

## Employment Law for Paralegals, 2d e. UPDATES – as of December 2024

The following highlights key amendments to legislation:

**Bill 27, the *Working for Workers Act, 2021*** received Royal Assent on December 2, 2021

Schedule 2 amends the *Employment Standards Act, 2000* as follows:

New Part VII.0.1 Written Policy on Disconnecting from Work (ss 21.1.1 – 21.1.2):

- imposes a requirement on employers that employ 25 or more employees to have a written policy by March 1 of each year with respect to “disconnecting from work” defined to mean not engaging in work-related communications including emails, telephone calls, video calls or the sending or reviewing of other messages
- employers must provide a copy of the written policy to all employees within 30 days of preparing the policy or any amendments to it and for new employees, within 30 days of the day the employee becomes an employee of the employer
- mandatory content of written policy to be provided by regulation

New Part XV.1 Non-Complete Agreements (ss 67.1 – 67.2):

- prohibits employers from entering into employment contracts or other agreements with an employee that are, or that include, a non-complete agreement (subject to certain exceptions including the sale of a business and holders of “executive” positions including the chief executive officer, president, chief administrative officer and others)

Part XVIII. 1 re Temporary Help Agencies and Recruiters:

- ss 74.1.1 – 74.1.15: amended to include detailed provisions regarding licensing requirements for temporary help agencies and recruiters (“recruiter” and terms and conditions regarding licensing to be defined by regulation) which came into effect July 1, 2024
- s 74.4.3: regarding obligations of recruiters
- s 74.12.1 and 74.19: prohibiting reprisal by recruiters and orders if reprisal has been established

Schedule 3 amends the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, SO 2006, c 31 as follows:

- new s 10.2: prohibits a regulated profession from requiring as a qualification for registration that a person’s experience be Canadian experience, unless an exemption from the prohibition is granted by the Minister for the purposes of public health and safety in accordance with regulations

NOTE: “Regulated Professions” to which the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* applies are listed in Schedule 1 of the Act and included the Law Society of Ontario, the Ontario College of Teachers, and Chartered Professional Accountants of Ontario, among others, but does NOT include health professionals.

Schedule 5 amends the *Occupational Health and Safety Act* by adding s 29.1 requiring the owner of a workplace to ensure that access to a washroom is provided, on request, to a worker who is present at the workplace to deliver anything or to collect anything to deliver elsewhere

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**Bill 43, *Build Ontario Act (Budget Measures), 2021*** received Royal Assent on December 9, 2021

Schedule 9 amends the *Employment Standards Act, 2000* by increasing minimum wage effective January 1, 2022 as follows:

- employees under 18 years of age who do not work more than 28 hours per week: \$14.10/hour
- for services of hunting and fishing guides, \$75.00 for less than five consecutive hours in a day and \$150.05 for five or more hours in a day, whether they are consecutive
- employees who are homeworkers: \$16.50/hour
- all other employees: \$15.00/hour

**Differential minimum wage for liquor servers has been removed.**

From October 1, 2022, minimum wage will increase pursuant to the Consumer Price Index.

On October 1, 2024, minimum wage rates in Ontario were:

- \$17.20 (general minimum wage)
- \$16.20 (student minimum wage)
- \$18.90 (homeworkers wage)

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**Bill 88, *Working for Workers Act, 2022, SO 2022***, c 7 received Royal Assent on April 11, 2022

Schedule 2 amends the *Employment Standards Act, 2000* by adding Part XI.1 Written Policy on Electronic Monitoring (ss 41.1.1) requiring employers who, on January 1 of any year, employ 25 or more employees to have a written policy in place for all employees with respect to electronic monitoring before March 1 of that year.

Schedule 4 amends the *Occupational Health and Safety Act* as follows:

- New s 25.2 requires employers who become aware or ought reasonably to be aware that there may be a risk to a worker of having an opioid overdose at work to provide and maintain in good condition a naloxone kit and training
- s 66 is amended by increasing the fine for individuals to \$500,000 and for corporations to \$1,500,000; directors or officers who contravene or fail to comply with s 32 are subject to a fine of up to \$1,500,000

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**Bill 79, *Working for Workers Act, 2023, SO 2023***, c 15 received Royal Assent on October 26, 2023

Schedule 2 amends the *Employment Standards Act, 2000* by adding new s 53.2 to provide that in certain circumstances, a “location at which an employer carries on business” includes an employee’s private residence.

Schedule 5 amends s 66(2) of the *Occupational Health and Safety Act* by increasing the fines for corporations to \$2,00,000

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**Bill 149, Working for Workers Four Act, 2024, SO 2024 c 3** received Royal Assent on March 21, 2024

Schedule 2 amends the *Employment Standards Act, 2000* as follows:

- definition of “employee” in s 1(1) includes person performing work during a trial period within the meaning of training
- new Part III.1 sets out requirements related to the content of publicly advertised jobs including expected compensation or range of compensation, a prohibition against requiring Canadian experience, and disclosing the use of artificial intelligence to screen, assess or select applicants (NOTE: this part has not been proclaimed in force as of December 2024)

Schedule 4 amends the *Workplace Safety and Insurance Act, 1997* by adding a presumption of occupational disease for firefighters and investigators who develop primary-site esophageal cancer (s 15.1(4.1))

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**Bill 190, Working for Workers Five Act, 2024, SO 2024 c 19** received Royal Assent on October 28, 2024

Schedule 2 amends the *Employment Standards Act, 2000* as follows:

- new s 8.5 required employers who advertise a publicly advertised job posting to include a statement disclosing whether the posting is for an existing vacancy
- new s 8.6 requires an employer who interviews an employee to provide “prescribed” information and to retain all prescribed information for three years after the date the information was provided to the applicant (NOTE: these sections have not been proclaimed in force as of December 2024)

Schedule 4 amends the *Occupational Health and Safety Act* as follows:

- definition of “industrial establishment” in s 1(1) is amended by adding “other than an office located in a private residence” after “office”
- the definitions of “workplace harassment” and “workplace sexual harassment” are amended to include “virtually through the use of information and communications technology”
- s 3 is amended to indicate that the Act applies to telework performed in a private residence
- new sections are added requiring constructors (s 23.1) and employers (s 25.3) to ensure that washroom facilities provided are maintained in a clean and sanitary condition and that records of maintenance are maintained

Schedule 6 amends s 14(1) of the *Workplace Safety and Insurance Act, 1997* by adding “wildland firefighter” and “wildland fire investigator” to the definition of posttraumatic stress disorder in first responders

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**Bill 229, Working for Workers Six Act, 2024** was introduced in the Ontario Legislature November 27, 2024

Schedule 1 proposes the following amendments to the *Employment Standards Act, 2000*:

- introducing new s 47.1 the “placement of a child leave” to provide for a leave of up to 16 weeks because of the placement or arrival of a child into the employee’s custody, care and control through adoption or surrogacy
  - introducing new s 49.8 “long-term illness leave” to provide for a leave of up to 27 weeks if the employee will not be performing the duties of the employee’s position because of a serious medical condition
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## Chapter 7 – Just Cause for Dismissal

Case in Point page 206 – *Hucsko v A.O. Smith Enterprises Limited*, 2020 ONSC 1346 overturned on appeal – *Hucsko v A.O. Smith Enterprises Limited*, 2021 ONCA 728 (reasons released October 15, 2021)

The Court of Appeal determined that “the trial judge erred by failing to properly identify and characterize the conduct for which the employee was terminated” (at para 32). The trial judge had determined the basis for the termination to have been the employee’s refusal to apologize instead of the underlying conduct for the disciplinary action, namely sexual harassment of a co-worker. “The refusal to apologize is only part of the misconduct that the appellant had to consider when deciding whether there has been a breakdown in the employment relationship. The refusal to apologize did not occur in a vacuum. The degree of seriousness of the misconduct that led to the discipline, and then to the dismissal, is critical to the ultimate assessment of the propriety and proportionality of the employer’s response. But the trial judge eschewed this analysis, finding instead that the nature and seriousness of the respondent’s comments were irrelevant and focusing solely on his refusal to apologize.” (at para 38)

Following an analysis of the nature and extent of the misconduct, the surrounding circumstances and the corrective action taken by the employer and by applying the test established in *Dowling v Ontario (Workplace Safety & Insurance Board)* (2004), 246 DLR (4<sup>th</sup>) 65 (ONCA) explaining the test in *McKinley v BC Tel*, [2001] 2 SCR 161, the Court of Appeal concluded that the employee’s “lack of contrition, lack of understanding of the seriousness of his conduct, and his refusal to comply with the reasonable and essential requirement of an apology to the complainant and target of his comments” warranted the termination of his employment with the company. The appeal was allowed, the judgment of the lower court set aside and the employee’s wrongful dismissal claim was dismissed.

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