

Avoid Getting Boxed in by Your Past Payment Practices



If you decide to pay employees overtime above what's required by employment standards laws, you may be hemmed in by your previous practices and have a tough time changing them later. Employees and their unions may be able to use a legal theory called "estoppel" to force you to keep paying what you have in the past.

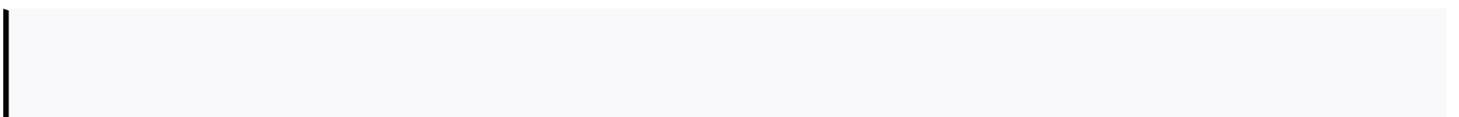
Pitfall: "Estoppel" May Bar Changes to Payment Practices

Estoppel is a doctrine that judges invoke when a person (Person A) does something not required by law that affects a second person (Person B) and then tries to change that practice later. Theoretically, since the action isn't legally required, Person A doesn't have to keep performing it. But if Person B expected and reasonably relied on Person A to keep performing the action and suffers harm as a result of the change, a court may intervene in the interest of equity to prevent or "estop" Person A from making the change in order to protect Person B.

Employers who have a record of paying overtime that's not required by employment standard law or an employment contract run the risk of being estopped from changing their policies. **Example:** When an employer cancelled a longstanding practice of paying its backhoe operators "grease time," that is, 30 minutes of overtime each shift to service their machines, the union brought a grievance claiming that the employer was estopped from changing its practice [[Vancouver \(City\) v. Canadian Union Employees \(Vancouver Civic Employees Union, Local 1004\)](#), 2008 CanLII 3867 (BC L.R.B.), Feb. 5, 2008].

Solution: Reserve Right to Change Payment Methods

If you pay out overtime or other amounts you're not legally required to, make it clear that you reserve the right to change your policy at any time and for any reason. This way, employees won't have an expectation that the policy will continue and won't be able to use estoppel to force you to keep honouring it. There's some sample language below that you can include in your HR Policy:



Right to Change Payment Methods

The Company reserves the right to change its current payment methods from time to time at its sole discretion and, except where the payment provision is required under the express terms of [*province*] employment standards laws or an employment contract or collective agreement, employees should not assume that the method in which they get paid today is necessarily the exact same method in which they will get paid in the future.