New Wage, Vacation & Tip Payment Requirements Take Effect in Ontario



Ontario payroll administrators take note: Some important *Employment Standards Act* (ESA) changes affecting payroll took effect on June 21, 2024. Despite their significance, especially for payroll administrators, the changes received little fanfare. Here's a summary of the key changes in case they flew under your own radar.

1. Employees Get to Choose Bank Account for Direct Deposit Wage Payments

Old Rule: Under Section 11(4) of the ESA, employers could pay wages by direct deposit, provided that the account was: i. in the employee's name; and ii. nobody other than the employee had access to the account, unless the employee authorized otherwise.

New Rule: While the account must still be in the employee's name and be accessible only to the employee, there's a new requirement for paying by direct deposit: Effective June 21, 2024, the employee must select the account into which the employer deposits their wages. In other words, employers may no longer require employees to use a certain bank or otherwise restrict their selection.

How to Comply: If you previously restricted employees' account selection, you're responsible for confirming that they want to keep using that account after June 20, 2024, before making their next and subsequent wage payments. Employees can also notify you that they want their wages deposited to a different account. If they provide such notification, you must make the change.

2. Written Agreement Required for Alternative Method of Paying Vacation Pay

Old Rule: Vacation pay earned during a completed vacation entitlement year or stub period must be paid to an employee in a lump sum sometime before they take the vacation time earned. But exceptions apply. One of them allows for payment of vacation pay that accrued during a pay period on the pay day for that period "if the employee agrees" to that manner of payment (ESA, Sec. 36(3)).

New Rule: The exception still applies but the phrase "if the employee agrees" has

been changed to “if the employee makes an agreement with the employer” to payment in that manner.

How to Comply: While it may look cosmetic, this change is actually significant because it means that agreements between the employer and employee to pay vacation pay in every paycheque as it accumulates or at any agreed-upon time must be in writing or electronic and may not be verbal.

3. New Requirements for Paying Employee Tips & Gratuities

Old Rule: The ESA didn’t specify methods that employers had to use to pay employees tips or other gratuities.

New Rule: Starting June 21, 2024, employers must pay tips or other gratuities by cash, cheque, or direct deposit.

How to Comply: Be sure to follow the ground rules for payment of tips and gratuities to employees listed in newly added Section 14.1 of the ESA.

If payment is by cash or cheque, tips or other gratuities must be paid at the workplace or other place that the employee agrees to electronically or in writing;

If payment is made by direct deposit, the account must be: i. selected by the employee; ii. in the employee’s name; and iii. accessible only to the employee unless the employee authorizes somebody else to have access to the account. If you restricted employees’ direct deposit account selection for tips before June 21, 2024, you must get them to confirm that they want to keep using that account. Employees can also notify you that they want their tips deposited to a different account, in which case you must make the change.

4. New Requirements for Employer Participation in Employees’ Tip Sharing Pools

Old Rule: Employers and their directors or shareholders are allowed to share in tips, provided that specific criteria are met. Specifically, Section 14.4(1) of the ESA says that an “employer may withhold or make a deduction from an employee’s tips or other gratuities or cause the employee to return or give them to the employer if the employer collects and redistributes tips or other gratuities among some or all of the employer’s employees.”

New Rule: Newly added Section 14.4(6) requires that employers who have a policy allowing employer or its director or shareholder to share in tips or other gratuities that are redistributed under Section 14.4(1), the employer must post and keep posted a copy of that policy in at least one conspicuous place in the establishment where it’s likely to come to the employees’ attention.

How to Comply: The rules aren’t changing all that much. The new rule doesn’t require you to establish a tip sharing policy. It just says that if you do have such a policy, you must post it in the workplace. According to Ontario Ministry of Labour (MOL) guidance, the rule also applies if you have an “established practice” and consistently applied unwritten practice of sharing in a tip pool, in which case you must put the practice in writing and post a copy.

The ESA doesn’t specify the information that must appear in the policy. All that matters, according to the MOL, is that “the posted document is a true copy of the

policy that is in place and clearly states that the employer or a director or shareholder of the employer shares in the tip pool.”

Final pointer: You must also keep a copy of every tip sharing policy that’s required to be posted for 3 years after the policy stops being in effect.