

New Ontario “Tip” Protection Legislation

On June 10, 2016, Ontario’s Bill 12 (“*Protecting Employees’ Tips Act, 2015*”) will come into force (the “*Act*”).

The *Act* amends the *Employment Standards Act 2000* (the “*ESA*”) to protect tips and gratuities that “a reasonable person would be likely to infer” are intended either for direct receipt by the employee or for redistribution to employees.

The *Act* prohibits employers from:

- withholding tips or gratuities from employees;
- making deductions from an employee’s tips or gratuities; or
- causing an employee to return or give up tips or gratuities.

Employers may withhold or deduct from tips or gratuities where authorized by statute or court order, or where the deduction or withholding are intended for redistribution to employees.

Amounts withheld contrary to these restrictions will be considered to be (and are enforceable as) “wages

owing” by the employer under the *ESA*.

Employers, directors and shareholders are also prohibited from “sharing” in tips or gratuities under the *Act*. This prohibition does not apply, however, to directors, shareholders, sole proprietors or partners who “regularly perform to a substantial degree the same work” performed by employees who share in the redistribution of tips or gratuities.

In the case of unionized employers, existing collective agreement provisions dealing with the treatment of tips or gratuities, to the extent that such provisions conflict with the *Act*, will be permitted to prevail until such time as the collective agreement expires and is renegotiated.

Employers operating businesses where tips or gratuities form part of employee compensation should be carefully reviewing their policies on the treatment of these earnings to ensure compliance with this new legislation.



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