

NEW AMENDMENTS TO THE *EMPLOYMENT STANDARDS ACT, 2000*

On October 25, 2010, the Ontario government passed Bill 68, an omnibus statute entitled, *An Act to promote Ontario as open for business by amending or repealing certain Acts* (the “*Open for Business Act*”). The *Open for Business Act*, which amends the *Employment Standards Act, 2000* (the “*ESA*”), was introduced as part of the provincial government’s commitment to modernize and improve the efficiency of various regulatory systems administered by the provincial government.

The amendments to the *ESA* are intended to reduce and eliminate the current backlog of employment standards complaints filed with the Ministry of Labour by encouraging early and efficient resolution of employment standards disputes. The amendments to the *ESA* will come into force on a day to be named by royal proclamation.

Overview of the Amendments to the *ESA*

The key amendments to the *ESA* include the following:

1. Employees must satisfy certain steps before the Ministry of Labour will assign their complaints to an Employment Standards Officer for investigation

Currently, once an employee files a complaint with the Ministry of Labour, the Ministry’s Director of Employment Standards (the “Director”) will assign the complaint to an Employment Standards Officer (the “Officer”) for investigation. After investigating a complaint, the Officer makes a decision as to whether or not the employer has violated the *ESA*. Under the new amendments, before the Director will assign a complaint to an Officer for investigation, complainants will be required to satisfy specific steps, including the following:

- A complainant must notify his or her employer that the complainant believes his or her rights under the *ESA* have been or are being violated by the employer. If the dispute relates to a complainant’s unpaid wages, the complainant must advise the employer of the amount of wages that the complainant believes are owed to him or her;
- A complainant must advise the Director in writing that the complainant has notified the employer of the complainant’s view that the employer has violated or is violating the *ESA*. The complainant must indicate to the Director what information was provided by the complainant to the employer when the employer was notified, as well as the manner in which the information was given and the response, if any, that the employer provided; and
- A complainant must also provide the Director with any evidence and/or written information that the Director requires the complainant to provide.

If a complainant files a complaint with the Ministry of Labour but fails to satisfy the above-noted steps, the Director will inform the complainant that his or her complaint has not been assigned to

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an Officer. If the complainant does not take the specified steps within six (6) months after the complaint was filed, an Officer shall be deemed to have refused to issue an order to the employer in respect of the complaint.

Although it will be mandatory for complainants to follow the steps specified by the Director, the Director will have the discretion to assign a complaint to an Officer for investigation even though the complainant has not completed the specified steps.

2. Employment Standards Officers may attempt to settle complaints

Under the new amendments, an Officer will be given the power to attempt to settle complaints that have been assigned to the Officer for investigation. If the Officer is successful at having the parties reach a settlement and the parties fulfil their respective obligations under the settlement, the complaint is deemed to have been withdrawn, the Officer's investigation is terminated, and any proceeding respecting the contravention alleged in the complaint, other than a prosecution, is terminated. In addition, the Officer will not be required to issue any orders against an employer that may have otherwise been found to be in violation of the *ESA*.

3. Employment Standards Officers may decide a complaint when a party fails to attend a decision-making meeting or fails to submit evidence or submissions on time

Under the current provisions of the *ESA*, an Officer may require the parties to a complaint to attend a decision-making meeting with the Officer. The Officer is required to provide the parties with at least 15 days of written notice in advance of the meeting and the Officer may direct the parties to make certain records or other documents available for the meeting. Under Bill 68, in addition to its current powers, an Officer may, after giving notice to the parties, require the parties to provide evidence or submissions within a timeline specified in the notice. If a party fails to attend at the meeting or fails to provide evidence or submissions within the required timeline, the Officer may decide the matter in the absence of the party and/or the requested evidence or submissions. Before making any decisions, the Officer will consider any evidence or submissions provided by both parties up to or during the meeting, along with any other factors that the Officer considers relevant.

Conclusion

The *Open for Business Act's* amendments to the *ESA* are a welcome change for employers. The amendments may potentially lead to early resolution of employment standards disputes and may reduce the number of employment standards complaints filed with the Ministry of Labour.

Employers are encouraged to implement an internal complaint process for employment standards complaints and to ensure that any internal complaints filed by employees are investigated in a timely manner.

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