

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** 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.
 - This includes international students, people working on most temporary work permits, and people receiving training (unless the training is part of an approved public or private college or university program).

Who is not covered by the ESA?

- Your job falls under federal jurisdiction (including airlines, banks, the federal civil service, post offices, radio and television stations);
 - 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

Other Minimum Wages

Student Minimum Wage (under 18):

- \$13.15 / hr

Liquor Servers Minimum Wage:

- \$12.20 / hr

Effective January 1, 2018

Employees on Commission:

Employees working completely or partly on commission must be paid 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 January 1, 2018, the minimum wage is **\$14.00 / hour**. On January 1, 2019, the minimum wage will increase to **\$15.00 / hour** and will be 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 a Permit to Work Excess Hours has been issued by the Ministry of Labour.

Rest Periods / Breaks

- You are entitled to an unpaid, 30-minute eating period after 5 consecutive hours of work. You may agree with your employer to split this into two 15 minute breaks. If you are required to work during this period, then you must be paid for it
- 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 shift and are required to report to work but work less than 3 hours, you must be paid at least 3 hours at your regular wage rate.
- There are some exceptions (e.g. where shift cancellation is due to fire, electrical failure, or a force of nature).
- If your employer cancels a shift less than 48 hours before the shift was to start, you are entitled to three hours' pay.

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.



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.



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.
- 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.

Calculating Public Holiday Pay

- Take the total amount of your regular wages earned over the previous pay period (before the holiday occurred) then divide by the number of days worked in that period.

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.

When would I not qualify for Public Holiday Pay?

- You fail without reasonable cause to work your last scheduled shift before the public holiday and your first scheduled shift after the public holiday (this is the "last and first rule").
- 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

- If you have worked for your employer for less than five years, 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. If you have worked for your employer for more than five years, you are entitled to at least **3 weeks with vacation pay equal to 6% of your annual earnings**.
- 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

- Deductions that employers must make due to federal and provincial laws. These 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 indicate the amount being deducted and the method used to calculate the amount.



Image Acorn Canada

Equal Pay for Equal Work - Employment Status

Effective April 2018, the ESA will require ‘equal pay for equal work’ regardless of differences in employment status. This includes differences in the number of hours worked and the term of employment (full-time, part-time, temporary, seasonal). This applies when:

- employees perform substantially the same kind of work in the same establishment;
- performance requires substantially the same skill, effort and responsibility; and
- the work is performed under similar working conditions.

Know Your Rights!

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

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

You have the right to take up to 10 days of job protected leave each calendar year due to illness, injury, and certain other emergencies and urgent matters. The first 2 Personal Emergency Leave days you take each year are paid. 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 cannot be required to provide a doctor’s note for taking personal emergency leave.



Termination

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 due to the bankruptcy and insolvency of the employer.

Notice of Termination

If you’ve been employed for **3 months or more**, your employer must provide you with a **written notice of termination** (often called a ‘working notice’) before terminating you, informing you of the date that your employment will end. Your working notice must equal the length of time required by the ESA, or your employer may also owe you Termination Pay. Employers are not legally required to tell their employees why they are being laid off except in mass layoff situations.

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.



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 sometimes called pay in lieu of notice. After three months of employment, it is equal to one week's regular pay. After two years of employment, it is equal to one week's regular pay for each completed year of employment, to a maximum of eight weeks' pay.

Severance

Once you have worked for an employer for 5 years or more, if your employment is terminated, then you may be eligible for severance pay.

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. *You do not need to inform your employer in order to file a complaint with the Ministry of Labour.*

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: Organizations like the Workers' Action Centre (*below*) 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 | 416.326.7160 |
1.800.531.5551

Toronto Workers' Action Centre

www.workersactioncentre.org | 416.531.0778

Parkdale Community Legal Services

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/>

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