



Have you been fired or laid off?

If you did not get any notice or pay, your employer may be breaking the law.



Table of Contents

Does the ESA apply to all workers?	1
What is a temporary layoff?.....	2
Can I be fired for a reason that goes against my human rights?.....	3
What are my rights if I am fired?.....	4
What if I have an employment contract?	7
Can I be fired without notice?	8
What if my employer forces me to leave my job?	9
What about severance pay?.....	10
Can I get my job back if I am fired?	11
When must my employer pay me?	12
Can I get EI benefits if I was fired?	12
What are my rights if I am in a union?.....	14
What can I do if I have been fired or laid off?.....	15
How do I make an ESA claim?.....	18
Where can I get help and information?	19

If you speak French

In many cases, you have the right to government services and legal actions in French. This includes hearings with French-speaking decision-makers.

Ask a lawyer or community legal clinic about your French-language rights.

Si vous parlez français

Il existe de nombreuses situations où vous avez droit à des services gouvernementaux et à des procédures judiciaires en français, comme la tenue d'une audience devant un décideur qui parle français.

Vous pouvez demander à des avocat(e)s ou à une clinique juridique communautaire de vous informer de vos droits liés au fait de parler français.

This booklet is about the rights that workers may have if they are fired or laid off. It explains some of the rights in Ontario's 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.

The rights in the ESA might still apply to you, even if you signed something that says:

- you are an independent contractor, or
- you are in business for yourself.

See [page 19](#) for where to get legal help.

Some industries are covered by the Canada Labour Code. This includes banks, airlines, some trucking businesses, and broadcasting. Like the ESA, the Canada Labour Code sets out rules that employers must follow.

For more information, contact the Government of Canada's Labour Program, Ontario Region at **1-800-641-4049**.

Other examples where the ESA does **not** apply include:

- students in work experience programs that a school board, college, or university approved,

- people on social assistance doing community participation through Ontario Works,
- people in jail who are in work programs, and
- people ordered or sentenced by a court to work.

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

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

III What is a temporary layoff?

The ESA says you can be laid off without notice if it is a temporary layoff.

A temporary layoff happens when your employer cuts back or stops your work. And you earn less than half of what you normally earn in a work week. But your employer does not end your employment. They plan to bring you back to work soon.

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

How long can a layoff be?

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 than that. For example, if your employer keeps paying into your group benefits plan, it can be up to 34 out of 52 weeks in a row.

If you are laid off, you might need to get legal advice about whether your employer has the right to put you on temporary layoff. 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, colour, ancestry, ethnic origin, citizenship, or where you were born
- your religious beliefs
- a physical or mental disability, including an addiction
- your sex or gender, including pregnancy
- your sexual orientation, gender identity, or gender expression
- your family or marital status
- your age
- your record of criminal offences

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.

What is accommodation?

Your employer has what is 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 What are my rights if I am fired?

Your employer does not have to tell you why you are being fired or laid off permanently. But in most cases, your employer must give you notice in writing.

There are 2 ways that an employer can give you notice:

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”.

ESA notice periods

The ESA has rules about the minimum or least amount of notice employers must give. If you worked **less than 3 months**, an employer does not have to give you any notice.

If you worked for:	You should get at least:
3 months but less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years but less than 9 years	8 weeks

The Ministry of Labour can enforce only these minimum notice periods. If you want more than this, you have to sue your employer in court.

If an employer fires 50 or more workers within 4 weeks, the minimum notice periods might be different. If this applies to you, get legal advice.

Getting more than minimum notice

To get more than minimum notice, you must take your employer to court. What you can get depends on **your situation**.

Here are some examples of why you might get more notice:

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

And you might have the right to even more money if, for example, the employer:

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

Talk to a lawyer who knows employment law about how much notice 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 a lawyer may be able to help you sue your employer in court.

III What if I have an employment contract?

Sometimes employers 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 why a court might order your employer to give you more notice, for example:

- the contract is not clear
- your employer forced you to sign the contract
- your employer tricked you 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 without 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” to fire you without giving you any notice. Having cause means that they had a good reason.

If this happens, try to get legal advice. Sometimes employers are wrong about what is a good reason. 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 refused to do something that is an important part of your job, unless you have a good reason. A good reason could be refusing to do work that is not safe.

Even if you did something wrong, your employer might not have the right to fire you without notice. For example, this might apply 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 the ESA says that your employer does not have to give you notice if you worked for them for **less than 3 months**.

Get legal advice if you think:

- your employer was wrong to fire you without notice, or
- you should get more notice.

||| **What if my employer forces me to leave my job?**

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, 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](#).

III What about severance pay?

In 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 why you could 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 worked for your employer. And the **most** you can get is 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 you should get legal help if you think you were fired because of something that the ESA says you can do. This means that you were “exercising your rights under the ESA”.

If the Ministry of Labour decides that you were fired for that reason, they can order your employer to:

- pay you, and
- give you back your job.

Examples of exercising your legal rights under the ESA are:

- taking pregnancy or parental leave
- asking about your rights or asking your employer to obey the law
- refusing to sign an agreement that affects your rights, for example, an agreement about 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 goes against your human rights
- because you raised a health or safety issue in the workplace

See [page 19](#) for where to get legal help. You may have more legal rights than those in the ESA.

III When must my employer pay me?

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

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

Your wages include any money your employer owes you because of your termination.

Your employer can give you severance pay in small amounts. But you must agree in writing or the Director of Employment Standards must approve it. In these cases, your employer must make the payments within 3 years.

If your employer misses a scheduled payment, they must pay you what is left of the severance pay right away.

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 why 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 and your employer did not approve this
- not doing something your employer tells you to do

It is not always clear what misconduct is. So you should apply for EI even if you were fired.

Record of Employment

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.

Ways to get help

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 cannot get 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. See the back of this booklet for more information.

III What are my rights if I am in a union?

If you are in a union, find out about your rights at work by:

- checking your collective agreement, or
- talking 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 union.

The union bargains with the employer to set working conditions for its members, 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 **416-441-3710**.

III What can I do if I am fired or laid off?

If you have been fired, it is a good idea to get legal advice. See page 19 for more information. A lawyer who knows employment law can help by giving you advice about:

- how much notice your employer should give you
- whether to make a claim with the Ministry of Labour or Human Rights Tribunal, or go to court
- how much notice a court might order
- what other rights you may have

With a lawyer's help, you might be able to agree on the amount of notice with your employer. An employer might want to do this to avoid the cost of going to court.

Making a claim

You may be able to make a claim against your employer because they broke the law.

Make a claim with the Ministry of Labour

Based on the rules in the ESA, the Ministry of Labour can order your employer to pay you money that they owe you.

You must make a claim for unpaid wages to the Ministry of Labour within **2 years** of when your employer owed you the money.

In some cases, the Ministry can order your employer to:

- give you your job back, and
- pay you back for any loss you had because of what your employer did.

For example, this could happen if your employer broke the law by punishing you for something you had the right to do.

Go to court

In some cases, you may be able to make a claim against your employer by suing them in court. But you cannot make a claim for the same reason with the Ministry of Labour.

You have **2 years** from the date something happened to sue your employer in court.

Make a human rights claim

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 make a claim for the same reason with a court or the Ministry of Labour.

The **Human Rights Legal Support Centre** has information to help you apply to the Human Rights Tribunal.

Visit hrlsc.on.ca. Or call **1-866-625-5179**. For TTY, call **1-866-612-8627**.

Take notes and keep documents

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 anything that could help your claim. Include the names of people who saw events that relate to your claim.

Keep your pay stubs and documents from your employer, such as your employment contract. And keep copies of any other documents that relate to your job.

If your employer is bankrupt

You may be able to get back money that your employer owes you, if your employer:

- has gone bankrupt,
- is insolvent, or
- is in receivership.

Wage Earner Protection Program

You can apply to the **Wage Earner Protection Program (WEPP)** to get:

- wages your employer did not pay,
- 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.

There is a limit to what you can get from WEPP. That limit is 7 times what the Employment Insurance Act says are your maximum weekly “insurable earnings”.

For 2024, the most you can get is **\$8,507.66** before deductions like income tax.

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 WEPP once your job ends.

To find out if you can get WEPP and how to apply, go to servicecanada.gc.ca. Or call Service Canada at **1-800-622-6232**. For TTY, call **1-800-926-9105**.

III How do I make an ESA claim?

Get the Ministry of Labour's **Employment Standards Claim Form** at a ServiceOntario Centre or www.labour.gov.on.ca. Fill out the form and:

- send it in online
- take it to a ServiceOntario Centre
- fax it to the Ministry of Labour at **1-888-252-4684**
- mail it to the Provincial Claims Centre, 70 Foster Drive, Suite 410, Sault Ste. Marie, Ontario P6A 6V4.

Find the nearest ServiceOntario Centre at ontario.ca/page/serviceontario.

Or call the Employment Standards Information Centre at **1-800-531-5551**. For TTY, call **1-866-567-8893**.

III Where can I get help and information?

Contact **your union** or one of the places listed below.

For legal help and advice, contact your local community legal clinic. Find the clinic nearest you at legalaid.on.ca/legal-clinics. Or call Legal Aid Ontario at **1-800-668-8258**. For TTY, call **711**.

The **Workers' Action Centre** gives free information and advice. Visit workersactioncentre.org. Or call them at **1-855-531-0778**.

Pro Bono Ontario has a free legal advice hotline that offers 30 minutes of help and advice over the phone. Visit probonoontario.org/hotline or call **1-855-255-7256**.

The **Ontario Legal Information Centre** offers a free 30 minutes with a lawyer by video or phone. They give legal information, not legal advice. Visit centreinfojuridique.ca/en or call **1-844-343-7462**.

This is general information for people in Ontario, Canada. It is not legal advice.

Cette publication est également disponible en français.

Vous pourriez avoir droit à des services en français du gouvernement et des fournisseurs désignés. Visitez justicepasapas.ca/droits-linguistiques-francophones.

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CLEO has more free publications on Employment and Work and other legal topics. For more information about your rights as a worker, visit stepstojustice.ca/emp-and-work.

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.

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