
Overtime Pay On the Rise

The Holiday Season may now have come and gone for another year, but did you make sure to track your overtime? Many employees likely did.

While holidays traditionally are a time for celebration and gathering with family and friends, increasingly they are becoming a time to catch up on work. The advent of mobile technology has transformed the world, and along with it the way we engage in work. Now, travelling to Aunt Tricia's house in Hamilton or riding the chair lift at the ski hill are opportunities to check your smartphone or remotely log into your workplace desktop to catch up on email messages and the latest draft of an important document.

While mobile technology has allowed employers to increase workplace productivity, it has also kicked open the door to lawsuits brought by employees for unpaid overtime. Whether performed in the traditional workplace setting or on a smartphone outside regular office hours, employers have to keep in mind that these are workplace duties being performed for which employees can demand compensation.

In Ontario, overtime pay is governed by the *Employment Standards Act*, which states that employees shall receive overtime pay of at least one and one-half times the regular rate of pay for each hour worked in excess of 44 hours per week. The Act governs the vast majority of Ontario's workforce, with a few exceptions for certain classes of workers like those in managerial roles or in certain professions like accounting and medicine.

Answering a few emails every evening and reviewing a set of documents on a Saturday morning can quickly push the average employee well beyond the 44-hour mark. All employers should be aware of this growing legal liability.

Several unpaid overtime cases are making their way through our legal

systems. These cases include two high-profile class action lawsuits against the Canadian Imperial Bank of Commerce and the Bank of Nova Scotia. In the CIBC case, 3,000 employees are seeking \$600 million in overtime pay, while in the case of Scotiabank, approximately 5,000 employees are claiming \$350 million.

Employers who fail to address this issue run the risk of facing either civil litigation (i.e. a traditional lawsuit launched by the employee) or a complaint filed with the Ministry of Labour. If an employment standards officer finds that an employer owes wages to an employee, the officer may award the employee up to \$10,000 in compensation.

Additionally, a corporation that is found to have contravened the *Employment Standards Act* can face a fine of up to \$100,000 for a first offence. Fines for second and third offences can be as high as \$250,000 and \$500,000, respectively. In the case of an individual employer (i.e. a sole proprietorship), a contravention of the Act can lead to imprisonment for up to twelve months.

Employers should be mindful and ensure that there are clear and consistent policies regarding overtime and the use of mobile technology. Wherever such overtime is a likely component of an employee's position, employers are well advised to address the issue directly in employment agreements.

About the Author Seth Jutzi, B.B.A., LL.B.

Seth Jutzi is a lawyer at Sorbara, Schumacher, McCann LLP, one of the largest and most respected regional law firms in Ontario.

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