

Stronger Workplaces for a Stronger Economy Act, 2014

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Agenda

- Overview of the Legislation
- Overview of the Current Compliance Regime
- Changes to the ESA
- Changes to the OHSA
- Changes to the LRA
- Changes to the WSIA
- Items to Watch in 2015
- Question & Answer

Overview – *Stronger Workplaces for a Stronger Economy Act, 2014*

- Passed by the Ontario Legislature in November 2014.
- Significant amendments to workplace laws, including the *Employment Standards Act, 2000* (ESA), the *Occupational Health and Safety Act* (OHSA), the *Labour Relations Act* (LRA) and the *Workplace Safety and Insurance Act* (WSIA).
- Product of recommendations in December 2012 report by Law Reform Commission of Ontario - “Vulnerable Workers and Precarious Work”.

The Current Compliance Regime

Ministry of Labour – ESA Compliance

- Key function = Ensuring compliance with provincial labour laws including the ESA
- Key tools = Inspection blitzes, audits and prosecutions

Prosecutions Initiated by Fiscal Year: 2006-2013

Fiscal Year (April 1 - March 31)	Prosecutions Initiated
2006/07	594
2007/08	371
2008/09	505
2009/10	311
2010/11	197
2011/12	468
2012/13	286

Accessed online: <http://www.labour.gov.on.ca/english/es/pubs/enforcement/convictions.php>

Penalties for ESA Violations

- Orders/Directions re: Compliance (including restitution, reinstatement, etc.)
- Fines (up to \$100,000 for first offence or \$500,000 for repeat offenders)
- Public listing on MOL website for one year from the date of posting
- Director Liability (fines of up to \$50,000, imprisonment if authorized, permitted or acquiesced in violation)

Ministry of Labour – OHSA Compliance

- Key function = Ensuring compliance with OHSA
- Key tools = Inspection blitzes, audits, investigations and prosecutions

Total Field Visits by Program Area (inspections, investigations and consultations)

Program/Total	2007/08	2008/09	2009/10	2010/11	2011/12
Construction	37,611	32,992	30,604	28,091	29,841
Industrial	53,505	52,163	48,497	45,890	42,794
Mining	4,716	3,912	3,652	3,821	2,750
SPS	5,443	4,752	5,657	6,448	5,492
Total	101,275	93,819	88,410	84,250	80,877

Notes:

1. SPS means Specialized and Professional Services staff including diving inspectors, engineers, ergonomists, hygienists, physicians and radiation protection officers.

Penalties for OHSA Violations

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- Compliance Orders

Orders Issued by Program Area (including stop work orders)

Program/Total	2007/08	2008/09	2009/10	2010/11	2011/12
Construction	81,832	69,109	57,759	53,133	60,340
Industrial	86,569	79,186	75,677	71,220	70,369
Mining	4,733	4,728	3,432	3,711	3,443
SPS	3,535	2,034	2,536	2,970	2,657
Total	176,669	155,057	139,404	131,034	136,809

Accessed online: <http://www.labour.gov.on.ca/english/hs/pubs/enforcement/index.php>

Penalties for OHSA Violations

- Fines (up to \$500,000 for first offence)

Number of Convictions and Amount of Fines: 2009-2014

Convictions/Fines	2009/10	2010/11	2011/12	2012/13	2013/14
Number of Convictions (per year)	1,164	948	903	814	780
Amount of Fines (per year)	\$12,909,435	\$11,291,560	\$9,771,230	\$10,695,290	\$9,307,130

- Imprisonment of up to 12 months (note Criminal Code risk)
- Public listing on MOL website for one year from the date of posting

Changes to the ESA

ESA Change #1:

Time Limits on Wage Claims (Feb. 20, 2015)

- Complaint filed by an employee → time limit for recovery of wages is extended from 6 or 12 months to 2 years from the date that the wages became due to the employee.
- Claim commenced by ESO following inspection → time limit for recovery of wages is extended from 6 months to 2 years from the date that ESO commenced inspection.
- Transitional provision: ESO may not issue an order for wages that became due before February 20, 2015 if they became due more than 6 or 12 months before the complaint was filed or the inspection was commenced.

ESA Change #2: **Removal of Recovery Cap (Feb. 20, 2015)**

- Previously, there was a \$10,000 cap on employee's ability to recover wages in an ESA complaint.
- Now, there is no cap on the amount of wages an employee can recover.

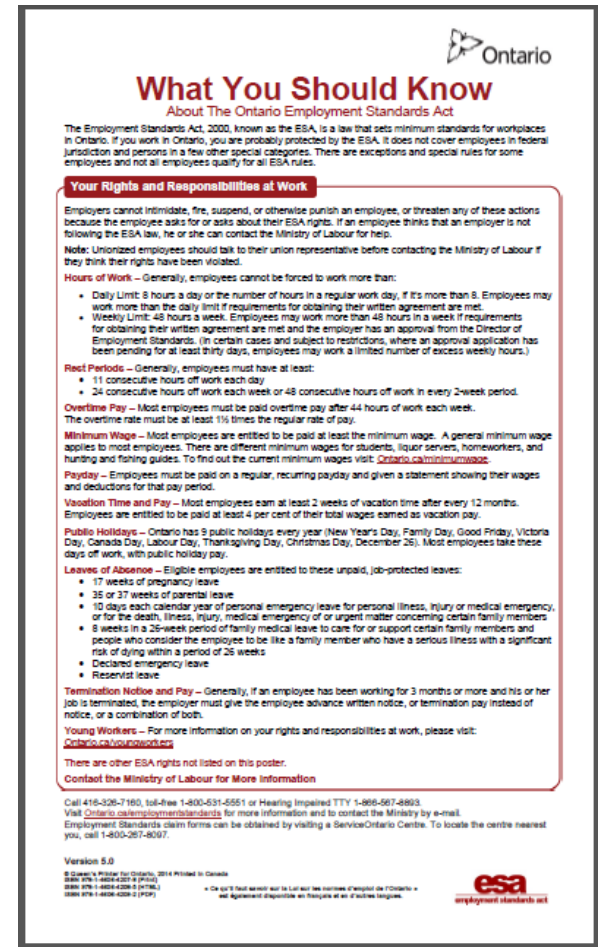
ESA Change #3: **Employer Self-Audits (May 20, 2015)**

ESO may, by written notice, require an employer to:

- conduct a self-audit of its records, practices or both to determine whether it is in compliance with one or more provisions of the Act and regulations; and
- report the findings of such self-audit to the MOL within a designated period, including any incriminating evidence of an ESA violation.

ESA Change #4: MOL Poster Distribution (May 20, 2015)

- Starting May 20, 2015, employers have 30 days to provide every existing employee with a copy of the most recent MOL poster re: ESA rights and obligations
- All new hires after May 20, 2015 must receive a copy of the poster within 30 days of their date of hire
- Employers must provide translated version of the poster, if a translation is requested by the employee and the MOL has prepared that translation



ESA Change #5: **Minimum Wage (October 1, 2015)**

Current minimum wage rates:

- \$10.30/hour – student under 18 years of age who works less than 28 hours per week or is working during a school holiday
 - \$9.55/hour – employee who serves liquor as a regular part of his/her employment
 - \$11.00/hour – most employees
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- Rate will be adjusted (upwards only) annually to take the Consumer Price Index into account
 - MOL will publish new rates no later than April for effect in October

ESA Change #6(a): **Temporary Help Agencies (Nov. 20, 2015)**

- Temporary help agencies and clients must record hours worked by each assignment employee for each client in each day and each week
- Records must be retained for 3 years and be readily available for inspection
- Consider the expense of recording and retaining this information when entering into agreements with temporary help agencies

ESA Change #6(b): **Temporary Help Agencies (Nov. 20, 2015)**

- Temporary help agencies and clients may be jointly and severally liable for unpaid wages owing to an assignment employee
- Agencies will remain primarily responsible, but proceedings against the agency do not have to be exhausted before proceedings may be commenced against client
- Ensure you review contractual indemnities in agreements with temporary help agencies.

Reminder of Other ESA Development: New Leaves of Absence (Bill 21)

- Family Caregiver Leave
- Critically Ill Child Care Leave
- Crime-related Child Death or Disappearance Leave

Changes to the OHSA

OHSA Change - Unpaid Interns (Nov. 20, 2014)

- Definition of “worker” expanded to include:
 - secondary school students who perform work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled;
 - persons who perform work or supply services for no monetary compensation under a program approved by a college of applied arts and technology, university or other post-secondary institution;
 - persons who receive training from an employer but who, under the *ESA*, are not an employee for the purposes of that Act because the conditions in s. 1(2) are met; and
 - such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation.

Reminder of OHSA Training Requirement

All employers must provide their workers and supervisors (even those in jobs not considered hazardous) with “basic occupational health and safety awareness training” by July 1st, 2014.

New hires must be trained as soon as practicable.

Changes to the LRA

LRA Change - Open Periods (May 20, 2015)²³

- “Union raid” open period during which a displacement or decertification application may be brought will be reduced from 3 months to 2 months in the construction industry.
- This amendment will likely reduce the number of displacement and decertification applications in the construction industry.

Changes to the WSIA

WSIA Change - Temporary Help Agencies (TBD)

- Definition of “temporary help agency” will be added
- Cost of a compensation claim (i.e. premiums and related accident costs) by an injured assignment employee will shift from the temporary help agency to the client of the agency if client is a participating employer
- Reporting obligations for clients of temporary help agencies

On our Radar Screen for 2015.....

- Government is launching public consultations to assess how LRA and ESA could be amended to best protect workers while supporting businesses in changing economy
- Workplace trends that will be examined include:
 - increase in non-standard working relationships such as temporary jobs, part-time work, and self-employment
 - rising prominence of the service sector
 - globalization and trade liberalization
 - accelerating technological change
 - greater workplace diversity

On our Radar Screen for 2015.....

Introduction to our Human Resources Compliance & Risk Management Diagnostic Solution

QUESTIONS?

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