



Ontario Government Introduces the Working for Workers Act, 2022

March 7, 2022

On February 28, 2022, the Ontario Government introduced **Bill 88, the *Working for Workers Act, 2022*** (“Bill 88”) as part of its continued response to the recommendations contained in the *Future of Work in Ontario*, a report from the Ontario Workforce Advisory Committee. Although Bill 88 includes several proposed changes to workplace rules for provincially regulated employers, two of the most notable are the creation of new employment rules for digital platform workers, as well as the imposition of a requirement for employers to disclose their electronic monitoring practices in respect of employees. On March 3, 2022, Bill 88 was referred to the Standing Committee on Social Policy for further consideration.

Enactment of the *Digital Platform Workers’ Rights Act, 2022*

Bill 88 would enact the *Digital Platform Workers’ Rights Act, 2022* (the “Act”) to establish a minimum wage and other foundational rights for digital platform workers.

The Act defines “digital platform work” as the provision of for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform. The Act further defines an “operator” as including a person that facilitates, through the use of a digital platform, the performance of digital platform work by workers, but expressly excludes temporary help agencies. In the result, the Act would apply to those who work for companies like Uber, Door Dash and Instacart, regardless of whether they would otherwise be considered to be employees or contractors at law.

As currently drafted, the Act would establish the following rights and protections for digital platform workers:

- The right to earn at least minimum wage (currently \$15.00), exclusive of tips and other gratuities, for time worked in respect of each work assignment;
- The right to amounts earned by the worker and to tips and other gratuities;
- The right to a recurring pay period and pay day;
- The right to information – within 24 hours after an individual is given access to an operator’s digital platform for the purpose of accepting or declining to perform digital platform work, an operator would have to provide certain information in writing including how pay is calculated, whether tips or other gratuities are collected by the operator and, if so, when and how they are collected. Workers would also have the right to certain information when they are offered a work assignment, within 24 hours of completing a work assignment, and when a work



assignment is not completed;

- The right to written notice if a worker is being removed from an operator's digital platform, along with an explanation of the reason(s) why, including specifically a requirement for a minimum of two (2) weeks' written notice where a worker is being removed from the operator's digital platform for a period of 24 hours or longer;
- The right to resolve their work-related disputes in Ontario; and
- Protection from reprisal if a worker seeks to assert their rights under the Act.

The Act also sets out the rules, processes and requirements with respect to record keeping, director liability, complaints and enforcement, collections, as well as offences and prosecutions. If passed, the Act would come into force on a day to be named by proclamation of the Lieutenant Governor.

Employment Standards Act, 2000 ("ESA") Amendments

Bill 88 proposes to amend the ESA as follows:

Written Policy on Electronic Monitoring of Employees

Bill 88 would amend the ESA to require employers with 25 or more employees to put in place a written policy for all employees on electronic monitoring. Employers would have six months after Bill 88 receives Royal Assent to implement a policy. Otherwise, a policy will be required to be put in place by March 1 of any year in which an employer has 25 or more employees as of January 1.

The policy would be required to contain the following information:

- Whether the employer electronically monitors its employees and if so,
 - a description of how and in what circumstances the employer does so, and
 - the purpose for collecting information through electronic monitoring;
- The date the policy was prepared and the date any changes were made to the policy; and
- Any other prescribed information.

Employers would have to provide a copy of the policy to all employees within 30 days of preparing or changing the policy. A copy of the policy would have to be provided to new hires within 30 days of their hire, if the policy is already in place. In the case of clients of temporary help agencies, however, these timelines differ in that the client would be responsible for providing the assignment employee with a copy of their policy within 24 hours of the start of the assignment or within 30 days of when the policy is in place, whichever is later. Finally, employers would have to retain a copy of the policy for three (3) years after it ceases to be in effect.

Bill 88 does, however, provide that the requirement to implement an electronic monitoring policy does not affect or limit an employer's ability to use information obtained through electronic monitoring of its employees.



If passed, Ontario would become the first province in Canada to require electronic monitoring policies and to protect employees' privacy by requiring that employers be transparent about how employees' use of computers, cell phones, GPS systems and other electronic devices are being tracked.

Business and Information Technology Consultants

Bill 88 would clarify the treatment of certain business and information technology (IT) consultants in order to give these workers greater opportunities for work, while giving businesses certainty about their statutory obligations when engaging them. As such, Bill 88 would exclude certain business and IT consultants from the application of the ESA provided the following requirements are met:

- The consultant provides services through:
 - a corporation of which the consultant is either a director or a shareholder who is a party to an unanimous shareholder agreement, or
 - a sole proprietorship which complies with the requirements of the *Business Names Act*, if applicable, of which the consultant is the sole proprietor;
- There is an agreement for the consultant's services that specifies the timing and the amount of the consultant's payment(s), expressed as an hourly rate of at least \$60/hour, exclusive of bonuses, commissions, expenses, travelling allowances, benefit and any other prescribed amounts;
- The consultant is paid the amount as set out in that agreement; and
- Such other requirements as may be prescribed

If passed, Bill 88 provides for these amendments to come into effect on January 1, 2023.

Reservist Leave

Bill 88 would amend the reservist leave provisions under the ESA:

- To reduce the service eligibility requirement from six to three consecutive months of employment, and
- To expand entitlement to leave to include when an employee is participating in Canadian Armed Forces military skills training.

These amendments would come into effect on the day Bill 88 receives Royal Assent.

Occupational Health and Safety Act ("OHSA") Amendments

Naloxone Kits

Bill 88 would amend the OHSA to require employers to provide and maintain in good condition a naloxone kit in the workplace where the employer becomes aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at the workplace or where prescribed



circumstances exist.

Employers would also be required to ensure that a naloxone kit is in the charge of a worker who works in the vicinity of the kit and who has received training to recognize an opioid overdose, to administer naloxone, and to acquaint the worker with any hazards related to its administration.

Increased Maximum Fines and Limitation Period

Bill 88 would amend the OHS Act to increase the maximum fines for convictions under the Act.

Specifically, the maximum fines would be increased from \$100,000 to \$1,500,000 for directors or officers of corporations, and to \$500,000 for other individuals.

Bill 88 would also amend the OHS Act by adding to it a list of aggravating factors to be considered in determining an appropriate penalty in the event of a contravention of, or failure to comply with, the legislation. These would include the following:

- The offence resulted in the death, serious injury or illness of one or more workers;
- The defendant committed the offence recklessly;
- The defendant disregarded an order of an inspector;
- The defendant was previously convicted of an offence under the OHS Act or another act;
- The defendant has a record of prior non-compliance with the OHS Act or its regulations;
- The defendant lacks remorse;
- There is an element of moral blameworthiness to the defendant's conduct;
- In committing the offence, the defendant was motivated by a desire to increase revenue or decrease costs;
- After the commission of the offence, the defendant:
 - attempted to conceal the commission of the offence from the Ministry or other public authorities, or
 - failed to co-operate with the Ministry or other public authorities; and
- Any other circumstance that is prescribed as an aggravating factor.

The limitation period for instituting a OHS Act prosecution is extended from one year to two years under Bill 88.

The OHS Act amendments related to increased fines and the extended limitation period would come into force on the later of July 1, 2022, and the day Bill 88 receives Royal Assent. The provisions related to naloxone kits would come into force on a day to be named by proclamation of the Lieutenant Governor.

Fair Access to Regulated Professions and Compulsory Trades Act, 2006 Amendments

Bill 88 would amend the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* to



establish timelines within which regulated professions must process applications for registration from domestic labour mobility applicants, subject to the granting of an exemption. This particular proposal is intended to reduce red tape so as to encourage out-of-province workers to help fill the labour shortage.

In Our View

As noted above, Bill 88 is part of the government's continued response to recommendations of the Ontario Workforce Advisory Committee, and which have already led to legislative changes through the enactment of Bill 27, the *Working for Workers Act, 2021*.

As Bill 88 has not yet been passed, its contents may potentially change from what is detailed above. Emond Harnden will continue to monitor Bill 88's progress through the provincial legislature, including any amendments that may be made to the proposed legislation, and provide an update once it becomes law.

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