



IFW NEWSLETTER

June 2024

WHAT'S NEW

- Our firm participated in the [Law Society's Lawyers Feed the Hungry](#) program on June 5, 2024.



WHAT'S NEW IN THE LAW

Changes to the ESA vacation pay provisions effective June 21st require a written agreement with the employee if paying vacation pay in an alternative method to a lump-sum prior to the employee's vacation

On June 21, 2024, amendments to the vacation pay provisions in the Ontario *Employment Standards Act, 2000* (the "ESA") introduced under Bill 149, the *Workers for Workers Four Act, 2023*, came into effect. Section 36(1) of the ESA requires an employer to pay vacation pay to an employee in a lump-sum before the employee commences their vacation.

However, the ESA provides an exception to the general rule of advance payment of vacation pay under s. 36(1) if the employer pays the employee by direct deposit into an account at a financial institution, or if the employee does not take their vacation in complete weeks. If either of these circumstances apply, then the employer may pay the employee their vacation pay on or before the pay day for the period in which the vacation falls. The majority of employers will be covered by this exception.

The new changes will affect employers who:

- pay employees by direct deposit BUT pay vacation pay AFTER the pay day for the period in which the vacation falls (e.g. where accrued vacation pay is paid on a set date or dates throughout the year);
- do not pay employees by direct deposit AND pay vacation pay on each regular paycheque;
- do not pay employees by direct deposit AND pay vacation by way of salary continuance through the employee's vacation.

In any of these circumstances, the Bill 149 amendments require that the timing of the payment of the vacation pay must be specifically set out and agreed in a written agreement with the employee. Accordingly, the employee must agree electronically or in writing to the alternate timing of vacation pay, and in addition, the employee's wage statement must either show clearly the amount of the vacation pay being paid (this amount must also be shown separately from any other amounts paid), or the employer must issue a separate statement for the vacation pay being paid.

Key Takeaways

1. Employers who pay their employees by direct deposit and pay vacation pay on or before the pay day for the period in which the vacation falls do not need an agreement with the employee.
2. If the employee agrees electronically or in writing, the employer can pay the vacation pay at any time agreed by the employee.
3. Contact us if you wish to ensure that your employment agreement properly specifies that an exception to these vacation pay requirements applies, or for us to draft a stand-alone agreement regarding the timing of vacation pay.

LET'S TALK

Israel Foulon Wong LLP is one of Canada's leading employment and labour law firms. The firm's partners, Peter Israel, Chris Foulon, Carita Wong, Alex Van Kralingen, Krista Kais-Prial, Behzad Hassibi, Katherine Chau, Mark Repath and their associates, Vibhu Gairola and Domenica Moran, have over 125 years of collective experience in assisting clients with employment and labour law issues.

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