

Employment Bulletin



Employment Standards Act, 2000

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Ontario's new Employment Standards Act, the "Employment Standards Act 2000" received Royal assent on December 21, 2000.

The Employment Standards Act 2000, like its predecessor, provides minimum standards of employment that must be followed by employers governed by provincial employment legislation. Some of the most notable changes to existing employment standards are:

Sale of Business

When an employer sells a business and the purchaser employs an employee of the employer, the employee's employment with the employer is deemed to be employment with the purchaser for the purpose of any calculation of the employee's length or period of employment. In the past, length of service with the predecessor employer was only recognized for the purposes of entitlement to pregnancy, parental leave, public holidays, vacation with pay and termination and severance pay.

Payment of Wages

The Act now specifically authorizes payment of wages by direct deposit, and pay statements by electronic e-mail.

Employment Records

The Act sets out in detail the type of employment records which must be kept and extends the time periods during which these records must be retained.

Hours of Work

In the past, employers were prohibited from allowing employees to work more than 8 hours in a day, or 48 hours in a week without a permit from the Director of Employment Standards.

Under the new Act, employees may work no more than 8 hours in a day, or, if the employer establishes a regular work day of more than 8 hours, no more than the number of hours in the regular work day, to a maximum of 48 hours in a week. However, employers can, with the agreement of their employees, require employees to work up to 60 hours per week. Two weeks' written notice is required to revoke this agreement by the employee. Employers must provide employees with reasonable notice of an intention to revoke the agreement.

The rest period provisions have also been amended. Employees must be given a rest period of at least 11 hours free from work in each day unless they are on call. An eating period of 30 minutes after every 5 hours of work is still required, although employees may agree to break this period up into smaller breaks totalling 30 minutes, if they wish. Employers must also give employees at least 8 hours off between shifts unless the total time worked on successive shifts is no more than 13 hours. In addition, employers must also give employees a work free period of at least 24 consecutive hours per week, or 48 consecutive hours in every period of two consecutive weeks.

Overtime

Overtime at the rate of time and a half is still required for any hours worked in excess of 44 hours per week. However, employers and employees are now free to agree that an employee's hours of work may be averaged over a period of up to 4 weeks for the purposes of determining entitlement to overtime. These agreements must have a specific expiry date and cannot last more than 2 years before they are subject to renewal.

Employers and employees may also now agree that overtime may be taken by way of time off in lieu of overtime at the rate of one and a half hours off for each one hour of overtime worked. The time off must be taken within 3 months of the week the overtime was earned or, with the employee's agreement, within 12 months of that week.

Vacation With Pay

Employees must still be given a vacation of at least 2 weeks with pay after each 12 months of employment. The new Act specifically requires that both active and non-active employment be included for the purposes of calculating entitlement to vacation. Vacation pay must be paid in a lump sum before the employee begins vacation unless the employee is paid by way of direct deposit on each regular pay day.

Employees and employers can agree that an employee will forego a vacation provided the parties obtain the consent of the Director of Employment Standards.

Pregnancy Leave

Pregnancy leave continues to be for 17 weeks. However, the Act now provides that in the event an employee decides to terminate her employment when it expires, she must give her employer at least 4 weeks' written notice of termination.

Parental Leave

Parental leave has now been extended to 35 weeks, for all employees who take pregnancy leave, and to 37 weeks for all other parents entitled to parental leave. Again, any employee not returning to employment after a parental leave must give at least 4 weeks' notice of termination.

Emergency Leave

The Act now provides for a leave of absence of up to 10 days per year without pay because of a personal injury, illness or medical emergency, the death, illness, injury or medical emergency of a family member or an "urgent matter" that concerns a family member. Only employees in workplaces which regularly employ at least 50 employees are entitled to the leave. Employers are entitled to evidence "reasonable in the circumstances" to determine that the employee was entitled to leave.

General Provisions Concerning Leave

During a pregnancy leave, parental leave or emergency leave, employees are entitled to continue to participate in the employer's benefit plans. Employers must continue to make their contributions to these benefit plans unless the employee gives written notice that he/she does not intend to pay his/her share of the premium.

The periods of these leaves of absence must be included in determining an employee's length of employment except for the purposes of determining whether an employee has completed a probationary period.

Employees are entitled to reinstatement at their former position upon the expiry of the leave. If that position no longer exists, employees must be given a comparable position.

Termination and Severance of Employment

The formula for calculating termination pay and severance pay is the same under the new Act. However, the Act now provides that if an employer lays an employee off without specifying a recall date, it is not considered to be termination until the period of layoff exceeds that of a temporary layoff.

Enforcement

There have been significant amendments to the enforcement provisions of the Act. Any employee covered by a collective agreement must still enforce his or her rights under the Act through the grievance procedure established under the collective agreement.

Employment Standards Officers are still authorized to investigate complaints. They may issue orders to pay for up to \$10,000.00 in wages with respect to each employee. They may also order reinstatement if they find a violation of the leaves of absence, lie detector, retail business establishments or reprisal portions of the Act. Employment Standards Officers may also make a compliance order ordering a person to cease contravening the Act, or ordering a person to take certain

actions in order to comply with the Act and provide deadlines for such compliance. Employees must still file complaints to collect money within 6 months of the date the money became due.

Employment Standards Officers may now issue notices of contravention in situations where they believe a person has contravened the Act. The person receiving the notice will be deemed to have contravened the Act unless they apply to the Ontario Labour Relations Board for a review of the notice within 30 days of service. Orders to pay and notices of contravention must be issued within 2 years of the date the complaint was filed by the employee.

Anyone disagreeing with the decision of the Employment Standards Officer may apply to the Ontario Labour Relations Board for a review within 30 days. There are special provisions with respect to the enforcement of the provisions of benefit plans. The Act provides that an employer cannot provide for a benefit plan that treats employees, beneficiaries, survivors or dependants differently because of their age, sex, marital status or same sex partnership status. If the Director of Employment Standards believes there has been a violation, he/she may refer the matter to the Ontario Labour Relations Board for determination. The Board in turn may order the employer to cease the contravention of the Act, and to compensate any person who may have suffered a loss.

Fines payable on conviction under the Act have been increased. An individual may be fined up to \$50,000.00 and imprisoned for a term of not more than 12 months.

A corporation may be fined up to \$100,000.00. A corporation that has one previous conviction under the Act may be fined up to \$250,000.00, and if it has more than one previous conviction, it may be fined up to \$500,000.00.

There are also special provisions with respect to convictions for intimidating, dismissing or otherwise penalizing employees for enforcing their rights under the Act. A court may order the employer to take specific actions or refrain from taking specific actions to remedy the contravention. An employer who fails to comply with such an order is subject to a fine of up to \$2,000.00 per day for each day it fails to comply, or to imprisonment for up to 6 months. If the employer is a corporation, the fine is \$4,000.00 per day.

The Effective Date of the Act

This Act received Royal Assent on December 21, 2000. On December 29, 2000, an amendment extending the period of parental leave to 35 weeks for an employee who took pregnancy leave, and 37 weeks for an employee who did not take pregnancy leave came into force. It is not expected that the rest of the Act will be proclaimed in force for several months pending the completion of new regulations to accompany it.

In the meantime, if you would like any additional information about Bill 147, please contact our office.

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