



Red Tape Commission urges key amendments to Ontario employment statutes

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In its report released in January 1997, the Red Tape Review Commission, a body of 11 Progressive Conservative MPPs appointed by the Harris government, makes a number of recommendations that would affect several employment-related statutes. The Commission was established with the aim of eliminating government requirements perceived to impede job creation or to waste taxpayers' time and money.

Among the most controversial changes proposed are those involving the *Employment Standards Act* which, according to the Commission, is overly complex and confusing and does not provide employers with the flexibility required in the modern workplace. (For previous articles concerning the *ESA*, see ["Changes to Employment Standards Act imminent"](#) on our Publications page, ["Controversial provision withdrawn from *ESA* amendments"](#) and ["Emond Harnden's view on the proposed *ESA* amendments"](#) on our What's New page, and ["*ESA* amendments receive Royal Assent"](#) on our Publications page.)

HOURS OF WORK AND OVERTIME

One area of the *ESA* considered particularly inflexible is that involving hours of work and overtime. Currently, the *ESA* mandates that an employee's work schedule not exceed 48 hours a week and eight hours a day. There are exceptions to this rule, including instances where accidents or emergencies necessitate longer hours to avoid serious interference with the ordinary working of the business. Otherwise, however, an employer wishing to exceed these limits requires a special permit, authorizing up to 100 extra hours a year for most employees. Regardless of the work schedule established, employees must be paid at a minimum time and a half rate for work in excess of 44 hours a week. Employees performing exclusively managerial or supervisory functions are exempt from the hours of work and overtime provisions.

The Commission would revamp all these provisions. Its key recommendations include:

- extending the maximum work week to 50 hours a week, or to 200 hours over a four week period, with yearly limitations subject only to empirical evidence of health and safety risks associated with overtime hours worked;
- eliminating or streamlining the process for obtaining overtime permits;
- giving employers the choice to compensate employees for overtime hours either through the premium rate set out in the *ESA*, or in-lieu time;
- expanding the exemption for managerial personnel from the hours of work and overtime



provisions to include persons employed in the self-governing professions, other professionals, and persons earning in excess of a specified amount.

EASING SEVERANCE OBLIGATIONS

The Commission believes that the severance pay provisions in the *ESA* are inconsistent with the common law concept of working notice and pose a threat to the viability of many enterprises. It therefore proposes to allow employers subject to the severance obligation to give longer notice periods as an alternative to severance pay.

Currently, businesses with a payroll of less than \$2.5 million are largely exempt from severance obligations. The Commission would raise this payroll threshold for exemption to an unspecified level.

HEALTH AND SAFETY

The Commission recommends a number of changes to the *Occupational Health and Safety Act*. It takes particular aim at the work refusal provisions, stating that these are often invoked in non-emergency situations and result in unnecessary work stoppages. Accordingly, the Commission proposes to amend the *OHS Act* to replace the subjective “reason to believe” test for refusing work with objective criteria to determine the conditions that constitute a danger sufficient to warrant a work refusal. As well, the Commission urges including sanctions where the work refusal provisions have been abused. (For previous articles on the subject, see [“Less government involvement, more flexibility urged for Ontario’s health and safety system”](#) on our Publications page.)

PAY EQUITY

The provisions of the *Pay Equity Act* are, in the Commission’s view, overly prescriptive and rigid in setting out how a gender neutral compensation scheme can be established and maintained. It therefore calls for the elimination of most of these aspects of the current legislation. More significantly, however, it views the *Pay Equity Act* as unduly burdensome on small and medium-sized private sector employers, and would exempt employers with fewer than 50, or “preferably” 100 employees from the legislation. Currently, private sector employers with fewer than 10 employees are exempt. The Commission believes that, as larger employers implement pay equity, market forces will naturally raise the pay rates of women working for exempt businesses.

HUMAN RIGHTS COMPLAINTS

The Commission notes the frustration expressed by many employers over the time and expense involved in responding to complaints filed under the *Human Rights Code*. Key among its proposals is the requirement that complainants establish reasonable grounds to believe that a right under the Code has been violated before filing a complaint with the Ontario Human Rights Commission. Currently, the *OHRC* has the discretion to refuse to investigate complaints in certain circumstances, including when the subject matter is deemed trivial, frivolous, vexatious, or the complaint is made in



bad faith. However, the Red Tape Commission observes, it is not always possible for the *OHRC* to know this without some preliminary investigation.

The Commission also recommends that small and medium-sized employers be consulted to develop reasonable criteria for determining what constitutes “undue hardship” in the accommodation of disadvantaged groups. In this regard, it notes that, in the absence of a formal definition of undue hardship in the Code, the practice of the *OHRC* has been to require “unreasonable and inordinately costly” forms of accommodation by employers.

IN OUR VIEW

While the government has tabled a number of “Red Tape Reduction Acts”, none of the recommendations discussed here have been placed before the legislature. Meanwhile, the Harris government has been moving on another front in its drive to make government more efficient. In February of this year, the Task Force on Agencies, Boards and Commissions (the ABC Task Force) released its report on streamlining regulatory and adjudicative agencies. Among its many recommendations are the creation of a new Labour Relations Tribunal through the merger of the Ontario Labour Relations Board with the Education Relations Commission, the College Relations Commission, the Ontario Police Arbitration Commission and the Pay Equity Hearings Tribunal. As well, it proposes the possible elimination of the Crown Employees’ Grievance Settlement Board in favour of private arbitrators and mediators. (See also “*Ontario’s New Public Sector Transition Stability Act, 1997*” on our What’s New page.)

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