International Remote Workers And The ESA: Key OLRB Ruling Explained



On March 28, 2025, the Ontario Labour Relations Board (the "OLRB") released its decision in *Jiri Pik v. Cure Data Inc.* In this decision, an internationally-based applicant alleged their purported employer had violated the applicant's rights under the *Employment Standards Act, 2000* ("ESA"). The OLRB disagreed, concluding the applicant's employment was not subject to the ESA as they had never worked for the respondent while physically resident in Ontario.

Background Facts

The Applicant alleged he was employed by Cure Data as the "Global Chief Technology Officer (CTO) and Head of the Singapore Office". Cure Data operated under the laws of Ontario.

The Applicant claimed that he frequently participated in electronic meetings with Cure Data personnel working in Ontario. However, he acknowledged that throughout the duration of his purported employment, he was never physically present in Ontario and instead performed his work from Singapore.

The parties agreed there was no written contract of employment.

The Applicant claimed Cure Data breached several provisions of the ESA with respect to his employment, including with respect to public holidays and overtime pay.

Cure Data disputed this claim. The Employment Standards Officer ("ESO") agreed, concluding the OLRB did not have jurisdiction under subsection 3(1) of the ESA with respect to the Applicant's employment.

The Applicant applied for a review of the ESO's decision to the OLRB.

The Decision

The OLRB narrowed the focus of its decision on the question of whether the ESA applied to the Applicant's employment pursuant to subsection 3(1) of the ESA, which states:

Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

(a) the employee's work is to be performed in Ontario; or

(b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario.

The OLRB dismissed several arguments put forth by the Applicant as to the reason his employment was subject to the ESA, despite his admission that he had never physically worked in Ontario.

First, the Applicant alleged that the ESA should apply on the basis of a purposive interpretation of the ESA and the understanding that its purpose is "broadly to protect workers from falling through the cracks of legal protections". In this regard, the Applicant alleged that the "Singapore law provides no equivalent minimum standards or even status'" with respect to his employment, and that the application of the ESA to his employment would prevent him from "losing basic protections due to the geography of work".

In rejecting this argument, the OLRB held that the "degree of parity between the employment standards in Ontario and any other jurisdiction in which the work is performed" was an irrelevant factor to the determination of whether an employee's employment was subject to the ESA. An employee will not have rights pursuant to the ESA just because they do not have protections under their local employment standards legislation.

Second, the OLRB rejected the Applicant's argument that the OLRB could obtain jurisdiction as a result of the relationship of the parties and their 'substantial connection' to Ontario. On this point, the OLRB clarified that the location of an employer's head office and its jurisdiction of incorporation were irrelevant to the determination of whether the ESA applied to an employee's relationship with their employer.

Instead, the OLRB reaffirmed its test for the application of subsection 3(1) of the ESA with respect to remote workers who worked for an employer while physically located outside of Ontario.

In particular, the OLRB concluded that the ESA, "as currently written, requires an employee to have had some degree of physical presence in Ontario to access statutory minimum employment standards". The OLRB noted that "in applying the test under subsection 3(1) of the [ESA], the [OLRB] considers the actual, physical location of the employee. There is no special jurisdictional rule for work performed in cyberspace".

As the Applicant had admitted to never being physically present in Ontario during the period of his alleged employment, the Applicant did not have any 'physical presence' in Ontario, and he had accordingly never 'performed work' in Ontario pursuant to subsection 3(1) of the ESA.

Takeaways

As the OLRB made clear in *Jiri Pak*, the physical location of the remote worker will be of primary relevance when determining the question of whether the ESA applies to an employment relationship.

Jiri Pak is the most recent of a series of OLRB decisions applying subsection 3(1) of the ESA to remote work arrangements following the rise in remote work over the past decade. The OLRB's review of these decisions in *Jiri Pak* provides further guidance on the application of subsection 3(1) to remote work arrangements, such as where a

remote employee performs work in Ontario and another jurisdiction over the course of their employment. For example, the OLRB in *Jiri Pak* reviewed a previous decision in which the OLRB had concluded a remote worker who primarily works while residing outside of Ontario will not be subject to the ESA solely due to their occasional in-person attendance at work-related meetings within Ontario. Such meetings would instead be considered a 'continuation' of work completed outside of Ontario.

Jiri Pak also serves as an important reminder for employers to confirm the work location of their remote employees at all times—even temporary relocations or recurring business trips may have an impact on the applicable employment standards with respect to an employee's employment.

Where possible, employers should ensure their employment agreements or written remote work agreements specify the jurisdiction of an employee's work location, and require employees to notify their employer in the event of a relocation. Where a remote employee intends to relocate to a new jurisdiction, a new agreement may be warranted, to ensure there is no confusion concerning the applicable jurisdiction with respect to employment standards legislation and other employment-related laws.

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