

Member's Quarterly

Fall 2023 Edition

Feature

Enhanced Protections for Remote Workers and Increased Fines under Bill 79

Ontario will have among the highest maximum fines in Canada

On March 13, 2023, the Minister of Labour, Immigration, Training and Skills Development announced proposed amendments to the Employment Standards Act, 2000 (the "ESA") and other related statutes under Bill 79, the Working for Workers Act, 2023. This is the third iteration of this Act responding to the changing realities of the modern workplace, principally in light of the COVID-19 pandemic.

As of May 9th, Bill 79 has currently passed its second reading at Provincial Parliament and will be proceeding to its Third Reading. There have been no proposed amendments, meaning that the current version will likely be the final text of the Bill.

While the Bill will make quite a few changes, today we are focusing on two of the more impactful changes. First, the ESA will be amended to change the definition of an employer's "establishment", mainly affecting how the ESA defines mass terminations. Second, maximum fines are being increased for the Employment Protection for Foreign Nationals Act, 2009, and the Occupational Health and Safety Act. Together, these fines aim to make employers more accountable for violations of these respective Acts, imposing some of the highest fines in Canada.

Changes to the ESA

The first substantial change concerns the definition of an "establishment" under the ESA, impacting the notice requirements for mass terminations.

Currently, the ESA requires employers who are terminating 50 or more employees within a four-week period, from the same establishment, to provide notice to the Director of Employment Standards and to provide enhanced notice to employees under the Regulations. This enhanced notice provides anywhere from 8 to 16 weeks of notice or pay in lieu of notice, depending on the number of employees being terminated.

An establishment currently means either (1) a single location that the employer carries on business, (2) separate locations within the same municipality, or (3) multiple locations where one or more employees at one location have seniority rights over another employee at a different location.

This definition will be expanded to include "a private residence of the employer's employee if the employee performs work in the private residence and the employee does not perform work at any other location where the employer carries on business." (Schedule 1, cl. 2). The practical application of this amendment will be to include an employee's residence within the definition of an "establishment." Whereas remote workers would not have been included in the definition for the purpose of mass terminations, the amended ESA will now include remote workers for the purpose of mass terminations.

Employees who work entirely remotely will now be treated as though they work in a location of the



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employer from their home office. This has an impact, particularly on the second definition of an establishment. For instance, if an employer terminates more than 50 remote workers within the same municipality, the amended ESA will now treat that termination as a mass termination, engaging the enhanced notice requirements for mass terminations, whereas before the mass termination provisions would not have been engaged.

Although the full impact of this amendment is still unclear, one practical challenge for employers will be ensuring that they keep accurate records relating to their employees' place of work. We have seen throughout the pandemic that many remote workers have moved to other municipalities or even other provinces, without notifying their employer. Given these changes, employers should ensure they keep accurate records of where their remote employees are working, and double check these records before any mass terminations to ensure compliance with the amended ESA.

These amendments to the ESA will take effect the day the Bill receives Royal Assent. Given the pace at which it has made its way through Provincial Parliament, these amendments will likely be in effect sometime this year.

Changes to Maximum Fines under the OHSA and EPFNA

Bill 79 will also increase fines under two other statutes. The Employment Protection of Foreign Nationals Act, 2009 will see an increase in the maximum fine for employers who withhold an employee's passport or work visa. The Act currently has a fine of up to \$50,000 for an individual and up to \$500,000 for a corporation. Bill 79 will increase the maximum fine to \$1,000,000 for corporations, although the fine for individuals remains unchanged.

Similarly, contraventions of the Occupational Health and Safety Act will see increased maximum fines for corporations. The current maximum fine for a corporation is \$1,500,000. Bill 79 will see the maximum fine increase to \$2,000,000.

These fines will be among the highest maximum fines in Canada for similar offences under other provincial Acts. The government has stated that the goal of these fines will be to ensure that Ontario's most vulnerable workers are adequately protected.

Both of these changes will take effect on the day the Bill receives royal assent. We will continue to monitor the progress of this Bill as it makes its way through Parliament.

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