



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.



This booklet is about rights you may have if you were fired or laid off, including rights under the Ontario Employment Standards Act (ESA).

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.

Table of Contents

Does the ESA apply to all workers?	1
What are my rights if I am fired or laid off?	2
What if I am laid off temporarily?	3
What if my employer forces me to leave my job?	4
Can I be fired for a reason that goes against my human rights?	5
I have been fired. How much notice should I get?	7
What if I signed an employment contract that says how much notice I get?	8
Can I be fired or laid off without any notice?	9
What about severance pay?	10
Can I get my job back if I am fired?	11
If my employer owes me money, when must it be paid to me?	12
Can I get EI benefits if I was fired?	13
What are my rights if I am protected by a union?	15
If I have been fired or laid off, what can I do?	15
How do I file an ESA claim?	18
Where can I find out more and get legal help?	19

If you speak French

In many cases, you have the right to government services and legal proceedings in French, including hearings before French-speaking decision makers and the right to file a 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

Il existe de nombreuses situations où vous avez droit à des services gouvernementaux et à la tenue d'une instance judiciaire ou quasi-judiciaire en français. Ainsi, vous pouvez avoir droit à ce qu'une audience à laquelle vous êtes partie soit tenue devant un décideur qui parle français, et vous avez le droit de déposer, en français, une demande sous le régime de la Loi sur les normes d'emploi. Pour en savoir plus sur vos droits linguistiques, consultez un avocat ou des représentants d'une clinique juridique communautaire.

This booklet is about rights that workers may have if they are fired or laid off. It explains some of the rights workers have under the Ontario Employment Standards Act (ESA) and other laws.

III Does the ESA apply to all workers?

No. Not all jobs are covered by the ESA and, for some jobs, 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. See [page 19](#) for where to get legal help.

Some industries are covered by federal laws, including banks, airlines, some trucking businesses, and broadcasting. Workers in these industries are covered by the Canada Labour Code. Like the ESA, the Canada Labour Code sets out minimum standards employers must follow. 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” approved 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.

You do not need to be a Canadian citizen or permanent resident, or have a work permit to be covered by the ESA.

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

III 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.

But in most cases, your employer must give you a written notice of termination. There are 2 ways an employer can do this:

1. Your employer can tell you that they will be letting you go on a day in the future. You are expected to work until that day. This is called "**working notice**".
2. Or, your employer can let you go **right away**. But they have to pay you the money you would have earned if they had given you working notice. This money is called "termination pay" or "pay in lieu of notice".

If you are laid off permanently, the same rules apply.

Termination pay is not the same as what the ESA calls "severance pay". See [page 10](#) for information about severance pay under the ESA.

III What if I am laid off temporarily?

The ESA says you can be laid off without notice if you are laid off temporarily.

But your employer can only put you on a temporary layoff if you have agreed to it. And if you are in a union, the rules will depend on what is in the collective agreement.

The ESA rules about temporary layoffs are complicated. There are rules about how long a temporary layoff can be. The general rule is that a temporary layoff can be up to 13 weeks out of 20 weeks in a row.

In some situations, a layoff can be longer, up to 34 weeks out of 52 weeks in a row. For example, this applies if your employer continues to pay into a pension plan for you.

Your employer can lay you off for any length of time, as long as they made these changes because of COVID-19. This rule is only for layoffs between **March 1, 2020, and July 30, 2022.**

If you are laid off, you might need to get legal advice about whether your employer has the right to put you on temporary lay-off. See [page 19](#) for where to get legal help.

III What if my employer forces me to leave my job?

You cannot claim constructive dismissal under the Employment Standards Act (ESA) if your employer reduced your wages or hours because of COVID-19 between **March 1, 2020, and July 30, 2022**.

This new rule might not affect your right to go to court to claim constructive dismissal. This is a complicated area of law. It is a good idea to get legal advice. See [page 19](#) for where to get legal help.

Sometimes being forced out of a job is the same as being fired. The law calls this “**constructive dismissal**”.

Constructive dismissal happens when your employer does something that:

- changes things at work for you in a major way,
- is not something you should have expected, and
- you do not agree to or accept it.

When this happens, it is like being fired. So if you leave the job, you have the same rights as if you were fired. This includes the right to termination pay.

Here are some examples of things that might be serious enough that it would be like getting fired:

- Your employer lowers your wages by a lot or refuses to pay you what they owe you.

- Your employer takes away core responsibilities and lowers your position. For example, you are no longer a supervisor and are doing the work you used to supervise others to do.
- Your employer abuses you, harasses you, or discriminates against you in a way that goes against your human rights.

The law about what is and what is not constructive dismissal is complicated. A lot depends on the details of your situation. It is important to get legal advice right away. See [page 19](#) for where to get legal help.

III Can I be fired for a reason that goes against my human rights?

In almost all cases, an employer cannot fire you because of your:

- race or colour,
- ancestry, ethnic origin, or place of origin,
- citizenship,
- sex,
- sexual orientation,
- gender identity or gender expression,
- age,
- record of offences,
- marital status,
- family status, or
- disability.

For example, an employer cannot fire you because you are pregnant, ask for a disability leave, or have reached a certain age.

In very rare cases, your employer might be able to fire you because you cannot do your job for a reason that relates to your human rights.

But before your employer can do that, they must show that you could not do the basic duties of your job, even with accommodation.

Your employer has what's called a "duty to accommodate" if you need changes to your job for a human rights reason. This means that your employer must work with you to find a way for you to continue to do your job. For example, you might need to start work earlier so you can care for your children after school.

If you cannot do your job now, but will be able to in the future, your employer might have to:

- put you on leave, and
- give you your job back when you can work again.

You may want to get legal advice if you believe that your employer fired you for reasons that go against your human rights. See [page 19](#) for where to get legal help.

III I have been fired. How much notice should I get?

The ESA has rules about the minimum notice of termination employers must give their employees. Most people who are fired or laid off have the right to more than the minimum notice of termination that is in the ESA. This is because of court decisions that say most workers should get what is “reasonable”, not just the minimum amount in the ESA.

ESA notice periods:

The ESA minimum notice periods range from **one 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 you want more than this, you will have to sue your employer in court.

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.

Getting more than minimum notice:

Here are some reasons that you might have a right to get more than the ESA minimum amount:

- You worked for the employer for a long time.
- Finding a similar job will be very difficult.
- Your job was very specialized.
- When hiring you, the employer convinced you to leave another job.
- You are an older worker.

And you might have the right to even more termination pay if the employer:

- broke laws, such as human rights laws, when they fired you
- fired you in a cruel or insensitive way
- fired you for an unfair reason, for example, they believed you did something bad and you did not
- fired you because you were acting on your rights that are in the ESA
- fired you because you raised concerns about health and safety in your workplace

The lists above and on [page 7](#) are just examples. What you can get depends on your situation. Talk to a lawyer who knows employment law about how much termination pay you might be able to get. See [page 19](#) for where to get legal help.

With a lawyer's help, you might be able to agree on the amount with your employer.

Or you may be able to sue your employer in court. A court can decide that your employer has to give you more than the minimum notice in the ESA.

III What if I signed an employment contract that says how much notice I get?

Employers sometimes try to limit the amount of notice you can get by putting an amount in your employment contract. If the amount of notice in the contract **could be less** than minimum notice in the ESA, a court will not apply the contract.

There are other reasons that a court might order your employer to give you more notice, for example:

- the contract is not clear about notice
- you were forced to sign the contract
- you were tricked into signing the contract
- the notice under the contract is extremely unfair

You may want to get legal advice about whether you are limited to the notice in your employment contract. See [page 19](#) for where to get legal help.

III Can I be fired or laid off without any notice?

Yes, in some situations.

Your employer might say that they are firing you because of something you did or did not do. They might say that they have “cause” or a good reason to fire you without giving you any notice.

If this happens, try to get legal advice. Sometimes employers are wrong about what is a good reason under the law to fire someone without notice. See [page 19](#) for where to get legal help.

Here are some examples of when an employer might have the right to fire you without giving you any notice:

- you stole from your employer
- you damaged your employer’s property on purpose

- you threatened or assaulted someone at work
- you refuse to do something that is an important part of your job, unless you have a good reason, like refusing to do work that is unsafe

Even if you did something wrong, your employer might not have the right to fire you without notice.

For example, it can help you if:

- what you did was not very serious
- your employer did not give you a chance to correct your behaviour
- you have worked for your employer for a long time

And if you worked for your employer for less than 3 months, ESA rules do not require your employer to give you notice.

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.

III What about severance pay?

Under the ESA, severance pay is not the same thing 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, or

- at least 50 people will be losing their jobs within a 6-month period because the employer is permanently closing some or all of their business.

You will not get severance pay if your employer is closing down their business because it was affected so badly **by a strike** that they cannot continue.

There are other reasons that you can lose your right to severance pay. For example, this could happen if your employer offers you another job and you do not accept it.

The basic rule is that severance pay is one week's pay for each year you have worked for your employer, up to a maximum of 26 weeks. But the rules about severance pay are complicated.

III 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, you should get legal help. See page 19 for more information.

If the Ministry of Labour decides that you were fired for exercising your rights under the ESA, they 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
- 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 reason that violates your human rights
- because you raised a health or safety issue in the workplace
- because you raised a concern about your employer not obeying environmental protection laws

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

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

Your employer must pay you your wages, including your vacation pay, by the later of these 2 dates:

- 7 days after your employment ends
- your next regular pay day

Your wages include any money owing to you as a result of your termination. But 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.

III Can I get EI benefits if I was fired?

If you are unemployed and looking for work, you may be able to get Employment Insurance (EI) benefits even if you were fired. It depends on the reason you were fired. If EI staff say you were fired because of “misconduct”, they will not give you benefits.

Misconduct usually means doing something wrong on purpose. Misconduct is more than simply not being able to do the job well. Here are some examples that could be seen as misconduct:

- threatening or violent behaviour
- destroying company property on purpose
- being late or away from work without permission
- disobeying an order from your employer

Misconduct cases are often unclear, so you should apply for EI even if you were fired.

Your employer must prepare a Record of Employment (ROE). Your employer can either give you a paper copy of your ROE or send your ROE to the government electronically.

If your employer sends your ROE to the government electronically, they do not have to give you a copy and you do not need a copy to apply for EI. But you can get a copy from

Service Canada if you want one. To see your ROE online, you need to have a MyServiceCanada account. You can access your account or set one up at [servicecanada.gc.ca](https://www.servicecanada.gc.ca).

It is easier to apply for EI with the ROE. But you should **apply for EI right away, even if you do not have your ROE yet**. You need 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 line at **1-800-206-7218**.

CLEO has a tool that creates a letter you can send to your employer asking for your ROE. You can use it by going to stepstojustice.ca/asking-for-roe.

If you do not qualify for EI or you are waiting for EI, you may be able to get financial assistance from Ontario Works (OW).

CLEO has free publications on other legal topics including EI and OW assistance. Please see the back of this booklet for information on how to order these publications or view them online.

III 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 union representative. You usually 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**.

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

If you have been fired, it is a good idea to get legal advice. See page 19 for more information.

A lawyer with experience in employment law can help by giving you advice about:

- how much notice your employer should give you
- whether you should file a claim with the Ministry of Labour or go to court
- what other rights you may have

A lawyer who knows employment law can tell you how much notice a court might order. With a lawyer's help, you might be able to agree on the amount of notice with your employer. An employer might want to avoid the cost of going to court.

Making a claim

You may be able to enforce your rights under the ESA by making a claim against your employer. The Ministry of Labour can order your employer to pay you money that you are owed based on the rules in the ESA.

A claim for unpaid wages must be filed with the Ministry of Labour within 2 years of the date the wages were owing.

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 enforce your rights by bringing a court action against your employer. If you do, you cannot file a claim for the same reason with the Ministry of Labour. You have 2 years from the date something happened to start a court action.

And if your employer did not respect your human rights, you may be able to bring a claim to the Human Rights Tribunal of Ontario. In most cases, you must do this within one year of when the problem happened. And you cannot file a claim for the same reason with a court.

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. 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.

If your employer is bankrupt

If your employer has gone bankrupt, is insolvent, or is in receivership, you may be able to get back money that they owe you. You can apply to the federal Wage Earner Protection Program (WEPP) to get back wages, vacation pay, severance pay, and termination pay.

You must have a valid Social Insurance Number (SIN) to apply online. If you do not have one, call **1-866-683-6516** to get a paper copy of the application form.

The most you can get from WEPP is 7 times your maximum weekly “insurable earnings” under the Employment Insurance Act. For 2022, the most you can get from WEPP before deductions is \$8,117.34.

You can get wages and vacation pay that you earned in the 6 months before your employer’s bankruptcy.

If you lost your job in the 6 months before your employer's bankruptcy, you can get severance and termination pay that your employer owes you. If you continue to work for your employer after the bankruptcy, you can also get it once your job ends.

To find out more about who can qualify and how to apply, you can go to the Service Canada website at servicecanada.gc.ca or call:

Toll-free.....**1-800-622-6232**

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

III How do I file an ESA claim?

The Ministry of Labour has an Employment Standards Claim Form that you can fill out and file for free. The form is available at a ServiceOntario Centre or on the Ministry of Labour website 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 nearest ServiceOntario Centre visit their website at ontario.ca/page/serviceontario.

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**

III **Where can I find out more and get legal help?**

CLEO's **Steps to Justice** website has step-by-step information about common legal issues, including your rights as a worker. Visit stepstojustice.ca/employment-and-work.

For legal help and advice, you can contact a community legal clinic or a lawyer. To find the clinic nearest you, visit Legal Aid Ontario's website at legalaid.on.ca/legal-clinics. Or you can call them at:

Toll-free **1-800-668-8258**

TTY use Bell's Relay Service **1-800-855-0511**

You can also get free legal help and advice over the phone from Pro Bono Ontario. For more information, visit their website at probonoontario.org/hotline or call them at **1-855-255-7256**.

If you have experienced discrimination, you can get free legal help from the Human Rights Legal Support Centre. Visit their website at hrlsc.on.ca or call them:

Toll-free **1-866-625-5179**

Toll-free TTY **1-866-612-8627**

Toronto area TTY **416-597-4903**

This booklet gives only general information. You should get legal advice about your own situation.

Published by:

CLEO (Community Legal Education Ontario/Éducation juridique communautaire Ontario) in co-operation with the Employment Standards Workgroup

With funding from:

Legal Aid Ontario
Department of Justice Canada

CLEO has more free publications on Employment and Work and other legal topics.

We revise our publications regularly to reflect changes in the law. Our Discard List tells you which publications are out of date and should be thrown away.

For our Discard List, or to order or view our publications online, visit cleo.on.ca. You can reach us by phone at **416-408-4420**.

CLEO's **Steps to Justice** website has step-by-step information about common legal problems, including your rights as a worker. Visit stepstojustice.ca/employment-and-work.