

INTRODUCTION OF THE NEW ONTARIO HEALTH PREMIUM

In its Provincial Budget 2004, the new provincial government announced that it would establish a new Ontario Health Premium (“OHP”). Some commentators have suggested that in addition to their existing liability for the Employer Health Tax (“EHT”), some employers may also be liable for the new OHP on behalf of their employees based on pre-1989 collective agreement language that required these employers to pay their employees’ Ontario Health Insurance Plan (O.H.I.P.) premium costs. It was in 1989 that the last Liberal government eliminated O.H.I.P. premiums in favour of the EHT. Nonetheless, old O.H.I.P. premium cost provisions remained dormant in some collective agreements.

We note that there are some key distinctions that must be made between the new OHP and the old O.H.I.P. premiums:

- **The OHP is not an “O.H.I.P. premium” mandated by the Ontario *Health Insurance Act*:** In introducing the OHP, the new government has not amended the *Health Insurance Act* to reinstate O.H.I.P. premiums. For example, the government has not amended section 12 of the *Health Insurance Act*, R.S.O. 1990, c. H.6 to make OHP payments a necessary condition of an individual’s entitlement to insured services under the *Health Insurance Act*.
- **The OHP is a “new tax”:** The OHP is an individual income tax imposed on employees by the provincial government pursuant to provincial *Income Tax Act*. In the Explanatory Note of *An Act to Implement Budget Measures 2004* (Bill 83), the provincial government explicitly calls the OHP “a new tax under the [provincial] *Income Tax Act*”. Employers should not be required to subsidize increases in personal income tax.
- **Practical considerations:** the OHP is based on total taxable income, which includes business and investment income in addition to employment and pension income. Employers are not privy to an employee’s non-employment taxable income. Consequently, employers cannot calculate the proper amount of OHP payable on behalf of their employees.