

It's Happening Tomorrow: New ESA Amendments Effective June 21, 2024



Overview

As we previously wrote about [here](#), on March 21, 2024, the Ontario Government passed the *Working for Workers Four Act, 2023* ("Working for Workers Four"), which amends the *Employment Standards Act, 2000* ("ESA"), *Workplace Safety and Insurance Act, 1997*, *Digital Platform Workers' Rights Act, 2022* and the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*. Several of *Working for Workers Four*'s amendments to the *ESA* come into effect this Friday, June 21, 2024.

Changes Regarding Vacation Pay

The language of the *ESA* related to paying vacation pay also changes effective June 21st. Employers may continue to pay vacation pay as a lump sum before the employee commences their vacation. If an employer wishes to pay vacation pay in any other way. For example, if vacation pay is paid as it accrues (i.e. on a "pay period basis") or if vacation pay is paid out in any other way, then the employee must have "made an agreement" with the employer that it may be paid out in that manner.

Previously, the employer simply needed the employee to "agree" to this practice, as of June 21st, employers will need an employee's agreement in writing before remitting vacation pay on each pay cheque. Practically, employers may wish to review their employment agreements with their regular lawyer at the firm to ensure compliance with this change.

Changes Regarding Payment of Wages

Effective June 21st, the *ESA* provisions related to paying employees by direct deposit will be amended to specify that the account in question must be an account of the employee's choice (as well as being in the employee's name and only accessible by that employee or a person they have authorized, which was already required by the *ESA*). It will also add the requirement that the account must meet any criteria "prescribed" by the government. At this time, no criteria have been prescribed by the government. Practically, this is a good time for employers to review what account information is requested from employees as part of their onboarding process to ensure that each account receiving direct deposit is in compliance with the new *ESA* requirements around employee selection.

Changes Regarding Payment of Tips

Effective June 21st, where an employer (or a director or shareholder of an employer) participates in tip-sharing, the employer is now required to post a copy of the tip-sharing policy in the workplace and retain a copy for three years after the policy ceases to be in effect. Practically, this means that employers should ensure any such policies are in writing and posted where employees can easily see it.

There are also additional changes that will come into force regarding tipping. The *ESA* now explicitly provides that tips may be paid by way of cash, cheque payable to the employee, direct deposit, or any method that might be prescribed by regulation. Cash and cheques may only be provided to the employee at their workplace or at another location agreed to by the employee. If tips are paid via direct deposit, the receiving account must meet the same criteria as the account for any other wages: it must be in the employee's name, selected by the employee, only accessible by the employee or someone authorized by the employee, and any other prescribed criteria. Again, at this time, no criteria have been prescribed.

Takeaways

We will continue to monitor the status of the outstanding legislative changes enacted under *Working for Workers Four*, and will release subsequent updates as the various amendments come into effect. We are available to assist employers with any issues that may arise out of these changes. For employees, employers may wish to incorporate new language into their employment contracts or policy handbooks reflecting these new changes to the *ESA*.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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