

## Labour and Employment Law Bulletin

February 2005

### Amendments to the Ontario Employment Standards Act, 2000

The Ontario Government has amended the hours of work and overtime averaging provisions of the Employment Standards Act, 2000. These amendments will become effective on March 1, 2005. Until that date, the current law applies.

#### What is Not Valid

Agreements between employers and employees to have a work week in excess of 48 hours a week (to a maximum of 60 hours a week) will no longer be valid, **unless the employer obtains the approval of the Director of the Employment Standards.**

Similarly, agreements between employers and employees to average overtime hours worked over a period of four weeks will no longer be valid, **unless the employer obtains the approval of the Director of the Employment Standards.**

Further details regarding the amendments to the hours of work and overtime averaging provisions are briefly summarized below.

(Please note that many employees are exempted from the hours of work and overtime provisions of the *Employment Standards Act, 2000*, or special rules apply, and, therefore, these amendments do not apply. Some of these exempted employees include on and off-site construction employees, Information Technology professionals, landscape gardeners, managerial and supervisory employees, and some designated professionals and commissioned salespersons in some situations. If you would like more information about exempted job categories, you can contact any lawyer in the Pallett Valo LLP Labour and Employment Group.)

#### Hours of Work

As of March 1, 2005, if an employer wants an employee to work more than 48 hours a week, the employer must:

- give non-unionized employees an Information Sheet, published by the Ministry of Labour's Director of Employment Standards, on Rights and Responsibilities Regarding Hours of Work and Overtime Pay. A copy of the Information Sheet is attached (please note that this document is also available in other languages which can be obtained from the Ministry of Labour website, or you may contact us to obtain copies of the multilingual document);
- obtain written agreement from the employee or the union if the workplace is unionized; and
- receive approval from the Director of Employment Standards.

The first two requirements set out above also apply if an employer wants an employee to work in excess of 8 hours per day.

If the Director of Employment Standards has not made a decision regarding an Application, workers may begin working additional hours, up to a maximum of 60 hours in a week, 30 days after the Application is made, if certain conditions are met.

In deciding whether to give approval to an Application for extended work hours, the Director of Employment Standards will consider such things as the employer's employment standards compliance history and the health and safety of workers.

Existing agreements to work hours in excess of 48 hours per week continue to be valid, but are subject to the requirement of obtaining an approval from the Director of Employment Standards. Also, employers must give the employees who agree to work excess hours a copy of the Information Sheet by June 1, 2005.

Agreements to work more than the weekly limit continue to be revocable by employees on two weeks' notice and by employers on reasonable notice.

Employers can immediately begin applying for approval of excess weekly hours. We recommend that any employers requiring employees to work more than 48 hours per week submit an Application to the Director of Employment Standards as soon as possible. A copy of the Application form can be obtained from the Director of Employment Standard, or you can contact any lawyer in the Pallett Valo LLP Labour and Employment Group.

The Ministry will conduct checks to ensure that written agreements are in place, that employees have been given the required Information Sheet, and that employees have signed willingly.

## Overtime

Currently, most employees must be paid overtime pay after 44 hours of work each week. Alternatively, an employee's hours of work can, with the employee's agreement, be averaged over a period of 2 or more weeks to determine the employee's overtime entitlement. This means that an employee will qualify for overtime pay if his or her average hours of work a week exceed 44 hours.

An approval of the averaging agreement by the Director of Employment Standards is only required if the averaging period would exceed four weeks.

As of March 1, 2005, in order to average an employee's hours of work over any number of weeks to determine overtime pay, an employer must obtain written agreement from the employee or union **and receive an approval from the Director of Employment Standards.**

The Application form for overtime averaging is the same form for extended work hours.

If the Director has not made a decision on an Application within 30 days, overtime averaging over a period of 2 weeks may begin, if certain conditions are met.

Written agreements that currently exist between employers and employees will remain valid, but the requirement to apply for Director's approval will apply.

## Other Key Amendments as of March 1, 2005

- The existing requirement that employers post in the material containing information about the Act and regulations in the workplace, is replaced by a requirement to post a poster prepared by the Minister that provides information about the Act and regulations. A copy of this poster is attached to this bulletin.
- The names of companies and individuals convicted of an offence under the *Employment Standards Act, 2000* and information about that offence can be published by the Ministry of Labour, including Internet postings.
- Employers will be required to keep copies of Agreements to work excess hours and to average hours of work for overtime purposes for 3 years after the last day the work was performed under these Agreements.

# What You Should Know

## About The Ontario Employment Standards Act

The Employment Standards Act, 2000, known as the ESA, is a law that sets minimum standards for fair workplace practices in Ontario. **If you work in Ontario, you are probably protected by the ESA.** It does not cover employees in federal jurisdiction and persons in a few other special categories. There are exceptions and special rules for some employees.

### Your Rights and Responsibilities at Work

Employers cannot intimidate, fire, suspend, or otherwise punish an employee, or threaten any of these actions because the employee asks for or asks about their ESA rights. If an employee thinks that an employer is not following the ESA law, he or she can contact the Ministry of Labour for help.

**Note:** Unionized employees should talk to their union representative before contacting the Ministry of Labour if they think their rights have been violated.

**Hours of Work** – Employees cannot be forced to work more than

- 8 hours a day – or the number of hours in a regular work day, if it's more than 8
- 48 hours a week.

Subject to certain requirements, employees can agree in writing to work more than these limits.

**Rest Periods** – Employees must have at least

- 11 consecutive hours off work each day
- 24 consecutive hours off work each week or 48 consecutive hours off work in every 2-week period.

**Overtime Pay** – Most employees must be paid overtime pay after 44 hours of work each week. The overtime rate must be at least 1½ times the regular rate of pay.

**Minimum Wage** – This is the lowest hourly rate an employer can pay an employee.

	February 1, 2004	February 1, 2005	February 1, 2006	February 1, 2007
<b>General Minimum Wage</b>	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour

**Note:** The minimum wage is different for students, liquor servers, homeworkers, and hunting and fishing guides.

**Payday** – Employees must be paid on a regular, recurring payday and given a statement showing their wages and deductions for that pay period.

**Vacation Time and Pay** – Most employees earn at least 2 weeks of vacation time after every 12 months. Employees are entitled to be paid at least 4 per cent of their total wages earned as vacation pay.

**Public Holidays** – Ontario has 8 public holidays every year. Most employees can take these days off work, with public holiday pay.

**Leaves of Absence** – Eligible employees are entitled to these unpaid, job-protected leaves:

- 17 weeks of pregnancy leave
- 35 or 37 weeks of parental leave
- 10 days each calendar year of emergency leave for personal illness, injury or medical emergency, or for the death, illness, injury, medical emergency or urgent matter of certain family members
- 8 weeks in a 26-week period of family medical leave to care for or support certain family members who have a serious illness with a significant risk of dying within a period of 26 weeks.

**Termination Notice and Pay** – If an employee has been working for 3 months or more and his or her job is terminated, the employer must give the employee advance written notice, or termination pay instead of notice, or a combination of both.

There are other ESA rights not covered on this poster and not all employees qualify for all ESA rights.

### Contact the Ministry of Labour for More Information

Call 416-326-7160 or toll-free 1-800-531-5551.

Visit your nearest Ministry of Labour office (addresses can be found in the phone book).

Visit [www.gov.on.ca/lab](http://www.gov.on.ca/lab) for more information and to contact the ministry by e-mail.

## Pallett Valo LLP Labour & Employment Law Group

Representing your best interests in an efficient manner is what our lawyers do best. We have the legal expertise and rich experience to provide creative and pragmatic solutions for a wide variety of employment-related issues. Our approach is to provide advice that minimizes the time, costs and disruption associated with labour and employment disputes. We represent our clients before various provincial quasi-judicial tribunals, in court, and at conciliation, mediation and other proceedings.

We provide support to management in drafting employment contracts and company policies, collective bargaining, collective agreement administration and grievance arbitration. We work for a diverse range of employers in the private and public sectors, and have specialized expertise in the construction industry.

## Training Seminars

Pallett Valo LLP's Labour & Employment Law Group conducts workshops and training seminars on a wide variety of issues which are designed to assist our clients.

### Seminar topics include:

- Employment Standards
- Human Rights and Accommodation
- Progressive Discipline and Performance Management
- The Law of Wrongful Dismissal
- Managing Absenteeism
- Union Organizing and Certification
- Health and Safety Obligations
- Privacy Law and Compliance Strategies

Our seminars focus on providing employers, managers and supervisors with practical information and pro-active strategies. If you are interested, you can contact any of the lawyers in the **Labour & Employment Law Group**:

**Pamela Yudcovitch** [pamyudco@pallettvalo.com](mailto:pamyudco@pallettvalo.com)  
Direct Dial: 905.273.3022 Ext. 218

**Maria McDonald** [mmcdonald@pallettvalo.com](mailto:mmcdonald@pallettvalo.com)  
Direct Dial: 905.273.3022 Ext. 263

**Andy Balaura** [abalaura@pallettvalo.com](mailto:abalaura@pallettvalo.com)  
Direct Dial: 905.273.3022 Ext. 225

The purpose of this document is to provide information as to recent developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of Pallett Valo LLP or any member of the Firm on the points of law discussed.

If you would like additional copies of the bulletin, or know of anyone who would be interested in joining our mailing list, please contact **Jenny Chiu** at [jchiu@pallettvalo.com](mailto:jchiu@pallettvalo.com).