

Employment Standards - Changing Times

A number of changes were made to the *Employment Standards Act, 2000* (the “**ESA**”), which have and will come into force this year. If you have employees, these changes will affect you, require you to take action and in some instances, may impact your pocket book.

1. **ESA Poster.** It used to be enough for companies to notify employees of their rights under the ESA by posting the Ministry of Labour (“**MOL**”) poster in an inconspicuous and accessible location. As of May 20, 2015, employers must give all of their existing employees a copy of version 6.0 of the poster, which can be printed or emailed as an attachment. New hires must receive the poster within thirty (30) days of being hired. Failure to provide employees with a copy of the poster may result in a compliance order or fine against the company. The ESA poster can be found at this link <http://www.labour.gov.on.ca/english/es/pubs/poster.php>.
2. **No ESA Complaint Cap.** Any employee who filed a complaint against his employer was limited to a \$10,000 recovery, even if his claim for unpaid wages, notice or severance pay was far greater than that amount. His only option would be to file a claim in court. As of February 20, 2015, there is no limit on the amount recoverable by an employee. An employee can file a cost-free complaint with the MOL for losses recoverable under the ESA, making the process much easier and cheaper.
3. **Increased Time Limit.** Hand-in-hand with the removal of the \$10,000 cap is the extension of time for an employee to submit a complaint. Previously, an employee had six (6) months to file a claim for unpaid wages or vacation, which meant amounts owed prior to the six (6) months was not payable by the employer. Employees now have two (2) years to submit their complaint, which increases an employer’s timeline for exposure and the amount recoverable by an employee. Despite this change, directors of the company are only personally responsible for six (6) months of wages and twelve (12) months of vacation, if the company is unable to pay the amounts owed.
4. **Annual Minimum Wage Increases.** Starting October 1, 2015, minimum wage will increase on an annual basis in line with increases in the Consumer Price Index (“**CPI**”). If there is a decrease or no change in CPI, the minimum wage will remain the same. Adjustments to the minimum wage will be announced by April 1 of each year, which will be no April Fool’s joke.
5. **Liability for Temporary Help Agencies.** If your company contracts with a temp agency for workers, effective November 20, 2015 both your company and the temp agency are jointly and severally liable for wages owing to the temp personnel. If the temp agency fails to pay the workers despite receiving your payment for the temp services, the MOL can order your company to pay the temp workers for unpaid wages while working for you. Companies need to consider the reputability of the temp agencies they work with and maintaining their own records of temp staff on hire to them. Keep in mind, the temp staff also has two (2) years to come back and bite you for monies owed to them, with no liability cap.
6. **Self-Audits.** In case the MOL runs out of officers to enforce the ESA, as of November 1, 2015 it can require your company to self-audit your records and practices to determine whether you are in compliance with the ESA. No need to worry. You will receive specific instructions on what is to be audited, the duration of time the audit must cover, the time line for completing the audit and how the audit should be completed. You are expected to report any instances of non-compliance with the ESA. Failure to do so or to fudge the truth will likely result in a big fine. What’s left for the MOL to do? Well, the self-audit doesn’t allow you to self-determine or self-impose a compliance order or fine; the MOL still has control over punishing you for the wrong-doings you discovered.

Times are changing for employees and employers. Strong and proper record keeping is a must in order to limit an employer's exposure for non-compliance under the ESA. Document delivery of the poster to employees, keep track of temp workers and their hours, maintain all employee records for at least two (2) years after their termination date and make sure you keep track of complying with the ESA. For advice and help with the ESA and other employment matters, contact your Chief Loophole Advisor at moira@wallacelaw.ca.