

# EMPLOYMENT STANDARDS

Know Your Rights | A project of the Global Labour Research Centre | York University

## Employment Standards Cover

Hours of work and overtime  
Minimum wages  
Vacation pay  
Public Holiday pay  
Wage deductions  
Personal leaves  
Termination



## Know Your Rights!

Your Employer **cannot legally** reduce your pay, suspend or punish you, or threaten you with termination because you

- ask questions about your employment rights; or
- insist that your employment rights be respected

## What are Employment Standards?

- Employment standards in Ontario are outlined in the *Employment Standards Act* (ESA) and set out your minimum legal rights and entitlements as a worker.
- Employers are legally required to maintain their responsibilities listed in the ESA.
- Many workers do not know their rights and are vulnerable to exploitation and unfair treatment by employers.
- Understanding employment standards means being able to protect and defend your rights under the law.

## Who is covered by the ESA?

- Almost all people working in Ontario, whether unionized or not, are covered by the ESA.
- This includes international students and people working on most temporary work permits.

## Who is not covered by the ESA?

- Your job falls under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways;
  - You are working in a program approved by a college of applied arts and technology or university (like a co-op or apprenticeship);
  - You are a high school student working under a work experience program authorized by the school board and that operates in the school that you are enrolled;
  - Your work is part of a community participation program under the *Ontario Works Act, 1997*;
  - You are a young offender working as part of a sentence or order of a court, or an inmate taking part in a work or rehabilitation program.
  - You are a police officer or hold political, religious, or judicial office.
  - Your industry or job is affected by exemptions or special rules
- <https://www.labour.gov.on.ca/english/es/tools/srt/index.php>

## Other Minimum Wages

### Student Minimum Wage (under 18):

- \$10.70 / hr (as of October 1, 2016)

### Liquor Servers Minimum Wage:

- \$9.90 / hr (as of October 1)

### Workers on Commission:

Employees working completely or partly on commission must receive an average pay of at least the minimum wage for each hour they have worked



## Know Your Rights!

Your Employer **cannot** reduce your pay, suspend or punish you, or threaten you with termination because you

- refuse to work more than the maximum daily or weekly hours of work; or
- refuse to sign an agreement to work more than the maximum daily or weekly hours of work, or to average your overtime.

## Minimum Wage

As of October 1, 2016, the minimum wage is **\$11.40 / hour** and is increased annually by the rate of inflation.

## Hours of Work

The ESA sets standards for the maximum hours of work, including rules on overtime pay, breaks and rest periods.

### Daily Limit

- The daily maximum number of hours in a workday is **eight hours**, unless the employer establishes a regular workday of more than eight hours, in which case the maximum number of hours is the number of hours in the regular workday.
- This daily limit of eight hours or the number of hours in a regular workday can be exceeded only if you agree to work hours in excess of the daily limit.

### Weekly Limit

- **48 hours** is the maximum number of hours most workers can be required to work in a week.
- The weekly maximum can only be exceeded (up to 60 hours) if you agree in writing and the hours are approved by the Director of Employment Standards at the Ministry of Labour.

### Rest Periods / Breaks

- You are entitled to an unpaid, **30-minute eating period** after no more than 5 hours of work, which you can agree with your employer to split into two shorter breaks.
- You are entitled to **24 consecutive hours off** work each work week, or **48 consecutive hours off** every two work weeks.



### The Three Hour Rule:

If you regularly work more than 3 hours per day and are required to report to work but then work less than three hours, you must be paid either three hours at the minimum wage or your regular wage for the time worked (whichever is higher). There are some exceptions (e.g. students under 18; where shift cancellation was due to a storm).

### Averaging Overtime

- Your employer may ask you to average your work hours over two or more weeks to calculate overtime pay.
- Overtime averaging can result in you receiving less overtime pay than you would have received if your hours were not averaged.
- Overtime hours can only be averaged if you and your employer establish an agreement and the employer has received approval from the Ministry of Labour’s Director of Employment Standards.
- You are not obligated to average your overtime hours and should not sign the agreement if you do not want to have your hours averaged.
- These agreements are to have an expiry date and can only be cancelled if you and your employer agree.

### Ontario’s Nine Paid Public Holidays

New Year’s Day | Family Day | Good Friday | Victoria Day | Canada Day  
Labour Day | Thanksgiving Day  
Christmas Day | Boxing Day

### Know Your Rights!

If you work on a public holiday you are entitled to:

- **Public holiday pay plus** premium pay of at least **1.5 times your regular hourly rate** for the hours worked on the public holiday; or
- Your regular rate of pay for the hours worked on the holiday, plus another day off with public holiday pay.

### Overtime Pay

- Overtime pay is calculated on a **weekly basis**.
- Every hour you work **after 44 hours** a week is considered overtime.
- A rate of **1.5 times** your regular wage (“time and a half”) should be paid for every hour you work over 44.
- Even if you agree to work more than 48 hours a week, your employer must pay you “time and a half” for every hour worked after 44.
- An employee and an employer can agree in writing that the employee will receive **paid time off instead of overtime** pay. This is called “banked” time or “time off in lieu”.
- An employer and an employee can’t agree that the employee will give up his or her right to overtime pay. The right to receive it is not negotiable.



Image: Toronto Star

### Public Holiday Pay

A Public Holiday (also called a Statutory Holiday) is established by law as a non-working day, which most workers receive as a day off with pay. Ontario has nine per year.

- If you qualify for holiday pay, you are entitled to take these days off work and receive public holiday pay.
- You can refuse to work on a public holiday even if you don’t qualify for public holiday pay.
- If you have agreed **in writing** to work on a public holiday, you can later decline to work on that day by giving the employer at least 48 hours notice.

## Calculating Public Holiday Pay

Take the total amount of your regular wages (including vacation pay) in the four weeks before the work week in which the public holiday occurred, then divide by 20.

- Eg: 80 hours worked in 4 weeks = 4 hours pay

Calculate your public holiday pay using the Ministry of Labour's **on-line calculator**.



## Refusing Work on Sundays

- An employee of a retail business who was hired on or after September 4, 2001 does not have the right to refuse to work on Sundays if he or she agreed in writing at the time of being hired to work on Sundays
- However, you can refuse to work Sundays for **religious belief or observance**. You must give 48 hours notice before Sunday work is to begin.

## Know Your Rights!

Even with a signed authorization, an **employer cannot make a deduction from your wages** to cover a loss due to "**faulty work**", like a mistaken credit card transaction, a customer who fails to pay, work that is spoiled, or a situation where tools or company property is damaged.

- If a public holiday falls during your vacation or on a day that you are not regularly scheduled to work, you are entitled to another day off with public holiday pay.

## When would I not qualify for Public Holiday Pay?

- You fail without reasonable cause to work on the last regularly scheduled day of work before the public holiday or your first regularly scheduled day of work after the public holiday (this is the "last and first rule"); or
- You fail without reasonable cause to work the entire shift on the public holiday if you agreed to or were required to work that day.

## Vacations & Vacation Pay

- You are entitled to an annual vacation of at least **2 weeks with vacation pay** equal to **4% of your annual earnings**, including any overtime pay.
- Your employer must pay you any outstanding vacation pay upon termination.
- You may be permitted to work through some or all of earned vacation time with your employer's agreement and approval from the Ministry of Labour's Director of Employment Standards.
- If you work through some or all of earned vacation time, the employer must still pay you your outstanding vacation pay.



## Wage Deductions

There are only three types of deductions that an employer can legally make from an employee's wages:

### Statutory Deductions

- These are the deductions that employers must make due to federal and provincial laws. Statutory deductions include Income Tax, Canada Pension Plan, and Employment Insurance.

### Written Authorization

- An employer can make deductions to your pay if you provide written consent. Written consent must include the amount being deducted and



Image: Acorn Canada

### Events covered by Personal Emergency Leave

- Personal illness, injury or medical emergency;
- Death, illness, injury, medical emergency or an urgent matter relating to the following of your **family members**:
  - Your spouse (same or opposite sex, married or common-law)
  - Your parent, step-parent or foster parent
  - Your grandparent or step-grandparent
  - Your child, step-child, foster child, grandchild or the spouse of your child
  - Your sibling
  - Any relative who is dependent on you for care or assistance

### Know Your Rights!

Your employment **cannot be terminated** due to asking questions about or exercising ESA rights.

provide a method of calculating the specific amount to be deducted.

### Court Orders

- A court may determine that an employee owes the employer money. The court does not have to specifically say an employer may deduct the amount from wage payment, but an employer may do so if the court rules in the employer's favour.

### Personal Emergency Leave

If your employer regularly employs more than 50 employees, you have the right to take up to 10 days of unpaid job-protected leave each calendar year due to illness, injury, and certain other emergencies and urgent matters.

- You are required to advise your employer that you are taking leave.
- If you can't advise your employer of the leave before taking it, you must tell them as soon as possible after commencing the leave.
- If you are absent for only part of a day, your employer might treat this leave as a full day.
- You may be required to provide evidence of the circumstances related to the leave.



### Termination

Under the ESA, your employment is considered terminated if the employer:

- Dismisses you, refuses or is unable to continue to employ you;
- “Constructively” dismisses you – by negatively changing your working conditions so much that you feel dismissed – and you resign in response, within a reasonable time; or
- Lays you off for a period that is longer than a “temporary lay-off”, including lay-offs due to the bankruptcy and insolvency of the employer.

### Notice of Termination

If you've been employed somewhere for **3 months or more**, your employer must provide you with a **written notice of termination** before terminating you.

## Know Your Rights!

The minimum notice you must receive depends on how long you've worked somewhere:

- More than 3 months but less than 1 year = 1 week
- More than 1 year but less than 3 years = 2 weeks
- More than 3 years, but less than 4 years = 3 weeks

Each year of employment adds another week of required notice, up to a maximum of 8 weeks.



Employers are **not legally required** to tell their employees why they are being laid off except in mass layoff situations.

### Termination Pay

Your employer can terminate you without written notice or with less notice than is required *if* they pay you **termination pay**. Termination pay is a lump sum of money equal to the amount of money you would have earned had you been given written notice.

## Enforcing Your Rights

What can you do if your employer is violating your employment rights?

**Inform:** Tell your employer that your employment rights have been violated under the ESA: some employers don't know the law and need to be informed of their responsibilities.

**Document:** Keep records of all correspondence and conversations with your employer, including dates, times and details.

**Gather Allies:** If your fellow employees are also being affected, speak to them and ask them to keep records of their experiences.

**File a Claim:** If your employer persists in violating your rights, contact the Ministry of Labour to **file a claim**. The Ministry will begin an investigation of your situation. If your employer terminates you because you have defended your employment rights, you can file a **claim for reprisal** with the Ministry.

**Get Support:** Several organizations help workers defend their employment rights and navigate the Ministry of Labour processes.

## For More Information and Support

**Employment Standards, Ontario Ministry of Labour**  
[www.labour.gov.on.ca/english/es](http://www.labour.gov.on.ca/english/es) | 416.326.7160 |  
 1.800.531.5551

**Toronto Workers' Action Centre**  
[www.workersactioncentre.org](http://www.workersactioncentre.org) | 416.531.0778

**Parkdale Community Legal Services**  
[www.parkdalelegal.org](http://www.parkdalelegal.org) | 416.531.2411

**Osgoode Hall Community and Legal Aid Services Programme, Employment Law Division**  
<http://www.osgoode.yorku.ca/community-clinics/welcome-community-legal-aid-services-programme-clasp/> | 416.736.5029

**Know Your Rights Factsheets Series**  
<http://glrc.apps01.yorku.ca/know-your-rights-2/>

**Global Labour Research Centre**  
 Faculty of Liberal Arts & Professional Studies  
 York University

N808 Ross Building  
 4700 Keele St.  
 Toronto, ON  
 M3P 1P3

[www.yorku.ca/glrc](http://www.yorku.ca/glrc)  
 416.736.2100 x 44704  
[glrc@yorku.ca](mailto:glrc@yorku.ca)  
 @GLRC\_York