Ministry Of Labour To Start A Three Month Spot Audit Of Employment Standards



The Ministry of Labour ("MOL") has announced that starting in September 2014, it will embark on a three-month random spot audit in industries that the MOL considers to be "known to hire a high proportion of vulnerable or temporary foreign workers, including restaurants, building services, personal care services (e.g., hair, aesthetics, massage services), business support services (e.g. collection agencies, call centres) and horticulture (e.g., nurseries, greenhouses)." The MOL considers employees in these sectors to be particularly vulnerable to exploitation and has taken an interest in ensuring employers are complying with basic employment standards.

The MOL will be checking for compliance with the requirements of the *Employment Standards Act, 2000* (the "ESA") and will have a particular focus on compliance with public holidays, vacation pay, minimum wage, record keeping and payment of wages.

Spot audits, although concerning, are not uncommon. The MOL's announcement of the current spot audit is a good reminder that under the ESA, the MOL has the broad power to send an investigator into any workplace in Ontario, at any time, without prior notice or a warrant, to conduct an inspection of the employer's records (including removal and copying of records) and to question any person in order to evaluate the company's compliance with employment standards, including record keeping. An employer cannot refuse to cooperate with any investigation, and the MOL can seek a warrant to enter a workplace if necessary. Depending on the results of an audit, the MOL can make orders ranging from ordering the employer to comply with the ESA to payment of back wages of up to a maximum of $10,000 per employee. In extreme cases, such as falsification of records or providing misleading information, an employer can be liable for an offence and a fine of up to $100,000 (up to $500,000 for multiple offences) and/or imprisonment for up to 12 months.

The spot audit is also a good reminder to take a minute to consider your organization's current internal record retention policy to ensure it is in compliance with the record keeping requirements of the ESA. The ESA requires employers to keep and retain the following records:

1. The employee's name and address, for 3 years post-employment.
2. The employee's date of birth, if the employee is a student and under 18 years of age, for the earlier of 3 years after the employee's 18th birthday or 3 years post-employment.

3. The date on which the employee began his or her employment, for 3 years post-employment.
4. The number of hours the employee worked in each day and each week, for 3 years after the day or week to which the information relates.
5. Wage statements, including vacation pay, for 3 years after the information was given to the employee.
6. Vacation time and vacation pay records, for 3 years after the record was made.
7. All documents related to an employee's statutory leave of absence, for 3 years after the leave ended.

These record keeping requirements are minimum standards only and your internal policy may exceed these time frames. Moreover, the ESA does not govern record keeping in respect of many other employment-related documents, such as employment applications, employment agreements, evaluations, medical records, training course and tax records, pension plans (including CPP), benefit enrolment and health and safety records. Your record retention policy should endeavour to cover all records reasonably related to the employment relationship.

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