

Your rights at work

What you should know about

- **hours of work**
- **pay**
- **overtime**
- **breaks**
- **holidays**
- **vacations**
- **emergency leave**
- **enforcing your rights**



This pamphlet is about your rights at work under the Ontario Employment Standards Act (ESA).

Another pamphlet called “Have you been fired or laid off?” is also available. Please see the [back cover](#) for information on how to order our publications or view them online.

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 (workfare) 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 [page 25](#) for where to get information and help.

What are the rules about hours of work?



In most jobs your employer can require you to work 8 hours a day. If your employer's regular work day is more than 8 hours, you can be required to work the number of hours in the regular work day. But the regular work day cannot be more than 13 hours. And the regular work week cannot be more than 48 hours.

The rules about hours of work may not apply to you if you agreed in writing to different rules. If you are protected by a union, the union can make an agreement on your behalf.

Can my employer ask me to work longer hours?



Yes. And you have the right to refuse, *unless*:

- **you agreed in writing to work longer hours, and**
- if you have been asked to work more than 48 hours a week, **your employer has applied for and received approval from the Ministry of Labour for longer hours.** In some cases, your employer can ask you to work more than 48 hours a week before receiving final approval from the Ministry of Labour, as long as it has been at least 30 days since the application was made.

Before asking you to sign an agreement to work longer hours, your employer must give you a copy of the Ministry of Labour information sheet about hours of work and overtime pay.

Your employer must also post a copy of the application in the workplace, as well as the decision.

You do not have to work more than the number of hours approved by the Ministry of Labour. This might be fewer than the number of hours you agreed to work.

Does an employer have to give weekends off?

No. An employer has to give one day off in each 7-day work week, or 2 consecutive days off in a 2-week period. So, your employer can require you to work 6 days in a row before giving you one day off, or 12 days in a row before giving you 2 days off.

How much does my employer have to pay me?



In most jobs you must be paid at least \$9.50 an hour.

If you work serving alcohol, you must be paid at least \$8.25 an hour.

If you are a homemaker, you must be paid at least \$10.45 an hour. Examples of homework could include sewing, stuffing envelopes, or telemarketing at home.

If you are a student under 18 years of age and you work during school holidays, or less than 28 hours a week during the school term, you must be paid at least \$8.90 an hour.

The minimum wage is supposed to go up on March 31, 2010. For most jobs, it will go up to \$10.25 an hour.

Workers serving alcohol will have to be paid at least \$8.90. Homeworkers will have to be paid at least \$11.28 an hour. And students under 18 years of age working during school holidays, or less than 28 hours a week during the school term, will have to be paid at least \$9.60 an hour.

On or before your payday, your employer has to give you a statement of your wages. This is often called a pay stub. The pay stub must include:

- your rate of pay,
- the pay period covered,
- your wages for that period, before and after any deductions, and
- the amount and reason for any deductions.

Your employer can make “statutory deductions” such as income tax, Employment Insurance (EI) premiums, and Canada Pension Plan (CPP) deductions.

Your employer may also be able to deduct money that you owe if there is a court order or, in some circumstances, if you have agreed in writing to a specific deduction.

When does my employer have to pay me overtime?

In most jobs, when you work more than 44 hours a week, the extra hours are considered overtime hours. You get paid 1½ times your hourly pay for each hour of overtime. For example, if your hourly wage is \$9.00, your overtime rate would be \$13.50 an hour.

The rules about overtime pay do not apply to you if you agreed in writing to different rules and the Ministry of Labour has approved longer hours for your employer. If you are protected by a union, the union can make an agreement on your behalf.

What are the different overtime rules my employer might ask me to agree to?



Your employer might ask you to sign an agreement affecting your right to overtime pay. You have the right to refuse if you do not agree. A written agreement can change the way your overtime is compensated.

If you agree in writing, your overtime can be compensated in paid time off work instead of overtime pay. In this case, you get 1½ hours of time off for every overtime hour you work. You must get the time off within 3 months of the week in which you earned it, unless you agree in writing to get the time off within 12 months.

If you agree in writing, your overtime can be “averaged”. Instead of being calculated on a weekly basis, your overtime can be averaged over a longer period. In this case, you only get overtime on the average number of overtime hours, not the actual number of overtime hours you worked in each week. Even if you sign an averaging agreement, your employer must still get approval from the Director of Employment Standards.

The following examples compare how overtime can be calculated for a 4-week period with a regular 35-hour work week. Remember, in most jobs the hours you work over 44 hours a week are considered overtime.

If you did not sign an averaging agreement:

If you *did not sign* an agreement to “average” your overtime over 4 weeks, your total number of overtime hours for the 4-week period would be 22.

4-week period	hours worked	paid as overtime <i>actual hours over 44</i>
Week 1	35	0
Week 2	50	6
Week 3	60	16
Week 4	35	0
Total	180	22

If you did sign an averaging agreement:

To find out your average overtime hours in the 4-week period, take the total number of hours you worked in the 4 weeks and divide by 4.

Then subtract from that the 44 hours you must work per week to qualify for overtime.

This gives you the “average” number of overtime hours per week. The result in this example is 1 hour per week. Multiply 1 by 4 to then get the total number of overtime hours in the 4-week period.

After you apply the averaging calculation, not all of the hours you worked on top of the 44 hours in the 4-week period are considered overtime hours. In this example, if you *did sign* an agreement to average your overtime over 4 weeks, your total number of overtime hours would only be 4 instead of 22.

4-week period	hours worked	calculation for averaging total number of paid overtime hours
Week 1	35	$180 \text{ hours} \div 4 \text{ weeks} = 45 \text{ hours}$ $45 \text{ hours} - 44 \text{ hours} = 1 \text{ hour}$ $1 \text{ hour} \times 4 \text{ weeks} = 4 \text{ hours}$
Week 2	50	
Week 3	60	
Week 4	35	
Total	180	<p>paid as overtime <i>average hours over 44 = 4</i></p>

What if my employer asks me to sign an agreement that affects my rights?



You have the right to refuse. You do not have to sign an agreement that affects your rights as a worker. For example, you do not have to agree to extend your work hours, take time off instead of getting overtime pay, or “average” your overtime over a period of weeks.

It is against the law for an employer to penalize or fire you for refusing to sign an agreement. If your employer penalizes you for refusing to sign an agreement, you can file a claim with the Ministry of Labour. See [pages 23 to 24](#) for information about filing a claim, and [page 25](#) for information about where to get legal help.

What can I do if I sign an agreement and then change my mind?

It depends on the agreement. In most cases, if you agreed to work more than 8 hours a day (or more than the regular work day for your job), or more than 48 hours a week, you can cancel the agreement by giving your employer

2 weeks' written notice. But if you made an agreement to work more than 8 hours a day at the time you were hired and the agreement was approved by the Director of Employment Standards, you cannot cancel it unless your employer agrees.

Overtime averaging agreements must be signed and dated, include expiry dates, and cannot last more than 2 years. At the end of the time agreed upon, you have the right not to renew the agreement. To cancel it before the expiry date, you and your employer must both agree.

You should get legal advice if your employer claims that you made an agreement about your rights under the ESA but:

- you did not make an agreement,
- you did not understand the agreement, or
- you did not make the agreement willingly.

You should not be forced to follow rules that you did not understand or you did not agree to willingly.

What breaks do I get at work?



In most jobs, you must get at least 30 minutes off after every 5 hours of work. You do not have to be paid for this time.

If you agree to it, you get two 15-minute breaks instead of one 30-minute break. This agreement can be oral or in writing.

Your employer does not have to give you any other breaks. But if you do get coffee breaks, you should be paid for them if you have to stay at work.

Do I get paid holidays?

On public holidays, such as Christmas Day, people in most jobs have the right to get the day off with holiday pay. It does not matter if you work full-time or part-time, how long you have worked in that job, or if the public holiday falls on a day that you would usually work. You must work your regular work day, before and after the holiday, unless you had “reasonable cause” not to work. Examples of reasonable cause include illness or injury. It is up to you to show that you had reasonable cause to miss work.

Holiday pay is calculated by adding up your earnings (your regular wages *plus* vacation pay) for the 4 work weeks before the work week with the holiday in it, and dividing that total by 20.

Your employer can ask you to work on the holiday. If you want to work, you can agree in writing to work the holiday and either:

- get holiday pay *plus* premium pay which is 1½ times your regular wages, or
- get regular pay, then take another day off instead with holiday pay. You have to take the other day off within 3 months of the holiday, or if you agree in writing, within 12 months.

However, if you did not work your regularly scheduled work day before and after the holiday, and you did not have reasonable cause not to work, you are only entitled to premium pay.

If you have to work on the holiday because of the kind of job you have, your employer has the right to decide whether or not you get premium pay or another day off

instead. For example, if you work in a restaurant or a hospital you might have to work on a public holiday.

What about vacations?



Most people are entitled to at least 2 weeks' vacation earned by working 12 months for the same employer. You must be allowed to take this time off within 10 months of earning it.

Your employer has the right to decide whether the 12-month period begins:

- when you start working for your employer, or
- on a different date.

If your employer chooses a different date, you still earn vacation for the period that starts with your first day of work and ends the day before your 12-month period begins.

Your employer has the right to decide exactly when you can take your vacation, and whether you can take all of your vacation at the same time. If you are entitled to 2 weeks' vacation, your employer can say whether you can take 2 weeks in a row, or one week at a time.

You do not have to take your vacation in periods of less than one week at a time, unless you want to. If this is what you want, you should ask for it in writing and get your employer to agree.

But if you earn vacation before the start of your 12-month period for earning vacation, you must take it within 10 months of earning it, even if it is less than a week.

What about vacation pay?



You either get your vacation with pay or you get the time off without pay if you have already been given your vacation pay.

Vacation pay must be at least 4% of the total wages you earned during the qualifying period for paid vacation.

When you leave a job, your employer must pay you any vacation pay you have earned that is owed to you.

Do I get time off for illness or other emergencies?

If you work for a company that regularly employs at least 50 workers, you have the right to emergency leave. You can take up

to 10 days off each year for emergencies and illness, either for yourself or a family member. Family member includes a common-law or same-sex partner.

You do not have to get paid for emergency leave. Even if you only take part of a day off as emergency leave, your employer can count it as one of your 10 days.

You are supposed to tell your employer as soon as you know you need emergency leave. Your employer can ask you for proof of the emergency such as a doctor's note.

What if I have a family member or close friend who is seriously ill or dying?

You might be able to take family medical leave. This is an unpaid leave of up to 8 weeks to provide care and support to a family member or someone with whom you have such a close relationship that you are like a family member. See [page 19](#) for information about receiving Employment Insurance (EI) compassionate care benefits while you are on family medical leave.

To qualify for family medical leave, you need a doctor's certificate saying that the family member or close friend is seriously ill and at significant risk of dying within 26 weeks. If the leave is to care for a close friend, your employer can ask for a copy of the document you used to prove your relationship in your application for EI compassionate care benefits.

If you are covered by the ESA, you are entitled to family medical leave, whether you work full-time or part-time and whether you are employed permanently or on a contract. It does not matter how many people work for your employer. See pages 1 and 2 for more information about whether the ESA applies to you.

You should give your employer notice in writing as soon as you know you need family medical leave. Your employer has the right to a copy of the doctor's certificate. If you cannot get a doctor's certificate, you are not entitled to family medical leave.

More than one person could qualify for the leave to care for the same person. But the 8 weeks of leave would have to be shared between them. For example,

if your mother is dying and you take 6 weeks of family medical leave, someone else could take 2 weeks.

You do not have to take all your family medical leave at the same time. For example, you could take 4 weeks in October and 4 weeks in December. But, you do have to take it in one-week periods, starting on a Sunday and ending the following Saturday.

Family medical leave ends on:

- the last day of the 8-week period,
- the last day of the week in which the person dies, or
- the last day of the week in which the 26-week period ends.

Can I take more leave if the person I'm caring for does not die in the 26-week period?

If the doctor gives you another certificate saying that your family member or close friend could die within the *next* 26 weeks, you could take up to 8 weeks more of family medical leave.

Can I get EI benefits while I am on family medical leave?

You might be eligible for EI compassionate care benefits for up to 6 weeks while you are on family medical leave. For more information about compassionate care benefits, contact a Service Canada Centre or a community legal clinic.

To find the Service Canada Centre for your area call **1-800-622-6232**. Or you can check the Service Canada web site at www.servicecanada.gc.ca.

To find out how to contact a community legal clinic, see [page 25](#).

How can I enforce my rights as a worker?

You may be able to make 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.

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.

If you make a 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.

Keep any documents or pay stubs you get from your employer. Note the names of any witnesses to events that relate to your claim.

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.

Note:

You have other legal rights besides those in the ESA. If you are discriminated against or harassed because of your race, sex, age, disability, or other reasons that violate your human rights, you can make a complaint to the Human Rights Tribunal of Ontario. For advice and help, you can contact the Human Rights Legal Support Centre at **416-314-6266** or **1-866-625-5179**, or visit their web site at www.hrlsc.on.ca.

You should also get legal help if you are having problems at work because you raised a health and safety issue in the workplace, or because you raised a concern about your employer not obeying environmental protection laws.

Your community legal clinic may be able to give you information or help if you are experiencing discrimination or other problems affecting your rights at work. To find out how to contact a community legal clinic, see [page 25](#).

How do I file a 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>.

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 <www.serviceontario.ca> or call **1-800-267-8097**.

You can also call the Employment Standards Information Centre:

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

If you speak French:

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

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

The union's job is to protect workers' rights. Usually, union dues are taken off your pay cheque if you are 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 union representative. Your rights may be different from the rights set out in the ESA. 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, hours of work, and overtime pay. 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**.

Where can I find out more and get legal help?



Contact your community legal clinic for help and information. For a list of clinics and how to contact them, see the CLEO booklet called **Getting legal help: Community Legal Clinics in Ontario**. See the [back cover](#) of this pamphlet to find out how to order it. It is also available on CLEO's web site at <www.cleo.on.ca>.

There are a few other ways to find the nearest community legal clinic:

- Check Legal Aid Ontario's web site at <www.legalaid.on.ca>,
- Phone Legal Aid Ontario at:

Toll-free	1-800-668-8258
Toll-free TTY	1-866-641-8867
Toronto area	416-979-1446
Toronto area TTY	416-598-8867
- Try looking in your phone book under "Legal Aid" or Lawyers".

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

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