

June 8, 2011

TO: Division Heads  
Accountability Officers

COPY TO: City Manager  
Deputy City Managers

FROM: Bruce L. Anderson,  
Executive Director, Human Resources

SUBJECT: **Employment Standards Act (ESA) Complaint  
– 2009 Re-earnable Lump Sum Payment**

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I am writing to provide you with an update regarding resolution of the ESA complaints that were made after City Council's decision in 2009 to cancel the re-earnable lump sum payments in 2009, the Employment Standards Officer's recent decision and the subsequent implementation process for the resolution of this matter.

On March 21, 2011, Employment Standards Officer Rick Richards released, to the City, the Reasons for his Decision in the above noted matter. He determined, in those Reasons that the City violated the *Employment Standards Act, 2000* in cancelling the 2009 performance based lump sum payments to employees who were at their job rate. At the same time, he has determined that Council's decision to cancel the 2010 performance based lump sum payment was not a violation of the *Employment Standards Act, 2000*.

In conjunction with the release of his Reasons, he required that the City advise him as to whether:

1. It will voluntarily comply, in whole or in part, with the *Employment Standards Act, 2000* as interpreted by his Reasons and pay some or all of the employees an amount as set out in his Reasons;
2. It will settle the claims of some or all of the employees who have submitted a claim in respect of this matter; or
3. It will require him to issue an Order, pursuant to the provisions of the *Employment Standards Act, 2000*.

This matter was considered by Council at its meeting on May 17, 18 and 19, 2011. Among the options available to the City, in addition to voluntary compliance, was to seek a review of the Officer's decision by the Ontario Labour Relations Board. Exercising this option may have allowed the City to avoid the payments, however, if unsuccessful, it would result in a significant delay in processing the payments.

In the interest of resolving this matter and in order to ensure that the eligible non-union employees received their payment in a timely manner, City Council authorized staff to voluntarily comply with the Employment Standards Officer's decision. As a result, the Officer will not be issuing an Order and the City will be processing the re-earnable lump sum payments in accordance with his decision.

Notice to Eligible Employees:

In addition to this memorandum, the City will also be sending a letter to all eligible employees advising them of the ESA decision and when the payment to them will be processed.

Eligible employees are those who were at the maximum of their applicable salary grade (job rate) at December 31, 2008, and who received a "Met Objectives" performance rating for their performance in 2008. Employees who received a partial increase that took them to the maximum of their applicable salary grade, in 2009, attributable to their 2008 performance, may also be eligible for a partial payment as a result of the decision. This information has been provided to the ESA Officer and he has included amounts that individual employees are entitled to receive as a lump sum payment with his decision.

During the week of May 23<sup>rd</sup>, the Employment Standards Officer wrote to each of the eligible employees to advise them of his decision and the amount the employee is owed.

Payment of the Lump Sum Payment:

Payroll is now in the process of implementing the ESA Officer's decision and preparing the systems to issue the payments on the pay date of June 23, 2011. For those employees who have retired, the payment will be processed on the pay date of July 4, 2011, and mailed out on July 5, 2011.

Please note that this re-earnable lump sum payment is considered to be pensionable earnings and will be subject to deductions for pension contributions. If the employee is retired, the City will be notifying OMERS of the change in earnings for 2009 and the employee's pension will be adjusted accordingly.

Should you have any questions, please contact Mike Wiseman at 392-3901.

Thank you



Bruce L. Anderson  
Executive Director, Human Resources

- c. Giuliana Carbone, Treasurer
- Celine Chiovitti, Director, Pension, Payroll & Employee Benefits
- Mike Wiseman, Manager, Benefits & Employee Services
- Darragh Meagher, Director, Employment Law