



LABOUR AND EMPLOYMENT NEWSLETTER

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EXCESS HOURS OF WORK WILL REQUIRE MINISTRY APPROVAL

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On April 26, 2004, the Government of Ontario introduced Bill 63, the *Employment Standards Amendment Act (Hours of Work and Other Matters), 2004*. This proposed legislation will come into force on January 1, 2005. Bill 63 follows through on the Government's stated intent in January of this year (which was the subject of an earlier Newsletter available on our website – www.millerthomson.ca) to make changes to the hours of work rules in the *Employment Standards Act, 2000* ("Act"). According to Government publications, the changes are required due to complaints from employees and employers that some companies were not complying with the Act.

There are two main areas of the Act that are affected by Bill 63: 1) excess hours of work agreements; and 2) overtime averaging agreements. The proposed legislation does not take away the ability of employers and employees to enter into these types of agreements. However, Bill 63 does require that these types of agreements receive approval from the Director of Employment Standards. There is no change to the hours of work or overtime pay thresholds in the Act.

Agreements– Key Features

There is substantial overlap between the key features relating to hours of work agreements and overtime averaging agreements. Some of the key features relating to these agreements are listed below:

- Agreements must still be entered into with employees for excess hours of work and overtime averaging;
- Director approval is required for excess hours in a work week and overtime averaging;
- Director approval is **not** required for agreements relating to excess hours of work in a day;
- Hours of work agreements must state a specified number of hours the employee can be required to work;

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- Hours of work agreements up to 60 hours per week can last for a period of up to 3 years;
- Hours of work agreements in excess of 60 hours per week can last for a period of one year;
- Overtime averaging agreements expire on the date agreed between the parties or as specified in the approval;
- In a non-union workplace, a document to be created by the Ministry of Labour must be shown to employees before entering into an hours of work agreement – the agreement must also acknowledge that the employee has seen the document;
- Applications for approval can be made via hand delivery, verifiable mail, e-mail, or fax beginning October 1, 2004;
- Agreements that are in place prior to January 1, 2005 will still be valid;
- There are posting requirements in the workplace for applications, approvals, and refusals;
- Employees can still revoke an hours of work agreement upon two weeks' notice in writing while employers can revoke agreements upon reasonable notice;
- Agreements must be kept for three years after the last day of work for the employee;
- Approval can be obtained for classes of employees – a class can be all employees of an employer;
- If approval from the Director takes more than 30 days, implementation of agreements can begin provided certain conditions are met;
- Criteria for approval at this time includes consideration of any violations of the *Act* or regulations by an employer as well as health and safety concerns;
- Revocation of an agreement can be for any reason the Director considers relevant; and
- The “greater right or benefit” section does not permit an employer to opt out of the hours of work agreement and approval mechanism in Bill 63.

The other change of note in Bill 63 is that it provides for the publication of parties that are convicted under the *Act*. The Government has stated that it will pursue enforcement of the *Act* more aggressively, including random spot checks of workplaces.

Miller Thomson will continue to monitor the passage of this legislation and will keep you updated with any developments.

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André Nowakowski is a member of our Labour and Employment Group. He provides legal services and advice to a wide range of clients in the private and public sectors.

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