



Talking Union is a bi-monthly newsletter highlighting matters of interest to the labour relations community. We welcome your questions and comments.

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EMPLOYMENT STANDARDS ACT, 2001

In December, 2000, the Government passed *Bill 57* which included the new *Employment Standards Act, 2000*. While the pregnancy/parental leave provisions of that *Act* were implemented immediately, the balance was only proclaimed effective September 4, 2001. This special edition of TALKING UNION summarizes the major changes in the *ESA 2000*.

Exemptions to the *ESA 2000* (Part III)

- All exemptions from the old *ESA* are continued
- New exemptions are: federal employees, political employees, employees holding an elected office in voluntary organizations, including trade unions
- Other exemptions for "prescribed individuals" as defined by Regulation

Payment of Wages (Part V)

- Authorizes payment by direct deposit
- Unpaid wages have priority over the claims of unsecured creditors to \$10,000.00 per employee

Hours of Work and Eating Periods (Part VII)

- Continues previous maximums of 8 hours per day, 44 per week before overtime premiums required, 48 overall maximum hours work per week
- Employer and employee may agree to a longer work day to a maximum of 60 hours per week, such agreements revocable on 2 weeks' notice by either party
- Employees must have 11 hours free from work each day, or

less with split shifts

- Employees must have 24 consecutive hours per week free from work or 48 hours in two weeks
- Employers can require longer work days or shorter rest periods in emergencies, with unforeseen and seasonal circumstances, and for urgent repairs
- Employees may agree to shorter eating periods than the normal 30 minutes

Overtime Pay (Part VIII)

- Former overtime premium after 44 hours continued, usually at one and one half the regular wage rate
- Employee may agree to average hours of work over 4 weeks (and avoid payment of overtime premiums)
- Overtime agreements must be in writing, for a specified term up to two years, and are not revocable without agreement
- Employees may agree to time off in lieu of premium pay, at one and one half hours off for each hour worked, taken within 3 months or as mutually agreed
- Regulations exempt certain employees from the hours of work limits, including construction employees (both on-site and off-site), taxicab drivers, ambulance drivers and information technology professionals

Public Holidays (Part X)

- Holiday pay calculated by regular wages plus vacation pay over the last four weeks divided by 20 for all employees
- Premium holiday pay is one and one half times the regular rate
- Holidays normally taken off with pay
- Employees can agree to work the holiday for regular pay and take a different day off with holiday pay or work the holiday for premium pay
- Other restrictions and limits on entitlement to holiday and premium pay specified

Vacation with Pay (Part XI)

- Guaranteed 2 weeks paid vacation per year worked, counting both "active" and "inactive" employment
- Vacation normally taken in one or two week blocks, but employee may request in writing to take vacation in shorter periods
- Vacation pay may be paid out at the time vacation taken, or at times agreed with the employee
- Employers must pay vacation pay for scheduled vacations even during strikes and lock-outs
- Employees may forgo taking any vacation and receive pay with Director's approval and employer's agreement

Leaves of Absence (Part XV)

- Employees entitled to combined total of 52 weeks of pregnancy and parental leave
- For employers of 50 or more employees, employees are entitled to "emergency leave" of 10 unpaid emergency leave days annually
- "Emergency leave" covers:
 - Personal illness, injury or medical emergency
 - Death, illness, injury or medical emergency of a family member
 - An urgent family matter
- "Family" specifically defined and includes same-sex partners and dependent relatives
- Employer may require reasonable evidence of the circumstances
- Employer must continue benefit contributions during recognized leaves
- Employers must reinstate the employee to the same, or a comparable, position after any statutory leave unless the employment ended in the interim solely for reasons unrelated to the leave

Termination and Severance of Employment (Part XV)

- Termination pay entitlements unchanged
- "Termination" and "Severance" now include constructive dismissal
- Unpaid benefit contributions deemed to be "unpaid wages" and subject to same collection procedures
- Benefit contributions must be continued through paid notice period
- Termination pay in lieu of notice must be paid in a lump sum equal to the amount of the regular wages for the period of notice
- Employees entitled to severance pay may agree to receive it in instalments over 3 years

Retail Business Establishments (Part XVII)

- Retail employees continue to have the right to refuse to work on a public holiday
- Retail employees may also refuse to work on a Sunday provided they provide at least 48 hours notice to the Employer
- Regulations specify employees who agreed at time of hiring to work on Sundays cannot refuse, unless due to religious objection

Reprisals and Enforcement (Part XVIII, XXII, XXIII and XXV)

- Employers prohibited from intimidating, dismissing, threatening or otherwise penalizing employees because of questions, complaints, or attempts to exercise rights under the *ESA 2000*, or because of garnishment orders against the employee
- Onus on the employer to establish no reprisal
- Employment Standards Officers can order reinstatement as well as compensation for proven reprisals
- Employee complaints must be made within two years of violation
- Orders for payment of unpaid wages can still only go back for 6 months' pay
- Employee seeking unpaid wages in a civil suit barred from filing a complaint

- Employee who complains under *ESA 2000* for termination or severance pay may not commence a wrongful dismissal action, unless complaint withdrawn within 2 weeks of filing
- Orders of the Employment Standards Officers subject to review by the Ontario Labour Relations Board
- Requests for review to be in writing and submitted within 30 days of the order
- Board may designate one or more parties to represent the group where interests among the group are substantially the same
- Judicial penalties for offences substantially increased:
 - \$50,000.00 or imprisonment for twelve months for Directors
 - \$100,000.00 for first offence by corporations, \$250,000.00 for second offence, and \$500,000.00 for a third offence

Enforcement and Collective Agreements (Part XXII, s. 99)

- *ESA 2000* deemed enforceable by arbitration as part of the collective agreement
- Employees represented by trade unions party to a collective agreement barred from filing complaints under *ESA 2000*
- Employees represented by trade unions are bound by the decisions of their trade unions
- Employees may complain under duty of fair representation in the *Labour Relations Act* with respect to enforcement of the *ESA 2000*
- Arbitrators are given the full remedial powers of an Employment Standards Officer, save and except they can not require action from the employer's Directors unless such action is contemplated in the collective agreement
- Trade unions may act for unpaid wages to amounts higher than those prescribed in the *ESA 2000* (i.e., greater than \$10,000.00)

Regulations (Part XXVII)

- The *ESA 2000* gives an extensive Regulation-making authority to the Cabinet

- Regulations can exclude individuals, groups of individuals, or certain industries from all or part of the *Act*
- Regulations can extend the work day, the maximum hours per week, or the period for averaging overtime
- Regulations can define “constructive dismissal”
- Regulations in force as of September 4, 2001:
 - 285/01 – Exemptions, Special Rules and Establishment of Minimum Wage (eg. exemptions from maximum hours of work, overtime, public holidays; further eg. Director may approve agreements for longer work hours and longer averaging periods)
 - 286/01 – Benefit Plans
 - 287/01 – Building Services Providers
 - 288/01 – Termination and Severance of Employment (eg. none for construction employees)
 - 289/01 – Enforcement
 - 290/01 – Posting of Information concerning Rights and Obligations
 - 291/01 – Terms and Conditions of Employment in Defined Industries

(naming the fur, women’s coat and suit, women’s dress and sportswear industries, so far, and providing different rules)

The above review is intended to provide the highlights of the changes made by the new *ESA 2000*, not to outline every change nor provide advice regarding any particular fact situation. Should you require more information about the *ESA 2000* amendments, contact the Ministry of Labour for brochures. The Ministry’s web site is www.gov.on.ca/lab/main.htm. Should you have a particular fact situation for which you require legal advice, the labour and employment lawyers at KOSKIE MINSKY would be pleased to assist.