Corporate Director Liability for Unpaid Wages – Know The Laws Of Your Province



Directors may be personally liable for an employee's wages.

Generally, corporate directors and officers aren't personally liable for the debts of the corporations they direct. This insulation from personal liability is one of the reasons so many companies are set up as corporations. However, there are some important exceptions. Corporate directors can be charged as individuals for ESA offences the company commits. And in 10 jurisdictions, they can also be held personally liable to employees for unpaid wages. As an HR director, you need to understand and, if necessary, be able to brief your own directors on the scope and extent of their personal liability for unpaid wages. Here's a rundown of the rules in each part of Canada.

Personal Liability of Corporate Directors for Unpaid Wages Across Canada

FEDERAL

Corporate directors jointly and severally liable for wages and other employee entitlements that arose during their incumbency and if recovery of amount from corporation is unlikely or impossible. **Limit:** Up to 6 months' wages (*Canada Labour Code*, Sec. 251.18)

ALBERTA

Corporate directors jointly and severally liable for up to 6 months' wages and other employee entitlements that arose for services performed during their tenure but only if claim is made within 6 months of corporation's going into liquidation, dissolution or issuance of a bankruptcy receiving order, as the case may be. **Defence:** Director not liable if he/she believes on reasonable grounds that corporation can pay the debts as they become due (*Employment Standards Code*, Sec. 119)

BRITISH COLUMBIA

Corporate directors and officers personally liable for up to 2 months' wages per employee that were earned or should have been paid during their tenure. **Limits:** Not personally liable for: (i) Individual or group termination notice or money payable if

corporation is in receivership or subject to certain bankruptcy actions; (ii) Vacation pay that becomes payable after they leave office; or (iii) Money left in an employee's time bank after they leave office (*Employment Standards Act*, Sec. 96)

MANITOBA

Director or former director jointly and severally liable with corporation (but not other directors/former directors) to an employee or former employee of the corporation for: (i) wages, other than vacation allowance, earned or that became due and payable within last 6 months they were a director; and (ii) vacation allowance that accrued or became due and payable within last 22 months they were director; **Limits:** "Wages" doesn't include: (a) wages in lieu of notice; or (b) wages earned by employee while corporation's business is under control of a receiver-manager (*Employment Standards Code*, Sec. 90)

NEW BRUNSWICK

Director or former director jointly and severally liable with corporation (but not other directors/former directors) to employee or former employee for: (i) up to 6 months' wages earned or that became due and payable while they were a director; and (ii) up to 12 months' vacation pay or pay in lieu that accrued or became due and payable while they were director; **Limits:** Doesn't apply to: (a) Administrative monetary penalties; (b) Directors of nonprofits; and (c) Former directors who haven't been directors for 2 years or more; **Defence:** No liability if director or former director exercised reasonable diligence to provide for payment of the unpaid amount (*Employment Standards Act*, Sec. 65)

NEWFOUNDLAND

Corporate director, officer or agent not personally liable for unpaid wages but can be personally fined for offences they directed, authorized, assented to, acquiesced in or participated in regardless of whether the corporation is prosecuted or convicted (*Labour Standards Act*, Sec. 76)

NOVA SCOTIA

Doesn't make corporate directors personally liable

ONTARIO

Directors jointly and severally liable for up to 6 months' wages if: (i) the employer is insolvent, the employee files an unpaid wage claim with a receiver or bankruptcy trustee and the claim isn't paid; or (ii) an MOL employment standards officer issues an order finding the employer and/or director liable for wages; (b) directors liable for; Wages include:

- Vacation pay accrued while they were directors up to 12 months (or a higher amount agreed to under contract)
- Holiday pay that became payable while they were directors—either minimum required by ESA or higher amount agreed to under contract, whichever is greater
- Overtime pay that became payable while they were directors—either minimum required by ESA or higher amount agreed to under contract, whichever is greater

Limits: "Wages" don't include termination and severance pay and amounts deemed to be wages under Act (*Employment Standards Act*, Sec. 81)

PRINCE EDWARD ISLAND

Corporate directors jointly and severally liable with the corporation for up to 6 month's pay that becomes payable while they're directors if either: (i) the corporation is insolvent, the employee has files a claim for unpaid pay with a receiver or bankruptcy trustee, and the claim hasn't been paid; or (ii) the government orders the corporation to pay and the corporation doesn't pay within 30 days; **Limits:** Doesn't apply to directors of corporations carried on for purposes other than "gain"; **Defence:** No liability if director can show he/she "exercised the degree of care, diligence and skill to ensure that pay owing was paid that a reasonably prudent person would have exercised in comparable circumstances" (*Employment Standards Act*, Sec. 5.7)

QUÉBEC

Although not liable for unpaid wages, directors or officers of a corporation, partnership or association are presumed to commit the offence the corporation, partnership or association commits and can be fined. **Defence:** No liability if director or officer can show he/she "exercised due diligence, taking all necessary precautions to prevent the offence" (*Labour Standards Act*, Sec. 142)

SASKATCHEWAN

Corporate directors jointly and severally liable to employee for up to 6 months' wages due and accruing to the employee but not paid while they're corporate directors (*Sask Employment Act*, Sec. 2-68)

NORTHWEST TERRITORIES

Although not liable for unpaid wages, corporate directors, officers or agents who directed, authorized, assented to, acquiesced in or participated in the offence are guilty of the offence and liable to the punishment provided for the offence, whether or not the corporation is prosecuted; **Defence:** No liability if director, officer or agent can show he/she "exercised all due diligence to prevent the commission of the offence" (*Employment Standards Act*, Secs. 100 and 101)

NUNAVUT

1. Corporate officers and directors liable for up to 2 months' unpaid wages of each employee who hasn't been paid; and 2. Corporate directors, officers or agents who knowingly directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence, whether or not the corporation is prosecuted; **Defence:** No liability if director, officer or agent can show he/she "exercised all due diligence to prevent the commission of the offence" (*Labour Standards Act*, Secs. 61 and 60)

YUKON

Corporate directors jointly and severally liable to an employee for up to 2 months' wages due for services performed while they were directors (*Employment Standards Act*, Sec. 86)