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Bill 149

An Act to amend various statutes with respect to employment and labour and other matters

The Hon. D. Piccini

Minister of Labour, Immigration, Training and Skills Development

Government Bill

1st Reading November 14, 2023

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

SCHEDULE 1 DIGITAL PLATFORM WORKERS' RIGHTS ACT, 2022

The Schedule amends the *Digital Platform Workers' Rights Act, 2022* as follows:

1. Section 8 of the Act is amended to provide that certain limits on recurring pay periods and pay days may be prescribed by regulation.
2. Section 9 of the Act is amended to provide that rules for determining compliance with the minimum wage requirements of the Act may be prescribed by regulation.
3. Section 66 of the Act is amended to give the Lieutenant Governor in Council the authority to make corresponding regulations.
4. The French version of the Act is amended to make a minor translation correction.

SCHEDULE 2 EMPLOYMENT STANDARDS ACT, 2000

The *Employment Standards Act, 2000* is amended as follows:

1. Amendments are made to include work performed during a trial period within the meaning of training for the purposes of the definition of "employee" in subsection 1 (1) of the Act.
2. New Part III.1 of the Act sets out certain requirements and prohibitions related to the content of publicly advertised job postings, as defined in that Part.
3. Subsection 11 (4) of the Act, which sets out requirements regarding the payment of wages by direct deposit, is amended to impose additional requirements related to the account into which the direct deposit is made.
4. New subsection 13 (6) of the Act clarifies that the circumstances in which subclause 13 (5) (b) (ii) of the Act would apply include where a customer of a restaurant, gas station or other establishment leaves the establishment without paying for the goods or services taken from, consumed at or received at the establishment.
5. New section 14.1 of the Act sets out the permitted methods of paying an employee's tips or other gratuities and other related requirements.
6. New subsection 14.4 (6) of the Act imposes requirements regarding the posting of employer policies relating to the employer or a director or shareholder of the employer sharing in tips or other gratuities redistributed under subsection 14.4 (1) of the Act.
7. Subsection 36 (3) of the Act is amended and subsection 36 (4) of the Act is re-enacted to clarify that the methods of paying vacation pay as set out in those subsections may only be used if the employee has made an agreement with the employer that those methods be used.
8. Related amendments are made to the Act and provision is also made for regulations to be made by the Lieutenant Governor in Council.

SCHEDULE 3 FAIR ACCESS TO REGULATED PROFESSIONS AND COMPULSORY TRADES ACT, 2006

The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* is amended to provide that prescribed requirements must be met to determine whether a regulated profession assesses qualifications in a way that is transparent, objective, impartial and fair and, if a third party makes such assessments, whether the regulated profession has taken reasonable measures to ensure that the assessments are made in a way that is transparent, objective, impartial and fair.

SCHEDULE 4 WORKPLACE SAFETY AND INSURANCE ACT, 1997

Section 15.1 of the *Workplace Safety and Insurance Act, 1997*, which creates presumptions that apply to certain firefighters and fire investigators, is amended to establish a presumption in respect of primary-site esophageal cancer. Related amendments are made to provisions of that section and to section 15.2.

The Act is amended by adding a new section 52.0.1 and by making corresponding amendments to sections 54 and 111 of the Act. These provisions govern the annual adjustment of payments provided for in, or otherwise determined under, the Act. The amendments provide that a prescribed additional indexing factor may be applied on such dates as may be prescribed. The Lieutenant Governor in Council is given related regulation-making powers.

**An Act to amend various statutes with respect to
employment and labour and other matters**

CONTENTS

1.	Contents of this Act
2.	Commencement
3.	Short title
Schedule 1	Digital Platform Workers' Rights Act, 2022
Schedule 2	Employment Standards Act, 2000
Schedule 3	Fair Access to Regulated Professions and Compulsory Trades Act, 2006
Schedule 4	Workplace Safety and Insurance Act, 1997

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Except as otherwise provided in this section, this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Working for Workers Four Act, 2023*.

**SCHEDULE 1
DIGITAL PLATFORM WORKERS' RIGHTS ACT, 2022**

**1 Section 8 of the *Digital Platform Workers' Rights Act, 2022* is amended by adding the following subsection:
Same, prescribed limits**

(2) For the purposes of subsection (1),

(a) a recurring pay period shall not exceed the prescribed number of days, if any; and

(b) a recurring pay day shall be no later than the prescribed number of days, if any, after the end of the pay period.

2 (1) Subsection 9 (2) of the Act is amended by adding “Unless the regulations provide otherwise” at the beginning of the portion before paragraph 1.

(2) Paragraph 2 of subsection 9 (2) of the Act is amended by striking out “for that assignment” at the end.

(3) Paragraph 3 of subsection 9 (2) of the Act is repealed.

3 Subsection 66 (1) of the Act is amended by adding the following clauses:

(d.1) prescribing a number of days for the purposes of clause 8 (2) (a) or 8 (2) (b);

(d.2) prescribing rules for the purpose of determining compliance with subsection 9 (1), including providing that minimum wage may be paid other than on a per work assignment basis;

4 The French version of the Act is amended by striking out “répétitive” wherever it appears and substituting in each case “récurrente”.

Commencement

5 This Schedule comes into force on the later of the day subsection 9 (1) of Schedule 1 (*Digital Platform Workers' Rights Act, 2022*) to the *Working for Workers Act, 2022* comes into force and the day the *Working for Workers Four Act, 2023* receives Royal Assent.

**SCHEDULE 2
EMPLOYMENT STANDARDS ACT, 2000**

1 Section 1 of the *Employment Standards Act, 2000* is amended by adding the following subsection:

Training includes trial periods

(2.1) For the purposes of clause (c) of the definition of “employee” in subsection (1), training includes work performed during a trial period.

2 (1) The Act is amended by adding the following Part:

**PART III.1
JOB POSTINGS**

Definitions

8.1 In this Part, and for the purposes of Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions) and Part XXVII (Regulations) insofar as matters concerning this Part are concerned,

“artificial intelligence” has the meaning set out in the regulations; (“intelligence artificielle”)

“employer” means an employer as defined in subsection 1 (1) and includes a prospective employer; (“employeur”)

“publicly advertised job posting” has the meaning set out in the regulations. (“annonce publique de poste”)

Compensation range information

8.2 (1) Every employer who advertises a publicly advertised job posting shall include in the posting information about the expected compensation for the position or the range of expected compensation for the position.

Exception

(2) Subsection (1) does not apply to a publicly advertised job posting that meets such criteria as may be prescribed.

Range of expected compensation

(3) For the purposes of subsection (1), a range of expected compensation is subject to such conditions, limitations, restrictions or requirements as may be prescribed.

Canadian experience

8.3 (1) No employer who advertises a publicly advertised job posting shall include in the posting or in any associated application form any requirements related to Canadian experience.

Exception

(2) Subsection (1) does not apply to a publicly advertised job posting that meets such criteria as may be prescribed.

Use of artificial intelligence

8.4 (1) Every employer who advertises a publicly advertised job posting and who uses artificial intelligence to screen, assess or select applicants for the position shall include in the posting a statement disclosing the use of the artificial intelligence.

Exception

(2) Subsection (1) does not apply to a publicly advertised job posting that meets such criteria as may be prescribed.

(2) Section 8.2 of the Act, as enacted by subsection (1), is repealed.

3 (1) Clause 11 (4) (a) of the Act is repealed and the following substituted:

(a) the account is selected by the employee and is in the employee’s name;

(2) Subsection 11 (4) of the Act is amended by adding “and” after clause (b) and by adding the following clause:

(c) the account meets the prescribed criteria, if any.

4 Section 13 of the Act is amended by adding the following subsection:

Cash shortage, lost property, etc.

(6) For greater certainty, the circumstances set out in subclause (5) (b) (ii) include where a customer of a restaurant, gas station or other establishment leaves the establishment without paying for the goods or services taken from, consumed at or received at the establishment.

5 The Act is amended by adding the following section to Part V.1:

Method of payment

14.1 (1) An employer shall pay an employee’s tips or other gratuities,

- (a) by cash;
- (b) by cheque payable only to the employee;
- (c) by direct deposit in accordance with subsection (3); or
- (d) by any other prescribed method of payment.

Place of payment by cash or cheque

(2) If payment is made by cash or cheque, the employer shall ensure that the cash or cheque is given to the employee at his or her workplace or at some other place agreeable to the employee.

Direct deposit

(3) An employer may pay an employee’s tips or other gratuities by direct deposit into an account of a financial institution if,

- (a) the account is selected by the employee and is in the employee’s name;
- (b) no person other than the employee or a person authorized by the employee has access to the account; and
- (c) the account meets the prescribed criteria, if any.

6 Section 14.4 of the Act is amended by adding the following subsection:

Policy re employer, etc., sharing in tips

(6) If an employer has a policy in place with respect to the employer or a director or shareholder of the employer sharing in tips or other gratuities redistributed under subsection (1), the employer shall post and keep posted a copy of the policy in at least one conspicuous place in the employer’s establishment where it is likely to come to the attention of the employer’s employees.

7 (1) Section 15 of the Act is amended by adding the following subsection:

Retention of job postings

(7.1) An employer shall retain or arrange for some other person to retain copies of every publicly advertised job posting within the meaning of Part III.1 and any associated application form for three years after access to the posting by the general public is removed.

(2) Section 15 of the Act is amended by adding the following subsection:

Retention of tips sharing policy

(7.2) An employer shall retain or arrange for some other person to retain copies of every written policy on sharing in tips or other gratuities that is required to be posted under subsection 14.4 (6) for three years after the policy ceases to be in effect.

8 (1) Subsection 36 (3) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Same

(3) The employer may pay the employee vacation pay that accrues during a pay period on the pay day for that period if the employee has made an agreement with the employer that it may be paid in that manner and,

.

(2) Subsection 36 (4) of the Act is repealed and the following substituted:

Same

(4) The employer may pay the employee vacation pay at a time set out in an agreement that the employee has made with the employer.

9 (1) Subsection 141 (1) of the Act is amended by adding the following paragraph:

1.2 Prescribing a method of payment for the purposes of clause 14.1 (1) (d) and establishing any terms, conditions or limitations on its use.

(2) Section 141 of the Act is amended by adding the following subsection:

Transitional regulations

(2.0.3.8) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Working for Workers Four Act, 2023*.

(3) Subsection 141 (2.0.4) of the Act is amended by striking out “or (2.0.3.7)” wherever it appears and substituting in each case “(2.0.3.7) or (2.0.3.8)”.

Commencement

10 (1) Except as otherwise provided in this section, this Schedule comes into force on the day the *Working for Workers Four Act, 2023* receives Royal Assent.

(2) Sections 3, 5, and 6, subsection 7 (2), section 8 and subsection 9 (1) come into force on the day that is three months after the day the *Working for Workers Four Act, 2023* receives Royal Assent.

(3) Section 2 and subsection 7 (1) come into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 3
FAIR ACCESS TO REGULATED PROFESSIONS AND COMPULSORY TRADES ACT, 2006

1 Section 10 of the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* is amended by adding the following subsection:

Same

(3) For the purposes of subsection (2),

- (a) in order for a regulated profession to be considered to make assessments of qualifications in a way that is transparent, objective, impartial and fair, it must, at a minimum, meet the requirements prescribed by regulation; and
- (b) in order for a regulated profession to be considered to have taken reasonable measures to ensure that a third party makes assessments in a way that is transparent, objective, impartial and fair, it must, at a minimum, meet the requirements prescribed by regulation, including any requirements respecting contracts entered into between the regulated profession and the third party.

2 Subsection 34 (1) of the Act is amended by adding the following clause:

(c.1.3) governing the assessment of qualifications for the purposes of subsection 10 (2), including,

- (i) prescribing requirements relating to the determination of whether a regulated profession makes assessments in a way that is transparent, objective, impartial and fair, and
- (ii) prescribing requirements relating to the determination of whether a regulated profession has taken reasonable measures to ensure that a third party makes assessments in a way that is transparent, objective, impartial and fair;

Commencement

3 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE 4
WORKPLACE SAFETY AND INSURANCE ACT, 1997**

1 (1) Subsections 15.1 (5) and (6) of the *Workplace Safety and Insurance Act, 1997* are repealed and the following substituted:

Same, primary-site esophageal cancer

(4.1) If a worker is prescribed under clause (8) (a) and suffers from and is impaired by primary-site esophageal cancer, the disease is presumed to be an occupational disease that occurs due to the nature of the worker's employment as a firefighter or fire investigator, unless the contrary is shown.

Restriction

(4.2) The presumption in subsection (4.1) does not apply unless the worker was employed as a full-time firefighter, part-time firefighter or fire investigator or served as a volunteer firefighter for a total of at least 15 years before being diagnosed.

Time of diagnosis

(5) The presumptions in subsection (4) and (4.1) apply only to diseases diagnosed on or after January 1, 1960.

Diseases diagnosed before 1998

(6) If a presumption in subsection (4) or (4.1) applies in relation to a disease of a worker that is diagnosed before January 1, 1998, the rights of the worker or his or her survivor shall, subject to the presumption, be determined in accordance with Part IX.

(2) Clause 15.1 (8) (a) of the Act is amended by striking out "or (4)" and substituting "(4) or (4.1)".

(3) Clause 15.1 (8) (b) of the Act is repealed and the following substituted:

(b) defining "firefighter", "fire investigator", "full-time firefighter" and "part-time firefighter" for the purposes of this section and the regulations under this section;

(4) Clause 15.1 (8) (e) of the Act is amended by striking out "and (4)" and substituting "(4) and (4.1)".

2 Subsection 15.2 (1) of the Act is repealed and the following substituted:

Claims based on presumptions

(1) This section applies if,

- (a) a regulation under section 15.1 is made or amended and, as a result, a presumption established under section 15.1 applies to an injury sustained by a worker or to a disease with which a worker is diagnosed; or
- (b) the presumption established under subsection 15.1 (4.1) applies to a disease with which a worker is diagnosed.

3 The Act is amended by adding the following section:

Additional indexing factor

52.0.1 (1) If an additional indexing factor is prescribed for the purposes of this section, on the prescribed date, the Board shall,

- (a) adjust the amounts that were adjusted under subsection 51 (1) and section 52 by the prescribed additional indexing factor; or
- (b) if the amounts that were adjusted under subsection 51 (1) and section 52 were previously adjusted by a prescribed additional indexing factor in the same calendar year, adjust the amounts previously adjusted by the most recently prescribed additional indexing factor.

Same, January 1

(2) If the date prescribed for the purposes of subsection (1) is January 1, the Board may add the prescribed additional indexing factor to the indexing factor described in subsection 49 (1) and apply them to the amounts to be adjusted in a single calculation.

Same, new claims

(3) If the date prescribed for the purposes of subsection (1) is a date other than January 1, on the prescribed date, the Board shall,

- (a) adjust amounts that first became payable between January 1 and the prescribed date by the prescribed additional indexing factor; and
- (b) if more than one additional indexing factor is prescribed in the same calendar year, adjust amounts previously adjusted by the most recently prescribed additional indexing factor.

4 Section 54 of the Act is amended by adding the following subsections:

Additional indexing factor

(4) If an additional indexing factor is prescribed for the purposes of this subsection, on the prescribed date, the Board shall adjust the amount that, in the year the worker was injured, was deemed to be a worker's average earnings under subsection (1) by applying the prescribed additional indexing factor to the amount as first determined, or as most recently adjusted, as the case may be, and shall round the adjusted amount to the nearest \$100.

Same, January 1

(5) If the date prescribed for the purposes of subsection (4) is January 1, the Board may add the prescribed additional indexing factor to the indexing factor described in subsection 49 (1) and apply them to the amounts to be adjusted in a single calculation.

5 Section 111 of the Act is amended by adding the following subsections:**Additional indexing factor**

- (3) If an additional indexing factor is prescribed for the purposes of this subsection, on the prescribed date, the Board shall,
- (a) adjust the amounts set out in the pre-1997 Act and the amounts payable under that Act that are adjusted on January 1 by the indexing factor described in subsection 49 (1) of this Act, by the prescribed additional indexing factor; or
 - (b) if the amounts set out in the pre-1997 Act and the amounts payable under that Act that are adjusted on January 1 by the indexing factor described in subsection 49 (1) of this Act were previously adjusted by a prescribed additional indexing factor in the same calendar year, adjust the amounts previously adjusted by the most recently prescribed additional indexing factor.

Same, January 1

(4) If the date prescribed for the purposes of subsection (3) is January 1, the Board may add the prescribed additional indexing factor to the indexing factor described in subsection 49 (1) and apply them to the amounts to be adjusted in a single calculation.

Same, new claims

- (5) If the date prescribed for the purposes of subsection (3) is a date other than January 1, on the prescribed date, the Board shall,
- (a) adjust amounts that first became payable under the pre-1997 Act between January 1 and the prescribed date by the prescribed additional indexing factor; and
 - (b) if more than one additional indexing factor is prescribed in the same calendar year, adjust amounts previously adjusted by the most recently prescribed additional indexing factor.

6 Section 184 of the Act is repealed and the following substituted:**Regulations, additional indexing factor**

184 (1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing an additional indexing factor, to be expressed as a percentage, for the purposes of subsections 52.0.1 (1), 54 (4) and 111 (3);
- (b) prescribing a date for the purposes of subsections 52.0.1 (1), 54 (4) and 111 (3).

Same

(2) The application of a prescribed additional indexing factor may be subject to any terms, restrictions, limitations, conditions or exclusions that are set out in the regulations.

Commencement

7 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.