

PUBLICATION

Employer Consequences for Arrears

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August 15, 2013

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In Alberta, the Employment Standards Code, RSA 2000, c E-9 (the “Code”) outlines the statutory rights and responsibilities of both employees and employers. The Code also establishes minimum standards for the many facets of the employment relationship. Neither an employer nor employee can contract out of these minimum standards (section 4). An employer should be aware of its responsibility to maintain current records for each employee (section 14(1)). Failing to keep up-to-date records can become a time consuming and costly mistake if an employee files a complaint with Employment Standards regarding unpaid wages, overtime pay, vacation pay and/or general holiday pay. Once an employee has filed such a complaint, an Employment Standards officer is assigned to investigate the matter. An officer may mediate between an employer and employee to assist in a settlement (section 84(1)). However, if mediation or settlement is unsuccessful, an Employment Standards officer may do any of the following:

- Pursuant to section 79 of the Code, direct an employer to complete an audit on itself of its employment records, to determine if any earnings may be due (section 79 of the Code). Failure to comply with this audit may result in Employment Standards conducting a Crown or third party audit (section 59 of Employment Standards Regulation, Alta Reg 14/1997); or
- Pursuant to sections 87 and 90(4) of the Code, order payment of:
 - wages, overtime pay, or both, for a period up to six months;
 - vacation pay or general holiday pay, or both, for a period up to two years.

It is unclear whether an Employment Standards officer must first direct an employer to conduct an audit (via section 79 of the Code), before ordering payment of wages, overtime pay, vacation pay or general holiday pay (via sections 87 and 90(4) of the Code). However, considering the preamble and the relevant provisions of the Code, it is likely that an audit would be directed prior to an order being made. That being said, the language used in section 87(1) of the Code is compulsory: “... the officer must make an order requiring the employer to pay to the employee...”. Section 87(2) should also be noted: “If an officer is unable to determine the amount of earnings that are due to an employee... the officer may determine the amount [of earnings that are due] in any manner that the officer considers appropriate.”

Appeal:

If an employer is ordered to pay under section 87 of the Code, the employer may appeal the order under sections 87(3) and 95 of the Code. The notice of appeal must be served on the Registrar of Appeals within 21 days after the employer was served a copy of the order under section 87. This deadline should be strictly observed. It should be noted that a Provincial Court judge sits as an umpire of the proceedings and his or her decision is final (section 107(3)).

It is clear from the above provisions that an employer exposes itself to unnecessary risks if it fails to maintain up-to-date records or pay employees in the appropriate manner.

For more information on this topic, please contact one of the authors, Brent Cooper at 403.225.6409 or Vik Mall at 403.254.3837, or any member of our Employment and Labour group.