

LABOUR AND EMPLOYMENT NEWSLETTER

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NEW TICKETING POWERS TO ENFORCE THE EMPLOYMENT STANDARDS ACT

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On July 14, 2004, the Minister of Labour announced that employment standards officers have been provided with new powers to issue tickets to employers who fail to comply with the *Employment Standards Act, 2000* ("ESA").¹

Under the Provincial Offences Act ("POA"), employment standards officers can be appointed as provincial offences officers. A provincial offences officer is now vested with the authority to issue tickets to employers that violate the ESA. The tickets carry set fines of \$300, with a \$60 victim fine surcharge added to each fine. Money collected from the fines will go to the municipality in which the offence took place, while the victim surcharge will go into the provincial Victims' Justice Fund ("Fund") account.

Tickets can be issued for a range of general ESA violations that do not raise complex factual or legal issues. Ticketable offences fall into three general categories:

1. Administrative and enforcement offences (e.g., failing to retain records, failing to give a wage statement);
2. Contraventions of wage-based employment standards (e.g., failure to pay overtime, failing to pay an employee's wages, failing to pay the minimum wage); and
3. Contraventions of non wage-based employment standards (e.g., requiring employees to work hours in excess of daily or weekly limits, failing to give vacation time).

Tickets may be issued as a result of proactive inspections or after investigation of an employee complaint. Employment standards officers will continue to retain other enforcement and compliance options including requesting voluntary compliance, issuing orders to pay wages, orders to compensate, or orders to reinstate.

If issued a ticket, an employer will have three options:

1. Plead guilty by signing the guilty plea on the ticket and paying the set fine at the court office specified on the ticket;

¹ To review the press release please visit: <http://www.gov.on.ca/LAB/english/news/2004/04-81.html>

2. Plead guilty by signing the guilty plea on the ticket and paying the set fine at the court office specified on the ticket;
3. Plead guilty and make submissions respecting the fine by appearing before a provincial judge or justice of the peace. The provincial judge or justice may impose the set fine or reduce it; or
4. Plead not guilty by giving notice of intention to appear in provincial offences court and requesting a trial.

The ticketing powers are part of the provincial government's ongoing effort to deter employers from violating the ESA, and according to the Minister, "helps level the playing field for those who obey the law".

Note, however, that the new POA ticketing powers are separate and distinct from existing Ministry of Labour administrative powers that allow employment standards officers to issue Notices of Contravention when the ESA has been violated. Under the existing ESA penalty provisions, where one employee is affected by the violation, most Notices of Contravention will result in a set fine of \$250 for a first time violation. Depending on the frequency of similar violations and the numbers of employees affected, however, the fines can increase up to \$1,000 and this amount could be multiplied by the number of employees affected.

Although the Ministry of Labour will have recourse to both the POA ticketing option and issuing ESA Notices of Contravention, it is anticipated that ticketing will be the Ministry's preferred enforcement mechanism.

For a complete list of POA ticketable offences under the ESA, please contact your Miller Thomson lawyer.

A B O U T T H E A U T H O R :

Michael Conradi 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.

Our Labour and Employment Practice Group is dedicated to providing comprehensive and integrated legal services, and advises management in all aspects of labour relations and employment law. For more information about our Group, visit our website at www.millerthomson.com or contact:

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