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EMPLOYMENT STANDARDS ACT- IMPORTANT PART OF DOING BUSINESS

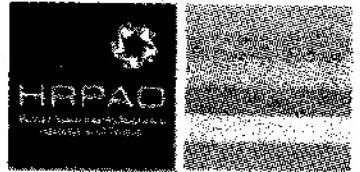
By Stuart E. Rudner

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Employment Standards Act – Important Part of Doing Business



Shaping Organizations for Excellence

"Human Resources Professionals Association of Ontario (HRPAO) shapes organizational excellence. Our vision is to be the premier HR association in Canada sought out for knowledge, innovation and leadership"

Ashocking number of small to medium-sized business owners will know little or nothing about Ontario's Employment Standards Act until they find themselves and their company in legal hot water.

Richard Thomson agrees. As a Human Resources consultant, his work takes him inside a lot of smaller businesses in the province.

"In my experience with companies of under 500 employees, about 80 percent don't have even basic HR policies or procedures in writing that reflect their responsibilities under The Act," says Thomson. "Many business owners are well-meaning and think that common sense is all they need to guide them but it's a very risky way to run a business."

The Employment Standards Act sets out the minimum standards of employment for workplaces as required by law. These standards deal with many aspects of employment and cover the majority of workers in Ontario. The Act also has special clauses for employees who work in a 24/7 environment such as nurses, paramedics and fire fighters. The Act is also tailored to reflect the unique working arrangements in the retail sector.

Workers not covered by The Act include employees working under Federal jurisdiction (banks, federal civil service, post offices, radio and TV stations or inter-provincial railways), police officers, elected trade union officials or anyone holding political, judicial or religious office.

Adhering to the Act is serious business, according to Stuart Rudner, a Toronto lawyer specializing in employment law. "Employers who violate the Act can be prosecuted and if convicted, be ordered to pay a fine of up to \$50,000, serve up to 12 months in jail or both. Corporate employers convicted of a first offence can face a fine of \$100,000," says Rudner. "Even failure to post The Act in the language of the majority of your employees can be a breach of the Act and result in a fine."



STUART RUDNER practices commercial litigation and employment law with Miller Thomson LLP, a national, full-service law firm. He is a member of the HRP AO and speaking at the October 25, 2005 HRP AO HR Law conference.

Thomson thinks many business owners get into labour trouble because of a wrong-headed attitude. "Their business becomes so personalized, they don't see a separation between it and them. This, coupled with a strong sense that they are the 'King or Queen' of the castle, often leads to expensive legal problems down the road," Thomson says.

Rudner offers one example. "I was contacted by an employee who felt he was being forced out of his job by the owner of the company he worked for. He and the owner had agreed from the start that most of his wages would be earned from commission sales and they agreed to a structure. The employee became so successful, he was making more money than the owner. The owner decided to change the sales structure and territory, effectively cutting the employee's pay by 60 percent. In my view, this was a pretty clear case of constructive dismissal. If the owner had consulted an HR professional on staff or an employment lawyer like myself, he probably would have not done what he did. Unfortunately, many entrepreneurs are used to calling all of the shots, and do not take the time to seek advice from others before they act."

Both Rudner and Thomson again emphasize the value of HR policies and procedures for all small to medium businesses. "Many outside HR consulting services offer low-cost, templates of basic policies and procedures that cover recruitment, discipline, termination and performance and appraisals," says Thomson. "You can then modify or add to this template as your business grows." As well, HRP AO has developed an online HR program for small and medium-sized business with Human Resources and Skills Development Canada, available this fall. The program provides information on employment legislation, developing job descriptions, interview skills



RICHARD THOMSON, CHRP, is a senior consultant with HR on Call, a Toronto-based company that develops customized HR solutions to multi-location businesses and franchises. An HRP AO member, he is author of an upcoming book, *Successful Employee Relations for Small Businesses*.

and other HR and labour relations needs.

According to Rudner, businesses will often consult employment lawyers on an as-needed basis, as issues arise. He suggests that businesses work with employment counsel proactively to establish employment policies and agreements; this can reduce the risk of claims being made down the road. He also recommends employees contact an employment lawyer if they suspect their rights are being violated or denied. "For those people who don't qualify for legal aid but still can't afford a lawyer, several law schools operate law clinics that may be able to provide advice and representation," explains Rudner.

Performance Management — Why your company needs it

As a business owner, if you're not regularly talking with your employees about the company's direction and how their performance ties into it, just what are you talking about?

"It's not just a sit-down, annual performance appraisal anymore," says Beaugard. "Work priorities and job duties change quickly today, so you have to talk with

enforcement. It's important to point out shortfalls in their performance as well. Ask them how they see the situation and what measures could be taken to keep the

