



Changing Workplaces Review

The Canadian Payroll Association congratulates the Ontario government for initiating consultations on the current *Labour Relations Act, 1995* and *Employment Standards Act, 2000*, (ESA) as this supports our goal of increasing the efficiency and effectiveness of payroll-related legislation, regulations and administration for all stakeholders: employers, employees and the government.

The Association actively participates in Ontario's Ministry of Labour Employer Stakeholder events and thanks the Ministry for accepting our most recent recommendation that employers be enabled to distribute the employment standards poster to employees electronically or in paper format. This decision not only reduces paper burden and costs for the Ministry of Labour, it also decreases administrative burden for employers and government. In today's changing workforce dynamics, it is less complex to send a copy of the poster to employees electronically.

When complexity decreases--compliance increases

In recommending changes to the two central pieces of legislation governing workplaces in Ontario, the goals of decreased complexity and increased compliance should be the guiding principle for Special Advisors coordinating this public consultation and providing the Minister of Labour with a final written report with recommendations. The objective should be more efficient and effective regulatory requirements for employers, employees and government.

With this objective in mind, we have prepared the following recommendations and comments to the consultation questions for the Changing Workplaces Review that impact employers and their payroll systems:

- Ontario should increase regulatory harmonization with other provinces/territories
- The accepted use of electronic documents and record-keeping should be clearly addressed
- Working agreements and vacation waivers should not require approval from the Director of Employment Standards
- Clarity must be given regarding placement agency workers
- The terms "supervisor" and "manager" require definition
- Minimum standards enforcement should be achieved by proactive employer education rather than the current reactive punitive approach
- Employers need to understand their compliance requirements
- More examples are required within the online Employment Standards Guide and related webpages

How has work changed for you?

Technology has enabled organizations to expand their activities across Canada and globally. This requires employer policies and payroll systems to address multi-jurisdictional requirements. Non-consistent payroll requirements across jurisdictions increase complexity for employers, payroll services providers and software developers.

Are changes needed to support employers in the modern economy?

Yes, changes are needed to support employers in the modern economy by harmonizing minimum standards and government should support more online electronic documentation.

- Greater harmonization of minimum standards with other provinces and territories is needed. Ontario's Ministry of Labour should take the lead on a Canada-wide initiative to identify the most efficient and effective legislation, regulations and administrative policies with a goal to harmonize a minimum of two standards per year. The Canadian Payroll Association has subject matter experts in all jurisdictions and is available to illustrate inconsistencies and identify areas that should be harmonized; for example, the calculation of public holiday pay. The complexity of the calculation of public holiday pay varies by jurisdiction, making it challenging for employers who operate in multiple jurisdictions. The long-term benefits of this initiative include more efficient and effective administration and implementation of regulatory requirements across Canada, and greater employer understanding and compliance.
- The accepted use of electronic documents and record-keeping in today's modern economy should be clearly addressed in the ESA and on the Ministry of Labour website for employment standards.

How could the ESA be simplified while remaining fair and comprehensive? Are there standards in the ESA that are too complex? If so, what are they and how could they be simplified?

Requiring approval from the Director of Employment Standards for workplace agreements increases complexity and red tape burden for employers, government and employees. The MOL should adopt the same administrative efficiencies that exist for mutual agreements between the employee and employer to substitute a public holiday, which do not require approval from the Director, for the following four types of agreements:

- working more than the maximum hours
- averaging hours
- compressed workweeks
- waiving of legislated vacation time (while keeping legislated vacation pay mandatory)

Are there specific employment relationships (e.g., agencies) that may require special attention in the ESA?

- It is still unclear how clients are jointly responsible for unpaid wages of placement agency workers, especially when workers do not report unpaid wages to the organization they are providing services for. The client's responsibility is to remunerate the temporary agency for services rendered; the agency's responsibility is to pay their employees. The client should not be held responsible for both paying the agency under their contract for services, and to the worker if their employer did not satisfy the employment contract. This is the equivalent of making patrons of a restaurant jointly responsible for unpaid wages of the wait staff, cook, etc.

- The terms “supervisor” and “manager” require definition and clarity throughout the ESA and supporting MOL web pages.
- The MOL should provide guidance on how to differentiate between an employee and a contractor, similar to

Do the current enforcement provisions of the ESA work well? What problems, if any, exist with the current system? What changes, if any, should be made?

Minimum standards enforcement should be achieved by proactive employer education rather than the current reactive punitive approach. The Ministry of Labour should work more proactively with employers and key stakeholders, such as the Canadian Payroll Association and other industry/professional associations, rather than spending additional resources on audit blitzes.

The federal government’s Underground Economy Reduction model, which utilizes associations to bring awareness and education to members, should be adopted rather than a strict punitive approach.

A more consistent approach from MOL auditors and inspectors is needed. For example, some auditors agree that an indication of pay period frequency and end date on the pay statement satisfies the requirement of illustrating the pay period for which the wages are being paid. Other auditors have issued the employer a non-compliance ticket even though the pay period start date can undeniably be determined with the pay frequency and end date.

Improved clarity within the Act, regulations and Employment Standards Guideline and website should reduce misinterpretation by auditors, inspectors and MOL staff responding to employer queries.

What changes could increase compliance?

Employers need to understand their regulatory requirements to be compliant. Confusion, however, often develops from conflicting court decisions. In *Paquette c. Quadraspec Inc.*, 2014 ONCS 2431, the Ontario Superior Court decided that previous court decisions to only recognize an employer’s Ontario payroll, when determining whether they have a payroll of \$2.5 million or more, were incorrect. This suggests that employers may have to include their global payroll; however, this has not been clarified by Employment Standards.

The following require increased clarity within legislation, regulations and administrative policies:

- Clearly state if the \$2.5 million threshold for severance consideration includes an employer’s payroll outside of Ontario.
- Clarify pay statement requirements regarding the pay period for which the wages are being paid.
- Define Termination Pay and Severance Pay in section 1 of the ESA to avoid confusion between the two.
- Clearly indicate, within the Act, when certain types of employees are exempt (for example, certain professionals may be exempt from overtime rules).
- Clarify when bonus or incentive payments form part of the public holiday calculation.

- Clearly illustrate how to calculate public holiday pay when the employee's shift straddles two calendar days.
- Create a Just Cause fact sheet, similar to one create by British Columbia's Employment Standards: <https://www.labour.gov.bc.ca/esb/facshts/justcaus.htm>.
- To avoid current confusion that this refers to the Canada Pension Plan, the following underlined clarifications should be added in the ESA guide under exemptions from severance pay: "...has his or her employment severed and retires on a full company registered pension plan recognizing all years of services."
- Clarity for Orders to Pay (whether the amount sent to the Director of Employment Standards is subject to Canada Pension Plan, Employment Insurance and income tax deductions, and if the amount is to be reported on the employee's T4).

Should all Ontario employees be provided with a number of job-protected sick days and personal emergency leave, and are there are other types of leaves that should be addressed?

If job-protected sick days or any additional job-protected leaves are legislated, these should be unpaid to keep both direct and indirect employer costs down. (Indirect costs would include payroll system implementation to track paid days off, carry-over provisions, etc.)

Are there any other issues related to this topic and changes that need to be addressed?

More examples are required within the online Employment Standards Guide and related webpages. For example, the public holiday pay examples provided in the Carswell Interpretation Manual provide much needed clarity; however, not all employers have access to this manual.

Last year, our Payroll Infoline answered over 40,000 inquires from employers requiring clarification on legislation across Canada (10,500 related to employment/labour standards and half pertaining to Ontario). Payroll compliance through education and advocacy is our mission statement and the Canadian Payroll Association is pleased to continue working with Ontario's Ministry of Labour to ensure that any amendments to legislation, regulation or administrative policies are introduced with the greatest possible administrative efficiencies. Our subject matter experts are available to offer feedback on any proposed amendments to legislation, regulations, administrative policies, as well as the Employment Standards Guide, online calculators, website, or any other employer resource tools.

About the Canadian Payroll Association

The Canadian Payroll Association has been representing employers' payroll interests since 1978. With over 20,000 members, the Canadian Payroll Association helps influence the administration of over half a million organizational payrolls.

Employers annually pay \$865 billion in wages and taxable benefits, \$163 billion in health and retirement benefits, and \$290 billion in provincial and federal statutory remittances, while complying with over 190 regulatory requirements.