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Requirements for U.S. companies ‘carrying on business’ in Ontario

By **Samantha Chapman and Max Ray-Ellis**

Law360 Canada (August 14, 2025, 9:25 AM EDT) -- The COVID-19 pandemic resulted in a shift toward remote work. Now, in the current environment of tariffs and anti-immigration sentiment in the U.S., many Canadians working in the U.S. for U.S. companies are returning to Canada while continuing to be employed by their U.S. employer. This has resulted in many U.S. companies setting up shop in Ontario without necessarily setting up a brick-and-mortar location in the province. This raises questions as to what obligations and liabilities companies have if their employees are working in Ontario, but the company is not registered in Ontario.

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Extra-provincial

In Ontario, the *Extra-Provincial Corporations Act*, R.S.O. 1990 (the Act) requires any company “carrying on business” in the province to be registered in the province. In addition, any company that is deemed to have a “fixed place of business” in Ontario must pay employer health tax in respect of any of its employees who either (a) report for work at the company’s permanent establishment in Ontario, or (b) do not report for work at any of the company’s permanent establishments, but who are paid from or through the company’s permanent establishment in Ontario. So, what are the obligations of foreign entities whose employees work remotely from within Ontario? This article explores the obligations relating to the extra-provincial registration and employer health tax requirements.

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What does it mean to be ‘carrying on business’?

The *Extra-Provincial Corporations Act* provides that “an extra-provincial corporation carries on its business in Ontario if: (a) it has a resident agent, representative, warehouse, office or place where it carries on its business in Ontario; (b) it holds an interest, otherwise than by way of security, in real property situate in Ontario; or (c) it otherwise carries on its business in Ontario.”

The Act goes on to say that an extra-provincial corporation *does not* carry on its business in Ontario by reason only that (a) it takes orders for or buys or sells goods, wares and merchandise; or (b) offers or sells services of any type, by use of travellers or through advertising or correspondence.

The Act states that no extra-provincial corporation within Class 3 (which is a corporation incorporated or continued under the laws of a jurisdiction outside of Canada) "shall carry on any of its business in Ontario without a licence under this Act to do so, and no person acting as representative for or agent for any such extra-provincial corporation shall carry on any of its business in Ontario unless the corporation has a licence under this Act."

What does it mean to have a 'permanent establishment' in Ontario?

According to the *Corporations Tax Act*, R.S.O. 1990, a company is deemed to have a "permanent establishment" in Ontario if: (a) it has a fixed place of business in Ontario where day-to-day activities are carried on; (b) its head office or registered office is located in Ontario; (c) its business is carried on through an employee (or agent) who has general authority to contract for the company or fill orders from the company's merchandise, land or premises owned or leased by the company; or (d) a place at which the company uses substantial machinery or equipment is located in Ontario.

If a company has no fixed place of business in Ontario, it may still have a "permanent establishment" in Ontario if the principal place where the company conducts business and each place where the company carries on a substantial portion of the business is located in Ontario. Moreover, even if a business does not otherwise carry on business in Ontario in a year, it may still be deemed to have a "permanent establishment" in Ontario, if it has a place in Ontario where the company constructs, creates, fabricates, grows, improves, manufactures, mines, packs, preserves or processes, in whole or in part, anything in Ontario, whether or not the company exports that thing without selling it before exportation.

If any of the foregoing criteria are met, the company will be required to pay employer health tax in Ontario. In addition, the company may also have other tax filing obligations, such as payroll taxes. In addition to tax and registration issues, non-Canadian registered corporations may also be subject to relevant Canadian statutory protections for employees. For provincially regulated employees in Ontario, this includes, but is not limited to, the Ontario *Employment Standards Act*, the *Human Rights Code*, the *Occupational Health and Safety Act*, the *Workers Compensation Act* and the *Labour Relations Act*.

As such, foreign companies need to be careful to comply with the statutory requirements in the province of Ontario and Canada generally when they have employees in Ontario or are otherwise setting up business in Ontario.

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