

Have you been **fired** or **laid off?**

If you have been fired or laid off with no notice, or no pay, your employer may be breaking the law.

Find out about your rights under the Ontario Employment Standards Act (ESA).



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario

This pamphlet is about your rights under the Ontario Employment Standards Act (ESA) if you were fired or laid off.

CLEO has free publications on other topics as well, including workers' rights under the ESA and Employment Insurance (EI) leaves and benefits. Please see the back cover for information on how to order these publications or view them online.

If you speak French

You have the right to services in French from the Ministry of Labour, including the right to file your claim under the Employment Standards Act in French. To find out more about your language rights, ask a lawyer or a community legal clinic.

Si vous parlez français

Vous avez droit à des services en français de la part du ministère du Travail. Ainsi toute plainte déposée par vous sous le régime de la Loi sur les normes d'emploi peut-elle être déposée en français. Pour en savoir plus sur vos droits linguistiques, consultez un avocat ou des représentants d'une clinique juridique communautaire.

Does the ESA apply to all workers?

No. Not all jobs are covered by the ESA, and in some cases only parts of the ESA apply.

Some employers say that their workers are self-employed and the ESA does not apply to them. If this is your situation, it is a good idea to get legal advice. Even if you signed something that says you are an “independent contractor” or in business for yourself, the rights in the ESA might still apply to you.

Some industries are regulated by the federal government, including banks, airlines, trucking, and broadcasting. Workers in these industries are covered by the Canada Labour Code. For more information, contact the federal government’s Labour Program, Ontario Region, at **1-800-641-4049**.

Other examples where the ESA does not apply include:

- students in work experience programs authorized by a school board, college, or university,

- people on social assistance doing community participation under Ontario Works, and
- inmates in work programs and people ordered or sentenced by a court to work.

Your immigration status does not matter. You do not need to be a Canadian citizen, permanent resident, or holder of a work permit to be covered by the ESA.

If you are not sure whether you are covered by the ESA, see [pages 18 and 19](#) for where to get information and help.

What are my rights if I am fired or laid off?

Your employer does not have to tell you why you are being fired or laid off.

In most cases, if you are fired or laid off for more than 13 weeks, your employer must tell you ahead of time. This is called notice. Your employer must give you notice in writing. And in most jobs, if you are fired without proper notice, your employer must pay your normal wages for the weeks you should

have been given notice. This is called “termination pay”. If you are laid off permanently, the same rules apply.

Termination pay is not the same as “severance pay”. [See page 6](#) for information about severance pay.

What if I am laid off temporarily?

You can be laid off without notice if you are laid off temporarily. In most cases, the law says you are laid off temporarily if you are laid off for 13 weeks or less. But the rules about temporary lay-off are complicated. If you are laid off, get legal advice about whether your lay-off is temporary or permanent.

What if my employer forces me to leave my job?

In some cases, being forced out of a job is the same as being fired. For example, if you leave because your employer refuses to pay you, or because your employer is discriminating against you, you may have the same rights as if you were fired. Try to get legal help right away.

How much notice should I get?

The amount of notice or termination pay you get depends on how long you have worked for your employer. You may want to get legal advice about how much notice your employer should have given you, and whether you should file a claim with the Ministry of Labour or bring a court action against your employer.

ESA notice periods:

The ESA sets out minimum notice periods. They range from **1 week** for people who have worked at least 3 months, to **8 weeks** for people who have worked for 8 years or more. The Ministry of Labour can enforce only these minimum notice periods.

If an employer fires 50 or more workers within a 4-week period, the minimum notice periods might be different. If this is your situation, get legal advice.

Notice ordered by the court:

In some cases, Ontario courts have found that the ESA notice period was not enough. A court can decide that more notice was required in a particular case because the court is not limited

to the minimum notice periods in the ESA. The amount of notice a court will order depends on all the circumstances, not just length of employment. For example, the court may also consider the type of job, the availability of similar employment, and the age of the worker when deciding the amount of notice an employer was required to give. The court can order an employer to pay the wages owing for the notice period. A court can also order an employer to pay you for harm done to you. For example, if you were discriminated against or harassed, or you were fired in a particularly humiliating way, you might be entitled to compensation for harm.

Can I be fired or laid off without notice?

Yes, in some situations you can be fired or laid off without notice. For example, if you have not worked continuously for at least 3 months, or if you are fired because of your own misconduct, you do not have to be given any notice. However, what your employer says is misconduct might not be misconduct under the law.

Even if your employer had a reason to fire you because of something you did, this does not necessarily mean it is misconduct.

If you think your employer was wrong to fire you without notice or if you think you should be paid for a longer notice period, get legal advice.

What about severance pay?

Severance pay is not the same as termination pay. Severance pay is another payment that some people get when they lose their jobs. You get severance pay only if you have worked at least 5 years for your employer and:

- your employer pays out wages of at least \$2.5 million a year in Ontario, or
- at least 50 people will be losing their jobs within a 6-month period because the business is being cut back.

Severance pay is one week's pay for each year of employment, up to a maximum of 26 weeks.

If my employer owes me money, when must it be paid to me?

Your employer must pay you your wages and your vacation pay no later than:

- 7 days after your employment ends, or
- your next regular pay day if it comes more than 7 days after your employment ends.

Your wages include any money owing to you as a result of your termination. However, severance pay can be paid in instalments if you agree in writing or if the Director of Employment Standards approves. In these cases, the payments must be made within 3 years. If your employer misses a scheduled payment, the balance of the severance pay becomes due immediately.

Depending on the amount of money you get, the income tax deductions might be at a rate higher than the rate that was applied to your regular pay cheque.

If I am fired or I quit, can I get EI benefits?

If you are unemployed and looking for work, you may be able to get Employment Insurance (EI) benefits.

Your employer must prepare a Record of Employment (ROE). It is easier to apply for EI with the ROE. Your employer must give you your ROE within 6 days after your last day of work. Or your employer can send it to the government electronically instead. The deadline for your employer to do this is 16 days after your last day of work, or sometimes earlier.

If your employer sends your ROE to the government electronically, you do not need a paper copy to apply. But you can get a copy from Service Canada if you want one.

Apply for EI right away, even if you did not get your ROE yet. Bring proof of your employment, such as pay stubs and T4 slips. If you do not apply within 4 weeks after your employment ends, you will probably get fewer EI payments.

If you are having problems applying for EI or getting your ROE, you can call the Service Canada EI information service at **1-800-206-7218**.

If you do not qualify for EI or you are waiting for EI, you might be able to get social assistance benefits from Ontario Works (OW). If you quit or got fired, you might still qualify for benefits. It depends on why you quit or got fired.

CLEO has free publications on other legal topics including EI and OW benefits. Please see [the back of this pamphlet](#) for information on how to order these publications or view them online.

Can I be fired for being pregnant?

No, pregnancy is not a reason for your employer to fire you. An employer who fires you because you are pregnant or because you might get pregnant is breaking the law. You may want to get legal advice if your employer has violated your human rights by discriminating against you because of pregnancy. See [pages 18 and 19](#) for where to get legal help.

If you have worked for your employer for at least 13 weeks before your due date, you can take up to 52 weeks off work **without pay**. You might qualify for EI maternity and parental benefits for part of this time.

When you return, your employer must give you back your job or a comparable job unless you are fired or laid off for reasons unrelated to your leave.

Can I get my job back if I am fired?

In most cases, you cannot get your job back if you are fired. But, if you think you were fired because you tried to exercise your legal rights under the ESA, you should get legal help. The Ministry of Labour can order your employer to compensate you *and* give you back your job. Examples of exercising your legal rights under the ESA are:

- taking the pregnancy or parental leave you are entitled to, and returning to your job at the end of your leave,
- asking about your rights or asking your employer to obey the law,

- refusing to sign an agreement affecting your rights (for example, an agreement about how you will be compensated for overtime),
- making a claim against your employer, or
- giving information to an Employment Standards Officer who is investigating your employer.

You should also get legal help if you think you were fired:

- because of your race, sex, age, disability, or other reasons that violate your human rights,
- because you raised a health or safety issue in the workplace, or
- because you raised a concern about your employer not obeying environmental protection laws.

You may have other legal rights besides those in the ESA.

What are my rights if I am protected by a union?

If you are protected by a union, check your collective agreement to find out about your rights at work, or talk to your shop steward. You will have to use the grievance procedure in the collective agreement to enforce your rights.

Most workers in Ontario have the right to join or form a labour union. A union is an organization of workers that bargains with employers to set conditions of employment, such as wages. This process is called collective bargaining. To find out more about unions and union organizing, contact the Canadian Labour Congress, Ontario Region at **1-800-387-3500**. In the Toronto area, call **416-441-3710**.

If I have been fired or laid off, what can I do?

You may be able to enforce your rights as a worker by making a claim against your employer. The Ministry of Labour can order your employer to pay you money that you are owed. In some

cases, the Ministry can order your employer to give you your job back and to compensate you for any loss caused by your employer's actions. For example, this is the case if your employer broke the law by penalizing you for exercising your legal rights.

In some cases, you may be able to bring a court action against your employer. If you do, you cannot file a claim for the same violation of your rights with the Ministry of Labour.

In general, a claim for unpaid wages must be filed with the Ministry of Labour within 6 months of the date the wages were owing. The claim can include unpaid wages for the last 12 months, as long as it is filed within 6 months of one of the dates when unpaid wages were due.

A claim for vacation pay can be filed up to 12 months after it became due.

In certain cases, you have up to 2 years to file if your claim does not involve any unpaid wages. For example, you have up to 2 years to file a claim against your employer for penalizing you, or

threatening to penalize you, because you exercised your legal rights. See [pages 10 and 11](#) for examples of exercising your legal rights.

If your employer has gone bankrupt, you may be able to get wages, vacation pay, severance pay, and termination pay owing to you by applying to the federal Wage Earner Protection Program (WEPP). The maximum that you can get from WEPP is an amount equal to 4 weeks of “insurable earnings” under the Employment Insurance Act (currently about \$3,400) minus deductions. You can get wages and vacation pay that you earned in the 6 months before your employer’s bankruptcy. You can get severance or termination pay owing only if you lost your job in the 6 months before your employer’s bankruptcy. You must have a valid Social Insurance Number (SIN). To find out more about who can qualify and how to apply, contact Service Canada:

Toll-free **1-866-683-6516**

Toll-free TTY **1-800-926-9105**

Web site www.servicecanada.gc.ca

If you make an ESA claim against your employer, it is very helpful to have records of the hours and dates that you worked. Make notes about incidents that might be relevant to your claim. Include the names of any witnesses to events that relate to your claim.

Keep any documents or pay stubs you get from your employer. Also keep copies of any other documents that have to do with your job.

In most cases, the maximum amount the Ministry of Labour can order an employer to pay you is \$10,000. If it is a case in which the Ministry can order the employer to give you back your job and compensate you for losses, then the employer can also be ordered to pay more than \$10,000. One example would be a claim involving your right to pregnancy and parental leave.

What do I need to do before I file a claim?

Before you file a claim with the Ministry of Labour, you are supposed to contact your employer about the matter. You

do not have to talk to your employer in person or by phone. You can contact your employer by mail, fax, or email if you prefer. Keep proof of your contact such as registered mail receipts or fax confirmations.

You might not have to contact your employer if you have a good reason not to do so. The claim form asks how you contacted your employer, what you asked your employer, and what the result was. If you did not contact your employer, you must give a reason. You might have a good reason if:

- your workplace has shut down or your employer is bankrupt,
- you do not speak the same language as your employer,
- your claim involves a violation of your human rights,
- you are afraid to contact your employer,
- you are making a claim for money that is owed to you from at least 5 months ago,
- you already tried to contact your employer,

- it is difficult for you to contact your employer because of a disability,
- you are a young worker, or
- you were employed as a live-in caregiver.

These are examples. You might have a good reason that is not included in this list.

How do I file an ESA claim?

The Ministry of Labour has an Employment Standards Claim form that you can fill out and file. The form is available at a ServiceOntario Centre or on the Ministry of Labour web site at www.labour.gov.on.ca/english/es/forms.

You can complete and submit the form online, or you can drop the completed form off at a ServiceOntario Centre, fax it to the Ministry of Labour at **1-888-252-4684**, or mail it to:

Provincial Claims Centre
Ministry of Labour
70 Foster Drive, Suite 410
Roberta Bondar Place
Sault Ste. Marie, ON
P6A 6V4

To find the ServiceOntario Centre nearest you, visit their web site at <www.serviceontario.ca>.

You can also call the Employment Standards Information Centre:

Toll-free	1-800-531-5551
Toronto area	416-326-7160
Toll-free TTY	1-866-567-8893

Where can I find out more and get legal help?

Contact your community legal clinic or the Employment Standards Information Centre for information. For legal help and advice, you can contact a community legal clinic or a lawyer.

To find your nearest community legal clinic go to the Legal Aid Ontario (LAO) web site at <www.legalaid.on.ca> and click on “**Contact LAO**” then “**Community legal clinics**”. Or you can call LAO at:

Toll-free	1-800-668-8258
Toll-free TTY	1-866-641-8867
Toronto area TTY	416-598-8867

You can also see CLEO's booklet called **Getting legal help: Community Legal Clinics in Ontario**. To find out how to order a copy or view it online, check the [back cover](#) of this pamphlet.

If you have experienced discrimination, you can also get legal advice and help from the Human Rights Legal Support Centre. For contact information visit their web site at <www.hrlsc.on.ca>, or call them:

Toll-free	1-866-625-5179
Toll-free TTY	1-866-612-8627
Toronto area	416-314-6266
Toronto area TTY	416-314-6651

This publication contains general information only. It is not a substitute for getting legal advice about your particular situation.

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