



MAY 6, 2015

NEW *ESA* COMPLIANCE OBLIGATIONS IN FORCE MAY 20, 2015

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Effective May 20, 2015, amendments to the *Employment Standards Act, 2000* (“*ESA*”) compliance obligations will come into force. These include new poster requirements and new powers for employment standards officers to order employer “self-audits.” In this *FTR Now*, we will review the new rules, and the impact that they will have on employers in Ontario.

NEW POSTER REQUIREMENTS

As of May 20, 2015, employers will be required to provide each employee with a copy of the most recent *ESA* information poster published by the Ministry of Labour. This new obligation will apply in addition to the existing obligation to post the poster in a conspicuous place in the workplace.

New employees must be given a copy of the poster within 30 days of their first day of work. Existing employees must be given a copy within 30 days of May 20, 2015 (i.e. by June 19, 2015). If an employee requests a translation of the poster into a language other than English, the employer is required to inquire as to whether the Minister of Labour has prepared a translation of the poster into that language, and if the Minister has done so, the employer must provide the employee with a copy of the translation.

Copies of the poster can be downloaded from:

<http://www.labour.gov.on.ca/english/es/pubs/poster.php>

SELF-AUDITS

The May 20, 2015 amendments will also provide employment standards officers (“*ESOs*”) with the authority to require an employer to conduct an examination of the employer’s records or practices, or both, to determine whether the employer is in compliance with one or more provisions of the

ESA or the regulations. In order to do so, the ESO must give written notice to the employer, which *must* specify:

- the period to be covered by the examination;
- the provision or provisions of the *ESA* or the regulations to be covered by the examination; and
- the date by which the employer must provide a report of the results of the examination to the ESO.

The written notice *may* also specify:

- the method to be used by the employer in carrying out the examination;
- the format of the report to be provided by the employer;
- such information to be included in the employer's report as the ESO considers appropriate;
- a requirement that the employer include in the report an assessment of whether the employer has complied with the *ESA* or the regulations;
- a requirement that the employer include in the report an assessment of whether one or more employees are owed wages; and/or
- a requirement that the employer pay wages owed if the employer assesses that one or more employees are owed wages.

Further, if the employer's report includes an assessment that one or more employees are owed wages, the employer must include the following in the report to the ESO:

1. The name of every employee who is owed wages and the amount of wages owed to the employee.
2. An explanation of how the amount of wages owed to the employee was determined.
3. If the notice requires payment, proof of payment to the amount owed to the employee.

If the employer's report includes an assessment that the employer has not complied with the *ESA* or the regulations but no employees are owed wages,

the employer shall include in the report a description of the measures that the employer has taken or will take to ensure that the *ESA* or regulations will be complied with.

Even if an employer reports that it is in compliance, the ESO retains the power to conduct an investigation or inspection, and to take such enforcement measures under the *ESA* as the ESO considers appropriate, including issuing an order under section 103 (Order to pay wages) or 108 (Compliance order) of the *ESA*. Section 103 was amended on February 20, 2015 to remove the \$10,000 maximum cap on orders made for unpaid wages on a go-forward basis.

The new amendments specify that no employer shall provide a report that contains information the employer knows to be false or misleading.

CONCLUSIONS

Provincially regulated employers will want to take steps now to ensure that they are in a position to distribute the *ESA* information poster to new and existing employees within the timelines described above. With the new enforcement powers given to ESOs, employers will also want to ensure that their scheduling and payroll practices are *ESA*-compliant so that they will be prepared to respond in a timely manner should the Ministry require a self-audit to be performed.

Watch for information about our CPD Advantage Session on these new *ESA* compliance obligations, to be held June 10, 2015.

If you have any questions about how these changes will impact your workplace, please contact your regular Hicks Morley lawyer.

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