

***RECENTLY ANNOUNCED CHANGES TO  
THE WORKPLACE SAFETY AND  
HEALTH REGULATIONS AND THE  
EMPLOYMENT STANDARDS CODE***

**Antoine Hacault & Adrian Frost  
Thompson Dorfman Sweatman LLP  
February 27, 2007**



# Today's Presentation

---

- New Regulatory Provisions enacted under *The Workplace Safety and Health Act*
- Amendments to *The Employment Standards Code* and Related Regulations



# New WSH Regulations

---

- 12 of 14 current Regulations repealed
- New Regulation is comprehensive (335 pages)
- Substantial amount of new Regulation repeats former Regulations
- New requirements introduced that will affect almost every workplace



# New WSH Regulations

---

Three significant new areas:

1. Violence in the Workplace
2. Harassment in the Workplace
3. Musculoskeletal Injuries (MSI)



# New WSH Regulations

---

1. Violence in the Workplace (Part 11)
  - Similar legislation in BC, AB and SK
  - WS&H Committee (or Rep) to conduct assessment of “risk of violence”
  - “violence” defined
  - IF risk identified – Violence Prevention Policy must be developed and implemented – in consultation with WS&H Committee (or Rep)



# New WSH Regulations

---

1. Violence in the Workplace (cont'd)
  - Violence Prevention Policy – Mandatory Components:
    - Prevention
    - Confidentiality
    - Investigation Procedures
    - Corrective Action
    - Other legal rights not impacted
  - Must inform workers of risks of violence and ensure they are aware of Policy



# New WSH Regulations

---

## 2. Harassment in the Workplace (Part 10)

- Previously a “human rights” issue
- “Harassment” defined – similar to Human Rights but expands definition
- Harassment Prevention Policy required (no preliminary assessment of risk)



# New WSH Regulations

---

## 2. Harassment in the Workplace (cont'd)

- Mandatory provisions to be included in Policy
  - Worker Entitlement
  - Employer Obligation
  - Corrective Action
  - Non-Disclosure
  - Availability of other avenues and remedies
- Procedures – key element of policy



# New WSH Regulations

---

## 3. Musculoskeletal Injuries (Part 8)

- Employer must conduct a risk assessment where risk of MSI is:
  - Known to be present
  - Reasonably obvious; or
  - Has been identified as possibly being present
- “MSI” defined and examples provided



# New WSH Regulations

---

## 3. Musculoskeletal Injuries (cont'd)

- Following assessment, Employer must implement Control Measures in consultation with WS&H Committee (or Rep)
- Examples of Control Measures
- Requirement to monitor Control Measures and implement further measures where reasonably practicable to do so



# New WSH Regulations

---

Other changes of note:

- Pregnant or Nursing Employees
- Hearing Conservation & Noise Control (Part 12)
- Asbestos (Part 37)
- Retention of Records (Part 2) – 5 years unless otherwise stipulated



# Amendments to the ESC

---

## Bill 2 – *The Employment Standards Code Amendment Act*

- Arises out of recommendations from Joint Labour Management Committee
- Introduced on November 17, 2006
- Third Reading and Royal Assent December 7, 2006
- In force April 30, 2007



# Amendments to the ESC

---

## New *Employment Standards Regulation*

- Also Arises out of recommendations from Joint Labour Management Committee
- Repeals former Regulations
- Introduced on January 31, 2007
- In force April 30, 2007 except new definition of “family member” (s.22) in effect January 31, 2007



# Amendments to the ESC

---

## Highlights of Significant Change Include:

1. Hours of Work and Overtime
2. Individual Notice of Termination
3. Bereavement and Family Leaves
4. Guaranteed Reporting Pay
5. Administrative Penalties
6. Directors' Liability



# Amendments to the ESC

---

## 1. Hours of Work and Overtime

- Background - Michalowski and Nygard
- New – Exclusion from Hours of Work and Overtime provisions for employees who:
  - “performs management functions primarily”
  - earn twice the industrial annual average wage (2005 = approx \$68,500) **and** exercise substantial control over their own work schedule



# Amendments to the ESC

---

## 1. Hours of Work and Overtime (cont'd)

- Regulatory Amendments to address incentive based compensation (commissions, piece-rate, etc.)
  - If wages consist of or include incentive pay, hourly rate calculated including incentive pay for pay period (s.18(1))
  - Not included if regular wage rate w/o incentive pay is twice minimum wage OR if incentive paid at 150% during overtime hours (s.18(2))



# Amendments to the ESC

---

## 2. Individual Notice of Termination

- Currently – “one pay period’s notice”
- New – graduated scale based on service:

Less than 1 year	= 1 week
1 year less than 3 years	= 2 weeks
3 years less than 5 years	= 4 weeks
5 years less than 10 years	= 6 weeks
over 10 years	= 8 weeks



# Amendments to the ESC

---

## 2. Individual Notice of Termination (cont'd)

- Employee notice required:
  - 1 week (less than 1 year of service)
  - 2 weeks (one year or more of service)
  
- Important change: Employers no longer permitted to withhold wages for any portion of notice not provided by Employee



# Amendments to the ESC

---

## 2. Individual Notice of Termination (cont'd)

- New list of exceptions in s.62 to notice obligation
  - Important change – no longer able to agree to notice less than minimum standard (current s.62(b) will no longer exist)
  - Must review employment agreements carefully to not contravene statutory minimum



# Amendments to the ESC

---

## 3. Bereavement and Family Leaves

- Bereavement Leave – 3 days of unpaid leave in connection with death of family member
  - “family member” already defined in ESC – new expanded definition in Regulation (Jan 31)
  - Notice by Employee – must be provided and specify death to which it relates
  - Employer may request evidence of entitlement to leave



# Amendments to the ESC

---

## 3. Bereavement and Family Leaves (cont'd)

- “Family Leave” – up to 3 days unpaid per year for “health of the employee” or for employee to meet “family responsibilities” (not defined)
  - Notice by employee – “as much as is reasonable and practicable in the circumstances”
- To be eligible for either type of Leave, employee must be employed for at least 30 days



# Amendments to the ESC

---

## 4. Guaranteed Reporting Pay

- Currently – guarantee of 3 hours only applies to employees called in on non-scheduled shift
- Employees reporting for work guaranteed pay for 3 hours, or regularly scheduled shift, whichever is less



# Amendments to the ESC

---

## 5. Administrative Penalties

- May be issued for repeat violations of the Code
- Amounts set by Regulation – generally are:
  - \$500 per worker, per violation for most provisions
  - \$1,000 per worker, per violation for child employment provisions
  - Max of \$10,000 issued at any one time



# Amendments to the ESC

---

## 6. Directors' Liability

- Directors not to be liable for wages in lieu of notice (but continue to be liable for earned wages)
- Person who manages or supervises a corporation and deemed by 114.1 of The Corporations Act to be a director is liable as a director under the ESC

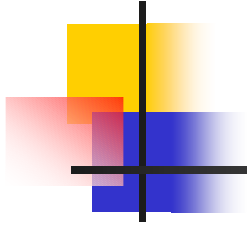


# Amendments to the ESC

---

Other changes of note:

- General Holidays – pro rata entitlement for part time workers (no more 15 out of 30 calculation)
- Director may issue permits re: modified hours of work and averaging (previously application to Manitoba Labour Board)
- Check provisions carefully – lots of new little details that might apply to you



**Thank you**

**Questions?**