

## BACK TO PERMITS: AGREEMENTS TO WORK EXCESS WEEKLY HOURS AND TO AVERAGE OVERTIME REQUIRE GOVERNMENT APPROVAL

*Employment Standards Amendment Act (Hours of Work and Other Matters), 2004*

Bill 63, the *Employment Standards Amendment Act (Hours of Work and Other Matters), 2004*, contains various amendments to the *Employment Standards Act, 2000* (“*ESA, 2000*”). The amendments affect a variety of provisions of the *ESA, 2000* including the hours of work and overtime averaging provisions. The Bill received Royal Assent on December 9, 2004 and is scheduled to come into force on March 1, 2005. The key amendments to the *ESA, 2000* are set out below.

### Excess Weekly Hours of Work – Director Approval Required

If an employer wants an employee to work more than 48 hours in a work week, the employer must do the following:

1. Provide the employee with the most recent version of the document, “Information for Employees about Hours of Work and Overtime Pay”. The document is available at: [http://www.gov.on.ca/LAB/english/es/hours/info\\_hours.html](http://www.gov.on.ca/LAB/english/es/hours/info_hours.html). This requirement is not applicable to unionized employees.
2. Obtain the employee’s or union’s written agreement.
3. Obtain approval from the Director of Employment Standards (the “Director”).

### Excess Daily Hours of Work

If an employer wants an employee to work more than eight hours in a day or the number of hours in the employee’s established regular work day, the employer must comply with requirements one and two above.

### Overtime Averaging – Director Approval Required

To average an employee’s hours of work for overtime pay purposes, employers must comply with requirements two and three above.

### Existing Written Agreements

Existing written agreements will continue to be valid, but Director approval must be obtained for an employee to work over 48 hours per work week or to engage in overtime averaging. Employees with existing written agreements to work excess hours must also receive a copy of the most recent version of the document, “Information for Employees about Hours of Work and Overtime Pay”, by June 1, 2005.

Existing approvals under the current hours of work and overtime averaging provisions of the *ESA, 2000* are terminated.

### Applications for Approval

Applications for approval may be made immediately. Application forms can be found in a variety of computer formats at <http://www.gov.on.ca/LAB/english/es/hours/index.html>. The Ministry of Labour has produced a 41 page guide setting out the application process in detail. The guide can be found at [http://www.gov.on.ca/LAB/english/es/hours/guide\\_toc.html](http://www.gov.on.ca/LAB/english/es/hours/guide_toc.html).

Approvals are for individual positions or a specified class of employees. A specified class of employees could be all employees of the employer or all employees in a specific occupational group. The approval applies to every employee in the class whether or not the employee was employed by the employer at the time the approval was issued.

### 30 Days from Service of the Application

If the employer has not received a decision on the application within 30 days of service, employees may begin working excess hours, up to a maximum of 60 hours per week, and employers may commence overtime averaging, provided certain conditions are met. For a list of the conditions and more information please see chapter four of the Ministry of Labour's guide.

Please note that if the application is made more than 30 days before March 1, 2005, the 30 day period is deemed to end on the later of the last day of the 30 day period or March 1, 2005. Therefore, the earliest an employer can rely on the 30 day period is March 1, 2005.

### Applicability of the Hours of Work and Overtime Provisions of the *ESA, 2000*

Please note that certain industries and job categories are exempt or have special rules regarding the hours of work and overtime provisions of the *ESA, 2000*. Accordingly, in each case, it must be determined whether the hours of work and overtime provisions of the *ESA, 2000* are applicable.

### Miscellaneous Matters in the *Employment Standards Amendment Act (Hours of Work and Other Matters), 2004*

1. Employers will be required to retain copies of excess hours and overtime averaging agreements for three years after work was last performed under them.
2. Employers will be required to post a Ministry of Labour poster in the workplace outlining employees' rights. The poster can be found at the Ministry of Labour's website at: <http://www.gov.on.ca/LAB/english/es/poster.html>.
3. When a person is convicted of an offence under the *ESA, 2000*, the Director may publish the person's name, a description of the offence, the date of the conviction, and the person's sentence. Publication may be on the internet.