

## **NEW EMPLOYMENT STANDARDS LEGISLATION IN ONTARIO: TIME FOR EMPLOYERS TO REVIEW THEIR EMPLOYMENT POLICIES**

By Koby Smutylo  
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The *Employment Standards Act, 2000* (“ESA 2000”) received Royal Assent on December 21, 2000. The ESA 2000 gives employers greater flexibility in developing work arrangements with their employees and employees more time off for family related matters.

**The provisions dealing with parental leave were proclaimed into force on December 31, 2000. The other provisions will take effect sometime in 2001, likely June or July, when the balance of the new legislation is proclaimed in force and the current legislation is repealed.**

McLean & Kerr LLP recommends that employers review the new employment standards legislation and take steps to ensure that their employment policies are compliant with the provisions of the ESA 2000 and that managers and employees are aware of their respective obligations and rights under the new legislation.

### ***“A Time for Change”***

The ESA 2000 represents an attempt by the Ontario Government to “modernize” and “simplify” employment standards legislation in the province. The need for such change was identified in a review of employment standards legislation in the province. The review, which included public meetings in five Ontario cities, culminated in the July 2000 release of the consultation paper “A Time for Change: Ontario’s Employment Standards Legislation” by the Ministry of Labour.

### **Overview of the *Employment Standards Act, 2000***

Like the current provincial employment standards legislation, the ESA 2000 applies to most, **but not all**, employers and employees in the Province of Ontario. The ESA 2000 does not apply to employees in industries regulated by the Government of Canada, such as: post office, railways, airlines, banks, shipping companies that cross provincial and state borders, and radio and television stations. These employees are covered by the federal *Canada Labour Code*.

The ESA 2000 affects employers and employees subject to a collective agreement to a limited extent. Collective agreements are deemed to contain rules on wages and working conditions that are at least equal to or better than the rules in the ESA 2000. In addition, though there are some exceptions, employees covered by a collective agreement cannot file a claim with the ministry, but instead must use the grievance procedure outlined in the collective agreement.

## **Significant changes were made in the following areas:**

### **Parental Leave**

Under the ESA 2000, parents (natural or adoptive) of children born or adopted on or after December 31, 2000 are entitled to 37 weeks of parental benefits. Birth mothers are entitled to 52 weeks (17 weeks maternity plus 35 weeks parental leave) combined maternity and parental leave.

The current legislation authorizes 17 weeks maternity leave and only 18 weeks parental leave. The new parental leave provisions, the only ESA 2000 provisions proclaimed in force at this time, are consistent with federal Employment Insurance eligibility requirements.

### **Emergency Leave**

Under the ESA 2000, employees whose employers employ 50 or more employees are entitled to an emergency leave of absence without pay of up to 10 days.

The entitlement is available in the following circumstances: personal illness, injury, medical emergency; death illness or medical emergency of a spouse, same-sex partner, parent, step-parent, or foster parent of the employee, the employee's spouse or the employee's same-sex partner; death illness or medical emergency of a grandparent, grandchild or step-grandchild of the employee or of the employee's spouse or same-sex partner; death illness or medical emergency of the spouse or same-sex partner of a child of the employee; death illness or medical emergency of the employee's sister or brother; and death illness or medical emergency of a relative of the employee who is dependent on the employee for care or assistance. There are no comparable provisions in the current legislation.

### **Vacation with Pay**

The ESA 2000 provides that the two weeks vacation that employers are required to give employees must be taken in a two-week period or two periods of one-week, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees. Requiring employees to provide notice in writing is new.

### **Working Hours**

The ESA 2000 increases the maximum allowable hours that an employee may work in a week to 60 hours. However, an employee may only be "permitted" by an employer to work in excess of 48 hours and up to 60 hours in a week if the employee consents.

An employer must give an employee a period of at least 11 hours free from performing work in each day. The minimum does not apply to employees that are on call or are

called in during periods in which they are not otherwise expected to perform work by their employer. In addition, the ESA 2000 enacts weekly rest periods of 24 hours in every seven days or 48 hours in every 14 days. There are no mandatory rest periods in the current legislation.

An employer must give an employee a period of at least 8 hours free from work between shifts unless the total time on successive shifts does not exceed 13 hours or unless the employer and the employee agree otherwise.

The current legislation provides a maximum work day of 12 hours and work week of 48 hours. However, daily hours in excess of 8 require approval of the Director of Employment Standards.

### **Overtime Pay**

Employees retain the right to receive overtime pay for work in excess of 44 hours a week. However, under the new legislation employers and employees may enter into averaging agreements. An averaging agreement is an agreement that the employee's hours of work may be averaged over a period of not more than four weeks for the purpose of determining the employee's entitlement to overtime pay.

In addition, the ESA 2000 provides that employees may be compensated for overtime hours by receiving one and one-half hours of paid time off for every hour of overtime worked instead of overtime pay.

Time off in lieu of overtime pay is only available if the employee and employer agree and the paid time off work is taken within 3 months of the week in which the overtime was earned or, with the employees agreement, within 12 months of that work week.

### **Homemakers**

The current employment standards legislation requires that employers wishing to employ persons to do work in the employees' own home (called "homeworkers") must obtain a permit from the Director of Employment Standards. In addition, homeworkers are exempt from the hours of work and overtime provisions.

The ESA 2000 provides no such special treatment of homeworkers; homeworkers are included in the ESA 2000's definition of "employee" and, therefore, must be treated the same as other employees.

### **Enforcement Measures**

Under the ESA 2000, the maximum court-ordered fines for an offending corporation are increased from the current maximum of \$50,000 to \$100,000 for the first offence, \$250,000 for the second offence and \$500,000 for the third offence.

The maximum court-ordered fines for an individual remain at \$50,000 with increased jail terms of up to one year.

### **McLean & Kerr LLP Can Help**

We will be pleased to answer any questions you may have in connection with the *Employment Standards Act, 2000* or its application to your specific situation. In addition, we are available to review your employment contracts, practices and policies for the purpose of ensuring that they are not only in compliance with the ESA 2000 but afford you maximum flexibility in structuring work arrangements with your employees under the ESA 2000.

**Koby Smutylo**

**Direct Dial: 416.369.6610**

**E-mail: [ksmutylo@mcleankerr.com](mailto:ksmutylo@mcleankerr.com)**