the Act and perform inspections to ensure that the Act is being complied with.<sup>5</sup> Following an investigation, employers may be convicted of contravening the *ESA*, thereby leaving them vulnerable to fines and even imprisonment.

Section 132 of the *ESA* imposes penalties on any person, including a corporation or a trade union, who violates a provision of the Act, such as failing to provide overtime pay or refusing to reinstate an employee after a protected leave. Pursuant to this section:

- If the person is an **individual**, they may be liable to a fine of not more than \$50,000 or to imprisonment of not more than twelve months, or both;
- If the person is a **corporation**, it may be liable to a fine of not more than \$100,000;
- If the person is a **corporation that has previously been convicted of an offence under this Act**:
  - if the person has **one previous conviction**, to a fine of not more than \$250,000; or
  - If the person has **more than one previous conviction**, to a fine of not more than \$500,000.<sup>6</sup>

# Proposed Amendments

The proposed amendments to the *OHSA* include:

- Constructors and employers have new duties regarding the maintenance of washroom facilities in the workplace, including ensuring that they remain clean and sanitary and keeping records of such cleaning;
- The definitions of “workplace harassment” and “workplace sexual harassment” are expanded to include acts of virtual harassment enacted through the use of information and communications technology;
- The application of the Act is expanded to include telework performed in or about a private residence; and
- Information can be “posted”, pursuant to requirements under the Act by making them available in an electronic format if (a) employers provide workers with instructions on how to access the information and (b) if the information can be readily accessed by workers in the workplace.

**Takeaways for Employers:** These proposed amendments largely address the new reality of virtual work environments. An employer’s duty to ensure a safe work environment does not change when the workplace is largely virtual. Employers can also use virtual spaces to fulfill some of their obligations under the *OHSA*.

The proposed amendments to the *ESA* include:

- New obligations are imposed on employers who publicly advertise job postings, including disclosing whether the posting is for a currently vacant position and other information to be prescribed, within a set time frame of the applicant’s interview;
- Employers may require evidence reasonable in the circumstances that an employee is entitled to sick leave, but cannot require a certificate from a qualified

- health practitioner;
- The maximum fine that could be imposed on a person for contravening the Act is increased from \$50,000 to \$100,000.
  - Similarly, [ESA Reg. 289/01](#) is to be amended to increase the fine for offenders of a third or subsequent contravention affecting multiple employees in a three-year period from \$1,000 to \$5,000, multiplied by the number of affected employees.

**Takeaways for Employers:** The proposed amendments represent a strong deterrent for potential non-compliant employers. Employers who have been sanctioned for non-compliance in the past should be especially careful to avoid repeat offences, given the heightened cost consequences associated with them. Employers should also be aware of their disclosure obligations if they use publicly advertised job postings and keep up to date with the information which must be provided. Employers may also be required to alter their policies on sick leave, given that employers are no longer permitted to require employees to produce sick notes. It is yet to be seen what will constitute “evidence reasonable in the circumstances” in the absence of documentation from a medical professional.

This blog was co-authored by Summer Law Student, Jason Corry and Articling Student, Leslie Haddock.

## **Footnotes**

1 2024,” *Legislative Assembly of Ontario*, online:

[www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-190](http://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-190).

2 *Occupational Health and Safety Act*, RS0 1990, c 0.1, [s 6\(1\) \[OHSA\]](#).

3 *Ibid*, [s 66\(1\)](#).

4 *Ibid*, [s 66\(2\)](#).

5 *Employment Standards Act, 2000*, SO 2000, c 41, [s 91](#) [ESA].

6 *Ibid*, [s 132](#).

*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.*

Authors: [Marty Rabinovitch](#), [Leslie Haddock](#)

Devry Smith Frank LLP