

**EMPLOYMENT STANDARDS ACT, 2000 UPDATE: HOURS OF WORK, OVERTIME
AVERAGING AND OTHER MATTERS**

On April 26, 2004, the Ontario provincial government introduced Bill 63, the *Employment Standards Amendment Act (Hours of Work and Other Matters), 2004*. Bill 63 proposes various amendments to the *Employment Standards Act, 2000 (ESA, 2000)*. In particular, the bill makes significant changes to the hours of work and overtime averaging provisions of the *ESA, 2000*, and adds a number of miscellaneous provisions. The bill is scheduled to come into force on January 1, 2005.

Hours of Work

Currently, employees subject to the hours of work provisions in the *ESA, 2000*, may work in excess of 48 hours a week provided employers obtain their written agreement. The Director of Employment Standards' approval for employees to work in excess of 48 hours a week is only required if the employees will be working more than 60 hours a week.

Under Bill 63, Director approval, in addition to employees' written agreement, is always required for employees to work in excess of 48 hours a week. Although existing excess hours of work agreements would continue to be valid, employers would be required to provide employees with a document from the Ministry of Labour outlining employees' rights by April 5, 2004. Existing Director approvals would be terminated under the bill. Employers who wish to continue to have employees work in excess of 48 hours a week may apply for Director approval on or after October 1, 2004.

Overtime Averaging

Currently, the hours of employees eligible for overtime pay under the *ESA, 2000* may be averaged over a four week period to determine their entitlement to overtime pay, provided the employees agree in writing. Director approval to average hours to determine entitlement to overtime pay is only required if the averaging period exceeds four weeks.

Under Bill 63, Director approval, in addition to employees' written agreement, is always required to average hours for determining employees' entitlement to overtime pay. Existing overtime averaging agreements would continue to be valid, but all existing Director approvals would be terminated. Employers who wish to continue to average hours for the purpose of determining employees' entitlement to overtime pay may apply for Director approval on or after October 1, 2004.

Miscellaneous Matters

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.
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.