



e2r Alert!

ONTARIO: IT and Business Consultants amendments to the Employment Standards Act, 2000 in effect now!

The Ontario government's second **Working For Workers Act, 2022** was passed on April 7, 2022 and makes amendments to the *Employment Standards Act, 2000* ("ESA") that relate to the status/classification of IT Consultants and Business Consultants.

These changes came into effect as of **January 1, 2023**.

The amendments specifically indicate that 'business consultants' and 'information technology consultants' are exempt from the application of the ESA if certain conditions are met. The ESA provides broad definitions of these two categories:

"business consultant" means an individual who provides advice or services to a business or organization in respect of its performance, including advice or services in respect of the operations, profitability, management, structure, processes, finances, accounting, procurements, human resources, environmental impacts, marketing, risk management, compliance or strategy of the business or organization"

"information technology consultant" means an individual who provides advice or services to a business or organization in respect of its information technology systems, including advice about or services in respect of planning, designing, analyzing, documenting, configuring, developing, testing and installing the business's or organization's information technology systems"

These two categories will be exempt from being characterized as employees governed by the ESA **ONLY if** they provide their services through a corporation in which they are a director or shareholder (who is a party to a unanimous shareholder agreement), or they are operating as a sole proprietorship in which they are the sole proprietor (registered under the *Business Names Act*) and there is a written agreement setting out, in part, (i) when the consultant will be paid; and (ii) the minimum hourly rate of \$60 (excluding bonuses, commissions, expenses and travelling allowances, benefits and any other prescribed

amounts). The agreement must express the payment as an hourly rate and the consultant must actually be paid that amount.

Takeaway

Unless the individual independent contractor is incorporated or registered as a sole proprietor and receives at least \$60 per hour (excluding a variety of other payments) the individual **will be** considered an employee under the ESA. It doesn't matter if the individual has multiple clients and a great agreement with the organization and **wants** to be an independent contractor. According to these amendments, either the foregoing exists, or the individual will be considered an employee under the Act.

To make matters even more confusing, this also raises the question of the real possibility the individual will be considered an employee under the Act but an independent contractor under other legislation such as the *Income Tax Act!*

We will update you further when we know more and are happy to work with you to ensure you remain compliant in this ever-changing workplace landscape. Please do not hesitate to reach out to speak with an e2r™ Advisor with any questions.