EMPLOYMENT ALERT: 
END OF 60-HOUR WORK WEEK

Amendments to Hours of Work and Overtime Rules

As promised, the Ontario government has recently brought in new legislation to abolish the ability of employers to independently establish working hours that are longer than eight hours a day or 48 hours a week. This new legislation, the Employment Standards Amendment Act (Hours of Work and Other Matters), 2004 ("the Amendment Act"), was passed by the Ontario legislature and received Royal Assent on December 9, 2004.

The Amendment Act sets out a new set of rules that employers must follow if they want their employees to work excess daily or weekly hours, or if they want to average an employee’s working hours to determine overtime pay entitlements. These rules will amend and replace the current provisions of the Employment Standards Act, 2000 ("the ESA 2000") dealing with hours of work and overtime. The Amendment Act comes into force on March 01, 2005.

Maximum Daily and Weekly Hours

In a nutshell, the Amendment Act prohibits employers from requiring or permitting employees to work more than 48 hours per week, unless:

(i) the employees have agreed to do so in writing;

(ii) the employer has given the employees an information sheet published by the Ministry of Labour ("the Ministry") setting out their rights and the employer’s obligations respecting hours of work and overtime pay; and

(iii) the employer has applied and received consent for an approval for excess working hours by the Director of Employment Standards ("the Director").

The first two criteria also apply to agreements to work excess daily hours (i.e. more than 8 hours per day). Effective March 1, 2005, employers will also be required to apply for approval to engage in overtime averaging agreements for the purposes of determining an entitlement to overtime pay.
Seeking Approval for Excess Working Hours

Here’s how the new approval system works:

**STEP I**

The employer must first provide its non-union employees with the Ministry’s publication “Information for Employees About Hours of Work and Overtime Pay,” which is available at www.gov.on.ca/LAB/english/es/hs/info_hours.html. This form advises employees of their basic legal rights under the **ESA 2000**, with respect to Maximum Daily and Weekly Hours of Work, Overtime and Eating and Rest Periods.

**STEP II**

Next, the employer must enter into written agreements with each employee (or with any union representing the employees, as applicable) to have them consent to work the excess hours requested, or to average their working hours over two or more weeks. The specific requirements for such Agreements are covered in detail in the Ministry’s publication entitled “Employment Standards Act, 2000 Employer’s Guide to the Application Process: Excess Hours or Work/Averaging Hours” which is available on the website www.gov.on.ca/LAB/english.

**STEP III**

The employer must obtain and fill out the Hours of Work and Averaging Hours application (“the Application”) which is available in Acrobat/pdf format at www.gov.on.ca/LAB/english/ es/pdf/mol_es_001.pdf. It is also available in HTML and text formats and can be completed and served electronically. The Application requires the employer to provide the Ministry with the following information:

(a) **Employer Information**: business name, business activities (sector or industry classification); type of legal incorporation/registration and corresponding registration numbers; operating jurisdictions; and number of employees in Ontario;

(b) **Employer Contact Information**: including contact information for a specific corporate representative;

(c) **Application Type**: whether for excess hours of work or for averaging arrangements;

(d) **Locations where Work will be Performed**: including contact information at alternate sites and number of employees affected;

(e) **Employee Information**: occupational group(s) or positions of employees affected; number of weekly hours required/number of weeks to average over; date new arrangement to start; date new arrangement will end; number of employees affected and union representative contact information, if applicable;

(f) **Confirmation**: confirmation that written agreements with employees with respect to excess hours of work or overtime averaging are in place;

(g) **Reasons Supporting Application**: brief reasons with respect to why excess hours (or averaging agreements) are necessary. Employers must include information respecting whether other methods of getting work done have been attempted, the implications for the employer if approval is not granted, and measures being adopted to avoid or reduce excess hours.

(h) **Offence History**: confirmation that the employer has not been convicted of an

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This can be no longer than a three-year arrangement for excess hours up to 60 per week and no longer than a one-year arrangement for excess hours over 60 per week. For non-unionized employees, averaging arrangements can only last up to 2 years. For unionized employees there is no upper limit, but the agreement itself must contain some specific expiry date.
offence under the *Occupational Health and Safety Act or the ESA 2000* in the three years preceding the application. Also, confirmation that that employer has no outstanding orders to pay under the *ESA 2000*.

**STEP IV**

The Application must be served on the Director. Service may be done by e-mail, verifiable mail (i.e. registered mail, Xpresspost or Priority Courier), facsimile, or hand-delivery. The appropriate addresses and contact numbers are listed on the application form.

**STEP V**

At least one copy of the Application must be posted on the date of service in every workplace where the affected employees work. The application must remain posted until the employer receives approval from the Director.

**Rights and Obligations Pending Approval**

Pending approval from the Director, and upon satisfaction of the conditions listed below, an employer can permit its employees to work up to 60 hours per week.

The nine conditions are:

(i) The employer and employee have entered into valid, written agreements respecting excess hours or averaging of weekly hours;

(ii) The employer has served the application on the Director, in a form permitted;

(iii) The application applies to the individual employees or occupational groups being requested to work extra hours or to average their working hours;

(iv) 30 days have passed since the application was served on the Director;

(v) The employer has not received a notice that the Application was refused;

(vi) The employer’s most recent application, if any, was not refused;

(vii) The employer's most recent application, if any, was not revoked;

(viii) The employer has posted a copy of the Application in accordance with the legislation; and

(ix) The employee(s) do not work more than the lesser of the following: the hours of work specified in the Application; the number of hours the employee agreed to work in writing; or 60 hours.

The same basic criteria are applicable in the case of averaging applications except that there is no requirement to post a copy of the Application and employers are only entitled to average over a two-week period pending the Director’s approval.
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Transitional Rules

Until March 01, 2005, the current provisions of the ESA 2000 continue to apply. So, an employer can continue to have its employees work up to 60 hours in a week, or to average his/her weekly hours over two or more weeks, in accordance with prior written agreements.

However, employers are encouraged to apply for new approvals for these practices as soon as possible. For employers who do submit these applications well in advance of March 01, 2005, the 30-day period referred to above shall not be deemed to have passed until March 01, 2005.

Existing agreements to work excess hours, or to average hours will be honoured and will continue, in accordance with their terms after March 01, 2005, with the following exceptions:

(a) the employer must have applied to the Director for approval before February 28, 2005 in order to continue its existing arrangement on or after March 01, 2005;

(b) the employer cannot permit employees to work in excess of 60 hours per week, until approval for that arrangement has been received; and

(c) the employer must provide its employees with a copy of the Information Sheet by no later than June 1, 2005.\(^2\)

If you require further information, please contact:

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2 Not applicable to unionized employees. There is no requirement to provide unionized employees with the information sheet.