



IFW NEWSLETTER

October 2024

WHAT'S NEW

- REMINDER: Effective October 1, 2024, Ontario has increased its minimum wage to \$17.20 /hr
- We are thrilled to announce that **Israel Foulon Wong LLP** has been recognized one of **Canada's Best Law Firms for 2025** by the Globe and Mail and Statista. The award list can be found [HERE](#).

Congratulations IFW LLP Team!

WHAT'S NEW IN THE LAW

The Ontario legislature is back in session and has passed the *Working for Workers Five Act, 2024*.

Background

The *Working for Workers Five Act, 2024* was introduced in the Ontario legislature prior to lawmakers' summer break.

The fifth installment of this government's measures affecting the workplace was passed quickly upon resumption of sittings, with many of the changes becoming law effective October 28, 2024.

This newsletter will discuss some of the changes to the *Employment Standards Act, 2000* (the "ESA") now that the *Working for Workers Five Act, 2024* has received Royal Assent.

Sick Notes Now Prohibited for ESA Sick Leave

One important change to the ESA, with immediate effect, is that employers are now prohibited from requiring a sick note from a qualified health practitioner as evidence of an employee's illness, injury or medical emergency for entitlement to ESA sick leave.

The ESA still preserves an employer's right to require an employee to provide "evidence reasonable in the circumstances" of the illness. Presumably, a copy of a prescription (redactions may be necessary) would be sufficient evidence in some circumstances, but that may not be applicable for many situations. What if an employee decides to send a photo of themselves as evidence of the illness or injury? The evidence an employer may receive could range from practical, to awkward, or worse.

It is important to note that the prohibition on employers requiring a sick note only relates to a request from a "qualified health practitioner", a term that includes only physicians, registered nurses, or psychologists (no further prescribed class of health practitioners have been established in any regulation at this time). If the nature of the illness, injury or medical emergency could be addressed by another health practitioner, that request may be reasonable by the employer.

Finally, the prohibition on requiring a note from a qualified health practitioner applies only to a sick leave being taken by the employee pursuant to the ESA. As it currently stands, the ESA sick leave entitlement is a total of three (3) *unpaid* days in each calendar year. Therefore, an employer who requires a sick note from a physician as a condition to receiving *paid* vacation day (pursuant to an employment contract or the employer's policies/practices) is not impacted by the new law. Similarly, an employer who requires a sick note from a physician for an employee who is looking for a two-week unpaid leave is not impacted by the changes.

“Ghost Jobs”

Just in time for Halloween, the *Working for Workers Five Act, 2024* has also amended the ESA to address concerns about employers publicly posting “ghost jobs”. “Ghost jobs” are positions that appear to be open, but for which employers have no intention to hire at that time. The “evil” being addressed here is that employers use ghost jobs to collect an internal database, for when they might be ready to hire. The argument is that in doing so, it de-values the purpose of a job posting and is a replacement for proper job market research for elements of the role, such as a prospective employee's expected compensation.

Although not in force until a date to be proclaimed in the future, the ESA now states that every employer who advertises a public job posting shall include in the posting whether the posting is for an existing vacancy. Of course, this does not prohibit the posting of a ghost job, but it requires an employer to identify it as such.

Further, if an employer interviews an employee for a publicly advertised job posting, the employer shall, within a prescribed time period, provide the applicant with prescribed information. It is to be seen exactly what information an employer may be compelled by regulation to provide to applicants/interviewees, but it is likely to be information that would confirm whether the position has been filled or not, and therefore whether the posting is closed.

Key Takeaways

Employers are prohibited from requiring an employee to provide a doctor's note to support an illness, however, the prohibition is limited in its application. It only impacts the three (3) days of unpaid sick leave employees are entitled to under the ESA. Requests for paid sick leave, or unpaid sick leave beyond three (3) days in a calendar year, are not impacted by the prohibition.

It is likely a matter of time before employers have to disclose in public job postings whether the posting is for an existing vacancy. Failure to include such a statement is likely a breach of the ESA. It would be wise for employers to prepare for this eventuality by setting up internal protocols now.

LET'S TALK

Israel Foulon Wong LLP is one of Canada's leading employment and labour law firms. The firm's partners, Peter Israel, Chris Foulon, Carita Wong, Alex Van Kralingen, Krista Kais-Prial, Behzad Hassibi, Katherine Chau, Mark Repath and their associates, Vibhu Gairola and Domenica Moran, have over 125 years of collective experience in assisting clients with employment and labour law issues.

CONTACT US

65 St. Clair Avenue East, Suite 200
Toronto, ON M4T 2Y8
p. 416-640-1550
f. 416-640-1555
inquiries@israelfoulon.com
www.israelfoulon.com