

Employment Law Update: What You Need to Know



York Region Paralegal Network
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Disclaimer

This presentation does not constitute or replace legal advice. Every situation is unique and involves specific legal issues. If you would like legal advice with respect to the topics discussed in this presentation, or any Employment Law matter, we would be pleased to assist you.

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Agenda

1. Legislative Changes

2. Return to Work,
Remote Work, and
Hybrid work

3. Constructive
Dismissal

4. Best Practices

5. Q&A



Legislative Changes

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Working for Workers Seven Act

- Tabled in May 2025 - Ordered for Third Reading in October 2025



- **Changes:**
 - **The *Employment Standards Act, 2000* (“ESA”);**
 - **The *Occupational Health and Safety Act* (“OHSA”); and**
 - **The *Workplace Safety and Insurance Act* (“WSIA”)**

Changes to the ESA

1. Reporting Fraudulent Job Postings

2. New “Job Seeking Leave”

3. New Extended Layoff Provision





Reporting Fraudulent Job Postings

- Operators of public job posting platform (Monster, Glassdoor, etc.) must:
- Include a mechanism on this platform to report a fraudulent publicly advertised job posting; and
- Prepare a written policy on:
 - **How the person will address a reported posting; and**
 - **Any other prescribed information**
- **The policy must be:**
 - **Posted on the platform where users can see it; and**
 - **Retained for at least three years after it ceases to be in effect**

Current State of Job Postings/Interviews

- On January 1, 2026 all publicly advertised job postings must:
 - **Include the salary range;**
 - **Indicate if the posting is for a vacancy or a new role; and**
 - **Indicate if the employer (“ER”) uses AI to screen applications**

- Also on January 1, 2026:
 - **Job postings may not require Canadian experience**
 - **ER must advise all interviewees whether they were hired or not within a prescribed period**
 - **ER must retain job postings and interview information for three years**



New Job Seeking Leave

- **New Job-Protected Leave of Absence (“LOA”)**
- **Qualifying Employee (“EE”) entitled to an unpaid, job-protected LOA of up to 3 days**
- **EE not entitled to this LOA where ER provides 25% or less of the required notice**



New Extended Layoff

- **New Layoff Provision: Maximum of 52 weeks in a 78 week period**
- **Criteria:**
 - **Parties must agree in writing**
 - **Director of Employment Standards must approve**



Changes to the OHSA

1. An ER required under WSIA to have a defibrillator eligible for WSIB reimbursement
2. Ministry of Labour Inspectors provided authority to issue administrative penalty against a person where they have breached
 - a. OHSA;
 - b. Regulation to OHSA;
 - c. Inspector or Director order; or
 - d. Order of the Minister
3. Washroom facilities - ER must maintain record of cleanings for washrooms provided for EE use → Effective January 1, 2026
 - a. Date and time of two most recent cleanings
 - b. Post record in/near washroom OR electronically



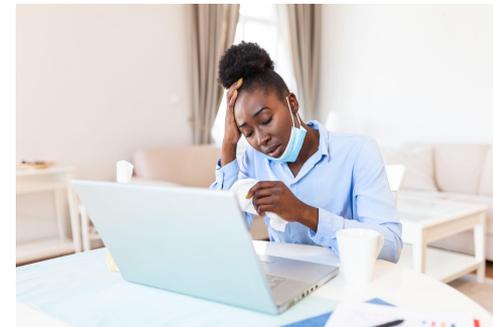
Changes to the WSIA

- ER prevented from making a false or misleading statement to WSIB about an EE's benefit claim
 - **Administrative penalty for breach of this rule**
 - **Penalty is in addition to any fine levied by a court**
- Increased maximum fine for ER convicted of two or more counts of the same offence in the same legal proceeding
 - **Currently: \$500,000.00**
 - **Increase: \$750,000.00**



Changes to Protected Leaves of Absence ("LOAs")

- **Long Term Illness Leave**
 - Qualifying EEs entitled to a LOA of up to 27 weeks in a 52 week period
 - Effective Date: June 19, 2025
 - Does not change the duty to accommodate!
- **Placement of a Child Leave**
 - Effective at a date to be proclaimed (not yet in effect)
 - Entitlement: job protected LOA of 16 weeks
 - Qualifications: EE has had child placed into their custody, care, and control for the first time, such as:
 - Adoption;
 - Surrogacy; or
 - Occurrence of other prescribed event or circumstance
 - EE has 13 weeks of consecutive service for the ER



Long Term Illness Leave

Three criteria to meet:

- 1) EE employed at least 13 consecutive weeks
- 2) EE has serious medical condition
- 3) Qualified health practitioner issues certificate outlining serious condition + how long EE expected to be away

Serious condition: anything preventing EE from working

Qualified health practitioner: physician, registered nurse, psychologist, or as prescribed by law



Long Term Illness Leave (cont'd)

EE and ER rights/obligations:

- **EE: advise ER before leave, or ASAP after + provide notice in writing**
 - **Up to 27 weeks of leave in 52 week period**
 - **Only entitled to period set out in certificate, LOA ends day after that period**
 - **LOA can be extended if new certificate issued**
-
- **ER: request copy of certificate; treat partial weeks as full weeks**



Remote Work, Return to Work, and Hybrid Work



Remote Work

Remote Work - Who Decides?

- ERs calling EEs back to work
- Tension between EEs and ERs re staying home
- Default: ER determines location of work
- Ks/policies govern situation - written, verbal and/or past practice

- **No absolute right to remote work**
 - But: accommodation may be required
 - EEs can also request to work remotely at ER's discretion
 - Considerations:
 - Put arrangements in writing
 - Confirm who pays for what
 - Adequacy of home office/equipment
 - Health and Safety requirements
 - What laws apply?
 - Address changing jurisdictions

- Pro tip: set out remote work terms in Ks and policies



Return to Work

ER summoned EEs back to office - what now?

- **EEs cannot refuse, unless:**
 - Existing right to work remotely
 - Legitimate reasons to stay home:
 - Refusing unsafe work/work environment
 - Leave of absence
 - Accommodation required
- **ERs allowing EEs to work remotely indefinitely is risky!**
 - ER can unwittingly give EEs right to remote work
 - If no communication otherwise, can become accrued right
 - ERs should put EEs on notice re reserving right to recall
 - Conversely, if ER does not have right, EE may have accrued WFH
- **Consequences if EE refuses w/o good reason:**
 - Discipline
 - Claim job abandonment



Pivot, Pivot, Pivot: Constructive Dismissal

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Can ERs force EEs back?

Yes, No, Maybe So!

- **EEs cannot refuse to return to office UNLESS:**
 - Existing right
 - Refusing unsafe work
 - Need for accommodation
 - Leave of absence
 - Need vs preference



Options for Addressing a WFH Request

To Remote or Not to Remote?

- **Hybrid work**
 - Alternating Remote and In-Person
- **Remote Work**
 - Temporary or
 - Permanent

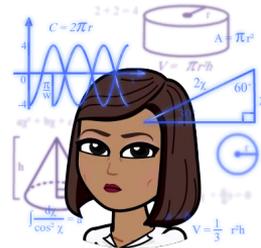
THINKING...



Considerations about Remote Work

Working Remotely or Remotely Working?

- Put arrangements in writing
- Where is the EE working?
 - What laws apply?
- Health & Safety?
- Managing remote EEs?
- If nothing in writing → recall may be constructive dismissal!



What is Constructive Dismissal?

Ch-ch-ch-ch-changes!

- **Unilateral, Substantial Change to Fundamental Terms and Conditions of Employment**
- Includes: change to compensation, schedule, duties, work location, etc.
- Even if compensation does NOT decrease
- Result: same as outright dismissal



Avoiding Constructive Dismissal



Pivot, Pivot, Pivot!

- **ERs: flex your discretion muscles**
- Get written consent for changes
- Give appropriate notice for changes
- Seek legal advice from an Employment Lawyer before doing anything that may have legal implications
- **EEs: check your agreements, policies if ER makes changes**
- Reject changes in timely manner, in writing
- Seek legal advice before accepting changes

Best Practices

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HR Tips & Tricks for EEs & ERs

Understand contracts & policies:

- Policies: set the rules, give ERs extra rights, establish procedures both EE and ER must follow
- E.g.: WFH - is there right to change location of work, is there a policy/language in EEs' agreements? Both parties must understand rights
- Get HR advice re contracts, policies
 - ERs: provide consideration, implement correctly, no offside language
 - Ensure have required policies, not discriminatory, give yourself flexibility
 - EEs: understand rights ER gets, your obligations, entitlements
 - E.g.: is there right to WFH, or have to request it?



Be proactive:

- ERs - review contracts and policies regularly
- EEs - review contracts/policies before accept offer/promotion, sign off on policies
- Get HR advice!

Any questions?

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Awards and Recognition

Selected as the Gold Winner for Best Labour & Employment Boutique Law Firm in the 2023 annual Canadian HR Awards, presented by HRD Canada and supported by Canadian HR Reporter

Rudner Law was selected as one of the top three Employment & Labour Law Boutique for 2019, 2020, 2021, and 2022 in the HR Reporter Readers' Choice Awards

Selected as the Silver Winner for Best Labour & Employment Boutique Law Firm in the seventh annual Canadian HR Awards in 2020, presented by HRD Canada and supported by Canadian HR Reporter

Awarded the 2021 Business Achievement Award, Professional Services by the Richmond Hill Board of Trade

2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024:
Selected for inclusion in 'The Best Lawyers in Canada' in the area of Employment Law

Repeatedly named in Canadian HR Reporter's Employment Lawyers Directory (comprehensive directory of top employment law and immigration law practitioners in Canada)

Legal Influencer By Lexology – recognized as the only Legal Influencer in Canadian HR Law in the first Lexology Awards

Named one of Canada's Top Legal Social Media Influencers

Nadia Zaman Nominated Top 25 Most Influential Lawyers from 2023-2025 as a Changemaker

Selected as a finalist for Best Labour & Employment Boutique Law Firm in 2021 and 2022 Canadian HR Awards, presented by HRD Canada and supported by Canadian HR Reporter

THANK YOU!

**IF YOU THINK YOU MIGHT
NEED AN EMPLOYMENT
LAWYER,
YOU PROBABLY DO.**



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