

PROTECT YOUR BUSINESS: COMPLYING WITH THE EMPLOYMENT STANDARDS ACT

One aspect to doing business in Ontario involves ensuring that you are compliant with the *Employment Standards Act* (the “**ESA**”). The ESA establishes minimum employer obligations and employee rights that most employers in Ontario are expected to abide by.

The Ontario Ministry of Labour (the “**Ministry**”) is tasked with enforcing the minimum requirements set out in the ESA. The Ministry’s powers include, but are not limited to, granting an employment standards officer (an “**Officer**”) the power to enter any place, *without a warrant*, to investigate if there has been a violation of the ESA.

Such investigations often catch employers unprepared, leading to fines, business disruption or in extreme cases, imprisonment. The best way to protect your business is to be prepared. This involves educating yourself about your responsibilities as an employer under the ESA and constantly monitoring your business for compliance.

Key Compliance Areas: the Basics

(a) Hours of Work

Employees may only work a certain number of hours in a day and in a week. Employees can agree in writing to work more hours, but in most cases, approval by the Ministry will be required in order to do so. Most professionals, farm and some sales employees are exempt from these provisions.

(b) Minimum Wage

Most employees are entitled to receive the minimum wage. While a general minimum wage applies to most employees, different minimum wages can exist for certain types of jobs.

(c) Vacation time and pay

In Ontario, employees are entitled to at least 2 weeks’ of vacation time after every 12 months. At a minimum, employees are entitled to be paid at least 4 per cent of their total wages earned in that 12-month period as vacation pay.

(d) Public Holidays & Holiday Pay

Most employees are entitled to take public holidays off and receive public holiday pay. However, employees must meet certain criteria to be entitled to holiday pay.

(e) Termination Notice and Pay

Most employees are entitled to receive termination notice upon the termination of his or her employment. An employee may also be entitled to severance pay based on certain factors regarding the employer’s business.

Note that the ESA only provides for *minimum* entitlements. Employment contracts and other agreements between employers and employees may provide employees with greater rights than those provided in the ESA, in which case the terms of the contract will take precedence.

Workplace Notice Requirements

Current statutory and regulatory compliance in Ontario also requires the following workplace postings in a location visible to all employees:

- The [What You Should Know About the Ontario Employment Standards Act](#) poster.
- The [Health & Safety at Work – Prevention Starts Here](#) poster
- The [Occupational Health and Safety Act](#) (OHSA)
- Company Health & Safety policy
- Company Pay Equity policy (if more than 10 employees)
- Company [Workplace Harassment and Workplace Violence Prevention](#) policies (if more than 5 employees)
- Names and work locations of Joint Health & Safety Committee members (if applicable)
- The [In Case of Injury](#) poster (for workplaces covered by WSIB)

The Ministry conducts blitzes each year, wherein they will randomly visit workplaces to ensure employers are complying with the ESA and other applicable safety legislation.

For details of the Ministry's blitz initiatives, please click on the following link:

<http://www.labour.gov.on.ca/english/resources/blitzschedule.php>

The “Surprise” Self-Audit

As of May 20, 2015, the ESA was amended to allow an Officer to request that an employer examine its own records, practices or both to determine whether the employer is in compliance with the ESA and its accompanying regulations.

The onus will be on the employer to provide proof of compliance.

If an Officer is not satisfied with the employer's self-audit, he or she may conduct an inspection of the employer's workplace.

The Benefits of Compliance

The obvious benefits of complying with the ESA are avoiding the costly fines and penalties that may be issued by Officers.

For example, if a corporation is found to be guilty of an offence under the ESA, it may be ordered to pay a fine of not more than \$100,000 if it has no previous convictions. If a corporation has one previous conviction, the fine may not exceed \$250,000 and if the corporation has more than one previous conviction, to a fine of not more than \$500,000.

Individuals who fail to comply with the ESA, including in certain cases, directors of a corporation, can also face jail sentences.

However, compliance can save an employer more than legislated fines. ESA investigations disrupt business and take the focus off of value producing activities. Numerous infractions can also affect employee morale and lead to dissatisfaction in the workplace.

At Houser Henry & Syron LLP, we have extensive experience in advising employers on their obligations under the ESA. We can help guide you through the regulations so that you and your business are protected.

About Houser Henry & Syron LLP

For over 75 years, Houser Henry & Syron has helped entrepreneurs and private companies of all sizes grow and prosper. We provide a range of business law services - from assisting with day-to-day legal requirements to providing strategic counsel on highly complex transactions. We are uniquely positioned to provide high-quality legal advice, tailored to the specific needs of our clients, at a reasonable price.