

Member's Quarterly

Fall 2022 Edition

Feature

Legislation Updates in Ontario

*Employers take note***Working for Workers Act: Round Two**

In December 2021, the Ontario government passed Bill 27: Working for Workers Act, 2021, which made a number of changes to employment-related legislation. This included a ban on non-compete agreements and the introduction of right to disconnect policies for certain workplaces.

Two short months later, the Ontario government proposed Bill 88: Working for Workers Act, 2022, which if passed, will make another set of sweeping changes to employment legislation.

This article highlights the proposed changes that will impact employers.

Bill 88 proposes a number of amendments to the Ontario Employment Standards Act, 2000 ("ESA"), including:

- An electronic monitoring policy will be required for employers with more than 25 employees. The policy must include:
 - whether the employer electronically monitors its employees;
 - if so, a description of how, in what circumstances and for what purpose the monitoring will occur; and,
 - the date the policy and any changes were prepared.
- Certain business and information technology consultants will be exempt from the ESA.
- Reservist leave will apply to military skills training.

The proposed changes to the Ontario **Occupational Health and Safety Act** ("OHSA") include:

- The maximum fine for Directors and Officers will be increased from \$100,000 to \$1,500,000.
- The maximum fine for other individuals (including supervisors) will be increased to \$500,000.
- A list of aggravating factors must be considered when determining the appropriate penalty.
- Where there is a risk of an employee having an opioid overdose at the workplace, the employer must provide naloxone kits.
- Most significant for employers, the limitation period for a prosecution will be increased from one to two years.

If passed, Bill 88 will also create the **Digital Platform Workers' Rights Act, 2022** (the "Act"), which sets out various entitlements for workers that are offered work assignments through a digital platform. This would include workers of ride sharing, delivery and courier companies that use digital platforms to assign work, often referred to as "gig workers".

Although such workers will not be entitled to the protections offered to employees under the ESA, the Act offers a number of protections that mirror some of the ESA entitlements, including:

- **The Right to Information:** Workers will be entitled to specific written information with respect to their work. This includes information with respect to how pay is calculated, the collection of tips and gratuities, the recurring pay period, the factors used to assign work, and any performance rating system.



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- **The Right to a Recurring Pay Period:** The operators of a digital platform will be required to establish a recurring pay period and pay its workers all amount earned, including gratuities, during that period.
- **The Right to Minimum Wage:** Workers will be entitled to be paid the minimum wage rate established under the ESA for all work assignments. Tips and gratuities will not be included in this assessment.
- **The Right to Amounts Earned:** Operators of a digital platform will not be permitted to withhold or make deductions from a worker's pay, or require a worker to return earnings (including tips), unless such deduction is authorized under application legislation.
- **The Right to Notice of Removal:** Workers will be entitled to two weeks written notice before being removed from a digital platform for 24 hours or longer. Workers will also be entitled to a written explanation outlining the reason they are being removed. Workers that are guilty of willful misconduct will not be entitled to notice of removal.
- **The Right to Resolve Work Related Disputes:** Workers will be entitled to have their work-related disputes resolved in Ontario, rather than a foreign jurisdiction.
- **The Right to be Free from Reprisal:** A worker will be free from reprisal for inquiring into their rights under the Act, filing a complaint or exercising their rights under the Act.

In addition, the Act will require operators of a digital platform to keep records with respect to each worker for three years after the termination of the worker's access to the digital platform.

While the Act will only apply to select companies that are engaged in the operation of a digital platform, if the Act is passed, it will have an incredible impact on the gig economy. Operators will have to make a number of changes to the operation of the digital platforms, which will undoubtedly trickle down to the users of those platforms.

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