



CLIENT ALERT

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2023 HR CHECKLIST FOR ONTARIO EMPLOYERS

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New for 2023

Effective January 1, 2023, private companies incorporated in Ontario must establish and maintain a Register of individuals with significant control (“ISCs”). *Significant Control* means a direct or indirect interest in a significant number of corporation shares. *Significant Number* means shares carrying 25% or more of all voting rights or 25% or more of the value of all shares. The Register must contain the name, date of birth, last known address and tax jurisdiction of each ISC, and the dates when they became or ceased to be an ISC. It must also contain a description of why an individual is an ISC and what steps are to be taken annually to update the Register. The Register must, in any event, be updated within 15 days of learning new ISC information. The Register is accessible to law enforcement, tax administration, and regulatory authorities. Shareholders who knowingly provide false information are subject to a fine of up to \$200,000 and imprisonment of up to 6 months.

Effective December 18, 2022, Employment Insurance (“EI”) sickness benefits were extended permanently from 15 weeks to 26 weeks. Qualified individuals who establish a new claim on or after that date will receive up to 26 weeks of EI sickness benefits paid at 55% of their average weekly insurable earnings up to a maximum entitlement of \$638 for 2022.

Effective June 1, 2023, Ontario’s Occupational Health and Safety Act (“OHS”) has been amended to require that certain employers provide and maintain a naloxone kit in workplaces where they are aware, or ought to be aware, that there may be a risk of a worker having an opioid overdose. Ontario has published [Regulation 559/22: Naloxone Kits](#), which provides additional information about the naloxone kit requirement. Ontario has also published [this webpage](#), which provides guidance regarding the naloxone kit requirement.

Effective June 23, 2023, Canada’s Competition Act (which applies to all provincially and federally regulated businesses operating in Canada) has been amended to prohibit employers from conspiring, agreeing, or arranging to enter into “wage-fixing agreements” and “no-poach agreements” with another employer that is not affiliated with them.

Termination provisions continue to be disputed by departing employees and set aside by the Courts. The pandemic continues to impact the judicial determination of reasonable notice of termination under the common law. Accordingly, it is vital to frequently review your offers of employment, employment agreements, and employment policies to

ensure that they are legally compliant and enforceable, especially if employee rights upon termination are being limited to the statutory minimums under the *Employment Standards Act* (“ESA”).

Return-to-Work will continue to be an issue in 2023, given the ongoing pandemic and emerging respiratory and flu challenges. Business imperatives, occupational health and safety, and human rights will have to be properly balanced, including updating relevant policies, including vaccination mandates. Remote work will make adherence to your disconnecting from work policy important to avoid contravening various provisions of the **ESA**. It will be important to ensure that employees working remotely adhere to privacy and cybersecurity policies and that employers disclose any electronic employee monitoring in that policy.

While Ontario has not yet introduced comprehensive private sector privacy legislation, Canada has introduced legislation to establish a new statutory framework governing of personal information practices in the private sector, the first statutory framework governing the creation and use of artificial intelligence systems and an enhanced framework for the protection of critical cyber systems and services. From an employment law perspective, the key piece of legislation is likely to be the *Consumer Privacy Protection Act* (“**CPPA**”), which will replace the *Personal Information Protection and Electronic Documents Act* (“**PIPEDA**”). **CPPA**, as drafted, would update **PIPEDA** by requiring organizations to implement a privacy management program, explain upon an individual’s request how a prediction, recommendation, or decision was made by an automated decision-making system, and grant individuals the right to direct that their personal information be transferred from one organization to another.

Reminders from 2022

Ontario employers with over 25 employees must have written policies regarding Workplace Vaccination, Disconnecting from Work, and Electronic Employee Monitoring.

Ontario employers can no longer enter into non-competition agreements with non-C suite employees. Existing employment agreements should be reviewed for provisions that may be construed as directly or indirectly preventing post-employment competition. Properly worded confidentiality, non-disclosure, non-solicitation, and intellectual property provisions are still permissible to protect the employer’s interests.

Calculation of severance pay under **ESA** Section 64 is now based on an Ontario employer’s global headcount and payroll. It remains to be settled how “global” will be assessed in the case of closely interrelated companies.

Workplace Policies

Ontario employers are required by law to have the following workplace policies:

- An Accessibility Policy;
- A Pay Equity Plan (employers with ten or more employees);
- A Workplace Health and Safety Policy;
- A Workplace Violence and Harassment Policy;
- A COVID-19 Workplace Safety Plan;
- A Workplace Vaccination Policy;
- A Disconnecting from Work Policy; and
- An Electronic Employee Monitoring Policy.

While not required by law, there are other policies that employers should consider implementing, including:

- An Absenteeism Policy;
- An Accommodation Policy;
- A Human Rights Policy;
- An Information Technology Policy (including cybersecurity);
- An Intoxicants Policy (updated to address medical and non-medical cannabis in addition to alcohol, prescription drugs, over-the-counter medications and illegal drugs);
- An Investigations Policy;
- An Privacy Policy; and
- A Social Media Policy.

Workplace Training

Ontario employers are required by law to carry out:

- Accessibility training;
- Harassment prevention and training;
- Health and Safety prevention and training; and
- Violence prevention and training.

Workplace Postings

Postings required by law in Ontario workplaces include:

- Poster: "Health & Safety at Work: Prevention Starts Here";
- Poster: "What you Need to Know" about the Employment Standards Act;
- Poster: "In Case of Injury" if your workplace is covered by the WSIB;
- Copy of the Occupational Health and Safety Act must be available on-site; and
- Your COVID-19 Workplace Safety Plan.

Occupational Health & Safety

Health and Safety Committees or Representatives are required by law in Ontario workplaces:

- A Joint Health and Safety Committee must be formed and trained if your organization employs 20 or more employees.
- A Health and Safety Representative must be selected and trained if your organization employs more than 5 but less than 20 employees.

Accessibility for Ontarians with Disabilities Act ("AODA")

- Organizations with 20 or more employees in Ontario must file an Accessibility Compliance Report. The Report form and additional information is available online from the Government of Ontario. Small organizations having more than 20 but fewer than 50 employees are only required to complete an accessibility report with respect to the accessibility standards for customer service.
- Organizations with 50 or more employees in Ontario must have made their websites and web content accessible to the WCAG 2.0 standard.

And finally...

Employment law is constantly evolving, so contact Eric Kay at ekay@dickinson-wright.com to obtain advice regarding particular employment policies, issues, concerns, or problems.

DISCLAIMER:

This commentary is for information purposes only, and its provision does not form a lawyer-client relationship or constitute legal advice.

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