

## Your guide to the *Employment Standards Act*

Know your rights and obligations under the *Employment Standards Act* (ESA). This guide describes the rules about minimum wage (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage>), hours of work limits (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work>), termination of employment (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>), public holidays (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>), pregnancy and parental leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave>), severance pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>), vacation (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>) and more.

Amendments to the *ESA* that create a licensing application system for temporary help agencies and recruiters came into force on **July 1, 2023**.

Beginning on **January 1, 2024**:

- temporary help agencies will be required to be licensed to operate
- clients will be prohibited from knowingly engaging or using the services of a temporary help agency unless the agency holds a licence
- recruiters will be required to be licensed to act as a recruiter
- employers, prospective employers, and other recruiters will be prohibited from knowingly engaging or using the services of any recruiter that does not hold a licence.

Applications and information are available now (<https://www.ontario.ca/page/licensing-temporary-help-agencies-and-recruiters>). A new chapter describing these amendments in more detail will be posted soon.

### About your guide to the *ESA*

This guide is a convenient source of information about key sections of the *ESA*. It is for your information and assistance only. **It is not a legal document.** If you need details or exact language, please refer to the *ESA* itself and its regulations.

This guide should not be used as or considered legal advice. You may have greater rights under an employment contract, collective agreement, the common law or other legislation. **If you're unsure about anything in this guide, please talk to a lawyer.**

### Topics covered by the *ESA*

These include:

- benefit plans (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/benefit-plans>)
- bereavement leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/bereavement-leave>)
- child death leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/child-death-leave>)
- crime-related child disappearance leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/crime-related-child-disappearance-leave>)
- critical illness leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave>)
- declared emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/declared-emergency-leave>)
- domestic or sexual violence leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/domestic-or-sexual-violence-leave>)
- the employment standards poster: distribution requirements (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/mandatory-poster-and-information-sheets-employers>)
- equal pay for equal work (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/equal-pay-equal-work>)
- family caregiver leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-caregiver-leave>)
- family medical leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave>)
- family responsibility leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-responsibility-leave>)
- filing a claim (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim>)
- hours of work, eating periods and rest periods (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work>)
- infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>)
- lie detector tests (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/lie-detector-tests>)
- minimum wage (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage>)
- non-compete agreements (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/non-compete-agreements>)
- organ donor leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/organ-donor-leave>)
- overtime pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/overtime-pay>)
- payment of wages (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/payment-wages>)
- pregnancy and parental leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave>)
- public holidays (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>)
- reservist leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reservist-leave>)
- severance of employment (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>)
- sick leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/sick-leave>)
- temporary help agencies (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/temporary-help-agencies>)
- termination of employment and temporary layoffs (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>)
- tips or gratuities (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/tips-and-other-gratuities>)
- vacation (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>)
- written policy on disconnecting from work (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/written-policy-disconnecting-from-work>)

- written policy on electronic monitoring of employees (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/written-policy-electronic-monitoring-employees>)

### Reprisals are prohibited

Employers are prohibited from penalizing employees **in any way** because the employee exercised [ESA](#) rights. Employers who do so can be:

- ordered to compensate and/or reinstate the employee
- ordered to pay a penalty
- prosecuted

Learn more about reprisals (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>) .

### Greater right or benefit

If a provision in an employment contract or another Act gives an employee a greater right or benefit than a minimum employment standard under the [ESA](#) then that provision applies to the employee instead of the employment standard.

### No waiving of rights

No employee can agree to waive or give up their rights under the [ESA](#) (for example, the right to receive overtime pay or public holiday pay). Any such agreement is null and void.

### Enforcement and compliance

Employers who violate the [ESA](#) can be:

- ordered to comply with the [ESA](#)
- ordered to pay their employees
- ordered to pay a penalty
- prosecuted

### Other workplace-related laws

The [ESA](#) contains only some of the rules affecting work in Ontario. Other provincial and federal legislation governs issues such as workplace health and safety, human rights and labour relations.

Related Ontario laws include the:

- *Occupational Health and Safety Act* (<https://www.ontario.ca/laws/statute/90o01>)
- *Workplace Safety and Insurance Act, 1997* (<https://www.ontario.ca/laws/statute/97w16>)
- *Labour Relations Act, 1995* (<https://www.ontario.ca/laws/statute/95l01>)
- *Pay Equity Act* (<https://www.ontario.ca/laws/statute/90p07>)
- *Human Rights Code* (<https://www.ontario.ca/laws/statute/90h19>)

For more information about other Ontario laws, contact ServiceOntario:

- Tel: 416-326-1234 (in Toronto)
- Toll-free: 1-800-267-8097 (in the rest of Ontario)
- online at [ServiceOntario.ca](https://www.ontario.ca/welcome-serviceontario) (<https://www.ontario.ca/welcome-serviceontario>)

Federal laws affecting workplaces include statutes on income tax, employment insurance and the Canada Pension Plan (<https://www.canada.ca/en/services/benefits/publicpensions/cpp.html>) .

For more information about federal laws, call the Government of Canada information line at 1-800-622-6232.

### Who is not covered by the [ESA](#)?

Most employees and employers in Ontario are covered by the [ESA](#). However, the [ESA](#) does not apply to some people and the people or organizations they work for, such as:

- employees and employers in sectors that fall under federal employment law jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- individuals working under a program approved by a college of applied arts and technology or university
- individuals working under a program that is approved by a private career college registered under the *Private Career Colleges Act, 2005*
- secondary school students who work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- people who do community participation under the *Ontario Works Act, 1997* (<https://www.ontario.ca/laws/statute/97o25a>)

- police officers (except for the lie detectors provisions of the [ESA](#), which do apply)
- inmates taking part in work or rehabilitation programs, or individuals who work as part of a sentence or order of a court
- people who hold political, judicial, religious or elected trade union offices
- major junior ice hockey players who meet certain conditions related to scholarships
- individuals who meet the definition of business consultant or information technology consultant under the [ESA](#) if certain conditions are met

For a complete listing of other individuals not governed by the [ESA](#), please check the [ESA](#) and its regulations ([https://www.ontario.ca/laws/statute/00e41?\\_ga=2.267831623.830663072.1589199544-1699692134.1480627715](https://www.ontario.ca/laws/statute/00e41?_ga=2.267831623.830663072.1589199544-1699692134.1480627715)).

### Employee misclassification

Employers are prohibited from misclassifying employees as independent contractors, interns, volunteers or any other type of worker not covered by the [ESA](#).

Learn more about employee misclassification (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/employee-status>).

### Additional resources

In addition to this guide, the Ministry of Labour, Immigration, Training and Skills Development (MLITSD) has additional resources available to assist you:

- The Employment Standards Act Policy and Interpretation Manual (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual>) is the primary reference source for the policies of the Director of Employment Standards respecting the interpretation, administration and enforcement of the [ESA](#).
- Staff at the Employment Standards Information Centre are available to answer your questions about the [ESA](#). Information is available in many languages. You can reach the information centre from Monday to Friday, 8:30 a.m. to 5 p.m. by calling:
  - Tel: 416-326-7160
  - Toll-free: 1-800-531-5551
  - Toll-free TTY: 1-866-567-8893

Additional educational resources (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/educational-resources>) are available.

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

## Recent changes

The information in this chapter is currently being updated to reflect amendments to the [ESA](#) that came into force on July 1, 2023. Consequently, some of the information below is out of date. Please check back soon for updates.

### Paid infectious disease emergency leave ended on March 31, 2023

The *Employment Standards Act, 2000* ([ESA](#)) was amended on April 29, 2021 to require employers to provide eligible employees with up to three days of paid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave#section-3>) for certain reasons related to COVID-19. The leave was retroactive to April 19, 2021 and ended on March 31, 2023. Eligible employers could have applied to be reimbursed for these payments through the Workplace Safety and Insurance Board within 120 days of the date the employer paid the employee, or by July 29, 2023 (whichever was earlier).

### Business and information technology consultants

**Effective January 1, 2023**, if specified criteria are met, the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)) will not apply to individuals who meet the definition of business consultant or information technology consultant (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/business-and-information-technology-consultants>) under the [ESA](#).

### Temporary ESA rules no longer in effect

In response to the COVID-19 pandemic, the Ontario government made a regulation (<https://www.ontario.ca/laws/regulation/r20228>) that changed certain *Employment Standards Act, 2000* ([ESA](#)) rules during the COVID-19 period. The temporary rules (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>) ended on **July 30, 2022**.

### Written policy on electronic monitoring

Employers that employ 25 or more employees on January 1 of any year must have a written policy on electronic monitoring (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/written-policy-electronic-monitoring-employees>) in place by March 1 of that year. The employer must, within the specified timeframes, provide a copy of the policy to its employees and to assignment employees who are assigned to perform work for that employer.

The policy must state whether the employer electronically monitors employees. If the employer does, the policy must include:

- a description of how, and in what circumstances, the employer may electronically monitor employees
- the purposes for which the employer may use the information obtained through electronic monitoring
- the date it was prepared and the date any changes were made to the policy

The new requirement for a written policy requires employers to be transparent by providing employees with certain information about electronic monitoring. It does not:

- establish a right for employees not to be electronically monitored by their employer
- create any new privacy rights for employees

### Reservist leave

Effective April 11, 2022, the length of time an employee must be employed before being eligible for reservist leave has been shortened, from six consecutive months to three consecutive months.

Reservists are also now eligible to take reservist leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reservist-leave>) to participate in Canadian Forces military skills training.

### Written policy on disconnecting from work

Employers that employ 25 or more employees on January 1 of any year must have a written policy on disconnecting from work (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/written-policy-disconnecting-from-work>) in place by March 1 of that year. They must provide a copy of that policy to employees. Disconnecting from work is defined in the [ESA](#).

### Non-compete agreements prohibited

Employers are prohibited (with some exceptions), from entering into a non-compete agreement (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/non-compete-agreements>) with an employee. Non-compete agreement is defined in the [ESA](#). This prohibition does not apply to non-compete agreements entered into before October 25, 2021.

### A system for licensing requirements of temporary help agencies and recruiters

On a date to be set by the Lieutenant Governor, amendments that establish a system for the licensing of temporary help agencies and recruiters will come into force.

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Educational resources

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Overview

We work to create an environment where employers and employees understand their rights and obligations under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)), including by providing educational resources to encourage compliance with the [ESA](#).

This page lists educational resources that help explain your rights and obligations as they relate to employment standards.

### Online tools and resources

**Employment standards self-service tool** (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>)

Use this tool to determine if the amounts paid to an employee meet minimum standards for the following [ESA](#) provisions, and how these employment standards apply in the workplace:

- minimum wage
- overtime
- public holiday pay
- notice of termination and termination pay
- severance pay
- wage statements
- poster requirements
- unauthorized deductions
- record keeping
- hours of work and eating periods
- timing of vacation pay

**Guide to employment standards special rules and exemptions** (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>)

Find information on job categories and employees that are not covered by certain parts of the [ESA](#) or that are subject to special rules.

## Educational videos

### Know your rights (<https://youtu.be/qVJWJLCSxII>)

An overview of the [ESA's](#) core standards and where to find additional information on each standard.

### Illegal deductions from wages (<https://www.youtube.com/watch?v=RkRrPOzBDak>)

Explains what constitutes an illegal deduction from wages. This video is available in eight languages in addition to English and French.

### What to expect during an employment standards inspection (<https://www.youtube.com/watch?v=JHInu1qcJYk&feature=youtu.be>)

Find out what to expect and how to best prepare for an employment standards inspection.

### Filing a claim (<https://youtu.be/dkEafO8aM9k>)

What to expect when filing an employment standard claim. **Please note:** Video is being updated to reflect a new log-in system. Check back soon for updates.

### Employer portal (<https://youtu.be/KjyuiUBYtlg>)

An overview of the portal features, including how to get access and use the portal. **Please note:** Video is being updated to reflect a new log-in system. Check back soon for updates.

### Tips or other gratuities (<https://www.youtube.com/watch?v=JAriN9OXYBM>)

Details your rights and obligations with respect to tips or other gratuities under the [ESA](#).

### Claimant portal (<https://youtu.be/1kzUmcMf5PY>)

An overview of the portal features, including how to sign up and use the portal. **Please note:** Video is being updated to reflect a new log-in system. Check back soon for updates.

## Information sessions

The ministry, in partnership with organizations across Ontario, provides general information sessions on the *Employment Standards Act* ([ESA](#)).

These information sessions are delivered by subject matter experts from the ministry and cover **topics such as hours of work, public holidays, leaves of absence and more.**

To sign up for a session, check the calendar below and contact the host directly. This calendar is updated as new sessions are scheduled.

Date/time	Location	Organization	Topic	Register
October 25, 2023  2 p.m. to 4 p.m.	Webinar	Ministry of Labour, Immigration, Training and Skills Development	<i>Employment Standards Act</i> Overview for Employees	Zoom Registration ( <a href="https://us06web.zoom.us/j/zoommeeting/register/tZElceCrqjkqGtCrXrwwczVm6OkhR7JNmMVG">https://us06web.zoom.us/j/zoommeeting/register/tZElceCrqjkqGtCrXrwwczVm6OkhR7JNmMVG</a> )
November 23, 2023  10 a.m. to 12 p.m.	Webinar	Ministry of Labour, Immigration, Training and Skills Development	<i>Employment Standards Act</i> Overview for Employees	Zoom Registration ( <a href="https://us06web.zoom.us/j/zoommeeting/register/tZMkcuCrrzkuHdadIEDcmZITIVLn_DqYGWlZ">https://us06web.zoom.us/j/zoommeeting/register/tZMkcuCrrzkuHdadIEDcmZITIVLn_DqYGWlZ</a> )

If you would like to request an information session about an [ESA](#) topic outside of the sessions listed in the calendar, please email [EOP@Ontario.ca](mailto:EOP@Ontario.ca) (<mailto:EOP@Ontario.ca>). Please note you must have a minimum of 10 attendees.

## Policy and interpretation manual

This manual (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual>) is for policies that the director of employment standards uses to interpret, administer and enforce the [ESA](#).

As part of continuously improving our services for the public, we are interested in exploring new ways of information sharing, education and outreach. If you have a suggestion or request, contact [EOP@ontario.ca](mailto:EOP@ontario.ca) (<mailto:EOP@ontario.ca>).

## Employee status

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Rights of employees

The *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) applies to employees. The term "employee" is defined in Section 1 (<https://www.ontario.ca/laws/statute/00e41#BK0>) of the ESA.

The ESA does not apply to independent contractors, volunteers or other individuals who are not covered (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/industries-and-jobs-not-covered-under-employment-standards-act>) under the ESA. An individual considered an employee may be entitled to rights such as:

- minimum wage
- overtime pay
- public holidays
- vacation with pay
- notice of termination or termination pay

Under the ESA, employers are not allowed to treat employees covered by the Act as if they are not employees. If an employer misclassifies an employee in this way, an employment standards officer can issue a notice of contravention that results in a penalty, a prosecution or both against the employer.

Please note, the ESA provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation.

Learn more about employee rights under the ESA (<https://www.ontario.ca/document/your-guide-employment-standards-act-0>) .

## How to tell who is an employee

The relationship between an individual and the business (or person) they are working for determines whether the individual is an employee and entitled to protections under the ESA. An individual may be considered **an employee** under the ESA **when at least some of the following describes the relationship:**

- the work the individual performs is an important part of the business
- the business decides:
  - what the individual is to do
  - how much the individual will be paid
  - where and when the work is performed
- the business provides the individual with tools, equipment or materials to perform the work
- the individual cannot subcontract their work to someone else
- the business has the right to suspend, dismiss or otherwise discipline the individual

**If you're unsure who is an employee under the ESA**, call the Ministry of Labour, Immigration, Training and Skills Development's Employment Standards Information Centre at:

- 416-326-7160
- toll-free at 1-800-531-5551
- TTY 1-866-567-8893

The Information Centre can help callers in multiple languages. They can give general information about who is an employee but cannot provide advice.

**If you're still unsure whether someone is an employee, please talk to a lawyer.**

## How to tell who is an independent contractor

An independent contractor is someone who is in business for themselves. An individual may be considered an independent contractor, and **not covered by the ESA**, when at least **some of the following applies:**

- the business can end the individual's contract for services, but cannot discipline the individual
- the individual:
  - has the opportunity to make a profit and has a risk of losing money from the work
  - determines how, when or where the work is performed
  - decides whether to subcontract some of the work

## Example

Fariah works as a customer service representative for a sales business. She must work Monday to Friday from 9:00 a.m. to 5:00 p.m. in the business's office. She uses the business's telephones and computers. She is paid \$25.50 per hour. Her employment contract does not have an end date, although her employer can fire or discipline her for poor performance. Her employment contract states that she is an independent contractor and so she does not receive overtime pay, vacation pay or public holiday pay.

Fariah thinks she might actually be an employee and may be entitled to overtime pay, vacation pay and public holiday pay. She files a claim with the Ministry of Labour, Immigration, Training and Skills Development.

An employment standards officer investigates her claim. The officer looks at the relationship between Fariah and the sales business and finds that she is an employee.

It does not matter that Fariah signed the employment contract stating that she is an independent contractor because the facts show she is an employee.

The employment standards officer orders the sales business to:

- pay Fariah the overtime pay, vacation pay and public holiday pay that she was entitled to as an employee
- orders the employer to issue wage statements and keep records

### Employee or independent contractor: Common misconceptions

An individual **may** be considered an employee even if:

- the individual and the business agree (orally or in writing) that the individual is an independent contractor. It is the relationship between the individual and the business (or person) that matters, not the label that is given to it
- the individual:
  - charges the harmonized sales tax (HST)
  - submits invoices to the business
  - uses their own vehicle for work purposes
- the business does not make statutory deductions (for example, tax, Canada Pension Plan (CPP) or Employment Insurance (EI) from the person's pay)
- another government agency (for example, the Canada Revenue Agency) determines that the individual is not an employee under their legislation

### Volunteers

Volunteers are not employees under the ESA. However, the fact that someone is called a "volunteer" does not determine whether that person is an employee and entitled to the protections of the ESA.

The main factors that determine whether someone is a volunteer or an employee are how much:

- the business (or person) benefits from the individual's services
- the individual views the arrangement as being in pursuit of a living

In family-run businesses, the question will often be whether the individual is providing services in pursuit of a living or in service of the family.

If the person is providing services to the family, rather than services in pursuit of a living, that person is more likely to be a volunteer.

The fact that no wages were paid does not necessarily mean that someone is a volunteer. The fact that there was some form of payment does not necessarily mean someone is an employee. For example, an honorarium may have been paid, rather than wages.

### Interns and trainees

The fact that someone is called an "intern" or a "trainee" does not determine whether that person is an employee and entitled to the protections of the ESA.

Someone called an intern or a trainee will generally be considered to be an employee under the ESA if they:

- receive training from an employer
- are being trained in a skill that is used by the employer's employees

However, the ESA does **not** apply to an individual who performs work that is under a program approved by a:

- college of applied arts and technology or a university
- private career college registered under the *Private Career Colleges Act, 2005* (<https://www.ontario.ca/laws/statute/05p28>)

It also does **not** apply to a secondary school student who performs work under a work experience program that is authorized by the school board that operates the student's school.

This encourages employers to provide students enrolled in a college or university program, or in a secondary school work experience program, with practical training that adds to their classroom learning.

## Business and information technology consultants exception

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Overview

Effective January 1, 2023, an individual who meets the definition of "business consultant" or "information technology consultant" (IT consultant) does not have rights under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ESA if certain conditions are met.

This exception applies to individuals who would otherwise be covered by the [ESA](#) and does not affect whether someone meets the definition of “employee” under the [ESA](#). For example, where the individual is an independent contractor, the [ESA](#) does not apply, and the consultant exception is not relevant. See the Employee Status (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/employee-status>) chapter of this guide for more information about determining who is an employee.

### Business and information technology (IT) consultants defined

Under the [ESA](#) a “business consultant” is defined as someone who provides advice or services to a business or organization on its performance, including:

- operations
- profitability
- management
- structure
- processes
- finances
- accounting
- procurements
- human resources
- environmental impacts
- marketing
- risk management
- compliance
- strategy

Under the [ESA](#) an “information technology consultant” is defined as someone who provides advice or services to a business or organization on its information technology systems, including:

- planning
- designing
- analyzing
- documenting
- configuring
- developing
- testing
- installing

It does not matter whether the business or organization the consultant provides advice or services to is the consultant’s employer, or a client of the consultant’s employer.

### Determining if the exception applies

For a business or IT consultant to be excluded from the [ESA](#) **all four** of the following conditions must be met:

1. The individual meets the definition of business consultant or information technology consultant under the [ESA](#). The [ESA](#) includes definitions of the terms business consultant and information technology consultant.
2. The consultant provides services through a corporation or sole proprietorship. The individual must be providing their services through either:
  - a corporation of which they are a director or a shareholder party to a unanimous shareholder agreement
  - a sole proprietorship if the services are provided under a business name of the sole proprietorship that is registered under the *Business Names Act* (<https://www.ontario.ca/laws/statute/90b17>) .
3. There is a written agreement containing specified terms. The employer and consultant must have an agreement in writing that sets out when, and how much, the consultant will be paid. The agreement must express the consultant’s pay as an hourly rate, which must be at least \$60 per hour. The hourly rate cannot include:
  - bonuses
  - commissions
  - expenses
  - travelling allowances
  - benefits
4. The consultant must be paid at the time, and for the amount, specified in the agreement.



## Applying the exception

If all four of the conditions are met, the exception will apply, and the individual will not have rights under the [ESA](#).

If **any** of the conditions stops being met, the exception no longer applies, and the individual may have rights under the [ESA](#).

## Industries and jobs with [ESA](#) exemptions and/or special rules

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

While most employees and employers in Ontario are covered by the *Employment Standards Act, 2000* ([ESA](#)), there are some types of occupations:

- to which the [ESA](#) does not apply,
- that are covered by the [ESA](#) generally but exempt from (not covered by) certain parts of it,
- that are covered by special rules that change how certain parts of the [ESA](#) apply.

The Ministry of Labour, Immigration, Training and Skills Development's special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) can help you understand how the [ESA](#) applies to these types of occupations.

## Mandatory poster and information sheets for employers

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Overview

In certain circumstances, employers and recruiters are legally required to give employees one or more, mandatory, Ministry of Labour, Immigration, Training and Skills Development posters and documents.

### Employment standards poster

To help employers understand their obligations and employees know their rights, the Ministry of Labour, Immigration, Training and Skills Development has prepared and published a poster, called Employment Standards in Ontario (also known as the Employment Standards Poster).

Employers must provide all employees covered under the [ESA](#) with a copy of the most recent version of the employment standards poster within 30 days of becoming an employee. Learn more about the Employment Standards Poster (<https://www.ontario.ca/page/posters-required-workplace#section-1>) .

### Get a free [ESA](#) poster

- Online from the Ministry of Labour, Immigration, Training and Skills Development (<https://www.ontario.ca/page/posters-required-workplace#employment-standards-poster>) or ServiceOntario Publications (<https://www.publications.gov.on.ca/300338>)
- Call ServiceOntario Publications at 1-800-668-9938, Monday to Friday from 8:30 a.m. to 5:00 p.m.

### Information sheets

Employers must provide employees with an information sheets if the employee:

- has agreed to work more the daily or week limits on hours of work
- is a temporary help agency assignment employee
- is a foreign national

If the employee needs an information sheet in a language other than English, the temporary help agency must give it to the employee in their preferred language, if it's available from the Ministry of Labour, Immigration, Training and Skills Development.

### About hours of work and overtime pay

An employer and an employee can agree (electronically or in writing) that the employee will work more than the daily or weekly limits on hours of work. For information on daily and weekly limits on hours of work, see the hours of work (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work>) chapter of this guide.

These agreements are valid only if, prior to making the agreement, the employer gives the employee a copy of the most recent mandatory information sheet "Information for Employees About Hours of Work and Overtime Pay" that describes the hours of work in the [ESA](#). In order to be valid, the agreement must include a statement in which the employee acknowledges receipt of the information sheet.

Download the information sheet:

- English (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-en-2021-06-07.pdf>)
- Arabic (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-arabic-2021-06-07.pdf>)
- Hindi (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-hindi-2021-06-07.pdf>)
- French (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-fr-2021-06-07.pdf>)

- Portuguese (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-portuguese-2021-06-07.pdf>)
- Punjabi (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-punjabi-2021-06-07.pdf>)
- Spanish (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-spanish-2021-06-07.pdf>)
- Tagalog (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-tagalog-2021-06-07.pdf>)
- Thai (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-thai-2021-06-07.pdf>)
- Simplified Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-sim-chinese-2021-06-07.pdf>)
- Traditional Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-work-and-overtime-pay-tra-chinese-2021-06-07.pdf>)
- Ukrainian (<https://files.ontario.ca/mltsd-work-and-overtime-pay-uk-2022-04-20.pdf>)
- Urdu (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-urdu-2021-06-07.pdf>)

#### For temporary help agency assignment employees

After a new employee is hired, temporary help agencies **must** give their employees the most recent version of the Temporary Help Agency Assignment Employees information sheet, as soon as possible. It explains the rights of assignment employees of temporary help agencies under the *Employment Standards Act*.

Download the information sheet:

- English (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-en-2021-06-07.pdf>)
- French (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-fr-2021-06-07.pdf>)
- Arabic (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-arabic-2021-06-07.pdf>)
- Hindi (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-hindi-2021-06-07.pdf>)
- Portuguese (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-portuguese-2021-06-07.pdf>)
- Punjabi (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-punjabi-2021-06-07.pdf>)
- Spanish (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-spanish-2021-06-07.pdf>)
- Tagalog (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-tagalog-2021-06-07.pdf>)
- Thai (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-thai-2021-06-07.pdf>)
- Simplified Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-sim-chinese-2021-06-07.pdf>)
- Traditional Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-temporary-help-agency-assignment-employees-tra-chinese-2021-06-07.pdf>)
- Ukrainian (<https://files.ontario.ca/mltsd-your-es-rights-tha-ees-ukrainian-2022-04-22.pdf>)
- Urdu (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-urdu-2021-06-07.pdf>)

#### For foreign nationals

As soon as a recruiter has contact with a foreign national about employment, the recruiter **must** give the foreign national copies of the most recent:

- Your Rights Under the *Employment Standards Act* information sheet
- Your Rights Under the *Employment Protection for Foreign Nationals Act* information sheet

#### About the *Employment Standards Act*

If a recruiter has contact with a foreign national about employment, the recruiter must provide the foreign national with a copy of the most recent mandatory information sheet that gives a summary of rights for foreign nationals under the *Employment Standards Act* (ESA).

Download the ESA information sheet:

- English (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-en-2021-06-07.pdf>)
- French (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-fr-2021-06-07.pdf>)
- Arabic (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-arabic-2021-06-07.pdf>)
- Hindi (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-hindi-2021-06-07.pdf>)
- Portuguese (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-portuguese-2021-06-07.pdf>)
- Punjabi (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-punjabi-2021-06-07.pdf>)
- Spanish (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-spanish-2021-06-07.pdf>)
- Tagalog (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-tagalog-2021-06-07.pdf>)
- Thai (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-thai-2021-06-07.pdf>)
- Simplified Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-sim-chinese-2021-06-07.pdf>)
- Traditional Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-your-rights-as-a-foreign-national-tra-chinese-2021-06-07.pdf>)
- Ukrainian (<https://files.ontario.ca/mltsd-your-rights-as-a-foreign-national-uk-2022-04-20.pdf>)
- Urdu (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-urdu-2021-06-07.pdf>)

#### About the *Employment Protection for Foreign Nationals Act*

If a recruiter has contact with a foreign national about employment, the recruiter must provide the foreign national with a copy of the most recent mandatory information sheet that gives a summary of rights for foreign nationals under the *Employment Protection for Foreign Nationals Act, 2009* (EPFNA).

Download the EPFNA information sheet:

- English (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-en-2021-06-07.pdf>)
- French (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-fr-2021-06-07.pdf>)
- Arabic (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-arabic-2021-06-07.pdf>)
- Hindi (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-hindi-2021-06-07.pdf>)
- Portuguese (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-portuguese-2021-06-07.pdf>)
- Punjabi (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-punjabi-2021-06-07.pdf>)
- Spanish (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-spanish-2021-06-07.pdf>)
- Tagalog (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-tagalog-2021-06-07.pdf>)
- Thai (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-thai-2021-06-07.pdf>)
- Simplified Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-sim-chinese-2021-06-07.pdf>)
- Traditional Chinese (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-tra-chinese-2021-06-07.pdf>)
- Ukrainian (<https://files.ontario.ca/mltsd-employment-protection-for-foreign-nationals-act-uk-2022-04-20.pdf>)
- Urdu (<https://files.ontario.ca/mltsd-june-2021/mltsd-employment-protection-for-foreign-nationals-act-urdu-2021-06-07.pdf>)

## Reprisals

The information in this chapter is currently being updated to reflect amendments to the [ESA](#) that came into force on July 1, 2023. Consequently, some of the information below is out of date. Please check back soon for updates.

Employers are prohibited from penalizing or threatening to penalize employees **in any way** for:

- asking the employer to comply with the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)) and its regulations
- asking questions about rights under the [ESA](#)
- filing a complaint under the [ESA](#)
- exercising or trying to exercise a right under the [ESA](#)
- giving information to an employment standards officer
- asking about the rate of pay paid to another employee to determine if an employer is providing equal pay for equal work
- disclosing their rate of pay to another employee to determine if an employer is providing equal pay for equal work
- taking, planning on taking, being eligible or becoming eligible for a pregnancy, sick, bereavement, family responsibility, declared emergency, family caregiver, family medical, critical illness, organ donor, reservist, domestic or sexual violence, crime-related child disappearance or child death leave;
- being subject to a garnishment order (i.e., a court order to have a certain amount deducted from wages to satisfy a debt)
- participating in a proceeding under the [ESA](#)
- participating in a proceeding under section 4 of the *Retail Business Holidays Act* (<https://www.ontario.ca/laws/statute/90r30>) (regarding tourism exemptions that allow retail businesses to open on holidays)

If an employee does any of the above an employer **cannot for that reason**:

- punish the employee
- reduce the employee's pay
- intimidate the employee
- suspend the employee
- fire the employee
- penalize the employee in any other way, or
- threaten any of these actions

An employer that does penalize an employee for any of these reasons can be ordered by an employment standards officer to:

- reinstate an employee to their job
- compensate an employee for any loss incurred because of a violation of the [ESA](#)

An officer may also order an employer to pay any wages that he or she finds are owing to an employee, whether or not there has been a reprisal.

### Example

Maria found out that her employer pays her less than minimum wage. She asked her employer to start paying her the minimum wage and to make up for all that she is owed for the employer's failure to pay the minimum wage in the past.

Her employer became upset and fired Maria. Maria thought that she was fired because she asked to be paid the minimum wage under the Employment Standards Act, 2000.

Maria filed a claim with the Ministry of Labour, Immigration, Training and Skills Development. An employment standards officer investigated her claim.

The employment standards officer found that Maria's employer penalized Maria for asking her employer to be paid minimum wage.

The employment standards officer ordered Maria's employer to:

- give Maria's job back to her
- pay Maria the wages she was owed for the employer's failure to pay minimum wage in the past
- pay Maria the wages and vacation pay that she would have earned between the date that she was fired and the date that she got back her job
- increase Maria's pay to minimum wage

For information on additional reprisal protections that apply in the context of Part XVIII.1 – Temporary Help Agencies, please see "Temporary help agencies (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/temporary-help-agencies>)".

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

## Payment of wages

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

Employers must establish a regular pay period and a regular pay day for employees.

An employer has to pay all the wages earned in each pay period, other than vacation pay that is accruing, no later than the employee's regular pay day for the period.

Some employees earn commissions or "bonuses" based on sales made in a pay period. In these situations, the employment contract or the practice of the employer often provide that the commission or bonus is not "due and owing" or "earned" until some future event has occurred. For example, this could be when goods or services have been delivered to the customer and full payment has been received. In such cases, the commission or bonus is not "earned" in the pay period in which the sales are actually made. Instead, in accordance with the employer's accepted or agreed-on practice, it is "earned" and paid at a later date.

There are special rules about when employees must be paid their vacation pay. Refer to "When to pay vacation pay" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation#section-2>) for more information.

Use the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to check compliance with rules on payment of wages and other employment standards entitlements.

### How wages (including vacation pay) are paid

An employer may pay wages, including vacation pay, by:

- cash;
- cheque;
- direct deposit, which includes Interac e-Transfer, into the employee's account at a bank or other financial institution.

If payment is by cash or cheque, the employee must be paid the wages at the workplace or at some other place agreed to **electronically or in writing** by the employee.

If the wages are paid by direct deposit, the employee's account must be their name. Nobody other than the employee can have access to the account unless the employee has authorized it.

### When employment ends

If an employee's employment ends, the employer must pay their outstanding wages, including vacation pay (plus any payments due to the employee because the employment has ended – see "Termination of employment" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>)) and "Severance pay" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>)) no later than:

- seven days after the employment ends;  
**or**
- on what would ordinarily have been the employee's next regular pay day;
- whichever is later.

### Wage statements

On or before an employee's pay day, the employer must provide the employee with a wage statement that sets out:

- the pay period for which the wages are being paid;
- the wage rate, if there is one;
- the gross amount of wages and – **unless** the employee is given the information in some other manner (such as in an employment contract) – how the gross wages were calculated;
- the amount and purpose of each deduction;

- any amounts that were paid in respect of room or board;
- the net amount of wages.

The wage statement must be:

- in writing;  
**or**
- provided by e-mail if the employee has access to some means of making a paper copy.

The employee must be able to keep this information separate from their cheque.

### Special statements regarding vacation pay

Employees may request (in writing) a statement containing the information in the employer's vacation records. The employer is required to provide the information no later than:

- seven days after the request,  
**or**
- the first pay day after the employee makes the request,
- whichever is later, but subject to the following:
- If the employee asks for information concerning the current stub period or vacation entitlement year, the employer is required to provide the information no later than:
  - seven days after the stub period or vacation entitlement year ends,  
**or**
  - the first pay day after the stub period or vacation entitlement year ends, whichever is later.

The employer is required to provide the information with respect to each stub year or vacation entitlement year only once.

If the employee has agreed that vacation pay will be paid on each pay cheque as it is earned, the employer does not need to keep records and provide statements about vacation pay as discussed above. Instead, the employer must report the **vacation pay** that is being paid separately from the amount of other wages on each wage statement, or provide a separate statement setting out the vacation pay that is being paid. The employer must also keep a record of that information.

### Deductions from wages

Only three kinds of deductions can be made from an employee's wages:

#### 1. Statutory deductions

Certain statutes require an employer to withhold or make deductions from an employee's wages. For example, employers are required to make deductions for income taxes, employment insurance premiums (<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>) and Canada Pension Plan contributions (<http://www.servicecanada.gc.ca/eng/services/pensions/cpp/index.shtml>) .

An employer is not permitted to deduct more than the applicable statute allows and cannot make deductions if the money is not remitted to the proper authority.

#### 2. Court orders

A court order may indicate that an employee owes money either to the employer or to someone else other than their employer, and that the employer can make a deduction from the employee's wages to pay what is owed.

The court order must specifically state that the employer may make a deduction from the employee's wages in order for the employer to make the deduction.

If an employee owes money to someone other than their employer, a court order may direct an employer to make a deduction from an employee's wages and send the money to the court clerk or other official, to be paid in turn to a third party. The employer is not allowed to make this deduction if the money is not sent to the court clerk or other official specified in the order.

The *Wages Act* (<https://www.ontario.ca/laws/statute/90w01>) limits how much the employer is allowed to deduct at any one time.

#### 3. Written authorization

An employer may also deduct money from an employee's wages if the employee has signed a **written statement** authorizing the deduction. This is called a "written authorization."

An employee's written authorization must state that the employer may make a deduction from their wages. The authorization must also:

- specify the amount of money to be deducted;  
**or**
- provide a method of calculating the specific amount of money to be deducted.

An employee's oral authorization or a general statement ("blanket authorization") that an employee owes money to the employer under certain circumstances is not sufficient to allow a deduction from wages.

Even with a signed authorization, an employer **cannot** make a deduction from wages if:

- the purpose is to cover a loss due to "faulty work." For example, "faulty work" could be a mistake in a credit card transaction, work that is spoiled or rejected,

or a situation where tools are broken or employer vehicles damaged while on employer business;

**or**

- the employer has a cash shortage or has had property lost or stolen when an employee did not have sole access and total control over the cash or property that is lost or stolen. A deduction can only be made when the employee was the **only one** to have access to the cash or property, and has provided a written authorization to the employer to make the deduction.

## Record keeping

The information in this chapter is currently being updated to reflect amendments to the [ESA](#) that came into force on July 1, 2023. Consequently, some of the information below is out of date. Please check back soon for updates.

### Overview

All employers in Ontario are required to keep written records about each person they hire.

These records must be kept by the employer, or by someone else on behalf of the employer, for a certain period. The employer must also ensure that the records are readily available for inspection.

### Contents and retention of employee records

The employer must record and retain the following information for each employee.

#### Employee's personal information

##### The employee's name, address and starting date of employment

This must be kept for three years after the employee stopped working for the employer.

##### The employee's date of birth if the employee is a student under 18

This must be kept for either three years after the employee's 18<sup>th</sup> birthday or three years after the employee stopped working for the employer, whichever happens first.

#### Hours of work and pay

##### The dates, times and hours worked by the employee

The employer must record and retain the dates and times the employee worked. The employer must also record the hours worked by the employee in each day and each week.

This must be kept for three years after the day or week of work.

If an employee receives a salary (such as, a fixed amount) for each pay period and the amount paid does not change (except if the employee works more than 44 hours in a week) the employer is only required to record:

- the employee's hours in excess of those hours in the employee's regular work week

**and**

- the number of hours in excess of eight per day (or in excess of the hours in the employee's regular work day, if it is more than eight hours)

Employers are not required to record the dates and times the employee worked or the hours of work for employees who are entitled to receive a fixed amount (salary) for each pay period where the amount paid does not change and who are **exempt** from overtime pay and the provisions for maximum hours of work.

##### The regular rate for each hour of overtime worked, where the employee has two or more regular rates of pay

The employer must record the dates, times and regular rate for each overtime hour worked, if the employee:

- has two or more regular pay rates, and
- in a work week, performed work for the employer exceeding the overtime threshold.

These records must be kept for three years.

##### Written agreements to work excess hours or average overtime pay

The employer must retain copies of every agreement made with an employee to work excess hours or to average overtime pay for three years after the last day on which work was performed under the agreement.

##### Information contained in an employee's wage statement

This must be kept for three years after the information was given to the employee

##### Vacation, public holidays and leaves

**Vacation time records**

The employer must keep records of:

- the vacation time earned since the date of hire but not taken before the start of the vacation entitlement year (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation#section-1>)
- the vacation time earned during the vacation entitlement year (or stub period (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation#section-1>))
- the vacation time taken (if any) during the vacation entitlement year (or stub period)
- the amount of vacation time earned since the date of hire but not taken as of the end of the vacation entitlement year (or stub period)

The employer must make these records by whichever is later:

- seven days after the start of the next vacation entitlement year (or first vacation entitlement year if the records relate to a stub period)
- the first payday after the next vacation entitlement year ends (or first vacation entitlement year if the records relate to a stub period)

Generally, this information must be kept for five years after the record of vacation time was made.

**Vacation pay records**

The employer must keep records of the vacation pay earned and paid to the employee during the vacation entitlement year (or stub period, if any) and how that vacation pay was calculated.

The employer must make these records by whichever is later:

- seven days after the start of the next vacation entitlement year (or first vacation entitlement year if the records relate to a stub period)
- the first payday after the next vacation entitlement year ends (or first vacation entitlement year if the records relate to a stub period)

Generally, this information must be kept for five years after the record of vacation pay was made.

**Substituted day off for public holiday**

If a day is substituted for a public holiday, the employer must provide the employee with a written statement containing:

- the public holiday which is being substituted
- the date of the substituted day
- the date on which the statement is provided to the employee

The employer must retain a record of the information contained on the statement for three years.

**Information related to leaves**

An employer must keep, or arrange for some other person to keep, all notices, certificates, correspondence and other documents given to, or produced by, the employer that relate to an employee taking a leave. This information must be kept for three years after the day on which the leave expired.

This includes all the documents relating to an employee's:

- pregnancy leave
- parental leave
- sick leave
- family responsibility leave
- bereavement leave
- declared emergency leave
- infectious disease emergency leave
- family caregiver leave
- family medical leave
- critical illness leave
- organ donor leave
- reservist leave
- domestic or sexual violence leave
- child death leave
- crime-related child disappearance leave

**Policies on disconnecting from work and electronic monitoring**

Employers must retain copies of every written policy on disconnecting from work and every written policy on electronic monitoring for three years after the policy is no longer in effect.

**Homeworker register**

Employers who employ "homeworkers" are also required to keep a register containing the name, address and the homeworker's rate of pay. This must be kept until three years after the homeworker stopped being employed by the employer.

**Temporary help agencies and clients**

In addition to complying with the general record keeping obligations discussed in this chapter, a temporary help agency must also:

- record the number of hours an assignment employee worked for each client in each day and each week
- retain a copy of any written notice provided to an assignment employee about the termination of an assignment

The client(s) of a temporary help agency must also record the number of hours the assignment employee worked for them in each day and each week.

The temporary help agency and its client(s) must retain those records for three years after the day or week to which the information relates.

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## Minimum wage

Minimum wage is the lowest wage rate an employer can pay an employee. Most employees are eligible for minimum wage, whether they are full-time, part-time, casual employees, or are paid an hourly rate, commission, piece rate, flat rate or salary. Some employees have jobs that are exempt from the minimum wage provisions of the *Employment Standards Act*. See “Industries and jobs with *Employment Standards Act* exemptions and/or special rules” (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/industries-and-jobs-esa-exemptions-and-or-special-rules>)” for information on these job categories.

Compliance with the minimum wage requirements is determined on a pay period basis.

Use the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to check compliance with rules on minimum wage and other employment standards entitlements.

Effective January 1, 2022, the special minimum wage rate that previously applied to certain “liquor servers” was eliminated.

### Minimum wage rates

Effective October 1, 2023, minimum wage rates in Ontario have increased. This increase is tied to the Ontario Consumer Price Index for 2023.

The general and specialized minimum wage rates are detailed in the chart below.

Minimum wage rate	Rates from October 1, 2023 to September 30, 2024	Rates from October 1, 2022 to September 30, 2023	Rates from January 1, 2022 to September 30, 2022	Rates from October 1, 2021 to December 31, 2021	Rates from October 1, 2020 to September 30, 2021
<b>General minimum wage</b>	\$16.55 per hour	\$15.50 per hour	\$15.00 per hour	\$14.35 per hour	\$14.25 per hour
<b>Student minimum wage</b>	\$15.60 per hour	\$14.60 per hour	\$14.10 per hour	\$13.50 per hour	\$13.40 per hour
<b>Liquor servers minimum wage</b>	Same as general minimum wage	Same as general minimum wage	Same as general minimum wage	\$12.55 per hour	\$12.45 per hour
<b>Hunting, fishing and wilderness guides minimum wage</b>	\$82.85 Rate for working less than five consecutive hours in a day	\$77.60 Rate for working less than five consecutive hours in a day	\$75.00 Rate for working less than five consecutive hours in a day	\$71.75 Rate for working less than five consecutive hours in a day	\$71.30 Rate for working less than five consecutive hours in a day
	\$165.75 Rate for working five or more hours in a day whether or not the hours are consecutive	\$155.25 Rate for working five or more hours in a day whether or not the hours are consecutive	\$150.05 Rate for working five or more hours in a day whether or not the hours are consecutive	\$143.55 Rate for working five or more hours in a day whether or not the hours are consecutive	\$142.60 Rate for working five or more hours in a day whether or not the hours are consecutive
<b>Homeworkers wage</b>	\$18.20 per hour	\$17.05 per hour	\$16.50 per hour	\$15.80 per hour	\$15.70 per hour

### General minimum wage

This rate applies to most employees.

Example for calculating general minimum wage: One week, Julia works 38 hours. She is paid on a weekly basis. The minimum wage applicable to Julia is \$16.55 per hour. Since **compliance with the minimum wage requirements is based on pay periods**, Julia must be paid at least \$628.90 (38 hours × \$16.55 per hour = \$628.90) in this work week (prior to deductions (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/payment-wages#section-4>)). (Note that eating periods (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work#section-5>) are not included when counting how



many hours an employee works in a week).

**Student minimum wage**

This rate applies to students under the age of 18 who work 28 hours a week or less when school is in session or work during a school break or summer holidays.

**Hunting and fishing guides, wilderness guides minimum wage**

The minimum wage for hunting and fishing guides and for wilderness guides is based on blocks of time instead of by the hour. They are entitled to a minimum amount for working less than five consecutive hours in a day, and a different amount for working five hours or more in a day--whether or not the hours are consecutive.

A **wilderness guide** is a person who is employed to guide, teach, or assist a person or people while they are engaged in with activities in a wilderness environment, including the following activities:

- back-country skiing and snowshoeing
- canoeing, kayaking, and rafting
- dogsledding
- hiking
- horseback riding
- rock climbing
- operating all-terrain vehicles or snowmobiles
- wildlife viewing
- survival training

A wilderness guide **does not include** a hunting or fishing guide **or** a student under 18 years of age who works 28 hours each week or less or who is employed during a school holiday.

**Homeworkers minimum wage**

Homeworkers are employees who do paid work in their own homes. For example, they may sew clothes for a clothing manufacturer, answer telephone calls for a call centre, or write software for a high-tech company. Note that students of any age (including students under the age of 18 years) who are employed as homeworkers must be paid the homeworker's minimum wage.

**Minimum wage calculation for employees who earn commission**

If an employee's pay is based completely or partly on commission, it must amount to at least the minimum wage for each hour the employee has worked.

**A typical case**

Luba works on commission and has a weekly pay period. One week, she was paid \$300.00 in commission and worked 25 hours. The minimum wage applicable to Luba is \$16.55 an hour. The minimum wage (\$16.55) multiplied by the number of hours worked in the pay period (25) is \$413.75. Luba is owed the difference between her commission pay (\$300) and the required minimum wage (\$413.75). Luba's employer owes her \$113.75.

**Note:** Where overtime hours are worked, the calculation is more complicated.

Industry-specific and job-specific exemptions and special rules may apply to some salespeople who earn commission. Please refer to the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

**How provision of room and board affects minimum wage**

For the purposes of ensuring that the applicable minimum wage has been paid to an employee, an employer can take into account the provision of room and board (meals). Room and board will only be deemed to have been paid as wages if the employee has received the meals and occupied the room.

The amounts that an employer is deemed to have paid to the employee as wages for room or board or both is set out below:

- Room (weekly)
  - private \$31.70
  - non-private \$15.85
  - non-private (domestic workers only) \$0.00
- Meals
  - each meal \$2.55
  - weekly maximum \$53.55
- Rooms and meals (weekly)
  - with private room \$85.25
  - with non-private \$69.40
  - non-private (domestic workers only) \$53.55
- Harvest workers (only) weekly housing
  - serviced housing \$99.35
  - unserviced housing \$73.30

### Employees sent home after working less than three hours: the three-hour rule

When an employee who regularly works more than three hours a day is required to report to work but works less than three hours, they must be paid whichever of the following amounts is the highest:

- three hours at their regular rate of pay, **or**
- the amount the employee earned for the time worked and wages equal to the employee's regular wage for the remainder of the three hours.

For example, if an employee who is a liquor server is paid \$16.55 an hour and works only two hours and is sent home, they are entitled to two hours at their regular rate of \$16.55 an hour for the time worked (i.e., \$16.55, the general minimum wage,  $\times 2 = \$33.10$ ) plus another hour at their regular rate (i.e. the general minimum wage of \$16.55) for a total payment of \$49.65 which is \$33.10 (for the time worked) + \$16.55 (for the three-hour rule) = \$49.65.

**Note:** The rule does not apply to:

- employees whose regular shift is three hours or less
- in some cases where the cause of the employee not being able to work at least three hours was beyond the employer's control.

**Note:** As of January 1, 2019 the three-hour rule applies to students (including students over 18 years of age) except if the student works:

- at a children's camp, unless the student is also a wilderness guide
- providing instruction to or supervising children, unless the student is also a wilderness guide
- in a recreational program run by a charity, unless the student is also a wilderness guide.

### When the minimum wage changes

The minimum wage rates are subject to annual indexation based on the rate of inflation. If that rate is changed, the new rate will be published on or before April 1 and will come into effect on October 1.

If a change to the minimum wage rate comes into effect partway through an employee's pay period, the pay period will be treated as if it were two separate pay periods, and the employee will be entitled to at least the minimum wage that applies in each of those periods.

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## Hours of work

Certain industries and job categories are exempt from the hours of work rules set out in the *Employment Standards Act, 2000* (ESA). For more information please refer to the Guide to employment standards special rules and exemptions (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

Use the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to check compliance with rules on hours of work and other employment standards entitlements.

### Daily and weekly limits on hours of work

#### Daily limit

The maximum number of hours most employees can be required to work **in a day** is **eight** hours **or** the number of hours in an established regular workday, if it is longer than eight hours. The only way the daily maximum can be exceeded is by an **electronic or written** agreement between the employee and employer.

#### Weekly limit

The maximum number of hours most employees can be required to work in a week is 48 hours. The weekly maximum can be exceeded only if there is an electronic or written agreement between the employee and employer.

An agreement between an employee and an employer to work additional daily or weekly hours, does not relieve an employer from the requirement to pay overtime pay where overtime hours are worked.

#### Work time

It is necessary to determine what counts as work time (hours of work) for the purposes of determining compliance with certain standards under the *Employment Standards Act* (ESA), including the minimum wage, overtime and hours of work (including rest entitlements) provisions.

Generally, work is considered to be performed when the employee is actually working or the employee is not working but is required to stay at the workplace. However, even if the employee is required to stay, he or she is not considered to be working during the time that he or she is entitled to take time off and does take time off for:

- an eating period;
- sleeping (provided that the employer provides the sleeping facilities and the employee is entitled to at least six uninterrupted hours off work); or
- engaging in private affairs or pursuits.

Note that an employee who is not at the workplace but is "on call" is not considered to be working unless the on-call employee is called into work.

#### Travel time

Commuting time and travel during the workday are treated differently under the ESA.

Commuting time is the time it takes an employee to get to work from home and vice-versa. This is **not** counted as work time for the purposes of the ESA.

However, there are a number of exceptions to this rule.

- If the employee takes a work vehicle home in the evening for the convenience of the employer, the work time begins when the employee leaves home in the morning and ends when he or she arrives home in the evening.
- If the employee is required to transport other staff or supplies to or from the workplace or work site, time so spent must be counted as work time.
- If the employee has a usual workplace but is required to travel to another location to perform work, the time traveling to and from that other location is counted as work time.

Time spent travelling during the course of the workday **is** considered to be work time.

### Training time

Time spent by an employee in training that is required by the employer or by law **is** counted as work time. For example, where the training is required because the employee is a new employee or where it is required as a condition of continued employment in a position, the training time is considered to be work time.

Time spent in training that is not required by the employer or by law in order for an employee to do his or her job is **not** counted as work time. For example, where an employee hoping for a promotion with the employer takes training in order to qualify for it, time spent taking the training is not considered to be work time.

### Electronic and written agreement requirements for exceeding limits on hours of work

**Please note:** Employers are **no longer required** to apply to the Director of Employment Standards for approval of excess weekly hours or overtime averaging agreements.

An employer and an employee can agree **electronically or in writing** that the employee will work more than:

- eight hours a day or their established regular workday – if it is longer than eight hours;
- 48 hours a week.

These agreements are valid only if, prior to making the agreement, the employer gives the employee the most recent information sheet for employees about hours of work and overtime pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/mandatory-poster-and-information-sheets-employers#hours-of-work>) prepared by the Director of Employment Standards that describes the hours of work and overtime pay rules in the ESA. In order to be valid, the agreement must include a statement in which the employee acknowledges receipt of the information sheet.

In most cases, an employee can cancel an agreement to work more hours by giving the employer two weeks' notice **in writing or electronically**, while an employer can cancel the agreement by providing reasonable notice. Once the agreement is revoked, an employee is not permitted to work excess daily or weekly hours.

### Hours free from work

Employees are entitled to a certain number of hours free from having to work.

#### Daily

In most cases, an employee must receive at least 11 consecutive hours off work each day. Generally, an employee and an employer cannot agree to less than 11 consecutive hours off work each day. The daily rest requirement applies even if:

- the employer and the employee have agreed in electronically or writing that the employee's hours of work will exceed the daily limit.
- the employer and employee have agreed in electronically or writing that the employee's hours of work will exceed the weekly limit.

This rule does not apply to employees who are on call and called in to work during a period when they would not normally be working.

This requirement cannot be altered by an electronic or written agreement between the employer and employee.

#### Between shifts

Employees must receive at least **eight** hours off work between shifts.

This does not apply if the total time worked on both shifts is not more than 13 hours.

An employee and employer can also agree **electronically or in writing** that the employee will receive less than eight hours off work between shifts.

#### Split shifts

An employee who works a split shift (e.g. 6:00 a.m. to 11:00 a.m. and 2:00 p.m. to 7:00 p.m.) does not have to receive eight hours off between shifts.

#### Weekly or bi-weekly

Employees must receive at least:

- **24** consecutive hours off work in each work week;  
**or**
- **48** consecutive hours off work in every period of two consecutive work weeks.

### Exceptional circumstances

In exceptional circumstances, and **only so far as is necessary to avoid serious interference with the ordinary operation of the business**, an employer can **require** an employee to work:

- more than the normal limit of eight hours a day, or the established regular work day if that is longer;
- more than the 48 hours per week (or the greater number of weekly hours agreed to);
- during a required period free from work (see “Hours free from work” (<https://www.ontario.ca/document/your-guide-employment-standards-act/hours-work#section-4>)).

Exceptional circumstances exist when:

- there is an emergency;
- something unforeseen occurs that interrupts the continued delivery of essential public services, **regardless of who delivers these services** (for example, hospital, public transit or firefighting services, even if the employee only indirectly supports these services, such as an employee of a company that is contracted to prepare and deliver patient meals to a hospital);
- something unforeseen occurs that would interrupt continuous processes;
- something unforeseen occurs that would interrupt seasonal operations (that is, operations that are limited to or dependent on specific conditions or events – such as winter ski operations);
- it is necessary to carry out urgent repair work to the employer’s plant or equipment.

Here are some examples:

- natural disasters (very extreme weather);
- major equipment failures;
- fire and floods;
- an accident or breakdown in machinery that would prevent others in the workplace from doing their jobs (for example, the shutdown of an assembly line in a manufacturing plant).

Here are examples of situations that do not fall under the exceptional circumstances exemption:

- when rush orders are being filled;
- during inventory taking;
- when an employee does not show up for work;
- when poor weather slows shipping or receiving;
- during seasonal busy periods (such as Christmas);
- during routine or scheduled maintenance.

### Eating periods and breaks

Employers are required to provide eating periods to employees, but they are not required to provide other types of breaks.

#### Eating periods

An employee must not work for more than five hours in a row without getting a 30-minute eating period (meal break) free from work. However, if the employer and employee agree, the eating period can be split into two eating periods **within** every five consecutive hours. Together these must total at least 30 minutes. This agreement can be oral or in writing.

Meal breaks are unpaid unless the employee’s employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work in order for the time to be considered a meal break.

**Note:** Meal breaks, whether paid or unpaid, are not considered hours of work, and are not counted toward overtime.

#### Coffee breaks and breaks other than eating periods

Employers are required to provide employees with eating periods as described above. Employers do not have to give employees “coffee” breaks or any other kind of break.

Employees who are required to remain at the workplace during a coffee break or breaks other than eating periods must be paid at least the minimum wage for that time. If an employee is free to leave the workplace, the employer does not have to pay for the time.

#### Night shifts

The ESA does not put restrictions on the timing of an employee’s shift other than the requirements for daily rest and rest between shifts described earlier in this chapter. In addition, the ESA does not require an employer to provide transportation to or from work if an employee works late.

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## Written policy on disconnecting from work

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### Overview

Employers that employ 25 or more employees are required to have a written policy on disconnecting from work in place for all employees. They are also required to provide a copy of the written policy to all employees.

These requirements were added to the *Employment Standards Act, 2000* (ESA) on December 2, 2021. There was a special rule that applied in the first year of the requirement. Employers that employed 25 or more employees on January 1, 2022 had until June 2, 2022 to have a written policy on disconnecting from work in place.

Beginning in **2023**, and in the years that follow, employers that employ 25 or more employees on **January 1 of any year** must have a written policy on disconnecting from work in place **before March 1 of that year**.

The term "disconnecting from work" is defined in the ESA to mean not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work.

However, the ESA does not require an employer to create a new right for employees to disconnect from work and be free from the obligation to engage in work-related communications in its policies. Employee rights under the ESA to not perform work are established through other ESA rules.

The requirement relating to written policies on disconnecting from work applies to all employees and employers covered by the ESA except the Crown, a Crown agency or an authority, board, commission or corporation whose members are all appointed by the Crown and their employees.

### Employers with 25 or more employees required to have written policy

Only employers that employ 25 or more employees in Ontario on January 1 of any year are required to have a written policy on disconnecting from work.

To determine how many employees they have, the employer must count the **number of employees it employs on January 1**.

It is the individual number of employees that are counted, and not the number of "full-time equivalents." Part-time employees and casual employees each count as one employee, regardless of the number of hours they work.

### Multiple locations

Where an employer has multiple locations, all employees employed at each location **in Ontario** must be included when determining whether the 25-employee threshold has been met.

For example, an employer owns three sandwich shops with 12 employees employed in each shop on January 1. This employer employs 36 employees. The employer must have a written policy in place for all employees on disconnecting from work, even though there are fewer than 25 employees employed at each individual shop.

### Related employers

In certain circumstances, two or more employers may be treated as one employer under the ESA (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual/part-iii-how-act-applies#section-2>) .

If two or more employers are treated as one employer, then all employees employed **in Ontario** by these two or more employers are included in the count.

### Employees to include in the count

Anyone who meets the definition of "employee" is counted, including:

- homeworkers
- probationary employees
- some trainees (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/employee-status#section-5>)
- officers of a corporation who perform work or supply services for wages
- employees on definite term or specific task contracts of **any** length
- employees who are on lay-off, so long as the employment relationship has not been terminated and/or severed
- employees who are on a leave of absence
- employees who are on strike or who are locked-out

- employees who are exempt from the application of all or part(s) of the ESA (although these employees may not be covered by the disconnecting from work provisions of the ESA, they are included in the count to determine whether the employer employs at least 25 employees)

### Temporary help agencies

Assignment employees of temporary help agencies are employees of the agency and are included in the count to determine if the **temporary help agency** has met the 25-employee threshold. Assignment employees of temporary help agencies are not included in the count to determine whether the client the employee is assigned to meets the threshold.

The agency's count must include all its assignment employees, whether active or inactive on January 1.

### When the number of employees changes throughout the calendar year

If on January 1, the employer employs fewer than 25 employees in Ontario, then the ESA does not require that it have a written policy in place on disconnecting from work. This is the case even if the employer's employee count increases at a later point in the same calendar year.

### When the employee count increases throughout the year

If an employer employs 20 employees in Ontario on January 1, 2022, the requirement to have a written policy in place on disconnecting from work does not apply. The employer hires five more employees in May 2022. This employer continues to **not** be subject to the requirements to have a written policy in place for 2022.

However, if all 25 employees remain employed by that employer on January 1, 2023, the employer would meet the 25-employee threshold on January 1, 2023 and **will** be required to have a written policy on disconnecting from work in place for all employees before March 1, 2023.

### When the employee count decreases throughout the year

On the other hand, if an employer employs 25 employees or more in Ontario on January 1 (and as a result the requirement does apply) and their employee count decreases later in the same calendar year, the employer is still obligated to have a written policy in place on disconnecting from work. This is the case until the assessment of the "25-employee threshold" is done again the following January. If the employer employs fewer than 25 employees the following January 1, the obligation to have a written policy in place does not apply for that calendar year.

### Copy of the written policy

An employer that is required to have a written policy in place must also provide a copy of the written policy to its employees **within 30 calendar days** of:

- the policy being prepared
- the policy being changed (if an existing policy is changed)

Once an employer has the written policy in place, there is no requirement to develop a new policy by March 1 of each year. However, the employer must provide a copy of the written policy to any new employees within 30 calendar days of the new employee being hired.

Once an employer has provided the policy to its employees, there is no requirement to provide a copy to those employees again, unless changes have been made.

The employer may provide the policy to employees as:

- a printed copy
- an attachment to an email if the employee can print a copy
- a link to the document online if the employee has a reasonable opportunity to access the document and a printer (and knows how to use the computer and printer)

### Written policy requirements

The employer's written policy must be on "disconnecting from work," which is defined to mean not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work. As the list of work-related communications is inclusive, and not exhaustive, other types of work-related communications could also fall under this definition.

The employer must include the date the policy was prepared and the date any changes were made to the policy. The date must include the day, month and year. Other than these requirements, the ESA does not specify the information the employer must include in the policy nor does it specify that the policy must be a particular length. **The employer determines the content of the policy itself.**

The ESA does not specify that the policy provide a right for the employee to disconnect from work and be free from the obligation to engage in work-related communications.

Employee rights under the ESA to not perform work are established through other ESA rules, including:

- hours of work and eating periods (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work>)
- vacation with pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>)

- public holidays (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays/>)
- the rules in Ontario Regulation 285/01 that establish when work is “deemed” (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual/ontario-regulation-28501-when-worked-deemed-be-performed-exemptions-and-special-rules#section-1>) “to be performed

While it is not required by the ESA, in some cases, an employer may include a provision in their written policy on disconnecting from work that gives an employee the right not to perform work when the rules in the ESA would otherwise permit work to be performed. This provision may amount to a greater right or benefit (<https://www.ontario.ca/document/your-guide-employment-standards-act-0#section-3>) and may be enforceable under the ESA. In circumstances where the provision does not amount to a greater right or benefit, an employer may wish to seek legal advice about whether the provision would create any entitlements outside of the ESA (for example, contractual or common law entitlements).

### Written policy must apply to all employees

The written policy on disconnecting from work must apply to **all** of the employer’s employees in Ontario. This includes management, executives and shareholders if they are employees under the ESA. The employer would not be in compliance with the requirements of the ESA if its policy only applied to some of its employees (for example, if the policy applied only to the employer’s sales staff but not its managerial staff).

This doesn’t mean that the employer is required to have the **same** policy for all its employees. The employer can have a single policy that applies to all employees, or its policy can contain different policies (either in a single document or in multiple documents) for different groups of employees. For example, a retail employer may decide to have one policy that applies to its office staff and a different policy that applies to its in-store sales staff.

The written policy on disconnecting from work may be a stand-alone document, or it may be part of another document (for example, a comprehensive workplace human resource policies and procedures manual).

### Examples of what a “disconnecting from work” policy may address

- The employer’s expectations, if any, of employees to read or reply to work-related emails or answer work-related phone calls after their shift is over.
- The policy may set out employer expectations for different situations. For example, the policy may contain different expectations depending on:
  - the time of day of the communication
  - the subject matter of the communication
  - who is contacting the employee (for example the client, supervisor, colleague)
- The employer’s requirements for employees turning on out-of-office notifications and/or changing their voicemail messages, when they are not scheduled to work, to communicate that they will not be responding until the next scheduled work day.

### Employer checklist for a written policy on disconnecting from work

Here’s what employers need to ensure when creating a written policy on disconnecting from work.

- Determine whether you are required to have a written policy in place
- If you are subject to the requirement, develop a written policy and ensure the policy:
  - is about disconnecting from work, as defined in the ESA
  - includes the date it was prepared and, if applicable, the date any changes were made to the policy (the date must include the day, month and year)
  - applies to all of your employees (note that the content of the policy does not need to be the same for all groups of employees, though all employees must be covered by the policy)
  - is in place within the specified timeframe (for 2022, the policy was required to be in place by June 2, 2022. For all other years, the policy must be in place before March 1 of that year).
- Provide a copy of the written policy to all of your employees:
  - in the appropriate format
  - within 30 calendar days of the policy being prepared or changed (if an existing policy is changed).

Note that a new employee must be provided with a copy of the written policy within 30 days of being hired.

- Retain a copy of every written policy required by the ESA:
  - for three years after the policy is no longer in effect

### If the policy is not followed

If the employer’s written policy on disconnecting from work creates a greater right or benefit than an employment standard under the ESA, that greater right or benefit may be enforceable under the ESA. **If the employer’s policy on disconnecting from work does not create a greater right or benefit, the policy is not enforceable under the ESA.**

For example, an employer has a policy in place stating that employees are not required to answer work-related telephone calls after their shift is completed. However, the employer does not honour the policy and requires an employee to continue to answer work-related calls after their shift is over. Unless the employer's policy amounts to a greater right or benefit under the [ESA](#), no enforcement action can be taken by an employment standards officer relating to the new requirement for the employer to have a written policy in place.

However, other [ESA](#) rules may apply. Employers continue to have the obligation to follow other rules under the [ESA](#) including hours of work and eating periods (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work>), vacation with pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>) and public holiday (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays/>) rules (unless exemptions or special rules (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) apply).

For example, if an employee performs work — such as reviewing or drafting emails — the time the employee spends doing those activities is generally considered to be “working time” under the [ESA](#). This is the case even if the employee does so from home after the employee's day shift is over and even if the employer has a “disconnecting from work” policy in place stating that an employee is not to work from home.

### Employer record-keeping requirements

Employers must retain a copy of every written policy on disconnecting from work that was required by the [ESA](#) for three years after the policy is no longer in effect.

## Written policy on electronic monitoring of employees

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

### Overview

Employers that employ 25 or more employees on January 1 of any year are required to have a written policy on the electronic monitoring of employees in place.

The policy must state whether or not the employer electronically monitors employees. If the employer does, the policy must include:

- a description of how and in what circumstances the employer may electronically monitor employees
- the purposes for which the information obtained through electronic monitoring may be used by the employer
- the date the policy was prepared (the date must include the day, month and year)
- the date any changes were made to the policy

An employer must, within the specified timeframes, provide a copy of the written policy to all of its employees and to all assignment employees who are assigned to perform work for that employer.

These requirements were added to the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)) on April 11, 2022. There was a special rule that applied in the first year of the requirement. Employers that employed 25 or more employees on January 1, 2022 had until October 11, 2022 to have a written policy on the electronic monitoring of employees in place.

Beginning in **2023**, and in the years that follow, employers that employ 25 or more employees on **January 1 of any year** must have a written policy on the electronic monitoring of employees in place **before March 1 of that year**.

The [ESA](#) requirements:

- do not establish a right for employees not to be electronically monitored by their employer
- do not create any new privacy rights for employees

The [ESA](#) requirements are limited to requiring that certain employers be transparent about whether they electronically monitor employees. If they do, the employer must be transparent by:

- describing how and in what circumstances that monitoring occurs
- setting out the purposes for which the information obtained through the electronic monitoring may be used

The requirements relating to written policies on the electronic monitoring of employees apply to all employees and employers covered by the [ESA](#) except the Crown, a Crown agency or an authority, board, commission or corporation whose members are all appointed by the Crown and their employees.

### Employers with 25 or more employees required to have written policy

Employers are only required to have a written policy on the electronic monitoring of employees if they employ 25 or more employees in Ontario on January 1 of any year.



To determine how many employees they have, the employer must count the **number of employees it employs on January 1**.

The employer must count the individual number of employees, not the number of "full-time equivalents." Part-time employees and casual employees each count as one employee, regardless of the number of hours they work.

### Multiple locations

Where an employer has multiple locations, all employees employed at each location **in Ontario** must be included when determining whether the 25 employee threshold has been met.

For example, an employer owns three wine shops with 12 employees employed in each shop on January 1. This employer employs 36 employees. The employer must have a written policy in place for all employees on the electronic monitoring of employees, even though there are fewer than 25 employees employed at each individual shop.

### Related employers

In certain circumstances, two or more employers may be treated as one employer under the **ESA** (<https://www.ontario.ca/document/employment-standard-act-policy-and-interpretation-manual/part-iii-how-act-applies#section-2>).

If two or more employers are treated as one employer, then all employees employed **in Ontario** by these two or more employers are included in the count.

### Employees to include in the count

Anyone who meets the definition of "employee" is counted, including:

- homeworkers
- probationary employees
- some trainees (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/employee-status#section-5>)
- officers of a corporation who perform work or supply services for wages
- employees on definite term or specific task contracts of **any** length
- employees who are on lay-off, so long as the employment relationship has not been terminated and/or severed
- employees who are on a leave of absence
- employees who are on strike or who are locked-out
- employees who are exempt from the application of all or part(s) of the **ESA** (although these employees may not be covered by the electronic monitoring provisions of the **ESA**, they are included in the count to determine whether the employer employs at least 25 employees)

### Temporary help agencies

Assignment employees of temporary help agencies are **employees of the agency** and are included in the count to determine if the **temporary help agency** has met the 25 employee threshold. Assignment employees of temporary help agencies are not included in the count to determine whether the **client** the employee is assigned to perform work for meets the threshold.

The agency's count must include all of its assignment employees, whether active or inactive on January 1.

### When the number of employees changes throughout the calendar year

If, on January 1, an employer employs fewer than 25 employees in Ontario, then the **ESA** does not require that the employer have a policy in place on the electronic monitoring of employees. This is the case even if the employer's employee count increases at a later point in the same calendar year.

### When the employee count increases throughout the year

If an employer employs 20 employees in Ontario on January 1, 2022, that employer is not required to have a policy in place on the electronic monitoring of employees. Say the employer then hires five more employees in May 2022, this employer continues to **not** be subject to the requirements to have a written policy in place for 2022.

However, if all 25 employees remain employed by that employer on January 1, 2023, the employer would meet the 25 employee threshold on January 1, 2023 and **will** be required to have a written policy on the electronic monitoring of employees in place for all employees before March 1, 2023.

### When the employee count decreases throughout the year

If an employer employs 25 employees or more in Ontario on January 1, the requirement to have a policy on the electronic monitoring of employees applies. If the employee count decreases later in the same calendar year, the employer is still required to have a written policy in place. This is the case until the assessment of the "25 employee threshold" is done again the following January. If the employer employs fewer than 25 employees the following January 1, they do not need to have a written policy in place for that calendar year.

### Employees covered by the policy

The policy must apply to **all** of the employer's employees in Ontario to whom the provision applies. This includes management, executives and shareholders if they are employees under the ESA. If the policy only applies to some of their employees, the employer is not complying with the ESA requirements (for example, if the policy applied only to the employer's sales staff but not its managerial staff).

This doesn't mean that the employer is required to have the **same** policy for all its employees. The employer can have a single policy that applies to all employees, or its policy can contain different policies (either in a single document or in multiple documents) for different groups of employees. For example, a retail employer may decide to have one policy that applies to its office staff and a different policy that applies to its in-store sales staff.

### Assignment employees

Where the employer is required to have a written policy in place, the policy must also apply to **all** assignment employees who are assigned to perform work for that employer in Ontario. Assignment employees do not need to be addressed separately in the policy, but it must apply to them. For example, if an assignment employee is assigned to perform work for an employer in a role that is not otherwise addressed in the employer's written policy, the employer would need to amend the policy to address the work being done by the assignment employee.

### Policy requirements

An employer's written policy on electronic monitoring of employees may be a stand-alone document, or it may be part of another document (for example a comprehensive workplace human resource policies and procedures manual).

The employer's written policy must contain the following information:

#### 1. A statement as to whether the employer engages in electronic monitoring of employees.

"Electronic monitoring" includes all forms of employee and assignment employee monitoring that is done electronically. Some examples include where an employer:

- uses GPS to track the movement of an employee's delivery vehicle
- uses an electronic sensor to track how quickly employees scan items at a grocery store check-out
- tracks the websites that employees visit during working hours

What is required to be captured in the employer's policy is not limited to:

- devices or other electronic equipment issued by the employer
- electronic monitoring that happens while employees are at the workplace

For example, if the employer is electronically monitoring the employee through the employee's own personal computer that is used for work purposes, the policy must capture that. It applies equally where the employee works from home, at the employer's workplace, or under a hybrid "workplace/home" model.

If the employer does not electronically monitor employees, the policy must specifically state this.

#### 2. Where the employer does electronically monitor employees, the policy must also contain the following information:

- A description of how the employer may electronically monitor employees.
- A description of the circumstances in which the employer may electronically monitor employees.
- The purposes for which information obtained through electronic monitoring may be used by the employer.

#### Example: An employer tracks an employee's delivery vehicle using GPS:

The policy would include:

- A statement that the employer electronically monitors its employees.
- A description of how the employer may electronically monitor employees. For example, the employer monitors the employee's movement by tracking the employee's delivery vehicle through GPS.
- A description of the circumstances in which the employer may electronically monitor employees. For example, the employer monitors the employee's movement in the vehicle for the entire workday, every workday.
- The purposes for which information obtained through electronic monitoring may be used by the employer. For example, the employer uses the information obtained to assist in setting routes for employee safety, to ensure employees do not deviate from their delivery route during their shift, and to discipline employees who are untruthful about their whereabouts during working hours.

#### Example: An employer monitors its employees' emails and online chats

The policy would include:

- A statement that the employer electronically monitors its employees.
- A description of how the employer may electronically monitor employees. For example, the employer monitors employee emails and online chats through a software program created specifically for this purpose.
- A description of the circumstances in which the employer may electronically monitor employees. For example, the employer may monitor at any time employee emails and online chats.
- The purposes for which information obtained through electronic monitoring may be used by the employer. For example, the employer uses the information obtained through electronic monitoring of employee emails and online chats to evaluate employee performance, to ensure the appropriate use of employer

equipment, and to ensure work is being performed during working hours.

### 3. The date the policy was prepared and the date any changes were made to the policy.

- The date must include the day, month and year.

The ESA does not require the employer to provide employees with a right to privacy. The ESA requirements give some employees the right to be provided with specified information about electronic monitoring by their employer.

## Employer record-keeping requirements

Employers must retain a copy of every written policy on electronic monitoring that was required by the ESA for three years after the policy is no longer in effect.

## Copy of the policy

### Deadline — providing a copy to the employer's employees

An employer, including a temporary help agency, that is required to have a written policy in place must provide a copy of the written policy to its employees **within 30 calendar days** of:

- the day the employer is required to have the policy in place
- the policy being changed (if an existing policy is changed)

Once an employer has the written policy in place, there is no requirement to develop a new policy by March 1 of each year. However, the employer must provide a copy of the written policy to any **new employees within 30 calendar days** of the **later** of these two events:

- the day the employer is required to have the policy in place
- the day the individual becomes an employee of the employer

For example, an employer is required to have a written policy in place on electronic monitoring of employees on October 11, 2022.

If an individual becomes an employee of the employer on May 9, 2022, then the employer does not have to provide a written copy of the policy until November 10, 2022 (30 days after the employer was required to have a written policy in place). However, if an individual becomes an employee of the employer on December 6, 2022, then the employer must provide a copy of the written policy to the employee within 30 days of December 6, 2022.

### Deadline — providing a copy to assignment employees performing work for a client employer

An employer that is required to have a written policy in place must provide a copy of the written policy to any assignment employees who are assigned to performed work for it by **the later** of these two timelines:

- within 24 hours of the start of the assignment
- within 30 calendar days from the day the employer is required to have a policy in place

For example, an employer is required to have a written policy in place on electronic monitoring of employees by October 11, 2022.

If an assignment employee is assigned to perform work for that employer on May 9, 2022, then that employer has until November 10, 2022 (30 days after the employer was required to have a written policy in place) to provide the assignment employee with a written copy of the policy.

However, if an assignment employee is assigned to perform work for that employer on December 6, 2022, then that employer must provide the written policy to the assignment employee within 24 hours of the start of the assignment.

Once an employer has provided the policy to its employees, there is no requirement to provide a copy to those employees again, unless changes have been made.

## How to provide the written policy

The employer may provide the policy to employees as:

- a printed copy
- an attachment to an email if the employee can print a copy

- a link to the document online if the employee has a reasonable opportunity to access the document and a printer (and knows how to use the computer and printer)

### Limitations on complaints and claim investigations

Employees are limited in what they can file a complaint about with respect to the employer's written policy on electronic monitoring.

A complaint can only be made to the ministry, or be investigated by an employment standards officer, where there is an alleged contravention of the employer's obligation to provide a copy of the written policy within the required timeframe to its employees or to assignment employees who are assigned to perform work for it. A complaint alleging any other contravention of the policy on electronic monitoring of employee provisions cannot be made, or be investigated by, an employment standards officer.

Although there are limitations on what an employee can file a complaint about or have investigated by the ministry, an employer may wish to seek legal advice about whether its policy would create any entitlements that an employee could enforce outside of the [ESA](#).

### Using information collected through electronic monitoring

The [ESA's](#) rules about the employer's written policy on electronic monitoring do not affect or limit an employer's ability to use information obtained through the electronic monitoring of its employees in any way it sees fit.

Under the [ESA](#), the employer is required to state in its written policy the purposes for which it may use information obtained through electronic monitoring. However, the [ESA](#) does not limit the employer's use of the information to the stated purposes.

For example, an employer may create a policy setting out that the information it collects through the electronic monitoring of employee internet usage will be used by the employer only for the purpose of assessing overall employee productivity. If, however, the employer discovers through its electronic monitoring that an employee has been accessing inappropriate websites contrary to company IT policies, the employer can use that information for any reason. The [ESA](#) does not limit the employer's use of the information to what was written in the policy.

The employer can, for example, rely on that information to discipline or terminate the employee. It could also use that information to support its position that the employee was guilty of wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer and is therefore exempt from the [ESA's](#) termination and severance entitlements.

Similarly, nothing in the [ESA](#) limits the use of information the employer obtained through the electronic monitoring of an assignment employee who is assigned to its workplace.

### Employer checklist for creating a policy

The following is a checklist employers may use when creating a written policy on electronic monitoring of employees:

- Determine whether you are required to have a written policy in place.
- If you are subject to the requirement, develop a written policy and ensure the policy:
  - contains all required information
  - applies to all of your employees and any assignment employees that perform work for you (the content of the policy does not need to be the same for all groups of employees, though all employees must be covered by the policy)
  - is in place within the specified timeframe (for 2022, the policy was required to be in place by October 11, 2022. For all other years, the policy must be in place before March 1 of that year)
- Provide a copy of the written policy to all of your employees and any assignment employees assigned to perform work for you:
  - in the appropriate format
  - within the required timeframe
- Retain a copy of every written policy required by the [ESA](#) for three years after the policy is no longer in effect.

## Overtime pay

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

Interactive tools are available online; please use the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to check compliance with overtime rules and employment standards entitlements.

For most employees, whether they work full-time, part-time, are students, temporary help agency assignment employees, or casual workers, overtime begins after they have worked 44 hours in a work week. Their hours after 44 must be paid at the overtime pay rate.

### Overtime pay

Overtime pay is 1½ times the employee's regular rate of pay. (This is often called "time and a half.")

For example, an employee who has a regular rate of \$17.00 an hour will have an overtime rate of \$25.50 an hour ( $17 \times 1.5 = 25.50$ ). The employee must therefore be paid at a rate of \$25.50 an hour for every hour worked in excess of 44 in a week.

**No overtime on a daily basis**

Unless a contract of employment or a collective agreement states otherwise, an employee does not earn overtime pay on a daily basis by working more than a set number of hours a day. Overtime is calculated only:

- on a weekly basis
- **or**
- over a longer period under an averaging agreement

**Exceptions**

Many employees have jobs that are exempt from the overtime provisions of the *Employment Standards Act, 2000* (ESA). Others work in jobs where the overtime threshold is more than 44 hours in a work week. For more information, please see the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>).

**Managers and supervisors**

Managers and supervisors do not qualify for overtime if the work they do is managerial or supervisory. Even if they perform other kinds of tasks that are not managerial or supervisory, they are not entitled to get overtime pay if these tasks are performed only on an irregular or exceptional basis.

**Different kinds of work ("50 per cent rule")**

Some employees have jobs where they are required to do more than one kind of work. Some of the work might be specifically exempt from overtime pay, while other parts might be covered. If at least 50 per cent of the hours the employee works is in a job category that is covered, the employee qualifies for overtime pay.

**When an employee does two kinds of work**

Gerard works for a taxi company both as a cab driver and as a dispatcher in the office. Working as a cab driver he is exempt from overtime pay but working in the office as a dispatcher he is not.

During a work week, Gerard worked 26 hours in the office and 24 hours driving a cab, for a total of 50 hours. This is six hours over the overtime threshold of 44 hours.

Because Gerard spent at least 50 per cent of his working hours that week as a dispatcher (a job category that is covered), he qualifies for six hours of overtime pay.

**If the employee has more than one regular pay rate for overtime work performed**

An employee who is paid on an hourly basis may perform, in one work week, two types of work, each of which attracts a different hourly rate. In that case, the employee has two regular rates and, as a result, the overtime rate for each hour of overtime is based on the regular rate that applies to the work performed in that hour. See example below.

An employee works as a punch press operator earning \$17.00/hour and also as a shipping logistics coordinator earning \$20.00/hour for the same employer. The employee's overtime threshold is 44 hours and the overtime rate is 1.5 times the regular rate.

In one work week, the employee worked four hours of overtime. The 45<sup>th</sup> and 46<sup>th</sup> hours were worked as punch press operator and the 47<sup>th</sup> and 48<sup>th</sup> hours were worked as a shipping logistics coordinator. This employee's overtime pay entitlement would be calculated as follows:

45<sup>th</sup> hour overtime rate is  $\$17.00 \times 1.5 = \$25.50$  per hour

46<sup>th</sup> hour overtime rate is  $\$17.00 \times 1.5 = \$25.50$  per hour

47<sup>th</sup> hour overtime rate is  $\$20.00 \times 1.5 = \$30.00$  per hour

48<sup>th</sup> hour overtime rate is  $\$20.00 \times 1.5 = \$30.00$  per hour

The total overtime pay due to the employee is \$111.00 [ $\$25.50 + \$25.50 + \$30.00 + \$30.00$ ]

**Agreements for paid time off instead of overtime pay**

An employee and an employer can agree electronically or in writing that the employee will receive paid time off work instead of overtime pay. This is sometimes called "banked" time or "time off in lieu."

If an employee has agreed to bank overtime hours, they must be given 1½ hours of paid time off work, at the applicable regular rate, for each hour of overtime worked.

Paid time off must be taken within three months of the week in which the overtime was earned or, if the employee agrees electronically or in writing, it can be taken within 12 months.

If an employee's job ends before they have taken the paid time off, the employee must receive overtime pay for the overtime hours that were worked. This must be paid not later than the later of:

- seven days after the date the employment ended and
- on what would have been the employee's next pay day

**Calculating overtime pay**

The manner in which overtime pay is calculated varies depending on whether the employee is paid on an hourly basis, on a fixed salary, or has a fluctuating salary. Overtime pay calculations may also be affected by public holidays. The following are several examples of how overtime pay is calculated in different cases.

### Hourly paid employees

#### Example

Ravi's regular pay is \$17.00 an hour. His overtime rate ( $1\frac{1}{2}$  X regular hourly pay) is \$25.50 an hour. This week Ravi worked the following hours:

- Sunday: 0 hours
- Monday: 8 hours
- Tuesday: 12 hours
- Wednesday: 9 hours
- Thursday: 8 hours
- Friday: 8 hours
- Saturday: 8 hours
- **Total: 53 hours**

Any hours worked over 44 in a week are overtime hours. Ravi worked nine hours of overtime ( $53 - 44 = 9$ ).

Ravi's pay for the week is calculated as follows:

- Regular pay:  $44 \times \$17.00 = \$748.00$
- Overtime pay:  $9 \times \$25.50 = \$229.50$
- **Total pay:  $\$748.00 + \$229.50 = \$977.50$**

Result: Ravi is entitled to total pay of \$977.50.

### Employees on a fixed salary

If an employee's hours of work change from day to day but their weekly pay stays the same, the employee is paid a fixed salary.

A fixed salary compensates an employee for all non-overtime hours up to and including 44 hours a week. After 44 hours, the employee is entitled to overtime pay.

#### Example

Sharon's salary is \$750.00 a week. She worked 50 hours this work week.

1. First, Sharon's regular (non-overtime) hourly rate of pay is calculated:  
 $\$750.00 / 44 = \$17.05$   
Sharon was paid a regular rate of \$17.05 for each hour she worked up to and including 44 hours.
2. Next, her overtime rate is calculated:  
 $\$17.05 \text{ regular rate} \times 1\frac{1}{2} = \$25.58$ . Her overtime rate is \$25.58.
3. Then the amount of overtime she worked is calculated:  
 $50 \text{ hours} - 44 \text{ hours} = 6 \text{ hours of overtime}$
4. Her overtime pay is calculated:  
 $6 \text{ hours} \times \$25.58 \text{ an hour} = \$153.48$   
Sharon is entitled to \$153.48 in overtime pay.
5. Finally, Sharon's regular salary and overtime pay are added together:  
Regular salary: \$750.00  
Overtime pay: \$153.48  
**Total pay:  $\$750.00 + \$153.48 = \$903.48$**

Result: Sharon is entitled to total pay of \$903.48.

### Employees on a fluctuating salary

If an employee has set hours and a salary that is adjusted for variations in the set hours, the employee's salary fluctuates.

#### Example

Suppose Ben is hired on the understanding that he will be paid \$750.00 a week for a regular work week of 40 hours. His salary is adjusted for weeks in which he works either more hours or fewer hours. In this case, Ben is actually receiving a wage based on the number of hours he works.

Ben's salary is \$750.00 in a regular work week of 40 hours (where the salary is not adjusted). This week, he worked 50 hours.

1. First Ben's regular (non-overtime) hourly rate of pay is calculated:  
 $\$750.00 \div 40 = \$18.75$   
Ben's regular rate of pay is \$18.75 an hour.
2. Next his regular (non-overtime) earnings are calculated. He is entitled to \$18.75 an hour for all hours up to and including 44 hours a week:  
 $\$18.75 \text{ regular rate} \times 44 \text{ hours} = \$825.00$

Ben's regular earnings for the week are \$825.00.

3. Then his hourly overtime rate is calculated:

\$18.75 regular rate X 1½ = \$28.13

His overtime rate is \$28.13.

4. The amount of overtime Ben worked is calculated:

50 hours - 44 hours = 6 hours of overtime.

5. His overtime pay is calculated:

6 hours X \$28.13 an hour = \$168.78

Ben is entitled to \$168.78 in overtime pay.

6. Finally, Ben's regular pay and overtime pay are added together:

Regular pay: \$825.00

Overtime pay: \$168.78

**Total pay: \$825.00 + \$168.78 = \$993.78**

Result: Ben is entitled to total pay of \$993.78

### Calculating overtime when there is a public holiday

#### Example: When an employee's work week includes a public holiday

Antonio's regular pay is \$17.00 an hour. Antonio worked overtime in a week with a public holiday, but he did not work on the holiday. Antonio's public holiday pay for the holiday is \$136.00 (See "Public holiday pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays#section-4>)" for information on how to calculate public holiday pay). This week Antonio worked the following hours:

- Sunday: 0 hours
- Monday (public holiday): 0 hours
- Tuesday: 12 hours
- Wednesday: 9 hours
- Thursday: 8 hours
- Friday: 8 hours
- Saturday: 8 hours
- **Total: 45 hours**

Antonio worked one hour of overtime (45 – 44 = 1).

Antonio's pay for the week is calculated as follows:

- Regular pay: 44 X \$17.00 = \$748.00
- Overtime pay: 1 X \$25.50 = \$25.50
- Public holiday pay: \$136.00
- **Total pay: \$748.00 + \$25.50 + \$136.00 = \$909.50**

Result: Antonio is entitled to total pay of \$909.50.

#### Example: When an employee works on a public holiday and gets premium pay

Etsuko's regular hourly pay is \$17.00/hour. Etsuko and her employer agreed in writing that she would work on the public holiday and she would be paid premium pay for the hours she worked on the holiday plus public holiday pay.

During the week of the public holiday, Etsuko worked the following hours:

- Sunday: 0 hours
- Monday (public holiday): 9 hours
- Tuesday: 9 hours
- Wednesday: 9 hours
- Thursday: 9 hours
- Friday: 9 hours
- Saturday: 9 hours
- **Total: 54 hours**

Since Etsuko received premium pay for working nine hours on the public holiday, these hours are not included when the overtime pay is calculated:

54 hours – 9 hours at premium pay = 45 hours = 1 hour of overtime pay

Etsuko's pay for the week is calculated as follows:

- Regular pay:  $44 \times \$17.00 = \$748$
- Overtime pay:  $1 \times \$25.50 = \$25.50$
- Premium pay: \$229.50
- Public holiday pay: \$153.00
- **Total pay:  $\$748.00 + \$25.50 + \$229.50 + \$153.00 = \$1156.00$**

Result: Etsuko is entitled to total pay of \$1156.00.

#### Example: When an employee works on a public holiday and gets a substitute day off

Kathleen's regular hourly pay is \$17.00. Kathleen and her employer agreed electronically that she would work on the public holiday and she would receive a substitute day off work with public holiday pay plus her regular rate for hours worked on the public holiday (rather than be paid public holiday pay plus premium pay for the hours she worked on the holiday).

During the week of the public holiday, Kathleen worked the following hours:

- Sunday: 0 hours
- Monday: 9 hours
- Tuesday: 9 hours
- Wednesday: 8 hours
- Thursday: 9 hours
- Friday: 9 hours
- Saturday: 6 hours
- **Total: 50 hours**

Since Kathleen agreed not to receive premium pay for the nine hours she worked on the public holiday, these hours are counted when the overtime pay is calculated:

$50 \text{ hours} - 44 \text{ hours} = 6 \text{ hours of overtime}$

Kathleen's pay for the week is calculated as follows:

- Regular pay:  $44 \times \$17.00 = \$748.00$
- Overtime pay:  $6 \times \$25.50 = \$153.00$
- **Total pay:  $\$748.00 + \$153.00 = \$901.00$**

Result: Kathleen is entitled to total pay of \$901.00 and a substitute day off work.

Kathleen will also get a substitute day off work with public holiday pay within three months of the public holiday or, if Kathleen and her employer agree electronically or in writing, within twelve months of the public holiday.

#### Employees who are paid wages that are not based on the hours worked

Some employees' wages are not based on the number of hours they work in a week but instead are based on the number of pieces they complete and/or by commission. These employees must be paid at least the minimum wage for all the hours they work. They are also usually entitled to overtime if they work more than 44 hours a week.

#### Example: Calculating the overtime for piecework or straight commission employees

Becka is paid on a piecework basis. Rhian earns straight commissions. They both worked 48 hours this work week and each received a total of \$750.00.

1. First the regular (non-overtime) hourly rate of pay is calculated:  
 $\$750.00 \div 44 \text{ hours} = \$17.05$   
Their regular hourly rate of pay is \$17.05.
2. Then the hourly overtime rate is calculated:  
 $\$17.05 \text{ regular rate} \times 1\frac{1}{2} = \$25.58$   
Their overtime rate is \$25.58.
3. Next, the amount of overtime worked is calculated:  
 $48 \text{ hours} - 44 \text{ hours} = 4 \text{ hours of overtime}.$
4. The overtime pay is calculated:  
 $4 \text{ hours} \times \$25.58 \text{ an hour} = \$102.32$   
They are each entitled to \$102.32 in overtime pay.
5. Finally, the regular pay and overtime pay are added together:
  - Regular pay: \$750.00
  - Overtime pay: \$102.32
  - **Total pay:  $\$750.00 + \$102.32 = \$852.32$**



Result: Becka and Rhian are each entitled to total pay of \$852.32.

#### Example: Calculating the overtime for hourly rate plus commission employees

Justine is paid \$17.00 an hour plus commissions. In one work week, she worked 50 hours and was paid \$850.00 in hourly wages plus \$200.00 in commissions.

1. First Justine's regular rate is calculated:  
 $\$850.00 + \$200.00 = \$1050.00$  total wages paid  
 $\$1050 / 44 \text{ hours} = \$23.86$  an hour  
Justine's regular rate is \$23.86 an hour.
2. Then her overtime rate is calculated:  
 $\$23.86 \text{ regular rate} \times 1\frac{1}{2} = \$35.79$   
Her overtime rate is \$35.79.
3. Next her overtime entitlement is calculated:  
 $6 \text{ hours} \times \$35.79 \text{ an hour} = \$214.74$   
She earned \$214.74 in overtime wages.
4. Because Justine was paid \$17.00 per hour for all hours she worked, including her 6 overtime hours, she has already received \$102.00 in respect of her overtime entitlement.

Result: Justine was entitled to \$214.74 for overtime pay and was paid \$102.00. Her employer therefore owes her an additional \$112.74.

**Note:** Some commission employees are exempt from the overtime provisions. For more information, please see the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>).

#### Averaging agreements

Sometimes employees need to work variable hours to meet family responsibilities. For example, perhaps an employee needs to take a child once a month for a day of special medical treatment but cannot afford to lose a day's pay. Instead the employee would like to work extra hours in the preceding weeks, to make up the time.

Likewise, employers may need employees to work extra hours during a peak period, in order to fill customer orders.

An employer and an employee can agree electronically or in writing to average the employee's hours of work over a specified period of two or more weeks, up to a maximum of four weeks, for the purposes of calculating overtime pay. Under such an agreement, an employee would only qualify for overtime pay if the average hours worked per week during the averaging period exceeds 44 hours.

For example, if the agreed period for averaging an employee's hours of work is four weeks, the employee is entitled to overtime only after working 176 hours during the four work weeks ( $44 \text{ hours} \times 4 \text{ weeks} = 176 \text{ hours}$ ). Note that averaging periods cannot overlap one another and must follow one after the other without gaps or breaks.

Where a union does not represent employees, averaging agreements must contain an expiry date that cannot be more than two years from the date the averaging agreement takes effect. Where the agreement applies to unionized employees, the expiry date cannot be later than the day the next collective agreement takes effect.

An averaging agreement cannot be revoked by either the employer or employee(s) before its expiry date, unless both the employer and employee(s) agree electronically or in writing to revoke it.

#### Example: Calculating overtime pay when hours of work are being averaged over two weeks

Myron and his employer agree in writing to average his hours for overtime purposes over a period of two weeks. Myron works 54 hours the first week and 36 hours the second week. He earns \$17.00 an hour and his overtime rate is \$25.50 per hour ( $1\frac{1}{2} \times \$17.00$ ).

Myron's overtime entitlement is calculated as follows:

- The total number of hours worked in the averaging period are added together and then divided by the number of weeks in the averaging period to get the average number of hours worked in each week of the averaging period.  
 $54 + 36 = 90 \text{ hours}$   
 $90 \text{ hours} \div 2 \text{ weeks} = 45 \text{ hours per week}$
- The average number of hours worked per week minus 44 hours equals the average number of overtime hours in each week of the averaging period.  
 $45 \text{ hours per week} - 44 \text{ hours per week} = 1 \text{ overtime hour per week}$
- The overtime entitlement in week one and two of the averaging period is calculated by multiplying the average overtime hours per week by his overtime rate for that week.  
Week 1:  $1 \text{ hour} \times \$25.50 \text{ per hour} = \$25.50$   
Week 2:  $1 \text{ hour} \times \$25.50 \text{ per hour} = \$25.50$

Result: Myron is entitled to \$51.00 of overtime pay in addition to his regular earnings.

#### What cannot be done

An employer and an employee cannot agree that the employee will give up their right to overtime pay under the ESA. Agreements such as these are **not** allowed and would be deemed void. However, an employee can make an agreement to take paid time off in lieu of overtime pay or to average hours of work for overtime pay purposes.

An employer cannot lower an employee's regular wage to avoid paying time and a half after 44 hours (or another overtime threshold that applies) in a work week. For example, if Josée's regular pay is \$17.00 an hour, her employer cannot drop her regular rate in a week when overtime was worked to \$15.00 an hour and then pay her \$22.50 ( $1\frac{1}{2} \times \$15.00$ ) for overtime hours worked instead of \$25.50 ( $1\frac{1}{2} \times \$17.00$ ).

## Vacation

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### Vacation time and vacation pay

This employment standard has two parts: vacation time and vacation pay. Some employees have jobs that are exempt from the vacation with pay provisions of the ESA. For more information on these job categories, please see the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

Employees with less than five years of employment are entitled to **two weeks of vacation time** after each 12-month vacation entitlement year. Employees with five or more years of employment are entitled to **three weeks of vacation time**. Ordinarily, a vacation entitlement year is a recurring 12-month period beginning on the date of hire. Where the employer has established an alternative vacation entitlement year that begins on a date other than the date of hire, the employee is also entitled to a pro-rated amount of vacation time for the period (called a "stub period") that precedes the alternative vacation entitlement year.

**Vacation pay** must be at least four per cent of the gross wages (excluding any vacation pay) earned in the 12-month vacation entitlement year or stub period (where that applies) for employees with less than five years of employment. Employees with five or more years of employment at the end of a 12-month vacation entitlement year or stub period (if any) are entitled to at least six per cent of the gross wages earned in the 12-month vacation entitlement year or stub period.

An employee's contract of employment or a collective agreement may provide a **greater right or benefit** with respect to vacation time and/or pay.

An employee who does not complete either the full vacation entitlement year or the stub period (if any) does not qualify for vacation time under the ESA. However, employees earn vacation pay as they earn wages. Therefore, if an employee works even just one hour, they are still entitled to at least four per cent (or six per cent, depending on length of employment) of the hour's wages as vacation pay.

### Key definitions

The increased entitlements to vacation time and vacation pay (three weeks' vacation time and six per cent vacation pay) for employees with five or more years of employment only apply to vacation entitlement years or stub periods that end on or after December 31, 2017. Employers are **not required** to provide the increased entitlements if the vacation entitlement year or stub period ended before December 31, 2017.

#### Vacation entitlement year

The 12-month period over which employees earn vacation.

#### Standard vacation entitlement year

A recurring 12-month period beginning on the date of hire.

#### Alternative vacation entitlement year

A recurring 12-month period chosen by the employer to begin on a date other than the employee's date of hire (e.g. employee hired June 1 but employer establishes alternative vacation entitlement year commencing January 1).

#### Stub period

Period between the date of hire and beginning of the first alternative vacation entitlement year or, the period between the end of a standard vacation entitlement year and the beginning of an alternative vacation entitlement year where the employer switches from a standard vacation entitlement year to an alternative vacation entitlement year (e.g. If an employer has chosen an alternative vacation entitlement year that runs January 1 to December 31 and the employee is hired on September 1, the stub period will be September 1 to December 31).

Vacation entitlement year and stub period will include time the employee spends away from work because of:

- layoff
- sickness or injury
- pregnancy, parental, declared emergency, family caregiver, family medical, critical illness, organ donor, reservist, domestic or sexual violence, child death, or crime-related child disappearance leaves
- any other approved leaves (i.e. where there is no break in the employment relationship).

### Transitional rules

The increased entitlements to vacation time and vacation pay (three weeks' vacation time and six per cent vacation pay) for employees with five or more years of employment only apply to vacation entitlement years or stub periods that end on or after December 31, 2017. Employers are not required to provide the increased entitlements if the vacation entitlement year or stub period ended before December 31, 2017.

#### Example 1:

On March 1, 2017, Oakley had completed four years of employment with his employer. He has an alternative vacation entitlement year that runs from November 1 to October 31. Oakley was entitled to two weeks of vacation time and four per cent vacation pay (accrued on the wages earned during the vacation entitlement year) upon completing the vacation entitlement year that began November 1, 2016, and ended October 31, 2017.

However, for the vacation entitlement year that began on November 1, 2017, and ends on October 31, 2018, Oakley is entitled to three weeks of vacation time and six per cent vacation pay accrued on the wages earned during that vacation entitlement year. That's because he had five years of employment upon completing that vacation entitlement year, which ended on or after December 31, 2017.

Oakley is entitled to three weeks of vacation time and six per cent vacation pay upon the completion of each vacation entitlement year thereafter.

#### Example 2:

Jamieson was hired by his employer on June 1, 2001. He has a standard vacation entitlement year that runs from June 1 to May 31. He earned two weeks of vacation time and four per cent vacation pay (accrued on the wages earned during the vacation entitlement year) upon completing each of those years between his date of hire and May 31, 2017. Despite the fact that he had more than five years employment as of May 31, 2006, Jamieson was not entitled to the increased vacation entitlements because those vacation entitlement years ended prior to December 31, 2017.

However, for the vacation entitlement year that began on June 1, 2017, and ended May 31, 2018, Jamieson earns three weeks of vacation time and six per cent vacation pay (accrued on the wages earned in that vacation entitlement year) because that year ends on or after December 31, 2017.

Jamieson is entitled to three weeks of vacation time and six percent vacation pay upon the completion of each vacation entitlement year thereafter.

### Vacation time

The entitlement to two or three weeks of vacation time is determined by the employee's period of employment upon completion of each vacation entitlement year. If the employee has been with the employer for less than five years at the end of the vacation entitlement year, the employee is entitled to two weeks of vacation time for that year. Likewise, if the employee's period of employment is five years or more upon the completion of the vacation entitlement year, the employee's entitlement is three weeks of vacation time for that year.

For example, an employee who reaches the five-year employment threshold 10 months before the end of the vacation entitlement year and an employee who reaches that threshold just one day prior will both be entitled to three weeks of vacation for that vacation entitlement year.

An employment contract or collective agreement may provide a greater vacation time entitlement.

### Standard vacation entitlement year

If the vacation entitlement year is a standard one, 12 months after the date of hire, the employee will be entitled to a minimum of two weeks of vacation time. The employee will also be entitled to two weeks after completing each of the next four 12-month vacation entitlement years. The employee will then be entitled to three weeks of vacation after completing the fifth vacation entitlement year and for each vacation entitlement year thereafter.

### Example: standard vacation entitlement year

Ava is hired on June 1, 2014. She has a standard vacation entitlement year that runs from June 1 of each year to May 31 of the following year: Ava earns two weeks of vacation upon completing her first vacation entitlement year that runs June 1, 2014 to May 31, 2015. She also then earns two weeks in each of the following three vacation entitlement years:

- June 1, 2015, to May 31, 2016
- June 1, 2016, to May 31, 2017
- June 1, 2017, to May 31, 2018

On May 31, 2019, Ava has completed five years of employment and so will be entitled to three weeks of vacation for the vacation entitlement year June 1, 2018 to May 31, 2019. Her vacation time entitlement will be three weeks for each completed vacation entitlement year thereafter.

### Alternative vacation entitlement year

If an employer sets an alternative vacation entitlement year, the employee will be entitled to a pro-rated amount of two weeks' vacation for the stub period preceding the start of the first alternative vacation entitlement year. The employee will then be entitled to a minimum of two weeks of vacation time after completing each alternative vacation entitlement year until the employee reaches the five-year employment threshold. Upon completing the vacation entitlement year in which the employee reaches five years, the employee will be entitled to three weeks of vacation time for that vacation entitlement year and for each vacation entitlement year thereafter.

### Example: alternative vacation entitlement year

Jocelyn was hired on September 1, 2017. The employer has established an alternative vacation entitlement year that runs from January 1 to December 31. That means that Jocelyn's stub period is from September 1, 2017, to December 31, 2017. She is entitled to a pro-rated vacation based on two weeks for the stub period. (See how to calculate this entitlement in the section "Calculating stub period vacation entitlements"). Her first vacation entitlement year will be January 1, 2018, to December 31, 2018. Upon completing those 12 months, she will have earned two weeks of vacation time for the vacation entitlement year because she has been employed for less than 5 years. Jocelyn will have completed five years of employment on August 31, 2022.

Jocelyn will also be entitled to two weeks of vacation time upon completing each of the following vacation entitlement years:

- January 1 to December 31, 2019
- January 1 to December 31, 2020
- January 1 to December 31, 2021

Since Jocelyn will have reached the five-year employment threshold on August 31, 2022, she will be entitled to three weeks of vacation time for the completed vacation entitlement year ending December 31, 2022. She will then be entitled to three weeks of vacation time for each completed vacation entitlement year thereafter.

**Note:** An employee who does not complete either the full vacation entitlement year or the stub period (if any) does not qualify for vacation time under the [ESA](#). However, employees earn vacation pay as they earn wages. So if an employee who is paid by the hour works even just one hour, they are still entitled to four per cent or six per cent of the hourly wage as vacation pay.

### Calculating stub period vacation entitlements

#### When the employee has a regular work week

The vacation time entitlement for a stub period is calculated as two or three weeks of vacation (two weeks for employees with less than five years of employment and three weeks for employees with 5 or more years) multiplied by the ratio (R) of the length of the stub period to 12 months.

Note: The calculation of the stub period entitlement will be based on three weeks of vacation only if an employer converts from a standard vacation entitlement year to an alternative one and the employee has five or more years of employment upon completion of the stub period (see example 2 below).

#### Example 1:

- An employee has a regular work week.
- The employee was hired September 1 and the alternative vacation entitlement year begins the following January 1.
- Stub period is September 1 to December 31 (4 months)

Calculation of vacation entitlement for the stub period: 2 weeks  $\times$  R (ratio of stub period to 12 months) where R = 4 months/12 months

2 weeks  $\times$  4/12 = 2/3 of a week.

#### Example 2:

- Employee has a regular work week.
- Employee hired September 1, 2014 and has a standard vacation entitlement year that runs September 1 to August 31 each year.
- The employer advises that at the end of the employee's fifth year of employment (August 31, 2019) the employee will be switching to an alternative vacation entitlement year beginning January 1, 2020. [Note: The employee had five years of employment upon completion of the standard vacation entitlement year that ended August 31, 2019 and so was entitled to three weeks' vacation for the vacation entitlement year that began September 1, 2018 and ended August 31, 2019.]
- The employee's stub period preceding the alternative vacation entitlement year runs from September 1, 2019 to December 31, 2019.
- The employee will have more than five years of employment upon completion of the stub period so will be entitled to a pro-rated amount of three weeks in respect of that stub period calculated as follows:

Calculation of vacation entitlement for stub period: 3 weeks  $\times$  R (ratio of stub period to 12 months) where R = 4 months (September 1 to December 31) divided by 12 months.

3 weeks  $\times$  4/12 = one week

#### When the employee does not have a regular work week

In this scenario, the vacation entitlement for a stub period is calculated as two or three weeks (two weeks for employees with less than five years of employment and three weeks for employees with five or more years) times the average number of days worked per work week during the stub period (A) multiplied by the ratio of the length of the stub period to 12 months (R).

**Note:** The calculation of the stub period entitlement will be based on three weeks of vacation only if an employer converts from a standard vacation entitlement year to an alternative one and the employee has five or more years of employment upon completion of the stub period.

Example:

- Employee does not have a regular work week.
- Employee hired September 1 and alternative vacation entitlement year begins the following January 1.
- Stub period is September 1 to December 31 and there are 17 work weeks in the stub period. The employee worked a total of 51 days in those 17 work weeks.

Calculation of vacation entitlement for stub period: 2 weeks  $\times$  A  $\times$  R where

A = 51 days/17 work weeks and R = 4 months/12 months

2 weeks  $\times$  51/17  $\times$  4/12 (or 2 weeks  $\times$  3 days/week  $\times$  1/3) = 2 days

#### Deadlines for taking vacation

The vacation time earned for a vacation entitlement year or a stub period must be taken within 10 months after completing that year or stub period. The employer has the right to schedule vacation as well as an obligation to ensure the vacation time is scheduled and taken before the end of that 10-month period.

#### Example

Riley was hired on February 24, 2018. His employer established an alternative vacation entitlement year of July 1 to June 30. The pro-rated amount of vacation time that Riley earned for the stub period of February 24, 2018, to June 30, 2018, must be taken within 10 months of the end of the stub period (that is, within 10 months of June 30, 2018). The vacation time Riley earned for the entitlement year of July 1, 2018 to June 30, 2019, would have to be taken within 10 months of the end of the vacation entitlement year (that is, within 10 months of June 30, 2019).

If the deadline under the ESA for taking a vacation comes up when an employee is on pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, organ donor, reservist, domestic or sexual violence, child death or crime-related child disappearance leave, the vacation must be taken when the leave ends or at a later date with the agreement (in writing) of the employer and the employee.

Likewise, if an employee's contract requires that some or all of their vacation must be taken within a specified period that comes up when the employee is on a leave and the employee would otherwise have to give up some or all of their vacation entitlements under the contract, the employee may defer taking the

vacation until the leave ends or take it a later date with the agreement (electronically or in writing) of the employer and employee.

#### How to schedule vacation time earned for a vacation entitlement year

For employees whose period of employment is less than five years, employers are required to schedule the vacation time earned each vacation entitlement year in a block of two weeks or in two one-week blocks. For employees whose period of employment is five years or more, employers must schedule the vacation time earned each vacation entitlement year in a block of:

- three weeks
- a two-week period and a one week period, or
- three periods of one week

The exception in both cases is if the employee makes a written request and the employer agrees electronically or in writing to shorter periods. In that case, it is necessary to calculate the number of single vacation days to which the employee is entitled.

#### Calculating single vacation days earned for a vacation entitlement year

##### Example: When the employee has a regular work week

The employer takes the number of days in the employee's work week and multiplies that number by 2.

- The employee regularly worked Monday, Wednesday and Friday or three days a week in the preceding vacation entitlement year.
- The employee is therefore entitled to 6 single vacation days in respect of that vacation entitlement year.

##### Example: When the employee does not have a regular work week

The employer calculates the average number days worked in each week in the most recently completed vacation entitlement year and then multiplies that number by 2.

- The employee worked a total of 149 days in the preceding vacation entitlement year.
- There are 52.14 weeks per year.
- The average number of days worked per week in the year would be 149 days divided by 52.14 weeks per year = 2.86 days
- The single vacation days the employee would be entitled to in respect of that year would be  $2 \times 2.86$  days or 5.72 days of vacation.

Note: the above examples apply to an employee with less than 5 years of employment. Multiply by 3 for employees with 5 or more years of employment upon completion of the vacation entitlement year.

#### How to schedule vacation time earned for a stub period

The vacation time earned for a stub period is calculated as single days based on the formulas set out in the section "Calculating stub period vacation entitlements."

If the amount of vacation time earned is between two and five days inclusive, the vacation days must be taken consecutively, unless the employee requests electronically or in writing and the employer agrees electronically or in writing to shorter periods.

If the amount of vacation time earned with respect to the stub period is more than five days, five days must be taken consecutively and any additional days may be taken together with those five days or in a separate period of consecutive days. However, the employee may request electronically or in writing and the employer may then agree to schedule the vacation in shorter periods.

#### Forgoing vacation time

An employee can give up some or all of their earned vacation time with the employer's electronic or written agreement, and the approval of the Director of Employment Standards. This approval does not affect an employer's obligation to pay the employee vacation pay; employees may give up vacation time, but not the right to vacation pay

#### Vacation pay

Employees must receive a minimum of either four per cent or six per cent of the gross wages (excluding vacation pay) they earned for the 12-month vacation entitlement year or stub period.

- An employee whose period of employment is less than five years upon completion of a vacation entitlement year or stub period is entitled to vacation pay calculated as four per cent of all the wages (excluding vacation pay) earned in the vacation entitlement year or stub period.
- An employee whose period of employment is five years or more upon completion of a vacation entitlement year or period is entitled to vacation pay calculated as six per cent of all the wages (excluding vacation pay) earned during the vacation entitlement year or stub period.
- An employee who reaches the five-year employment threshold partway through the vacation entitlement year or stub period is entitled to vacation pay calculated as six per cent of all the wages (excluding vacation pay) earned in the vacation entitlement year or stub period. (It doesn't matter whether the employee's period of employment was five years or more when the vacation entitlement year or stub period began, or if the employee reached that threshold partway through).

##### Example 1: An employee has less than five years' employment on completion of a vacation entitlement year

Janice works part-time and earned gross wages of \$16,000.00 in her vacation entitlement year. She is entitled to four per cent of \$16,000.00 as vacation pay--\$640.00.

**Example 2: An employee has less than five years' employment on completion of a stub period**

Jocelyn was hired on September 1 and her employer has established an alternative vacation entitlement year that runs from January 1 to December 31. That means that Jocelyn's stub period is from September 1 to December 31. She earned \$13,050 in the stub period. She is entitled to four per cent of \$13,050 as vacation pay, i.e. \$522.00.

Note: Her first vacation entitlement year is January 1 to December 31. When she completes that vacation entitlement year, she will have earned four per cent vacation pay on the wages earned in that vacation entitlement year because she has been employed for less than 5 years.

**Example 3: An employee has more than five years' employment on completion of a vacation entitlement year**

Quinn, a part-time worker who has been employed for seven years with his employer, earned gross wages of \$16,000.00 in his vacation entitlement year. He is entitled to six per cent of \$16,000 as vacation pay, i.e. \$960.00.

**Example 4: An employee reaches five-year employment threshold partway through a vacation entitlement year**

Andrew has been employed for four years at the start of his current vacation entitlement year but reaches the five-year employment threshold partway through that year. He earned gross wages of \$16,000.00 in this vacation entitlement year. He is entitled to six per cent of \$16,000 as vacation pay, i.e. \$960.00.

If an employee's contract or collective agreement provides a better vacation benefit than the minimum required, the employee may be entitled to a higher percentage of their gross earnings for vacation pay. For example, an employee might be entitled under their contract to four weeks' vacation, with eight per cent of gross earnings for vacation pay.

The gross wages on which vacation pay is calculated include:

- regular earnings, including commissions;
- bonuses and gifts that are non-discretionary or are related to hours of work;
- overtime pay;
- public holiday pay;
- termination pay;
- allowances for room and board; and
- domestic or sexual violence leave pay.

But do not include:

- vacation pay paid out or earned but not yet paid;
- tips and gratuities;
- discretionary bonuses and gifts that are not related to hours of work, production or efficiency (e.g. a Christmas bonus unrelated to performance);
- expenses and traveling allowances;
- living allowances;
- contributions made by an employer to a benefit plan and payments from a benefit plan (e.g. sick pay) that an employee is entitled to;
- federal employment insurance benefits;
- severance pay.

**When to pay vacation pay**

In most cases, the vacation pay earned during a completed vacation entitlement year or stub period must be paid to an employee in a lump sum sometime before they take the vacation time earned. There are four exceptions:

1. When the vacation time is being taken in periods of less than one week.
  - In this case, the employee must be paid vacation pay on or before the pay day for the period in which the vacation falls.
  - For example, Alvaro is taking vacation from January 2 to January 8 inclusive, and the normal pay day that covers this period is January 30. Alvaro must be given his vacation pay on or before January 30.
2. When the employee has agreed electronically or in writing that their vacation pay will be paid on each pay cheque as it accrues (accumulates).
  - In this case, the employee's wage statement may show clearly the amount of the vacation pay being paid. This amount must also be shown separately from any other amounts paid.
  - Alternatively, the employer must issue a separate statement for the vacation pay being paid.

Note: An employee whose period of employment is less than five years and who is paid accrued vacation pay on each pay day is entitled to four per cent of the wages earned in each pay period as vacation pay. When the employee reaches the five-year employment threshold, the employee's entitlement increases to six per cent vacation pay on all wages earned in the vacation entitlement period. As a result, the employee is entitled to an additional two per cent of the wages earned in the vacation entitlement period up to the date the five-year threshold was reached. The employee is also entitled to six per cent vacation pay on the wages earned from that date on.

**Example: Payment of vacation pay on a pay period by pay period basis**

- Fraser's vacation entitlement year is January 1 to December 31.

- Fraser reached his five-year employment threshold on July 1.
  - Fraser was paid four per cent vacation pay each pay day on the wages earned between January 1 and June 30.
  - On July 1, when Fraser reached his five-year employment threshold, his vacation pay for that vacation entitlement year increased from four to six per cent of all the wages earned in that vacation year.
  - Fraser's employer must "top-up" the four per cent vacation pay on the wages he earned between January 1 and June 30 with an additional two per cent vacation pay. This additional vacation pay is due on the pay day for the pay period in which July 1 falls.
  - Fraser will then be paid six per cent vacation pay each pay day on the wages earned from July 1 to December 31.
3. If the employee agrees electronically or in writing, the employer can pay the vacation pay at any time agreed to by the employee.
  4. If the employer pays the employee their wages by direct deposit into an account at a financial institution.
    - In this case, the employee must be paid vacation pay on or before the pay day for the period in which the vacation falls.

### When employment ends

When employment ends (for example, where an employee quits or the employment is terminated), an employee is entitled to vacation pay that they have earned and that has not yet been paid. In some cases, this would include vacation pay earned during a previous vacation entitlement year or stub period as well as the vacation pay earned during a current one.

An employee whose employment is terminated during a vacation entitlement period and before the five-year employment threshold will be entitled on termination to vacation pay of four per cent of the wages earned during that last (partially completed) vacation entitlement period (plus any outstanding vacation pay earned in previously completed vacation entitlement periods).

An employee who reached five years with the employer prior to being terminated, and before or during the last (partially completed) vacation entitlement period, would be entitled to six per cent of all the wages earned in that (partially completed) vacation entitlement year (plus any outstanding vacation pay earned in previously completed vacation entitlement periods).

Vacation pay is payable on termination pay but not on severance pay.

The unpaid vacation pay must be paid within seven days of the employment ending or on what would have been the employee's next pay day, whichever is later.

#### Example 1 – The employee's period of employment is less than five years on termination of employment

Jenna was hired on April 1, 2017, and had a standard vacation entitlement year. On March 31, 2018, she had earned two weeks of vacation time and four per cent of the wages earned in the vacation entitlement year as vacation pay. Her employer scheduled her vacation for the two-week period beginning June 1, 2018, and her vacation pay was to be paid prior to the commencement of that vacation. However, Jenna quit her employment on May 15, 2018. When she quit, her employer was required to pay her the vacation pay earned in the vacation entitlement year April 1, 2017, to March 31, 2018, plus the vacation pay earned in her last (incomplete) vacation entitlement year (being four per cent of the wages she earned between April 1, 2018, and May 15, 2018).

Note: The vacation pay must be paid within seven days of the date Jenna quit or by what would have been Jenna's next pay day, whichever is later.

#### Example 2 – The employee's period of employment is five years or more on termination of employment

Dini was hired on June 1, 2013, and had an alternative vacation entitlement year that ran from January 1 to December 31 each year. He reached his five-year employment threshold on May 31, 2018. His employment was terminated on August 1, 2018. He had no vacation pay outstanding for any previously completed vacation entitlement years. Dini's vacation pay for his last partially completed vacation entitlement year is six per cent of the wages earned between January 1, 2018 and August 1, 2018, because he had reached the five-year employment threshold prior to the termination.

Note: The vacation pay must be paid within seven days of the date Dini's employment was terminated or by what would have been Dini's next pay day, whichever is later.

### Vacation and public holidays

A public holiday (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>) could fall during an employee's vacation period. In that case, the day remains a vacation day for the employee, and if the employee qualifies for the public holiday, the employee is entitled to one of the following:

- the employee can have a substitute day off work with public holiday pay. This must be taken within three months of the public holiday or, if the employee agrees electronically or in writing, within 12 months of the public holiday;
- or**
- the employer can pay public holiday pay for that day without giving the employee a substitute day off work, if the employee agrees electronically or in writing.

Employees may also agree electronically or in writing to work on a public holiday that falls while they are on vacation.

### Vacation and leaves of absence

Because there is no break in the employment relationship during a period of pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, domestic or sexual violence, organ donor, reservist, child death or crime-related child disappearance leave, the time on leave counts toward the completion of a vacation entitlement year or stub period. For example, an employee on leave for all or only part of a vacation entitlement year would have earned a full two weeks of vacation time at the end of the vacation entitlement year. The vacation pay earned during that vacation entitlement year would be a minimum of four per cent or six per cent (depending on the employee's length of employment) of any wages actually earned during the year.

Where an employee's contract provides that "paid vacation" is earned through active service (e.g., 1.5 paid vacation days for each month of service or three weeks paid vacation for each year of service) an employee on leave may not earn either vacation time and/or pay while on leave. However, at the end of the vacation entitlement year or stub period, the employer must ensure the employee receives the greater of what was in fact earned under the contract and the minimum vacation time and vacation pay, they would have earned under the ESA.

**Example: when a contract of employment provides a greater right to vacation based on active service**

Ingrid's contract of employment provides that she earns two paid vacation days for every month of active service. In other words, vacation time and vacation pay are earned together through active service. Ingrid is on a pregnancy/ parental leave for six months of her vacation entitlement year.

Although Ingrid's length of service continues to accrue while she is on pregnancy and parental leave, she is not credited with "active" service while on leave.

Ingrid's period of employment at the end of the vacation entitlement year in which she took her leave is three years. At the end of that vacation entitlement year, her employer determines that she has earned 12 paid vacation days under her contract of employment. Because she regularly works five days a week, she has earned enough vacation time under her contract to exceed the two-week minimum required under the ESA for an employee whose period of employment is less than five years. In addition, the employer is able to show that 12 days of regular wages exceeds four per cent of the wages she had actually earned during the vacation entitlement year.

**Example: Employee must receive at least minimum vacation entitlements under the ESA**

Tony's contract provides that he earns three weeks of paid vacation for every year of active service. He is on a parental leave for eight months of his vacation entitlement year. At the end of that vacation entitlement year, his period of employment is four years. Under his contract of employment Tony earned 1/3 of the three weeks of paid vacation he would otherwise earn in a year. In other words, he earned one week of paid vacation for the vacation entitlement year. However, his employer must ensure that Tony receives at least the minimum ESA vacation entitlements of two weeks of vacation time and four per cent vacation pay for an employee whose period of employment is less than five years. The employer will therefore have to provide Tony with another week of vacation time and ensure the week of vacation pay earned under the contract is not less than four per cent of the gross wages he had actually earned in the vacation entitlement year.

An employee who is on a pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, organ donor, reservist, domestic or sexual violence, child death or crime-related child disappearance leave has the right to defer taking her or his vacation entitlement until the leave of absence expires (or until some later date if the employer and employee agree). This is the case even if the employee's contract of employment states that the employee is not allowed to defer taking vacation or restricts an employee's ability to do so.

This means that an employee who is on a leave of absence under the ESA will not lose any vacation time or vacation pay because they are on a leave. It also ensures that an employee does not have to choose between taking less than their full leave entitlement and losing some or all of their vacation pay or vacation time.

An employee who has the right to defer vacation until the expiry of a leave of absence may forego their right to take vacation time, with the agreement of the employer and the approval of the Director of Employment Standards, Ministry of Labour, Immigration, Training and Skills Development. However, an employee cannot forego their right to be paid vacation pay.

**Requesting statements of vacation records**

Employers are required to keep records:

- of the vacation time earned since the date of hire but not taken before the start of the vacation entitlement year
- the vacation time earned and vacation time taken (if any) during the vacation entitlement year (or stub period)
- the balance of vacation time remaining at the end of the vacation entitlement year (or stub period).

The employer must also keep records of the vacation pay earned and paid to the employee during the vacation entitlement year (and stub period, if any) and how the amount was calculated.

These records must be made no later than seven days after the start of the next vacation entitlement year (or first vacation entitlement year if the records relate to a stub period) or the first pay day after the stub period or vacation entitlement year ends, whichever is later.

Employees may request (in writing) a statement containing the information in the employer's vacation records. The employer is required to provide the information no later than:

- seven days after the request,  
**or**
- the first pay day after the employee makes the request,

whichever is later, but subject to the following:

If the employee asks for information concerning the current vacation entitlement year or stub period, the employer is required to provide the information no later than:

- seven days after the start of the next vacation entitlement year (or first vacation entitlement year in the case of a stub period),  
**or**
- the first pay day after the stub period or vacation entitlement year ends,

whichever is later.

The employer is required to provide the information with respect to each vacation entitlement year or stub period only once.



If the employee has agreed that vacation pay will be paid on each pay cheque as it is earned, the employer does not need to keep records and provide statements about vacation pay as discussed above. Instead, the employer must report the vacation pay that is being paid separately from the amount of other wages on each wage statement, or provide a separate statement setting out the vacation pay that is being paid. The employer must also keep a record of that information.

**Vacation entitlement year**

The 12-month period over which employees earn vacation.

**Standard vacation entitlement year**

A recurring 12-month period beginning on the date of hire.

**Alternative vacation entitlement year**

A recurring 12-month period chosen by the employer to begin on a date other than the employee's date of hire (e.g. employee hired June 1 but employer establishes alternative vacation entitlement year commencing January 1).

**Stub period**

Period between the date of hire and beginning of the first alternative vacation entitlement year or, the period between the end of a standard vacation entitlement year and the beginning of an alternative vacation entitlement year where the employer switches from a standard vacation entitlement year to an alternative vacation entitlement year (e.g. If an employer has chosen an alternative vacation entitlement year that runs January 1 to December 31 and the employee is hired on September 1, the stub period will be September 1 to December 31).

Vacation entitlement year and stub period will include time the employee spends away from work because of:

- layoff
- sickness or injury
- pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, organ donor, reservist, domestic or sexual violence, child death, or crime-related child disappearance leaves
- any other approved leaves (i.e. where there is no break in the employment relationship).

**Transitional rules**

The increased entitlements to vacation time and vacation pay (three weeks' vacation time and six per cent vacation pay) for employees with five or more years of employment only apply to vacation entitlement years or stub periods that end on or after December 31, 2017. Employers are **not** required to provide the increased entitlements if the vacation entitlement year or stub period ended before December 31, 2017.

## Public holidays

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

Ontario has nine public holidays:

1. New Year's Day
2. Family Day
3. Good Friday
4. Victoria Day
5. Canada Day
6. Labour Day
7. Thanksgiving Day
8. Christmas Day
9. Boxing Day (December 26)

Most employees who qualify are entitled to **take these days off work and be paid public holiday pay**.

Alternatively, the employee can **agree electronically or in writing** to work on the holiday and be paid:

- public holiday pay plus premium pay for all hours worked on the public holiday and **not** receive another day off (called a "substitute" holiday);  
**or**
- be paid their regular wages for all hours worked on the public holiday **and** receive another substitute holiday for which they must be paid public holiday pay.

Some employees may be required to work on a public holiday. (See "Special rules for certain industries" later in this Chapter.) While most employees are eligible for the public holiday entitlement, some employees work in jobs that are not covered by the public holiday provisions of the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA). To determine whether a job is covered, or if special rules apply, please refer to the Guide to employment standards special rules and exemptions (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

Use the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to check compliance with public holidays and other employment standards entitlements.

The amount of public holiday pay to which an employee is entitled is all of the **regular wages earned** by the employee in the four work weeks before the work week with the public holiday **plus** all of the **vacation pay payable** to the employee with respect to the four work weeks before the work week with the public holiday, **divided by 20**.

See "Public holiday pay" later in this chapter.

**Regular wages** does not include any overtime pay, vacation pay, public holiday pay, premium pay, domestic or sexual violence leave pay, termination pay, severance pay or termination of assignment pay payable to an employee.

While some employers give their employees a holiday on Easter Sunday, Easter Monday, the first Monday in August, or Remembrance Day, the employer is not required to do so under the ESA.

### Performing both covered and exempt work

Some employees perform more than one kind of work for an employer. Some of this work might be covered by the public holiday part of the ESA, while another kind of work might be exempt from public holiday coverage.

If an employee performs both kinds of work, exempt and covered, they are eligible for the public holiday entitlement with respect to a particular public holiday if at least half of the work performed in the work week of the public holiday is work that is covered.

#### Example

Rupert works for a taxi company as both a taxi cab driver (work that is exempt from public holiday coverage) and a dispatcher (work that is covered by the public holiday part of the ESA). In the work week that Canada Day fell, at least half of Rupert's work was as a dispatcher. Because this work is covered by the public holiday part of the ESA, he is eligible for the public holiday entitlement for Canada Day.

### Qualifying for public holiday entitlements

Generally, employees qualify for the public holiday entitlement unless they:

- fail without reasonable cause to work all of their last regularly scheduled day of work **before** the public holiday or all of their first regularly scheduled day of work **after** the public holiday (this is called the "Last and First Rule");  
**or**
- fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.

**Note:** Most employees who fail to qualify for the public holiday entitlement are still entitled to be paid premium pay for every hour they work on the holiday.

Qualified employees can be full time, part time, permanent or on term contract. It does not matter how recently they were hired, or how many days they worked before the public holiday.

### The "last and first rule"

The "last regularly scheduled day of work before the public holiday" and the "first regularly scheduled day of work after the public holiday" do not have to be the days right before and right after the holiday.

For example, an employee might not be scheduled to work the day right before or after the holiday. As long as the employee works all of their last regularly scheduled shift before the holiday and all of the first one after it, or has reasonable cause for not working either of those days, they meet this qualifying criterion.

#### Reasonable cause

An employee is generally considered to have "reasonable cause" for missing work when something beyond their control prevents the employee from working. Employees are responsible for showing that they had reasonable cause for staying away from work. If they can do so, they still qualify for public holiday entitlements.

#### How the last and first rule works

##### Example: A typical case

Rosie's regular work week runs from Monday to Thursday. A public holiday falls on a Monday, and Rosie's workplace closes down for that day. If Rosie works the entire shift on the Thursday before the holiday and the Tuesday after the holiday, or has reasonable cause for failing to work either of those days, she qualifies to be paid for the holiday.

##### Example: When an employee takes a day off

A public holiday falls on a Monday, and Lev's workplace closes down for that day. Lev regularly works Monday to Thursday. Lev has asked his employer for permission to take off the Thursday before the public holiday because he has a personal appointment. His employer **agrees**. Lev's last regularly scheduled work day before the holiday is now considered to be on the Wednesday.

If Lev works his entire Wednesday shift before the holiday and his entire Tuesday shift after the holiday, or has reasonable cause for not working either of those days, he qualifies for the paid public holiday.

##### Example: When an employee leaves early

A public holiday falls on a Friday, and Doris's workplace is closed for the holiday. Doris normally works from 9 a.m. to 5 p.m., Monday to Friday. However, she wants to leave at 3 p.m. on the Thursday before the public holiday. The employer **agrees**. Doris's regularly scheduled shift on the Thursday before the public holiday is now considered to be from 9 a.m. to 3 p.m.

If Doris works from 9 a.m. to 3 p.m. on the Thursday and 9 a.m. to 5 p.m. on the following Monday, or has reasonable cause for failing to do so, she is entitled to the paid public holiday.

**Example: When an employee is on vacation**

Canada Day falls on July 1. George is on vacation from June 25 to July 9. If George works all of his last regularly scheduled shift before his vacation and first regularly scheduled shift after his vacation – on June 24 and July 10 – or has reasonable cause for failing to do so, he will qualify for the paid public holiday.

**Example: When an employee is on a leave or layoff**

Lydia is on pregnancy leave when the Canada Day holiday occurs. If Lydia works her last regularly scheduled day of work before her leave, and her first regularly scheduled day of work after her leave, or has reasonable cause for failing to do so, she will be entitled to the paid public holiday.

**Example: When there is no reasonable cause**

A public holiday falls on a Monday, and Ellen's workplace is closed for the holiday. Ellen does not work on her last scheduled day before the holiday, and she does not have reasonable cause for missing that day. She receives no pay for the holiday.

**Public holiday pay**

The amount of public holiday pay to which an employee is entitled is all of the **regular wages earned** by the employee in the four work weeks before the work week with the public holiday **plus** all of the **vacation pay payable** to the employee with respect to the four work weeks before the work week with the public holiday, **divided by 20**.

**When to include vacation pay in the calculation of public holiday pay**

The amount of vacation pay payable to include in the calculation of public holiday pay depends on whether the employee is on vacation at any time during the four work weeks prior to the public holiday, and the manner in which the employee is to be paid vacation pay. Please refer to the Vacation (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>) chapter for information on the different ways vacation pay can be paid.

**Vacation pay payable**

If the employee is to be paid their vacation pay **before they take a vacation or on or before the pay day for the period in which the vacation falls**, vacation pay will be included in the calculation of public holiday pay if the employee was on vacation during that four work week period. If the employee was not on vacation during that period, no vacation pay will be included in the calculation.

If the employee is to be paid vacation pay **with every pay cheque** the amount of vacation pay to include in the calculation of public holiday pay will be at least four per cent of **all** of the employee's wages earned during the four work week period. (Note that if an employee earns a higher percentage of vacation pay, such as six per cent of wages, then the "vacation pay payable" will be based on that higher percentage.)

If an employee is to receive their vacation pay **in a lump sum on a certain date or dates**, vacation pay will be included in the calculation of public holiday pay only if that date or dates falls during the relevant four work week period.

**Calculating the four work week period before the work week with a public holiday**

The four weeks before the public holiday is based on the employer's work week and is not necessarily a calendar week.

**Example:**

Christmas Day falls on a Tuesday. Suppose that an employer's work week runs from Thursday to Wednesday. In this case, the four work weeks used to calculate public holiday pay are those four weeks counting backwards from the first Wednesday (the last day of the employer's work week) before the work week in which the public holiday falls.

- Week 1: Thursday, November 22 – Wednesday, November 28
- Week 2: Thursday, November 29 – Wednesday, December 5
- Week 3: Thursday, December 6 – Wednesday, December 12
- Week 4: Thursday, December 13 – Wednesday, December 19

Public holiday: Tuesday, December 25

In this example, the regular wages earned by the employee and the vacation pay payable to the employee with respect to the four work weeks from November 22 to December 19 are used in the calculation of public holiday pay.

**Calculating public holiday pay****Example: A typical case**

Iryna works five days a week and earns \$120 a day. She worked her last regularly scheduled work day before the public holiday and her first regularly scheduled day after the holiday. She receives her vacation pay when her vacation is taken. She was not on vacation during the four work weeks leading up to the public holiday.

1. Iryna's total regular wages earned are calculated:  
\$120 per day X 5 days = \$600 per week  
\$600 per week X 4 work weeks = \$2,400  
Iryna earned \$2,400 of regular wages in the four work weeks before the public holiday.
2. The amount of vacation pay payable with respect to the four work week period is calculated:  
Iryna receives her vacation pay when she takes her vacation. Because she was not on vacation during the four work week period, the amount of vacation pay payable with respect to the four work weeks before the public holiday = \$0.

3. Then her total wages earned and vacation pay payable is added together and divided by 20:  
 $\$2,400 + \$0 = \$2,400$   
 $\$2,400 \div 20 = \$120$

Result: Iryna is entitled to \$120 public holiday pay.

#### Example: When vacation time is involved

Brock works five days a week and earns \$160 a day. He was on vacation for two of the four weeks before the public holiday. He receives vacation pay before he takes his vacation. He is paid \$1,600 vacation pay for his two weeks of vacation. Brock worked his last regularly scheduled work day before the public holiday and his first regularly scheduled work day after the holiday.

1. Brock's total regular wages earned are calculated:  
Brock worked 10 days.  
 $\$160 \text{ per day} \times 10 \text{ days} = \$1,600$
2. Then the amount of vacation pay is calculated:  
Brock was on vacation for two of the four work weeks prior to the work week with the public holiday, and is paid vacation pay before he takes his vacation. The amount of vacation pay payable with respect to the four work weeks prior to the work week with the public holiday = \$1,600.
3. Then his total wages earned and vacation payable is added together and divided by 20:  
 $\$1,600 + \$1,600 = \$3,200$   
 $\$3,200 \div 20 = \$160$

Result: Brock is entitled to \$160 public holiday pay.

#### Example: When an employee works part-time and each pay cheque includes vacation pay

Tegan works three days a week and earns \$120 a day. She worked her last regularly scheduled work day before the public holiday and her first regularly scheduled day after the holiday. She and her employer have agreed **in writing** that she will receive four percent vacation pay on each paycheque.

1. First, Tegan's regular wages earned are calculated:  
 $\$120 \text{ per day} \times 3 \text{ days} = \$360 \text{ per week}$   
 $\$360 \text{ per week} \times 4 \text{ weeks} = \$1,440$
2. Her vacation pay payable is also calculated:  
 $\$4.80 \text{ per day (4\% of \$120)} \times 3 \text{ days} = \$14.40 \text{ per week}$   
 $\$14.40 \text{ per week} \times 4 \text{ weeks} = \$57.60$
3. Then her regular wages earned and vacation pay payable are added together:  
 $\$1,440 + \$57.60 = \$1,497.60$
4. Tegan's total regular wages earned and vacation pay payable are then divided by 20:  
 $\$1,497.60 \div 20 = \$74.88$

Result: Tegan is entitled to \$74.88 public holiday pay.

#### Example: When there are no set hours and each pay cheque includes vacation pay

Bertie does not work a set number of hours per day or days per week. Her pay varies from week to week, according to the time she has worked. She and her employer have agreed **in writing** that she will receive four per cent vacation pay on each pay cheque.

1. First, Bertie's regular wages earned during the four work weeks before the holiday are:  
\$1,500 regular wages
2. Second, her vacation pay payable is calculated:  
 $\$1,500 \times 4\% = \$60$
3. Then her regular wages earned and vacation pay payable are added together:  
 $\$1,500 + \$60 = \$1,560$
4. Bertie's total wages earned and vacation pay payable are then divided by 20:  
 $\$1,560 \div 20 = \$78$

Result: Bertie is entitled to \$78 public holiday pay.

#### Example: When an employee is on a leave

Zoe usually works five days a week, earning \$120 a day. She receives vacation pay before she goes on vacation. On June 10, she went on a 17-week pregnancy leave, followed by a 35-week parental leave.

During her leaves, she was not paid wages or vacation pay. She received maternity and parental benefits from the federal Employment Insurance program, but these benefits are not considered "wages."

Zoe is entitled to receive public holiday pay for the public holidays that fall during her leave as long as she works her last regularly scheduled day before her leave and her first regularly scheduled day after her leave, or has reasonable cause for failing to do so.

Zoe went on leave on June 10 and only worked seven days during the four work weeks before the Canada Day public holiday. Her public holiday pay for Canada Day is:

- Regular wages earned:  $\$120 \text{ a day} \times 7 \text{ days} = \$840$

- Vacation pay payable: \$0 (she was not on vacation during the four work week period)
- Public holiday pay:  $(\$840 + \$0) \div 20 = \$42$  public holiday pay

Her public holiday pay for the rest of the public holidays that fall during her leave will be \$0. This is because she will not have earned any wages or vacation pay on any of the days during the four work weeks before each of those holidays.

#### Example: When an employee is on a layoff

Eugene usually works five days a week, earning \$100 a day. He was placed on temporary layoff on November 15. During his layoff, Eugene was not paid wages or vacation pay. He received employment insurance benefits during this time, but these benefits are not considered "wages."

Eugene was recalled to work on December 27. He is entitled to be paid public holiday pay for Christmas Day and Boxing Day as long as he works his last regularly scheduled day before the layoff and his first regularly scheduled day after the layoff, or has reasonable cause for failing to do so.

However, because Eugene did not earn any wages or vacation pay in the four work weeks before those two public holidays, the amount of public holiday pay he is entitled to will be \$0.

#### Premium pay

Premium pay is 1½ times an employee's regular rate of pay. If an employee is entitled to receive premium pay for work on a public holiday, they must be paid 1½ times their regular rate of pay for each hour worked.

For example, Nathan's regular rate of pay is \$17 an hour. This means that his premium pay will be \$25.50 an hour ( $\$17.00 \times 1\frac{1}{2}$ ).

#### Substitute holiday

A substitute holiday is another **working** day off work that is designated to replace a public holiday. Employees are entitled to be paid public holiday pay for a substitute holiday.

A substitute holiday must be scheduled for a day that is no later than three months after the public holiday for which it was earned, or, if the employee has agreed **electronically or in writing**, the substitute day off can be scheduled up to 12 months after the public holiday.

If an employee receives a substitute holiday, the employer must provide the employee with a written statement that sets out the public holiday that is being substituted, the date of the substitute holiday, and the date that the statement was given to the employee. This statement must be provided to the employee before the public holiday.

#### Entitlements for public holidays

Entitlements for public holidays vary depending on such things as whether the holiday falls on a working day or a non-working day and whether the employee works on the holiday. The different entitlements are set out below.

##### When a public holiday falls on a working day but the employee does not work

Most employees have the right to get the public holiday off and get paid public holiday pay. (Some employees may be required to work on a public holiday. See "Special rules for certain industries" later in this chapter.)

##### When a public holiday falls on an employee's non-working day or during an employee's vacation

When a public holiday falls on a day that is **not** ordinarily a working day for an employee, or during the employee's vacation, the employee is entitled to either:

- a substitute holiday off with public holiday pay;  
**or**
- public holiday pay for the public holiday, **if** the employee agrees to this **electronically or in writing** (in this case, the employee will not be given a substitute day off).

##### When an employee who qualifies for the day off has agreed electronically or in writing to work on a public holiday

Most employees have the right to get the public holiday off and get paid public holiday pay. However, if an employee agrees **electronically or in writing** to work on the public holiday, there are two options:

- the employee is entitled to receive regular wages for all hours worked on the public holiday, plus a substitute day off work with public holiday pay;  
**or**
- if the employee agrees **electronically or in writing**, they are entitled to public holiday pay for the public holiday plus premium pay for all hours worked on the public holiday. In this case, the employee will not be given a substitute day off.

#### Example: Calculating public holiday pay plus premium pay

A public holiday falls on one of John-Duncan's normal working days. He and his employer have agreed **electronically or in writing** that he will work on the public holiday and that, instead of getting a substitute holiday, he will be paid public holiday pay plus premium pay for all the hours he works on the holiday.

John-Duncan regularly works eight hours a day, five days a week. His regular hourly pay rate is \$17. He has a bi-weekly pay period. He has worked on all his scheduled work days in the pay period before the public holiday. He works eight hours on the public holiday.

Public holiday pay calculation:

1. John-Duncan's total regular wages earned in the pay period before the public holiday are calculated:  
8 hours per day X \$17 per hour = \$136 per day  
\$136 per day X 5 days = \$680 per week  
\$680 X 2 weeks in the pay period = \$1,360  
John-Duncan earned \$1,360 in the pay period before the public holiday.
2. The number of days John-Duncan worked in the pay period before the public holiday is calculated. He worked five days in each week of the bi-weekly pay period.  
John-Duncan worked 10 days in the pay period before the public holiday.
3. His total wages earned is then divided by 10:  
 $\$1,360 \div 10 = \$136$   
John-Duncan's public holiday pay entitlement is \$136.

Premium pay calculation

4. Finally, the premium pay owing to John-Duncan for his work on the public holiday is calculated:  
\$17 per hour X 1½ = \$25.50  
\$25.50 per hour X 8 hours worked = \$204  
John-Duncan's premium pay entitlement is \$204.

Result: John-Duncan is entitled to public holiday pay of \$136 and premium pay of \$204, for a total of \$340.

#### When an employee agrees to work on a public holiday but fails to do so

If an employee has agreed **electronically or in writing** to work on the public holiday but does not do so – and does not have reasonable cause for not having done so – the employee has no right to public holiday pay or to a substitute day off with pay.

However, if the employee has reasonable cause for not working the public holiday, then entitlements will depend on which of the two options below the employee chose in exchange for agreeing to work on the public holiday:

- if the employee had agreed electronically or in writing to work on the public holiday for regular wages plus a substitute day off with public holiday pay, the employee is entitled to a substitute day off work with public holiday pay;
- or**
- if the employee had agreed electronically or in writing to work on the public holiday for public holiday pay plus premium pay for each hour worked, they are entitled to be paid public holiday pay for the holiday. The employee is not entitled to receive any premium pay because they did not perform any work on the holiday.

#### When an employee works only some of the hours they agreed to work on a public holiday

If an employee has agreed **electronically or in writing** to work on the public holiday but works only some of the hours they agreed to work, and does not have reasonable cause for failing to work all of the hours, the employee is only entitled to receive premium pay for each hour worked on the holiday. The employee has no right to public holiday pay or a substitute day off work.

#### Example: A typical case

Trudi had agreed in writing that she would work eight hours on Canada Day but she only worked four hours and did not have reasonable cause for failing to work the other four hours. Trudi is entitled only to premium pay for the four hours she worked on the holiday. She is not entitled to public holiday pay or to a substitute day off work.

However, if the employee has reasonable cause for working only some of the hours they agreed to work on the public holiday, then:

- the employee is entitled to their regular rate for all the hours worked plus a substitute day off work with public holiday pay;
- or**
- if the employee had agreed electronically or in writing to work on the public holiday for public holiday pay plus premium pay for each hour worked, they are entitled to be paid public holiday pay plus premium pay for every hour worked on the holiday.

#### Special rules for certain industries

Special rules apply to employees who work in the following types of businesses:

- hotels, motels and tourist resorts;
- restaurants and taverns;
- hospitals and nursing homes;
- continuous operations (which are operations, or parts of operations, that do not stop or close more than once a week – such as an oil refinery, alarm-monitoring company or the games part of a casino if the games tables are open around the clock).

An employee who works in any of these businesses can be required to work on a public holiday without their agreement, but **only** if the holiday falls on a day that the employee would normally work and the employee is not on vacation.

If an employee is required to work, they are entitled to either:

- their regular rate for the hours worked on the public holiday, plus a substitute day off work with public holiday pay;
- or**

- public holiday pay plus premium pay for each hour worked.

The **employer** chooses which of these options will apply.

Note that the employer's ability to require employees to work on a public holiday is subject to the employee's right to take a day off for purposes of religious observance under the Ontario *Human Rights Code* (<https://www.ontario.ca/laws/statute/90h19>), and to the terms of the employee's employment contract. Note also that certain retail workers who work in continuous operations (for example, a 24-hour convenience store) have the right to refuse to work on a public holiday because of the special rules that apply to some retail workers. See the "Retail workers" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/retail-workers>) chapter of this guide for more information.

An employee in the previously listed businesses who is required to work on a public holiday that falls on their ordinary working day but fails to do so, with reasonable cause, is entitled to:

- a substitute holiday with public holiday pay;  
**or**
- public holiday pay for the holiday.

The **employer** chooses which option will apply.

An employee in any of these businesses who is required to work on a public holiday that falls on their ordinary working day but who fails, with reasonable cause, to work **some** of the hours they were required to work on the holiday is entitled to either:

- their regular rate for each hour worked on the holiday plus a substitute holiday with public holiday pay;  
**or**
- public holiday pay for the holiday plus premium pay for each hour worked.

The **employer** chooses which option will apply.

An employee in any of these businesses who is required to work on a public holiday that falls on their ordinary working day but who fails, without reasonable cause, to work part or all of the public holiday is only entitled to receive premium pay for each hour worked on the holiday (if any). The employee has no right to public holiday pay or a substitute day off work.

### Overtime calculations when an employee receives premium pay

Any hours worked on a public holiday that are compensated with premium pay are **not** included when determining whether an employee has worked any overtime hours.

### If employment ends

Sometimes an employee's job comes to an end before the employee can take a substitute holiday with public holiday pay that they have earned. In this case, the employer must pay the employee's public holiday pay at the same time it pays the employee's final wages. This is so regardless of the reason the job came to an end, whether it is because the employee quit, was fired for good reason, or for some other reason.

## Tips or other gratuities

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

### Overview

An employer generally cannot withhold, make deductions from, or make an employee return their tips or other gratuities, except as permitted by the *Employment Standards Act, 2000* (ESA).

### What is a tip or other gratuity

A "tip or other gratuity" is:

- a payment voluntarily made or left by a customer to an employee
- a payment voluntarily made by a customer to the employer for employees
- a payment of a service or similar charge imposed by the employer,

where a reasonable person would believe that the payment would be kept by an employee or shared among employees

Whether a payment or service charge is a tip or other gratuity will depend on the circumstances.

Examples of tips or other gratuities include:

- money left on a table for a server
- a tip added to a credit card or debit card payment for an employee
- gratuity or service charges imposed by banquet halls or other establishments

Employers must distribute tips or other gratuities to employees in cash, cheque or direct deposit (which includes Interac e-Transfer). The distribution of tips by pre-paid credit cards is not permitted.-->

Tips or other gratuities are not considered wages for the purposes of the ESA. They are not included when calculating:

- minimum wage
- termination pay
- severance pay
- vacation pay
- public holiday pay
- the regular rate used for calculating overtime pay

### The right to keep tips or other gratuities

An employer is prohibited from withholding, making deductions from, or making an employee return their tips or other gratuities unless permitted under the [ESA](#). For example, they cannot deduct for things, such as:

- spillage
- breakage
- losses
- damage

If an employer is found to have violated the prohibition against taking an employee's tips or other gratuities, the amount wrongfully kept will be considered a debt owing by the employer to the employee and is enforceable under the [ESA](#) as if it were wages owing to an employee.

An employee's ability under the [ESA](#) to keep tips or other gratuities, except in limited circumstances, is an employment standard. An employee cannot contract out of or waive this employment standard, even if the employee agrees to do so in writing or verbally.

For example, an employee cannot agree to:

- give the employer all of their tips or other gratuities in exchange for a higher rate of pay
- waive the right to minimum wage in exchange for keeping all or a higher percentage of their tips
- give the employer a certain percentage of their tips other than for a tip pool (for example, tipping out to "the house" to cover things like spillage, breakage, losses or damage, etc. is not allowed.)

### Payment and redistribution of tips or other gratuities

Employers can decide if tipping is allowed in their businesses. If tipping is not accepted, the employer should make it clear to the customers that tips or other gratuities will not be accepted by employees or the employer.

#### When tips or other gratuities should be distributed

There is no requirement under the *Employment Standards Act, 2000* ([ESA](#)) for employers to establish a regular period for distributing tips or other gratuities to employees. However, the failure of an employer to distribute tips or other gratuities within a reasonable time frame may constitute the withholding of those tips or other gratuities.

Whether a delay in the distribution of tips or other gratuities to employees is reasonable will depend on the circumstances. For example, if an employee experiences a delay in accessing their tips, the length of the delay and the reason for the delay are relevant factors in determining whether there has been a withholding of tips or other gratuities.

#### How tips or other gratuities should be distributed

The [ESA](#) does not specify the methods by which an employer must distribute tips or other gratuities to employees. However, the method used cannot constitute a withholding of, or a deduction from, tips or other gratuities in contravention of the [ESA](#).

For example, where the payment method mandated by the employer imposes limits on an employee's ability to access their tips or other gratuities within a reasonable period of time, this will constitute a withholding of those tips or other gratuities.

Whether a payment method constitutes an unauthorized withholding of, or deduction from, tips or other gratuities will depend on all the circumstances.

### Allowable deductions from tips or other gratuities

Only three kinds of deductions can be made from an employee's tips or other gratuities:

#### Statutory deductions

Certain statutes may require an employer to withhold or make deductions from an employee's tips or other gratuities. The most frequently encountered deductions authorized by statute include income taxes, employment insurance premiums and Canada Pension Plan contributions.

An employer is not permitted to deduct more than the applicable statute allows and cannot make deductions if the money is not remitted to the proper authority (such as the Canada Revenue Agency).

#### Court orders

A court order may indicate that an employee owes money to the employer or to someone else, and that the employer may make a deduction from the employee's tips or other gratuities to pay what is owed.



If an employee owes money to someone other than the employer, a court order may direct an employer to make a deduction from an employee's tips or other gratuities and send the money to the court clerk or other official, to be paid in turn to a third party. The employer is not allowed to make this deduction if the money is not sent to the court clerk or other official specified in the order.

### Pooling of tips or other gratuities

An employer may withhold or make deductions from an employee's tips or other gratuities if the amount collected will be redistributed among some, or all, of the employees at the workplace. This practice is commonly known as tip pooling.

A tip pool is a collection of employees' tips that is redistributed by the employer to some or all employees. Tip outs are payments from one employee to another employee, generally by way of contributions to a tip pool and usually according to a formula established by the employer. Examples would be an employer requiring a server to "tip out" a busser or kitchen staff 1% of tips the server received, or requiring a server to contribute the equivalent of 2% of sales to a tip pool. That money is then distributed among several staff members.

### Tip pooling example

In a tip pooling scenario, an employer has three servers and their tip pool arrangement requires servers to contribute 5% of their sales into a tip pool to be distributed among bussers, bartenders and hostesses. Server 1 has \$1,000 in sales during their shift and makes \$150 in tips, their contribution to the tip pool (tip out) would be \$50. Server 2 has \$100 in sales on their shift and makes \$20 in tips. Server 2's contribution to the tip pool (tip out) would be \$5. Server 3 has \$500 in sales during their shift but receives \$0 in tips. Server 3's contribution to the tip pool (tip out) would be \$0 because tip pooling amounts cannot come from any source other than tips. In this scenario, the tip pool amount that can be distributed among the bussers and hostesses would be \$55.

### Tip pooling terms

Employers can decide if there will be tip pooling terms in the workplace, including who will participate, and how it will be distributed. For example, the employer can determine:

- how much each employee is entitled to—for example, whether the amount received is based on number of hours worked or the employee's position
- when and how the tip pool shares will be distributed to employees—for example, weekly or daily, in cash or direct deposit (which includes Interac e-Transfer)
- how and when tip pooling terms should be changed or varied—for example, adding or removing employees to and from the tip pool, changing the percentage received by employees, or cancelling the tip pool, etc.

Tip pool terms may be written or oral. Under the ESA, employers do not need the employees' agreement to make deductions from their tips or other gratuities if the amount will be redistributed as part of a tip pool. Participating in a tip pool could be a condition of employment.

It is important to note that the terms of a tip pool cannot be enforced under the ESA. Only an employee whose tips or other gratuities were withheld or deducted can have an order issued on their behalf under the ESA. Other employees who did not have tips taken or deducted by the employer but would have normally received a percentage of the tip pool cannot have an order issued for those amounts.

### Managers' and employers' participation in tip pooling arrangements

Managers are allowed to keep the tips and gratuities they receive themselves, and generally may participate in tip pooling arrangements if their employers' policy permits them to do so.

Employers are allowed to keep the tips or other gratuities that they receive themselves.

An employer cannot share in a tip pool unless the following apply:

- they are a sole proprietor, partner, director or shareholder in the business
- they regularly perform to a substantial degree the same work as either:
  - some or all the employees who share in the redistribution
  - employees of other employers in the same industry who commonly receive or share tips or other gratuities

### Collective agreements

If a collective agreement that came into force before June 10, 2016, contains a provision that addresses the treatment of tips or other gratuities, the provision of the collective agreement prevails, even if it conflicts with the ESA. If a collective agreement expires but the provision that addresses the treatment of tips or other gratuities remains in effect, it continues to prevail until the collective agreement is renewed or a new agreement is ratified.

Collective agreements that come into effect or are renewed after June 10, 2016, must comply with the tips or other gratuities provisions in the ESA.

## Equal pay for equal work

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Under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), subject to certain exceptions, an employer cannot pay one employee at a rate of pay less than another employee on the basis of sex when they perform substantially the same kind of work in the same establishment, their work requires substantially the same skill, effort and responsibility and their work is performed under similar working conditions.

This standard is commonly referred to as "equal pay for equal work." Employers cannot lower employees' rates of pay to create equal pay for equal work.

## Protections under the Ontario *Human Rights Code*

Ontario's *Human Rights Code* protects people in Ontario from employment discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, disability, age, marital status, family status and record of offences. If an employee believes that a difference in their rate of pay may be related to discrimination on any of these grounds, they may wish to contact the Human Rights Legal Support Centre at: 416-597-4900 , 416-597-4903 (TTY) or toll-free at 1-866-625-5179 or 1-866-612-8627 (TTY).

## What is equal work?

Equal pay for equal work applies when there is “equal work” meaning the employees perform **substantially the same kind of work** in the **same establishment**, the work requires **substantially the same skill, effort and responsibility** and is performed under **similar working conditions**. All of these conditions must be met for equal pay for equal work to be required. There are some exceptions (set out below).

### Substantially the same kind of work

“Substantially the same kind of work” means the work does not have to be exactly the same. What matters is the actual work performed by the employees, not the stated conditions of their job offer or their job description.

### Same establishment

An establishment is a location where an employer carries on business. For example, an employer owns a hardware store. The hardware store is the employer's establishment.

Two or more locations are considered a single establishment if:

- they are in the same municipality, or
- there are common “bumping rights” for at least one employee across municipal borders

“Bumping rights” are the contractual right of an employee being laid off to replace an employee with less seniority who is not being laid off.

### Example

An employer owns two hardware stores in the same city. The two hardware stores are considered a single establishment because they are in the same municipality.

The employer owns a third hardware store in a different municipality. The three locations would not be considered a single establishment unless one or more employees could bump other employees in a different municipality.

### Substantially the same skill, effort and responsibility

Skill means the amount of knowledge, physical skill or motor skills needed to perform a job. This includes:

- education, like post-secondary degrees and diplomas
- training, like apprenticeships
- experience, like the number of years required to master a skill or gain expertise
- manual dexterity, like hand-eye coordination

Effort is the physical or mental effort regularly needed to perform a job. An example of physical effort is the physical strength a labourer needs to lift boxes. An example of mental effort is the amount of concentration and thinking a lawyer needs to do legal research.

Responsibility includes the number and nature of an employee's job responsibilities, and how much accountability and authority the employee has for those responsibilities.

This includes:

- the ability to make decisions and take action
- responsibility for the safety of others
- supervising other employees
- handling cash
- the amount of supervision over the employee

“Substantially the same skill, effort and responsibility” does not mean the skill, effort and responsibility must be exactly the same for equal pay for equal work to apply. What matters is the skill, effort, and responsibility needed for the actual work performed by the employees, not the stated conditions of their job offer or their job descriptions.

### Similar working conditions

Working conditions include:

- the working environment, like an office or outdoors
- exposure to the weather, like rain or snowstorms
- health and safety hazards, like exposure to chemicals or heights

### Example

Jane and Bill are library assistants who work in the same library. They both have undergraduate degrees, but they did not need a degree to qualify for their jobs. They help people with checking books in and out of the library. They also sort books and organize bookshelves. They make decisions following library policy. Jane and Bill perform work that is substantially the same kind of work in the same establishment. Their work requires substantially the same skill, effort, responsibility and is performed under similar working conditions.

Norman is a librarian at the same library. He has a graduate degree in library science, which is a requirement for his job. He helps people with checking books in and out of the library, as well as research. He also supervises library assistants, opens and closes the library and handles any complaints. Norman, Jane and Bill work under similar working conditions, however Norman's work requires different skill, effort and responsibility.

### Example

Andy and Kyra both work as labourers on a production line in a warehouse. Kyra packs plastic spoons into small boxes, and Andy packs plastic plates into boxes. Andy and Kyra are doing substantially the same kind of work in the same establishment. Their work requires substantially the same skill, effort and responsibility and is performed under similar working conditions.

Jackson is also a labourer in the same warehouse as Andy and Kyra. He drives a forklift that lifts boxes of spoons in and out of the warehouse, which means he spends part of his working time outdoors, even when the weather is bad. Jackson needed specialized training to be able to drive the forklift, and he is responsible for driving it safely. Jackson's work requires the same effort as Andy and Kyra's work, but it requires different skill, responsibility and working conditions.

## What is a difference in rate of pay?

- hourly pay rate
- salary
- overtime pay rate
- commission rate

A difference in rate of pay does not include a difference in benefit plans.

## Equal pay for equal work on the basis of sex

The ESA generally requires that employers pay men and women equal pay for equal work. That means that a woman cannot be paid less than a man if she is doing "equal work" to him. A man also cannot be paid less than a woman if he is doing "equal work" to her. The ESA does not prevent employers from paying employees of the same sex different rates of pay for equal work.

Note that other legislation, such as the Ontario *Human Rights Code*, may prohibit employers from paying employees of the same sex different rates of pay for equal work on other grounds not addressed in the ESA.

### Equal pay on the basis of sex and pay equity: What's the difference?

Ontario has legislation called the *Pay Equity Act* (<https://www.ontario.ca/laws/statute/90p07>) to ensure that employers pay women and men equal pay for work of equal value. This means that men and women must receive equal pay for performing jobs that **may be very different** but are of equal or comparable value. The value of jobs is based on the levels of skill, effort, responsibility and working conditions involved in doing the work.

For more information on pay equity, visit the Pay Equity Commission's website (<http://www.payequity.gov.on.ca/EN/Pages/default.aspx>) .

## Exceptions

Even if employees of different sexes are doing equal work, they can be paid different rates of pay if the difference is due to:

- a seniority system
- a merit system
- a system that measures earnings by production quantity or quality

Employees who perform equal work can also be paid different rates of pay if the difference is based on any other factor other than sex.

### Seniority system

A seniority system is generally one in which an employee receives rights based on their length of service with their employer. For example, an employer runs a grocery store and employs cashiers who perform equal work. All cashiers receive a \$1 per hour raise after their first year of employment.

Where two employees perform equal work, an employer may pay an employee who has greater seniority a higher rate of pay than that paid to another employee of different sex who has less seniority if the difference in the rate of pay is based on a seniority system.

### Merit system

A merit system is generally one in which employees receive compensation based on an assessment of how well they perform their jobs. Where two employees perform equal work, an employer may pay one employee a higher rate of pay than that paid to another employee of a different sex if the difference in the rate of pay is based on a merit system.

For example, an employer owns a furniture store and employs customer sales representatives who perform equal work. All customer sales representatives are eligible for a salary increase of 3 per cent if they meet their sales targets in a six month period.

**System that measures earnings by quantity or quality of production**

Where two employees perform equal work, an employer may pay one employee a higher rate of pay than that paid to another employee of a different sex if the difference in the rate of pay is based on a system that measures earnings by production quantity or quality.

For example, an employer operates a widget factory and employs manufacturing employees who perform equal work. All employees receive \$1 per completed widget, and receive a pay increase of .15 cents per widget after they complete 1,000 widgets.

**Any other factor other than sex**

Where two employees perform equal work, an employer may pay one employee a higher rate of pay than that paid to another employee of a different sex if the difference in the rate of pay is based on any other factor other than sex.

**Filing a claim**

If an employee believes that their employer is not complying with the equal pay for equal work provisions, the employee may file a claim (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim>) with the Ministry of Labour, Immigration, Training and Skills Development.

**Reprisals**

Under the ESA, an employer cannot punish an employee in any way for asking other employees about their rates of pay to find out if an employer is providing equal pay for equal work or for disclosing their own rate of pay to another employee for the purpose of determining or assisting that employee in determining whether they are receiving equal pay for equal work.

For more information, see the chapter on Reprisals (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>).

## Pregnancy and parental leave

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Pregnant employees have the right to take **pregnancy leave** of up to 17 weeks of unpaid time off work. In some cases the leave may be longer. Employers do not have to pay wages to someone who is on pregnancy leave.

All new parents have the right to take parental leave – unpaid time off work when a baby or child is born or first comes into their care (such as through adoption). Birth mothers who take pregnancy leave are entitled to up to 61 weeks' leave. Birth mothers who do not take pregnancy leave and all other new parents are entitled to up to 63 weeks' parental leave.

Parental leave is not part of pregnancy leave; a birth mother may take both pregnancy and parental leave. In addition, the right to a parental leave is separate from the right to pregnancy leave. For example, a birth father could be on parental leave at the same time the birth mother is on either pregnancy leave or parental leave.

Employees on leave have the right to continue participation in certain benefit plans and continue to earn credit for length of employment, length of service, and seniority. In most cases, employees must be given back their old job at the end of their pregnancy or parental leave.

An employer cannot penalize an employee **in any way** because the employee is or will be eligible to take a pregnancy or parental leave, or for taking or planning to take a pregnancy or parental leave.

**Ontario's ESA and the federal *Employment Insurance Act***

The *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) provides eligible employees who are pregnant or are new parents with the right to take unpaid time off work.

In contrast, the federal *Employment Insurance Act* (<http://laws-lois.justice.gc.ca/eng/acts/e-5.6/>) provides eligible employees with maternity and/or parental benefits that may be payable to the employee during the period the employee takes an ESA pregnancy or parental leave.

The rules governing the right to take time off work for pregnancy and parental leave under the ESA are different from the rules regarding the payment of maternity benefits and parental benefits under the federal *Employment Insurance Act* (<http://laws-lois.justice.gc.ca/eng/acts/e-5.6/>). For example, a new father may choose to commence a parental leave under the ESA up to 78 weeks after the child is born. However, there may be restrictions on accessing the employment insurance parental benefits at that time. **It is extremely important that employees obtain information about their rights to EI benefits if they are considering taking a pregnancy or parental leave under the ESA.** For information about maternity and parental benefits (<http://www.servicecanada.gc.ca/eng/sc/ei/benefits/maternalparental.shtml>), contact Service Canada's Employment Insurance Automated Telephone Information Service at 1-800-206-7218.

**Pregnancy leave**

Pregnant employees have the right to take pregnancy leave of up to 17 weeks, or longer in certain circumstances, of unpaid time off work.

**Qualifying for pregnancy leave**

A pregnant employee is entitled to pregnancy leave whether the employee is full-time, part-time, permanent or on a term contract, provided that the employee:

- is employed by an employer that is covered by the ESA,
- and
- started employment at least 13 weeks before the date the baby is **expected** to be born (the "due date").

Note that an employee does not have to **actively** work the 13 weeks prior to the due date to be eligible for pregnancy leave. It is only necessary that the employee have commenced employment at least 13 weeks before the baby is expected to be born.

**Example: A typical case**

Aurélie began her employment 15 weeks before her due date. She is eligible to begin her pregnancy leave **at any time** after starting her employment, because there are at least 13 weeks between the date her employment began and her due date.

**Example: When an employee is off sick**

Taylor is pregnant and was employed 15 weeks before the baby's due date. Soon after starting this new job, Taylor was off sick for five weeks. Taylor is eligible for pregnancy leave because there are at least 13 weeks between the date the employment began and the baby's due date. The fact that Taylor did not actually work for 13 weeks is irrelevant.

**Example: When a baby is born before the due date**

Meredith began her employment 15 weeks before her due date. However, 11 weeks after starting her new job, her baby was born. Meredith is eligible for pregnancy leave **to begin on the date the baby was born**, because there were at least 13 weeks between the date she began her employment and her due date. The fact that her baby was born less than 13 weeks after she began her employment is irrelevant.

**When a pregnancy leave can begin**

Usually, the earliest a pregnancy leave can begin is 17 weeks before the employee's due date. However, when an employee has a live birth more than 17 weeks before the due date, the employee is able to begin pregnancy leave on the date of the birth.

Ordinarily, the latest a pregnancy leave can begin is on the baby's due date. However, if the baby is born earlier than the due date, the latest the leave can begin is the day the baby is born.

Within these restrictions, an employee can start taking pregnancy leave any time within the 17 weeks up to and including the baby's due date. The employer cannot decide when the employee will begin pregnancy leave even if the employee is off sick or if the pregnancy limits the type of work the employee can do.

**Length of a pregnancy leave**

A pregnancy leave can last a maximum of 17 weeks for most employees. However, if an employee has taken a full 17 weeks of leave but is still pregnant, the employee may continue on the pregnancy leave until the birth of the child. If the employee has a live birth, the pregnancy leave will end on the date of the birth and then, in most cases, the employee will be able to commence parental leave.

An employee may decide to take a shorter leave if desired. However, once an employee has started a pregnancy leave, the leave must be taken all at once. The employee cannot use up part of the 17 weeks, return to work and then go back on pregnancy leave for the unused portion. If the employee returns to work for the employer from whom the leave was taken, even if it is only part-time, under the ESA the employee gives up the right to take the rest of the pregnancy leave.

(Note that under the federal Employment Insurance Program, employees are able to return to work and earn a certain amount of wages without having their employment insurance benefits reduced. However, under the ESA, a return to work, even on a part-time basis, would end the pregnancy leave.)

**Miscarriages and stillbirths**

An employee who has a miscarriage or stillbirth more than 17 weeks before the baby's due date is not entitled to a pregnancy leave.

However, if an employee has a miscarriage or stillbirth within the 17-week period preceding the due date, the employee is eligible for pregnancy leave. The latest date for commencing the leave in that case is the date of the miscarriage or stillbirth.

The pregnancy leave of an employee who has a miscarriage or stillbirth ends on the date that is the later of:

- 17 weeks after the leave began;
- or**
- 12 weeks after the stillbirth or miscarriage.

This means that the pregnancy leave of an employee who has a stillbirth or miscarriage will be at least 17 weeks long. In some cases it may be longer.

**Example: When an employee has a stillbirth**

Wai was pregnant and began pregnancy leave 15 weeks before the date the baby was due to be born. On the due date, Wai had a stillbirth. The ESA provides that the pregnancy leave ends on the date that is the later of 17 weeks after the leave began or 12 weeks after the stillbirth.

In this case, the later date is 12 weeks after the stillbirth. Wai can stay off work for up to 12 more weeks after the stillbirth, for a total of 27 weeks of pregnancy leave.

**Example: When an employee has a miscarriage**

Hélène began her pregnancy leave 15 weeks before her baby was due. One week later (one week into her pregnancy leave) she had a miscarriage. The law indicates that her pregnancy leave ends on the date that is the later of either 17 weeks after the leave began or 12 weeks after the miscarriage.

In Hélène's case, the later date is 17 weeks after the leave began. She will get a total of 17 weeks of leave.

**Notice requirements for pregnancy leave**

### Giving notice about starting a pregnancy leave

An employee must give their employer at least two weeks' written notice before beginning a pregnancy leave. Also, if the employer requests it, the employee must provide a certificate from a medical practitioner (which may include a medical doctor, a midwife or a nurse practitioner) stating the baby's due date.

### Retroactive notice

Sometimes a pregnant employee has to stop working earlier than expected (for example, because of complications caused by the pregnancy). In that case, the employee has two weeks after stopping work to give the employer **written notice** of the day the pregnancy leave began or will begin.

An employee does not have to start a pregnancy leave at the time of stopping work if the employee has stopped work due to illness or a complication caused by the pregnancy. The employee may choose instead to treat the time off as sick time and plan to commence the pregnancy leave later (but no later than the earlier of the birth date or due date). In that case, the employee has two weeks after stopping work to give the employer written notice of the day the leave will begin. If the employer requests it, the employee has to provide a medical certificate issued by a medical doctor, a midwife or a nurse practitioner stating the baby's due date and stating that the employee was unable to perform the duties of the position because of the complication.

If an employee stops working earlier than expected because of a birth, stillbirth or miscarriage, the employee has two weeks after stopping work to give the employer **written notice** of the day the leave began. The pregnancy leave begins no later than the date of the birth, stillbirth or miscarriage. If the employer requests it, the employee has to provide a medical certificate issued by a medical doctor, a midwife or a nurse practitioner stating the due date and the date of birth, stillbirth or miscarriage.

### Changing the date a pregnancy leave starts

Suppose a pregnant employee has given notice to begin a pregnancy leave. The employee can begin the leave **earlier** than the date originally provided to the employer if the employee gives the employer new **written notice** at least two weeks before the **new, earlier date**.

#### Example: Changing the start of a pregnancy leave to an earlier date

Barbara gave her employer written notice that she would begin her pregnancy leave on September 10. Now Barbara wants to start her leave on August 27. She must give her employer new written notice by August 13 (two weeks before August 27).

An employee can also change the date the pregnancy leave will begin to a **later** date than that originally provided to the employer. To do this, the employee must give the employer a new **written notice** at least two weeks before the **original date** the employee had said the leave would begin.

#### Example: Changing the start of a pregnancy leave to a later date

Mairead gave written notice to the employer that Mairead would start a pregnancy leave on September 10. Now Mairead wants to start the leave on September 15. Mairead must give the employer new written notice by August 27 (two weeks before September 10).

### Failing to give notice

An employee who fails to give the required notice **does not** lose the right to a pregnancy leave.

### Giving notice about ending a pregnancy leave

An employee can tell the employer when the return to work will be, but the employee is not required to do so. If the employee does not specify a return date, the employer is to assume that the employee will take the full 17 weeks of leave (or any longer period that the employee may be entitled to).

An employer cannot require an employee to return from pregnancy leave early. Also, an employer has no right under the ESA to require an employee to prove, through medical documentation, that the employee is fit to return to work. The decision to return to work is the employee's.

### Changing the date a pregnancy leave ends

An employee may want to change the date the pregnancy leave was scheduled to end to an **earlier date**. If so, the employee must give the employer a **new** written notice at least four weeks before the **new, earlier** day.

An employee may want to change the date the leave was scheduled to end to a **later** date. In this case, the employee must give the employer a **new** written notice at least four weeks before the date the leave was **originally** going to end. Unless the employer agrees, the employee cannot schedule a new end date to the pregnancy leave that would result in the employee taking a longer leave than the employee is entitled to under the ESA.

### When an employee decides not to return to work

Suppose an employee wants to resign before the end of the pregnancy leave, or at the end of the leave. The employee must give the employer at least four weeks' written notice of the resignation. This notice requirement does not apply if the employer constructively dismisses the employee. (See "Termination of employment" chapter for information about constructive dismissal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-2>) .)

### Parental leave

Both new parents have the right to take parental leave of up to 61 or 63 weeks of **unpaid** time off work.

### Qualifying for parental leave

A new parent is entitled to parental leave whether they are a full-time, part-time, permanent or term contract employee provided that the employee:

- is employed by an employer that is covered by the ESA,
- and

- was employed for at least 13 weeks before commencing the parental leave.

An employee does not have to **actively** work in the 13- week period preceding the start of the parental leave. For example, the employee could be on layoff, vacation, sick leave or pregnancy leave for all or part of the 13-week qualifying period and still be entitled to parental leave. The [ESA](#) only requires the employee to have been **employed** by the employer for 13 weeks before they may commence a parental leave.

A "parent" includes:

- a birth parent;
- an adoptive parent (whether or not the adoption has been legally finalized); or
- a person who is in a relationship of some permanence with a parent of the child and who plans on treating the child as their own. This includes same-sex couples.

#### When a parental leave can begin

A birth mother who takes pregnancy leave must ordinarily begin parental leave as soon as the pregnancy leave ends. However, an employee's baby may not yet have come into the employee's care for the first time when the pregnancy leave ends. For example, perhaps the baby has been hospitalized since birth and is still in the hospital's care when the pregnancy leave ends.

In this case, the employee can either commence parental leave when the pregnancy leave ends or choose to return to work and start the parental leave later. If the employee chooses to return to work, that employee will be able to start parental leave anytime within 78 weeks of the birth or the date the baby first came home from the hospital.

All other parents must **begin** their parental leave no later than 78 weeks after:

- the date their baby is born;  
**or**
- the date their child **first** came into their care, custody and control.

The parental leave does not have to be completed within this 78-week period. It just has to be started within this timeframe.

#### Length of a parental leave

Birth mothers who take pregnancy leave are entitled to take up to 61 weeks of parental leave. All other new parents are entitled to take up to 63 weeks of parental leave.

Employees may decide to take a shorter leave if they wish. However, once an employee has started parental leave, they must take it all at one time. The employee **cannot** use up part of the leave, return to work for the employer and then go back on parental leave for the unused portion.

(Note that under the federal Employment Insurance Program, employees are able to return to work and earn a certain amount of wages without having their employment insurance benefits reduced. However, under the [ESA](#), a return to work, even on a part-time basis, would end the parental leave.)

#### Miscarriages and stillbirths

An employee who has a miscarriage or stillbirth, or whose spouse or same-sex partner has a miscarriage or stillbirth, **is not** eligible for parental leave.

#### Notice requirements for parental leave

##### Giving notice about starting a parental leave

An employee must give their employer at least two weeks' **written notice** before beginning a parental leave. Because EI benefits can be taken over a shorter period or longer period, it is strongly advised that employees tell the employer exactly how many weeks the employee plans to take as parental leave when giving notice (for example, 37 weeks or 63 weeks). If an employee does not tell an employer how much leave they plan to take, the employer is to assume that the employee will be on leave for the full 61 or 63 weeks (see "giving notice about ending a parental leave" and "changing the date a parental leave ends," below). In that case, the employee is required to give four weeks' written notice if they want to return to work before using 61 or 63 weeks of leave. If an employee is also taking a pregnancy leave, the employee may, but is not required to, give the employer notice of the parental leave when notice of the pregnancy leave is provided.

##### Retroactive notice

Sometimes, an employee may stop working earlier than expected because a child is born or comes into the employee's custody, care and control for the first time earlier than expected. In this case, the employee has two weeks after stopping work to give the employer written notice that they are taking parental leave. The parental leave begins on the day the employee stops working.

##### Changing the start of a parental leave to an earlier date

Suppose an employee has given notice to begin a parental leave. The employee can begin the leave **earlier** than the date the employee originally told the employer by giving the employer new **written notice** at least two weeks before the **new, earlier date**. If the employee intends to use less than 61 or 63 weeks of leave, it is advised that the employee clearly state the number of weeks the employee plans to take in the new written notice. See "giving notice about starting a parental leave," above.

##### Example

Lee gave the employer written notice that Lee's parental leave would begin on September 10. Now Lee wants to start the leave on August 27. Lee must give the employer new written notice by August 13 (two weeks before August 27).

### Changing the start of a parental leave to a later date

An employee can also change the starting date of the leave to a **later** date than what the employee originally told the employer. To do this, the employee must give the employer new **written notice** at least two weeks before the **original** date the leave was going to begin. If the employee intends to use less than 61 or 63 weeks of leave, it is advised that the employee clearly state the number of weeks they plan to take in the new written notice. See “giving notice about starting a parental leave,” above.

### Example

Wendy gave her employer written notice that she would start her parental leave on September 10. Now Wendy wants to start her leave on September 15. She must give her employer new written notice by August 27 (two weeks before September 10).

### Failing to give notice

An employee who fails to give the required notice **does not** lose their right to a parental leave.

### Giving notice about ending a parental leave

An employee can tell the employer when they will be returning to work, but the employee is not required to do so. If the employee does not specify a return date, or did not specify a return date when the original notice that the employee was planning to take the leave was given, the employer is to assume that the employee will take the full 61 or 63 weeks of leave. For example, if an employee did not specify in the original notice that the employee planned to take 35 or 37 weeks of leave, the employer will assume that the employee will take the full 61 or 63 weeks of leave. If the employee wants to return to work after 35 or 37 weeks of leave, the employee must provide four weeks' of written notice prior to their return to work unless the employer allows the employee to return. An employer cannot require an employee to return from leave early.

### Changing the date a parental leave ends

An employee may want to return to work **earlier** than the date the employee was scheduled to return. If so, the employee must give the employer written notice at least four weeks before the **new, earlier day**.

An employee may want to return to work **later** than the date the employee was scheduled to return. In this case, the employee must give the employer **new** written notice at least four weeks before the date the employee was **originally** going to return. However, unless the employer agrees, the employee cannot schedule a new return date that would result in the employee taking a longer leave than the employee is entitled to under the ESA.

### When an employee decides not to return to work

Suppose an employee decides to resign before the end of their parental leave, or at the end of the leave. The employee must give the employer at least four weeks' written notice of the resignation. This notice requirement does not apply if the employer constructively dismisses the employee. (See “Termination of employment” chapter for information about constructive dismissal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-2>)).

## Rights for employees taking pregnancy and parental leaves

Employees on pregnancy or parental leave have several rights.

### The right to reinstatement

In most cases, an employee who takes a pregnancy or parental leave is entitled to:

- the same job the employee had before the leave began;  
**or**
- a comparable job, if the employee's old job no longer exists.

In either case, the employee must be paid at least as much as they were earning before the leave. Also, if the wages for the job went up while the employee was on leave, or would have gone up if the employee hadn't been on leave, the employer must pay the higher wage when the employee returns from leave.

If an employer has dismissed an employee for reasons that are **totally** unrelated to the fact that the employee took a leave, the employer does not have to reinstate the employee.

### The right to be free from penalty

Employers cannot penalize an employee **in any way** because the employee:

- took a pregnancy or parental leave;
  - For example, an employee adopted a child and took parental leave.
- plans to take a pregnancy or parental leave;
  - For example, an employee tells other employees of plans to have children.
- is eligible to take a pregnancy or parental leave;
  - For example, an employee's spouse has just given birth. The employee has not yet decided to take parental leave, but the employee is eligible
- will become eligible to take a pregnancy or parental leave.
  - For example, an employee tells an employer of a same sex partner's pregnancy. The employee is not yet eligible to take parental leave because the employee is not yet a parent, but the employee will be eligible to take parental leave in the future.



- asks questions about pregnancy or parental leave.
  - For example, an employee asks the employer if a father can take parental leave.

A “reprisal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>)” is when an employer penalizes or threatens to penalize an employee **in any way** for doing any of these things.

### The right to continue to participate in benefit plans

Employees on pregnancy or parental leave have a right to continue to take part in certain benefit plans that their employer may offer. These include:

- pension plans;
- life insurance plans;
- accidental death plans;
- extended health plans; and
- dental plans.

The employer must continue to pay its share of the premiums for any of these plans that were offered before the leave, unless the employee tells the employer in writing that the employee will not continue to pay their own share of the premiums.

In most cases, employees must continue to pay the employee's share of the premiums in order to continue to participate in these plans.

Employees who are on pregnancy or parental leave can also continue to participate in other benefit plans if employees who are on other types of leave are able to continue to participate in those plans. In addition, a female employee may be entitled to disability benefits during that part of the leave during which the employee would not have been able to work for health reasons related to pregnancy or childbirth.

### The right to earn credits for length of employment, length of service and seniority

Employees continue to earn credits toward length of employment, length of service, and seniority during periods of leave.

#### Example: Length of service

Trina's employment contract states that she earns 1 paid vacation day for each month of active service and that after five years (length of service) she will begin to earn 1½ paid vacation days for each month of active service. She is on pregnancy and parental leave for her entire fifth year of employment.

Because her leave will count towards "length of service", the year on leave will count to complete her 5 years length of service and she will then be entitled to earn 1½ paid vacation days for each month of active service when she returns from her leave.

However, while she was on the leave she was not earning credit for active service and so under her contract she was not earning paid vacation days during the leave itself. At the end of the leave she would not have earned any paid vacation under contract but the employer would be required to ensure that she received at least the minimum vacation entitlement for that year (two weeks of vacation time off plus four per cent of any wages earned in that year).

#### Example: Seniority

Kaley is a member of a union that has bargaining rights at the workplace. Under the collective agreement, an employee's seniority determines such things as order of layoff and recall, job promotions and annual vacation entitlements. Kaley continues to accrue seniority for all purposes during the pregnancy and parental leaves, just as if Kaley had been actively employed.

### Probation

The period of a leave is not included when determining whether an employee has completed a probationary period. If an employee was on probation at the start of a leave, the employee must complete the probationary period after returning to work.

## Sick leave

**Sick leave is different from infectious disease emergency leave.** Sick leave is unpaid and can be taken for a personal illness, injury or medical emergency. Infectious disease emergency, can be taken for specific reasons related to COVID-19. Note that **paid** infectious disease emergency leave was available from April 19, 2021 to March 31, 2023. **Unpaid** infectious disease emergency leave continues to be available.

For more information about the rights and obligations related to paid or unpaid infectious disease emergency leave, read the infectious disease emergency leave chapter (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) of this guide.

### Overview

Most employees have the right to take up to **three days** of unpaid job-protected leave each calendar year due to a personal illness, injury or medical emergency. This is known as **sick leave**. Special rules apply to some occupations.

Employees are entitled to up to three sick leave days per year once they have worked for an employer for at least two consecutive weeks. An employee who missed part of a day to take the leave would be entitled to any wages they actually earned while working.

### Reasons a sick leave may be taken

An employee who is entitled to sick leave can take up to three unpaid days of leave each calendar year due to personal illness, injury or medical emergency.

## Illness, injury or medical emergency

An employee can take sick leave for illnesses, injuries and medical emergencies for themselves. It does not matter whether the illness, injury or medical emergency was caused by the employee or by external factors beyond their control. For example, an employee who sprained their ankle while showing off to friends when waterskiing would still be entitled to sick leave, even though the injury may have been a result of their own carelessness.

Generally, employees are entitled to take the leave for pre-planned (elective) surgery if it is for an illness or injury, even though it is scheduled ahead of time and not a medical “emergency.”

Employees cannot take the leave for cosmetic surgery that isn't medically necessary or is unrelated to an illness or injury.

## Contracts that provide paid or unpaid sick leave

If an employment contract, including a collective agreement, provides a greater right or benefit than the sick leave standard under the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), then the terms of the contract apply instead of the standard.

If the contract does not provide a greater right or benefit, then the sick leave standard in the ESA applies to the employee. However, if an employment contract provides for something similar to sick leave (for example, paid “sick days”), and if the employee takes the leave under the employment contract, the employee is considered to have also taken sick leave under the ESA.

### Example

A contract only provides for one paid personal sick day per year. It does not include job-protected time off for any other reason. This contract does not provide a greater right or benefit than the sick leave provisions. This means that the employee is entitled to three days of job protected sick leave per calendar year.

If the employee takes one paid sick day off under the employment contract, the employee has also taken one sick leave day under the ESA. That means the employee would have two sick leave days left in the calendar year under the ESA, and no more paid sick days under the employment contract. The paid sick day counts against both the employment contract entitlements and against the ESA's sick leave entitlement. This is true whether the leave under the contract of employment is paid or unpaid.

## Interaction with other leaves

Sick leave, family responsibility leave, bereavement leave, family caregiver leave, family medical leave, domestic or sexual violence leave, critical illness leave, child death leave and crime-related child disappearance leave are different types of leaves. The purposes of the leaves, their length and eligibility criteria are different. See the other chapters of this Guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s). This means that a single absence can only count against one statutory leave, even if the event that triggered it is a qualifying event under more than one leave.

## Length of sick leave

Employees are entitled to up to three full days of job protected unpaid sick leave every **calendar** year, whether they are employed on a full or part-time basis.

There is no pro-rating of the three day entitlement. An employee who begins work partway through a calendar year is still entitled to three days of leave for the rest of that year.

Employees cannot carry over unused sick leave days to the next calendar year. The three days of leave do not have to be taken consecutively. Employees can take the leave in part days, full days or in periods of more than one day. If an employee takes only part of a day as sick leave, the employer can count it as a full day of leave.

### Example: Part-day sick leave

Val comes to work as usual but develops a severe migraine in the early afternoon. She leaves work to go home, rest and take medication.

Val has the right to be on sick leave for the half-day. Her employer does not have to count the absence as a full day of leave, but can if they want.

The employer is only allowed to count the half-day absence as a full day of leave when determining if Val's three day entitlement has been used up. The employer, for example, still must pay Val for the half day that she worked, and has to include the hours worked to determine whether she worked overtime, or reached her daily or weekly limit on hours of work.

## Notice requirements

Generally, an employee must inform the employer before starting the leave that he or she will be taking a sick leave of absence.

If an employee has to begin the leave before notifying the employer, the employee must inform the employer as soon as possible after starting it. Notice does not have to be given in writing. Oral notice is sufficient.

While an employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take the leave if they fail to do so.

## Proof of entitlement

An employer may require an employee to provide evidence “reasonable in the circumstances” that they are eligible for sick leave.

What will be reasonable in the circumstances will depend on all of the facts of the situation, such as the duration of the leave, whether there is a pattern of

absences, whether any evidence is available and the cost of the evidence.

### Medical notes

An employer may require an employee to provide a medical note from a health practitioner such as a doctor, nurse practitioner or psychologist when the employee is taking the leave because of personal illness, injury or medical emergency if it is “reasonable in the circumstances”.

However, the employer can ask only for the following information:

- the duration or expected duration of the absence
- the date the employee was seen by a health care professional
- whether the patient was examined in person by the health care professional issuing the note

Employers cannot ask for information about the diagnosis or treatment of the employee's medical condition.

### Rights during leave

Employees who take sick leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking a sick leave. See “Rights for employees taking pregnancy and parental leaves (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>) ” in the “Pregnancy and parental leave” chapter of this guide.

### Special rules regarding sick leave

#### Professional employees

Certain professionals may not take sick leave where it would constitute an act of professional misconduct or a dereliction of professional duty (for example, health practitioners). For a list of professions to which this special rule applies, please refer to the guide to special rules and exemptions (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Bereavement leave

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Overview

Most employees have the right to take up to **two days** of unpaid job-protected leave each calendar year because of the death of certain family members. This is known as **bereavement leave**. Special rules apply to some occupations.

Employees are entitled to up to two bereavement leave days per year after they have worked for an employer for at least two consecutive weeks. An employee who missed part of a day to take the leave would be entitled to any wages they earned while working.

### Reasons bereavement leave may be taken

An employee who is entitled to bereavement leave can take up to two unpaid days of leave each calendar year because of the death of the following family members:

- spouse (includes both married and unmarried couples, of the same or opposite genders)
- parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- spouse of the employee's child
- brother or sister of the employee
- relative of the employee who is dependent on the employee for care or assistance

Bereavement leave can be taken at the time of the family member's death, or sometime later to attend a funeral or memorial service. It could also be taken to attend to estate matters.

### Contracts that provide paid or unpaid bereavement leave

If an employment contract, including a collective agreement, provides a greater right or benefit than the bereavement leave standard under the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), then the terms of the contract apply instead of the standard.

If the contract does not provide a greater right or benefit, then the bereavement leave standard in the [ESA](#) applies to the employee.

### Example

A contract provides one paid bereavement day per year. This contract does not provide a greater right or benefit than the bereavement leave provisions. This means that the employee is entitled to two days of job protected bereavement leave per calendar year.

If the employee takes one paid bereavement day off under the employment contract to attend the memorial service of a specified relative, the employee has also taken one bereavement leave day under the ESA. That means the employee would have one bereavement leave day left in the calendar year under the ESA, and no more paid bereavement days under the employment contract. The paid bereavement day counts against both the employment contract entitlements and against the ESA's bereavement leave entitlement. This is true whether the leave under the contract of employment is paid or unpaid.

### Interaction with other leaves

Bereavement leave, family responsibility leave, sick leave, family caregiver leave, family medical leave, domestic or sexual violence leave, critical illness leave, child death leave and crime-related child disappearance leave are different types of leaves. The purposes of the leaves, their length and eligibility criteria are different. See the other chapters of this Guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s). This means that a single absence can only count against one ESA leave, even if the event that triggered it is a qualifying event under more than one leave.

### Length of bereavement leave

Employees are entitled to up to two full days of job protected unpaid bereavement leave every **calendar** year, whether they are employed on a full or part-time basis.

There is no pro-rating of the two day entitlement. An employee who begins work partway through a calendar year is still entitled to two days of leave for the rest of that year.

Employees cannot carry over unused bereavement leave days to the next calendar year. The two days of leave do not have to be taken consecutively. Employees can take the leave in part days, full days or in periods of more than one day. If an employee takes only part of a day as bereavement leave, the employer can count it as a full day of leave.

#### Example: Part-day bereavement leave

Robin's mother has died, and Robin tells her employer that she has to meet with a lawyer to deal with the distribution of the estate.

Robin has the right to be on bereavement leave for the half-day needed to travel to and from and attend the appointment with the lawyer. Her employer does not have to count the absence as a full day of leave, but can if they want. Robin does not have the right to take the entire day off as leave – even if his employer counted it as such – as she only needs half the day for the leave.

The employer is only allowed to count the half-day absence as a full day of leave when determining if Robin's two day entitlement has been used up. The employer, for example, still must pay Robin for the half day that she worked, and has to include the hours worked to determine whether she worked overtime, or reached her daily or weekly limit on hours of work.

### Notice requirements

Generally, an employee must inform the employer before starting the leave that he or she will be taking a bereavement leave of absence.

If an employee has to begin the leave before notifying the employer, the employee must inform the employer as soon as possible after starting it. Notice does not have to be given in writing. Oral notice is sufficient.

While an employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take the leave if they fail to do so.

### Proof of entitlement

An employer may require an employee to provide evidence "reasonable in the circumstances" that they are eligible for bereavement leave. This may take the form of a death certificate, a notification from a funeral home, a published obituary, a copy of a printed program from a memorial service or communication from a legal office setting up an appointment to discuss estate matters.

What will be reasonable in the circumstances will depend on all of the facts of the situation, such as the duration of the leave, whether there is a pattern of absences, whether any evidence is available and the cost of the evidence. For example, it might not be reasonable to expect an employee who makes minimum wage to get a letter from a lawyer stating that the employee had to attend a meeting if the lawyer charges \$25.00 for it.

### Rights during leave

Employees who take bereavement leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking a bereavement leave. See "Rights for employees taking pregnancy and parental leaves" in the "Pregnancy and parental leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>) " chapter of this guide.

### Special rules for bereavement leave

#### Professional employees

Certain professionals may not take bereavement leave where it would constitute an act of professional misconduct or a dereliction of professional duty (e.g. health practitioners). For a list of professions to which this special rule applies, please refer to the guide to special rules and exemptions (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

## Family responsibility leave

The *Employment Standards Act, 2000* was amended to include an unpaid, job-protected infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>). This leave is available to employees who are not performing the duties of their position for certain reasons related to COVID-19, including:

- personal illness, quarantine or isolation in specified circumstances
- concern by the employer that the employee may expose other individuals in the workplace to COVID-19
- **to provide care or support** to certain family members for a reason related to COVID-19, including school or day care closures
- due to certain travel-related restrictions

The leave is retroactive to January 25, 2020. Employers cannot require employees to provide medical notes to prove they are eligible for the leave. Learn more (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>).

Note: the minimum standards under the ESA described here may have applied differently to certain employees during the declared COVID-19 emergency when orders under the *Emergency Management and Civil Protection Act* were in effect. You can find the orders by visiting the *Emergency Management and Civil Protection Act* online (<https://www.ontario.ca/laws/statute/90e09>) and selecting the “Revoked/spent regulations under this Act” tab.

### Overview

Most employees have the right to take up to **three days** of unpaid job-protected leave each calendar year because of an illness, injury, medical emergency or urgent matter relating to certain relatives. This is known as **family responsibility leave**. Special rules apply to some occupations.

Employees are entitled to up to three family responsibility leave days per year after they have worked for an employer for at least two consecutive weeks. An employee who missed part of a day to take the leave would be entitled to any wages they earned while working.

### Reasons family responsibility leave may be taken

An employee who is entitled to family responsibility leave can take up to three unpaid days of leave each calendar year due to:

- illness, injury, medical emergency or urgent matter relating to the following family members:
  - spouse (includes both married and unmarried couples, of the same or opposite genders)
  - parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
  - spouse of the employee's child
  - brother or sister of the employee
  - relative of the employee who is dependent on the employee for care or assistance

### Illness, injury or medical emergency

An employee can take family responsibility leave for illnesses, injuries and medical emergencies for a specified family member listed above.

Generally, employees are entitled to take the leave if a relative has a pre-planned (elective) surgery if it is for an illness or injury, even though it is scheduled ahead of time and not a medical “emergency.”

Employees cannot take the leave for a relative who is having cosmetic surgery that isn't medically necessary or is unrelated to an illness or injury.

### Urgent matter

An employee can also take family responsibility leave because of an “urgent matter” concerning any of the family members listed above. An urgent matter is an event that is unplanned or out of the employee's control, **and** can cause serious negative consequences, including emotional harm, if not responded to.

#### Examples of an “urgent matter”

- The employee's babysitter calls in sick.
- The house of the employee's elderly parent is broken into, and the parent is very upset and needs the employee's help to deal with the situation.
- The employee has an appointment to meet with their child's counsellor to discuss behavioural problems at school. The appointment could not be scheduled outside the employee's working hours.

#### Examples of events that do not qualify as an urgent matter

- An employee wants to leave work early to watch his daughter's soccer game.
- An employee wants the day off to attend her sister's wedding as a bridesmaid.

### Contracts that provide paid or unpaid similar leave

If an employment contract, including a collective agreement, provides a greater right or benefit than the family responsibility standard under the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), then the terms of the contract apply instead of the standard.

If the contract does not provide a greater right or benefit, then the family responsibility leave standard in the ESA applies to the employee. However, if an

employment contract provides for something similar to family responsibility leave (for example, paid “sick days” that can be used for either the employee or if the employee’s child is sick), then if the employee takes the leave under the employment contract, the employee is considered to have also taken family responsibility leave.

#### Example

A contract only provides for one paid personal day per year, which may include the employee’s child’s illness. This contract does not provide a greater right or benefit than the family responsibility leave provisions. This means that the employee is entitled to three days of job protected family responsibility leave per calendar year.

If the employee takes one paid personal day off under the employment contract because their child was ill, the employee has also taken one family responsibility leave day under the ESA. That means the employee would have two family responsibility leave days left in the calendar year under the ESA, and no more paid personal days under the employment contract. The paid personal day counts against both the employment contract entitlements and against the employee’s family responsibility leave entitlement. This is true whether the leave under the contract of employment is paid or unpaid.

#### Interaction with other leaves

Sick leave, family responsibility leave, bereavement leave, family caregiver leave, family medical leave, domestic or sexual violence leave, critical illness leave, child death leave and crime-related child disappearance leave are different types of leaves. The purposes of the leaves, their length and eligibility criteria are different. See the other chapters of this Guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s). This means that a single absence can only count against one statutory leave, even if the event that triggered it is a qualifying event under more than one leave.

#### Length of family responsibility leave

Employees are entitled to up to three full days of job protected unpaid family responsibility leave every **calendar** year, whether they are employed on a full or part-time basis.

There is no pro-rating of the three day entitlement. An employee who begins work partway through a calendar year is still entitled to three days of leave for the rest of that year.

Employees cannot carry over unused family responsibility leave days to the next calendar year. The three days of leave do not have to be taken consecutively. Employees can take the leave in part days, full days or in periods of more than one day. If an employee takes only part of a day as family responsibility leave, the employer can count it as a full day of leave.

#### Example: Part-day family responsibility leave

Kevin’s daughter is sick, and her doctor has scheduled some tests at the hospital. Kevin tells his employer that he has to be away from work in the morning to take his daughter for tests.

Kevin has the right to be on family responsibility leave for the half-day needed to take his daughter for the tests. His employer does not have to count the absence as a full day of leave, but can if they want. Kevin does not have the right to take the entire day off as leave – even if his employer counted it as such – as he only needs half the day for the leave.

The employer is only allowed to count the half-day absence as a full day of leave when determining if Kevin’s three day entitlement has been used up. The employer, for example, still must pay Kevin for the half day that he worked, and has to include the hours worked to determine whether he worked overtime, or reached his daily or weekly limit on hours of work.

#### Notice requirements

Generally, an employee must inform the employer before starting the leave that he or she will be taking a family responsibility leave of absence.

If an employee has to begin the leave before notifying the employer, the employee must inform the employer as soon as possible after starting it. Notice does not have to be given in writing. Oral notice is sufficient.

While an employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take the leave if they fail to do so.

#### Proof of entitlement

An employer may require an employee to provide evidence “reasonable in the circumstances” that they are eligible for family responsibility leave.

What will be reasonable in the circumstances will depend on all of the facts of the situation, such as the duration of the leave, whether there is a pattern of absences, whether any evidence is available and the cost of the evidence. For example, if an employee takes the leave because a person included in the group of family members covered by family responsibility leave was involved in a car accident, it would be reasonable for an employer to request a copy of a police report or invoice from a towing company or auto mechanic.

#### Medical notes

An employer cannot require an employee to provide a medical note from a health professional when the employee is taking the leave because of the illness, injury or medical emergency of a specified relative.

In addition to being prohibited from requiring the employee to provide a medical note with respect to a leave taken because of the illness, injury or medical

emergency of a relative, the employer cannot require the employee to give details of the relative's medical condition. The employer may only require the employee to disclose the name of the relative, and their relationship to the employee, and a statement that the absence was required because of the relative's injury, illness or medical emergency.

### Rights during leave

Employees who take family responsibility leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking a family responsibility leave. See "Rights for employees taking pregnancy and parental leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>) in the "Pregnancy and parental leave" chapter of this guide.

### Special rules for family responsibility leave

#### Professional employees

Certain professionals may not take family responsibility leave where it would constitute an act of professional misconduct or a dereliction of professional duty (for example, health practitioners). For a list of professions to which this special rule applies, please refer to the guide to special rules and exemptions (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>).

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## Family caregiver leave

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Family caregiver leave is unpaid, job-protected leave of up to eight weeks per calendar year per specified family member.

Family caregiver leave may be taken to provide care or support to certain family members for whom a qualified health practitioner has issued a certificate stating that they have a serious medical condition.

Family medical leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave>) is another job-protected leave available under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) for employees with certain relatives who have a serious medical condition. One of the main differences between family caregiver leave and family medical leave is that an employee is only eligible for the latter if the family member who has a serious medical condition has a significant risk of death occurring within a period of 26 weeks. Employees may also be entitled to take critical illness leave to provide care or support to a minor child or adult who is a family member, whose baseline state of health has changed significantly and whose life is at risk from an illness or injury. Critical illness leave may be taken for up to 17 weeks to care for an adult, and up to 37 weeks to care for a minor child.

### Eligibility

All employees, whether full-time, part-time, permanent, or term contract, who are covered by the [ESA](#), may be entitled to family caregiver leave.

There is no requirement that an employee be employed for a particular length of time, or that the employer employ a specific number of employees for the employee to qualify for family caregiver leave.

**Care or support** includes, but is not limited to: providing psychological or emotional support; arranging for care by a third-party provider; or directly providing or participating in the care of the family member.

The specified **family members** for whom a family caregiver leave may be taken are:

- the employee's spouse (including same-sex spouse)
- a parent, step-parent or foster parent of the employee or the employee's spouse
- a child, step-child or foster child of the employee or the employee's spouse
- a grandparent or step-grandparent of the employee or the employee's spouse
- a grandchild or step-grandchild of the employee or the employee's spouse
- a spouse of a child of the employee
- a brother or sister of the employee
- a relative of the employee who is dependent on the employee for care or assistance.

The specified family members do not have to live in Ontario for the employee to be eligible for family caregiver leave.

### Qualified health practitioner

For family caregiver leave purposes, a qualified health practitioner is a person who is qualified to practice as a physician, registered nurse or psychologist under the laws of the jurisdiction in which care or treatment is being provided. In Ontario, this includes psychiatrists and nurse practitioners.

Different types of health practitioners may be able to issue certificates in different jurisdictions; it will depend on the laws of the jurisdiction.

### The medical certificate

The employee does not have to have the medical certificate before they can start the leave, but a certificate must eventually be obtained. If a certificate is never issued, the employee will not be entitled to the leave. This means that the employee would not be entitled to any of the protections afforded to employees on family caregiver leave.

The certificate from the qualified health practitioner must name the individual and state that the individual has a serious medical condition. There is no requirement that the note specify what the medical condition is; it need only state that it is “serious.” This can include conditions that are chronic or episodic.

If a medical certificate sets out a period during which the individual will have a serious medical condition, the certificate will support absences as family caregiver leave during that period. If no period is set out, the certificate will support absences as family caregiver leave from the date it is issued until the end of the calendar year in which it is issued.

An employer is entitled to ask an employee for a copy of the certificate to provide proof that they are eligible for a family caregiver leave. The employee is required to provide the copy as soon as possible after the request.

The employee may wish to provide the health practitioner with the “Medical certificate to support entitlement to family caregiver leave, family medical leave, and/or critical illness leave” form (<https://forms.mgcs.gov.on.ca/en/dataset/on00407>) . The health practitioner is not required to use this particular form; any certificate stating that the patient has a serious medical condition can be used.

The employee is responsible for obtaining and paying the costs (if any) of obtaining the certificate. The Ministry of Labour, Immigration, Training and Skills Development cannot assist the employee in obtaining the certificate.

### Interaction with other leaves

Family caregiver, sick, family responsibility, bereavement, declared emergency family medical, critical illness, domestic or sexual violence, child death, and crime-related child disappearance are different types of leaves. The purposes of the leaves, their length, the individuals with respect to whom they can be taken and the eligibility criteria vary.

See the respective chapters of this guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

### Length of family caregiver leave

A family caregiver leave can last up to eight weeks per calendar year for each specified family member. A “week” is defined as running from Sunday to Saturday.

The eight weeks can be taken consecutively or separately.

The employee may take leave for periods less than a full week (for example, single days, at the beginning, middle or end of a week), but if they do, they are considered to have used up one week of their eight-week entitlement. If the employee is on leave for two or more periods within the same week (for example, on leave on Monday and Thursday of the same week), only one week of the eight-week entitlement is used up.

The employee is entitled to be on leave only when the employee is providing care or support to a specified family member.

The employer cannot require the employee to take an entire week of leave if the employee only wants to take leave for a single day(s), cannot prevent the employee from working prior to taking a single day(s) of leave during a week, and cannot prevent the employee from returning to work after a single day(s) of leave during the week.

### Notice requirements

An employee must inform the employer in writing that they will be taking a family caregiver leave of absence.

If an employee has to begin a family caregiver leave before notifying the employer, they must inform the employer in writing as soon as possible after starting the leave.

If the employee does not take the eight-week leave all at once, the employee is required to provide notice to the employer with respect to each part of the leave.

### Example

Bella is going to take leave on eight consecutive Wednesdays. Bella is required to provide written notice to her employer of all eight days. She can do this by providing a single written notice that sets out all of the dates of leave, or she can provide separate notices.

While an employee is required to tell the employer in advance that they are taking a leave (or, if this is not possible, as soon as possible after starting the leave), the employee will **not** lose the right to take family caregiver leave if the employee fails to do so.

An employer may discipline an employee who does not properly inform the employer, but only if the reason for the discipline is the failure to properly notify the employer and **not in ANY way** because the employee took the leave.

### Rights during and at the end of a family caregiver leave

Employers do not have to pay wages when an employee is on family caregiver leave.

Employees who take family caregiver leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, an employer cannot threaten, fire or penalize in any other way an employee for taking, planning on taking, being eligible or being in a position to become eligible to take a family caregiver leave. See “Rights during pregnancy and parental leaves” (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental->



leave #section-3) ."

## Family medical leave

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Family medical leave is unpaid, job-protected leave of up to 28 weeks in a 52-week period.

Family medical leave may be taken to provide care or support to certain family members and people who consider the employee to be like a family member in respect of whom a qualified health practitioner has issued a certificate indicating that they have a serious medical condition with a significant risk of death occurring within a period of 26 weeks. Family caregiver leave is another job-protected leave available under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) for employees with certain relatives who have a serious medical condition. One of the main differences between family medical leave and family caregiver leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-caregiver-leave>) is that an employee may be eligible for family caregiver leave even if the family member who has a serious medical condition does not have a significant risk of death occurring within a period of 26 weeks. Employees may also be entitled to take critical illness leave to provide care or support to a minor child or adult who is a family member, whose baseline state of health has changed significantly and whose life is at risk from an illness or injury. Critical illness leave may be taken for up to 17 weeks to care for an adult, and up to 37 weeks to care for a minor child.

Note that if an employee has a certificate issued by a qualified health practitioner **before** January 1, 2018 to support their entitlement to family medical leave, then the rules for family medical leave before January 1, 2018 apply to that employee. What this means is that the employee with a pre-January 1, 2018 certificate would be entitled to take up to 8 weeks of family medical leave within a 26-week period, and would have to wait until that 26-week period was over to potentially become eligible for the 28-week period of leave.

### Eligibility

All employees, whether full-time, part-time, permanent, or term contract, who are covered by the [ESA](#) are entitled to family medical leave.

There is no requirement that an employee be employed for a particular length of time, or that the employer employ a specified number of employees in order for the employee to qualify for family medical leave.

**Care or support includes, but is not limited to:** providing psychological or emotional support; arranging for care by a third party provider; or directly providing or participating in the care of the family member.

The specified **family members** for whom a family medical leave may be taken are:

- the employee's spouse (including same-sex spouse)
- a parent, step-parent or foster parent of the employee or the employee's spouse
- a child, step-child or foster child of the employee or the employee's spouse
- a brother, step-brother, sister, or step-sister of the employee
- a grandparent or step-grandparent of the employee or of the employee's spouse
- a grandchild or step-grandchild of the employee or of the employee's spouse
- a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- a son-in-law or daughter-in-law of the employee or of the employee's spouse
- an uncle or aunt of the employee or of the employee's spouse
- a nephew or niece of the employee or of the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- family medical leave may also be taken for a person who considers the employee to be like a family member. Employees wishing to take a family medical leave for a person in this category must provide their employer, if requested, with a completed copy of the compassionate care benefits attestation form (<http://www.servicecanada.gc.ca/cgi-bin/search/eforms/index.cgi?app=profile&form=ins5223&lang=e>) , available from Employment and Social Development Canada (<http://www.esdc.gc.ca/eng/home.shtml>) , whether or not they are making an application for EI Compassionate Care Benefits or are required to complete the form to obtain such benefits.

The specified family members do not have to live in Ontario in order for the employee to be eligible for family medical leave.

### Employment insurance benefits

Under the federal *Employment Insurance Act* (<http://laws-lois.justice.gc.ca/eng/acts/e-5.6/>) , 26 weeks of employment insurance benefits (called "compassionate care benefits" (<http://www.servicecanada.gc.ca/eng/sc/ei/benefits/compassionate.shtml>) ") may be paid to EI eligible employees who have to be away from work temporarily to provide care to a family member who has a serious medical condition with a significant risk of death within 26 weeks and who requires care or support from one or more family members. For information about EI visit Service Canada's website (<http://www.servicecanada.gc.ca/eng/home.shtml>) , or contact Service Canada's Employment Insurance Automated Telephone Information Service at 1-800-206-7218.

The right to take time off work under the family medical leave provisions of the ESA is not the same as the right to the payment of compassionate care benefits under the federal *Employment Insurance Act*. An employee may be entitled to family medical leave whether or not they have applied for or is qualified for the compassionate care benefits.

## Interaction with other leaves

Family medical, sick, family responsibility, bereavement, declared emergency, family caregiver, critical illness, domestic or sexual violence, child death, and crime-related child disappearance are different types of leaves. For example, the purposes of the leaves, their length, the individuals with respect to whom they can be taken, and eligibility criteria are different.

See the respective chapters of this Guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

## Length of family medical leave

A family medical leave can last up to 28 weeks within a specified 52-week period.

"Week" is defined for family medical leave purposes as a period of seven consecutive days beginning on a Sunday and ending on a Saturday.

The 52-week period starts on the first day of the week in which the 26-week period specified in the medical certificate begins.

### Example

- A certificate stating that a family member of the employee has a serious medical condition with a significant risk of death within 26 weeks, starting Tuesday, January 3. The certificate is issued on Friday, January 6.
- The 52-week period within which family medical leave must be taken starts on the first day of the week of the 26-week period: Sunday, January 1. The 52-week period runs from January 1 to December 31.
- The employee can take up to 28 weeks of leave between January 1 and December 31.

The 28 weeks of a family medical leave do not have to be taken consecutively. An employee may therefore take a single week of leave at a time. However, if an employee only takes **part** of a week off work as family medical leave, it is still counted as a full week of leave.

That is because "week" is defined for family medical leave purposes as a period of seven consecutive days beginning on a Sunday and ending on a Saturday. Week is defined in this way to correspond with the beginning and end of the week set for EI entitlement purposes.

Note that the maximum length of family medical leave for an employee with a certificate issued by a qualified health practitioner before January 1, 2018 is eight weeks, to be taken within a period of 26 weeks.

## Where an employee provides care or support for only part of a week

Employees will not always need or want to take an entire week off to provide care or support to the individual.

In any week (which is defined as running from Sunday to Saturday), an employee's right to take family medical leave only begins on the first day the employee is providing care or support.

If the employee stops providing care or support before the end of that week, the employee is entitled to be on leave until the end of the week, and they can return to work only if the employer agrees. (The agreement does not have to be in writing.)

Even if an employee only takes part of a week off work as family medical leave, it is still counted as one week of the twenty-eight-week entitlement.

Note: Prior to the amendments to the ESA that came into force on October 29, 2014, employees had the right to be on family medical leave only on days on which they provided care or support, and employers could not prevent an employee from returning to work during a week in which leave was taken.

### Example

Felicia works weekdays. She provides care or support to her dying mother on Wednesday and takes family medical leave to do it. The first day of the week that she is entitled to be on family medical leave is Wednesday. She is also entitled to be on family medical leave on Thursday and Friday even though she is not providing care or support on those days. She is able to return to work on Thursday and Friday only if she wants to and her employer agrees to let her. Felicia is considered to have used up one of her 28 weeks of family medical leave even though she was on leave for only part of the week.

## Sharing family medical leave

The 28 weeks of family medical leave must be shared by all employees in Ontario who take a family medical leave under the ESA to provide care or support to a specified family member. For example, if one spouse took 18 weeks of family medical leave to care for their dying father, the other spouse would be able to take only 10 weeks of family medical leave. The spouses could take leave at the same time, or at different times.

## Taking more than 28 weeks of family medical leave

If an employee qualifies for family medical leave, the employee may take up to 28 weeks within the 52-week period running from the beginning of the 26-week

period stated in the certificate. If the family member does not pass away by the point that the 26-week period ends, the employee can remain on leave until all 28 weeks have been used up, and another medical certificate does not have to be issued with the 52-week period set by the certificate.

#### Example

On Sunday, January 1, a qualified health practitioner issues a certificate stating that Jean's mother has a serious medical condition with a significant risk of death within a period of 26 weeks. Jean takes 26 weeks of leave (ending July 1). Jean's mother is still alive on July 1: Jean can take a further two weeks of leave before December 31 and will not have to get a second medical certificate to be entitled to take the full 28 weeks of leave.

If an employee has taken a family medical leave to care for a family member who has not passed away within the 52-week period starting on the first day of the week in the 26-week period specified in the medical certificate, and a health practitioner issues another certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks, the employee would be entitled to an additional 28-weeks of family medical leave.

#### Example

On Sunday, January 1, a qualified health practitioner issues a certificate stating that Jean's mother has a serious medical condition with a significant risk of death within a period of 26 weeks. The 52-week period during which family medical leave must be taken runs from January 1 to December 31. Jean takes 28 weeks of leave (ending July 15). Jean's mother is still alive on January 1 of the following year: Jean can take a further 28 weeks of leave if another certificate is issued on January 1 or later.

As long as a health practitioner continues to issue additional certificates, an employee will be entitled to additional leaves with respect to the same family member.

Whether or not this employee would be eligible for any or further EI benefits would be a matter to be determined by the federal Employment Insurance Commission.

### Family medical leave for additional family members

If an employee has more than one specified family member who has a serious illness with a significant risk of death within a period of 26 weeks, the employee will be entitled to an 28 -week family medical leave for each of the specified family members.

### Timing of family medical leave

If a qualified health practitioner issues a certificate stating that a specified family member has a serious medical condition and there is significant risk of death occurring within a period of 26 weeks, an employee must take the family medical leave within the 52-week period starting on the first day of the week the 26-week period begins.

Where two or more certificates are obtained by two or more employees wishing to take leave with respect to the same family member, the 52-week period within which the family medical leave must be taken is determined by whichever certificate was issued first.

### Earliest date a family medical leave can begin

The earliest an employee may start the leave is the first day of the week in which the 26-week period identified on the medical certificate begins.

"Week" is defined for the purposes of family medical leave as a period of seven consecutive days, beginning on a Sunday and ending on a Saturday. If the date indicated on the certificate is a day other than a Sunday, the 26 week period will run from the preceding Sunday. Likewise, regardless of what day of the week the employee actually begins the leave, the week of family medical leave would be considered to have begun on the preceding Sunday.

#### Example

On Wednesday, June 13, a qualified health practitioner issues a certificate stating that Mohammed's spouse has a serious medical condition with a significant risk of death within a period of 26 weeks. Because a week is defined as a period of 7 consecutive days beginning on Sunday and ending on Saturday under the family medical leave provisions, the 26-week period is considered to begin Sunday June 10. Assuming Mohammed wished to commence the leave on the day the certificate was issued, the first week of the leave would be considered to have begun on Sunday June 10.

### Last date of a family medical leave

There are three important periods of time relating to family medical leave:

- the 26-week period specified in the medical certificate within which the family member has a significant risk of death
- the 52-week period that starts on the first day of the week in which the 26-week period specified in the medical certificate begins.
- the 28 weeks of family medical leave.

The latest day an employee can remain on leave is:

- the last day of the week in which the family member dies,
- the last day of the week in which the 52-week period expires
- the last day of the 28 weeks of family medical leave,

whichever is **earlier**.

Based on the definition of "week" for family medical leave, the last day an employee can be on leave will always be a Saturday.

### Medical certificate

The employee does not have to have the medical certificate before they can start the leave, but a certificate must eventually be obtained. If a certificate is never

issued, the employee will not be entitled to the leave. This means that the employee would not be entitled to any of the protections afforded to employees on family medical leave.

An employer is entitled to ask an employee for a copy of the certificate of the qualified health practitioner to provide proof that they are eligible for a family medical leave. The employee is required to provide the copy as soon as possible after the employer requests it. The certificate must name the family member and state that the family member has a serious medical condition with a significant risk of death occurring within a specified 26-week period. There is no requirement that the notice specify what the medical condition is; it need only state that it is serious and that there is a significant risk of death occurring within a 26-week period.

The employee may wish to provide the health practitioner with the Medical certificate to support entitlement to family caregiver leave, family medical leave, and/or critical illness leave form (<https://forms.mgcs.gov.on.ca/en/dataset/on00407>) .

The employee is responsible for obtaining and paying the costs (if any) of obtaining the certificate. The Ministry of Labour, Immigration, Training and Skills Development cannot assist the employee in obtaining the certificate.

If an employee is applying for Employment Insurance (EI) compassionate care benefits, a copy of the medical certificate submitted to Employment and Social Development Canada may also be used for the purposes of supporting an entitlement to family medical leave.

### Qualified health practitioner

For the purposes of family medical leave, a qualified health practitioner is a person who is qualified to practice medicine under the laws of the jurisdiction in which care or treatment of the family member is being provided. A qualified health practitioner can also be a nurse practitioner (a holder of an extended certificate of registration under the Nursing Act, 1991).

In Ontario, only a medical doctor or a nurse practitioner can issue a certificate. Different types of health practitioners with equivalent qualifications may be able to issue certificates in different jurisdictions - it will depend on the laws of that jurisdiction.

### Notice requirements

An employee must inform the employer in writing that they will be taking a family medical leave of absence.

If an employee has to begin a family medical leave before notifying the employer, they must inform the employer in writing as soon as possible after starting the leave.

If the employee does not take the 28-week leave all at once, the employee is required to provide notice to the employer each time the employee begins a new part of the leave.

### For example

Boris is going to take 14 weeks of leave from January 30 to May 6, and another 14 weeks from August 28 to December 2. Boris is required to provide written notice to his employer of both periods of leave. He can do this by providing a single written notice that sets out the start dates of both periods of leave, or he can provide two separate notices, at the same or different times.

An employee who does not give notice does not lose their right to a family medical leave.

While an employee is required to tell the employer in advance that they are taking a leave (or, if this is not possible, as soon as possible after starting the leave), the employee will not lose the right to take family medical leave if the employee fails to do so. An employer may discipline an employee who does not properly inform the employer, but only if the reason for the discipline is the failure to properly notify the employer and **not in any way** because the employee took the leave.

### Rights during and at the end of a family medical leave

Employers do not have to pay wages when an employee is on family medical leave.

Employees who take family medical leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, An employer cannot threaten, fire or penalize in any other way an employee for taking, planning on taking, being eligible or being in a position to become eligible to take a family medical leave. See "Rights during pregnancy and parental leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>) ."

## Critical illness leave

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Critical illness leave is unpaid job-protected leave of absence of up to 37 weeks in relation to a critically ill minor child, or 17 weeks in relation to a critically ill adult within a 52-week period.

### Eligibility

Critical illness leave may be taken to provide care or support to a critically ill minor child or adult who is a family member of the employee for whom a qualified health practitioner has issued a certificate stating:

1. that the minor child is a critically ill minor child, or the adult is a critically ill adult who requires the care or support of one or more family members, and
2. sets out the period during which the minor child or adult requires the care or support.

A “minor child” means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age.

An “adult” means a person who is 18 years of age or older.

“Critically ill” means that a person's baseline state of health has significantly changed and their life is at risk as a result of an illness or injury. It does not include chronic conditions.

A “family member” means:

- the employee's spouse (including same-sex spouse)
- a parent, step-parent or foster parent of the employee or the employee's spouse
- a child, step-child or foster child of the employee or the employee's spouse
- a brother, step-brother, sister, or step-sister of the employee
- a grandparent or step-grandparent of the employee or of the employee's spouse
- a grandchild or step-grandchild of the employee or of the employee's spouse
- a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- a son-in-law or daughter-in-law of the employee or of the employee's spouse
- an uncle or aunt of the employee or of the employee's spouse
- a nephew or niece of the employee or of the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- critical illness leave may also be taken for a person who considers the employee to be like a family member. Employees wishing to take a critical illness leave for a person in this category must provide their employer, if requested, with a completed copy of the compassionate care benefits attestation form (<http://www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=profile&form=ins5223&lang=e>) , available from Employment and Social Development Canada (<https://www.canada.ca/en/employment-social-development.html>) , whether or not they are making an application for EI Compassionate Care Benefits or are required to complete the form to obtain such benefits.

The specified family members do not have to live in Ontario in order for the employee to be eligible for critical illness leave.

An employee can take critical illness leave to care to a minor child who is their own child, or a minor child who is a family member from the list above (for example, a nephew, niece or grandchild).

The specified family members do not have to live in Ontario in order for the employee to be eligible for critical illness leave.

An employee can take critical illness leave to care to a minor child who is their own child, or a minor child who is a family member from the list above (for example, a nephew, niece or grandchild).

All employees who have been employed by their employer for at least six consecutive months and who are covered by the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) may be entitled to critical illness leave, whether they are full-time, part-time, permanent or term contract.

### Qualified health practitioner

For critical illness leave purposes, a qualified health practitioner is a person who is qualified to practice as a physician, registered nurse, or psychologist under the laws of the jurisdiction in which care or treatment is being provided. In Ontario, this includes psychiatrists and nurse practitioners.

Different types of health practitioners may be able to issue certificates in different jurisdictions; it will depend on the laws of that jurisdiction.

### The medical certificate

The employee does not have to have the medical certificate before they can start the leave, but a certificate must eventually be obtained. If a certificate is never issued, the employee will not be entitled to the leave. This means that the employee would not be entitled to any of the protections afforded to employees on critical illness leave.

The certificate must:

- name the minor child or adult
- state that the minor child or adult is critically ill or has been critically injured (there is no requirement that the certificate specify **what** illness or injury the person has; it need only state that the person is critically ill or critically injured)
- state that the minor child or adult requires the care or support of at least one family member, and
- set out the period during which the minor child or adult requires the care or support.

An employer is entitled to ask an employee for a copy of the certificate of the qualified health practitioner to provide proof that they are eligible for a critical illness leave. The employee is required to provide the copy as soon as possible after the employer requests it.

The employee may wish to provide the health practitioner with the Medical certificate to support entitlement to family caregiver leave, family medical leave, and/or critical illness leave form (<https://forms.mgcs.gov.on.ca/en/dataset/on00407>) . There is no requirement that the health practitioner use this particular form. Any certificate that states that a minor child is a critically ill or injured minor child or that an adult is a critically ill adult needing the care or support of one or more family members, and indicating the period during which the care or support will be required can be used.

The employee is responsible for obtaining and paying the costs (if any) of obtaining the certificate. The Ministry of Labour, Immigration, Training and Skills

Development cannot assist the employee in obtaining the certificate.

If an employee is applying for Employment Insurance (EI) benefits for caregivers of critically ill minor children or adults who are family members, a copy of the medical certificate submitted to Employment and Social Development Canada may also be used for the purposes of supporting an entitlement to critical illness leave.

### Employment Insurance benefits

Family members who take leave from work to provide care or support to a critically ill child may be eligible to receive Employment Insurance (EI) special benefits for caregivers of critically ill minor children who are family members for up to 35 weeks. There is a similar benefit for family members who take leave from work to care to critically ill adults for up to 15 weeks. For information about EI, visit Service Canada's website (<http://www.servicecanada.gc.ca/eng/home.shtml>) , or contact Service Canada's Employment Insurance Automated Telephone Information Service at 1-800-206-7218.

The right to take time off work under the critical illness leave provisions of the ESA is not the same as the right to the payment of EI benefits under the federal *Employment Insurance Act*. An employee may be entitled to a critical illness leave whether or not they have applied for, or qualified for, the new EI benefits for caregivers of critically ill minor children or adults who are family members.

### Interaction with other leaves

Critical illness, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, domestic or sexual violence, child death and crime-related child disappearance are different types of leaves. The purposes of the leaves, their length, the individuals with respect to whom they can be taken, and eligibility criteria vary

See the respective chapters of this guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

### Length and timing of critical illness leave

A critical illness leave taken to care for a minor child can last up to 37 weeks within a 52 week period. A critical illness leave taken to care for an adult can last up to 17 weeks.

If a medical certificate issued by a qualified health practitioner sets out a period during which the person requires care or support of a family member that is **less than 37 weeks** (in the case of a critically ill minor child) or **less than 17 weeks** (in the case of a critically ill adult), the employee is entitled to take a leave only for the period set out in the certificate.

If the certificate states that a minor child or adult is critically ill and requires the care or support of one or more family members for a period of 52 weeks or longer, the 37 or 17 weeks of leave may end no later than the last day of the 52-week period that begins on the first day of the week in which that minor child or adult became critically ill. (The employee may, however, be entitled to an "additional" leave at the end of the 52-week period – see the heading "Additional leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/critically-ill-child-care-leave#section-11>) " later in this chapter.)

A "week" is defined as running from Sunday to Saturday.

The weeks in which critical illness leave is taken can be consecutive, or they can be separated.

The employee may take leave for periods less than a full week (for example, single days, at the beginning, middle or end of a week) but if they do, they are considered to have used up one week of their entitlement. If the employee is on leave for two or more periods within the same week (for example, on leave on Monday and Thursday of the same week) only one week of the entitlement is used up.

The employee is entitled to be on leave only when the employee is providing care or support to the critically ill minor child or adult.

The employer cannot require the employee to take an entire week of leave if the employee only wants to take leave for a single day(s), cannot prevent the employee from working prior to taking a single day(s) of leave during a week, and cannot prevent the employee from returning to work after a single day(s) of leave during the week.

### Death of a minor child or adult

If a critically ill minor child or adult dies while an employee is on a critical illness leave, the employee's entitlement to be on leave ends at the end of the week (which is defined as being a Saturday) in which the person dies.

### Sharing critical illness leave

The total amount of critical illness leave that may be taken under the ESA by one or more employees in respect of the same minor child who is critically ill is 37 weeks. For a critically ill adult, the same rule applies but the total amount of leave that may be taken is 17 weeks.

For example, a critically ill minor child requires the care or support of a family member for 40 weeks. If one family member took critical illness leave pursuant to the ESA for 35 weeks, the other family member can only take critical illness leave pursuant to the ESA for 2 weeks. The family members could take the leave at the same time or at different times.

### Further leave

A qualified health practitioner might underestimate the period of time a minor child or adult will require the care or support of a family member. If the practitioner estimated the period to be **less than 52 weeks** but the minor child or adult is still critically ill at the end of the period set out in the certificate, a second medical certificate can be issued to allow an employee to extend their leave.

**Example**

Mark's minor child Jason became critically ill on January 1. The certificate issued on January 1 stated that Jason requires the care or support of a family member for four weeks (until January 28). Jason is still critically ill on January 28. Another certificate is issued on January 29, stating that Jason will require care or support of a family member for another three weeks (until February 18). Mark is entitled to four weeks of leave during the period January 1 to January 28 and to a "further" leave of three weeks during the period January 29 to February 1, for a total of seven weeks of leave.

Note, however, that the original leave and the extension(s) cannot be longer than 37 weeks in a 52-week period.

**Example**

Gail's minor child Maggie became critically ill on January 1. The certificate issued on January 1 stated that Maggie requires the care or support of a family member for 30 weeks (until July 29). Maggie was still critically ill on July 29. Another certificate was issued on July 30 stating that Maggie will require care or support for another ten weeks (until October 6). Although Gail was entitled to take leave during the 30-week period from January 1 to July 29, and to take a "further" leave during the 10-week period from July 10 to October 6, the total amount of leave she is entitled to is 37 weeks during the 52-week period that began on January 1.

**Example**

Deljeet's adult brother Balbir became critically ill on January 1. The certificate issued on January 1 stated that Balbir requires the care or support of a family member for 10 weeks (until March 11). Balbir is still critically ill on March 11. Another certificate was issued on March 12 stating that Balbir will require care or support for another 10 weeks (until May 20). Deljeet can take a further leave during the 10-week period between March 12 and May 20, but she can take no more than seven further weeks and her leave will end on April 29. The total amount of leave Deljeet is entitled to is 17 weeks within the 52-week period running from January 1, the date of the first certificate. She may be eligible for an additional leave after that period is over: see "additional leaves", below.

**Minor child turns 18 while employee is on critical illness leave**

Employees do not lose eligibility for critical illness leave if their child turns 18 after starting the leave. If a child turns 18 after a 37 week leave has already been started, the employee would be able to complete the leave and apply for further leave if necessary. However, in order to take additional critical illness leave for a critically ill adult (up to 17 weeks), the employee would need to wait until the end of the 52-week period related to the last 37 week leave taken in relation for a minor child.

**Example**

Tina's minor child Cathy became critically ill on January 1, 2017. The certificate issued on January 1 stated that Cathy requires the care or support of a family member until July 1 (26 weeks). Cathy turns 18 on March 1, and is still critically ill on July 1. A second certificate is issued on June 2, stating that Cathy requires care until October 7 (a further 14 weeks). Tina can stay on leave for a total of 37 weeks, so the leave will end on September 16 (after 37 weeks). If Cathy remains critically ill, then Tina can start a new 17 week leave no earlier than January 1, 2018 if a certificate is issued.

**Additional leaves**

If a minor child or adult remains critically ill after the 52-week period has expired, the employee is entitled to take another leave if the requirements for eligibility are met.

**Example**

A qualified health practitioner issued a certificate on January 1 2017, stating that Frank's minor child Rooney is critically ill and requires the care or support of a family member for 52 weeks. Frank is entitled to up to 37 weeks of critical illness leave during that 52-week period. Rooney remains critically ill on December 31. Another certificate is issued on January 12018, stating that Rooney remains critically ill and requires the care or support of a family member for another 40 weeks. Frank is entitled to a new, "additional" leave of 37 weeks in the 52-week period starting January 1, 2018.

**Notice requirements: advance notice and written plan**

An employee who intends to take critical illness leave must inform the employer in writing that they will be taking such leave and provide the employer with a written plan that indicates the weeks in which they will take the leave.

If an employee has to begin a critical illness leave before notifying the employer, they must inform the employer in writing and provide a written plan as soon as possible after starting the leave.

**Change in employee's plan**

An employee may take a leave at a time other than that indicated in their original plan provided to their employer so long as the new dates fall within the dates the ESA allows, and:

1. the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
2. the employee provides the employer with reasonable advance notice of the change in writing.

There is no limit on the number of times the employee can change their plan, so long as the requirements described above are met each time.

**Rights during and at the end of a critical illness leave**

Employers do not have to pay wages when an employee is on critical illness leave.

Employees who take critical illness leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, an employer cannot threaten, fire or penalize in any other way an employee for taking, planning on taking, being eligible or being in a position to become eligible to take a critical illness leave. See "Rights during pregnancy and parental leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>).

## Organ donor leave

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

Organ donor leave is unpaid, job-protected leave of up to 13 weeks, for the purpose of undergoing surgery to donate all or part of certain organs to a person. In some cases, organ donor leave can be extended for up to an additional 13 weeks.

### Qualifying for organ donor leave

An employee is entitled to organ donor leave whether they are a full-time, part-time, permanent, or term contract employee.

To qualify for organ donor leave, the employee must:

- Be covered by the ESA;
- Have been employed by their employer for at least 13 weeks;
- Undergo surgery to donate all or part of one of the following organs to another person:
  - Kidney
  - Liver
  - Lung
  - Pancreas
  - Small bowel

### When an organ donor leave can begin

Generally, organ donor leave begins on the date of the surgery. It may begin on an earlier date, as specified in a certificate issued by a legally qualified medical practitioner.

### Length of an organ donor leave

The employee may take leave for up to 13 weeks. The employee may extend the leave if a legally qualified medical practitioner issues a certificate stating that the employee is not yet able to perform the duties of their position because of the organ donation, and will not be able to do so for a specified period of time. The employee is entitled to extend the leave for the specified period of time.

The leave may be extended more than once, but the total period of extension must not be more than 13 weeks. Therefore, where the leave is extended, the maximum amount of time allowed for organ donor leave is 26 weeks in total.

### Example

Gabriel began an organ donor leave on September 1, the day that he had surgery to donate part of his liver to his daughter. Upon the employer's request, he provided a medical certificate from his doctor in advance of the surgery. After 13 weeks of organ donor leave, Gabriel was planning to return to work, but he had complications from the surgery that has hampered his recovery. His doctor recommended extending Gabriel's organ donor leave for another six weeks. Gabriel provided his employer with a medical certificate from his doctor stating this and extended his leave for an additional period of six weeks.

### Notice requirements

An employee who wishes to take organ donor leave must provide the employer with at least two weeks' written notice both before beginning or extending the leave, if possible. If this is not possible, the employee must provide written notice as soon as possible after beginning or extending the leave. However, if the employee does not provide notice to begin the leave, provided the employee meets the requisite criteria, the employee still has the right to take the leave.

The employee may end the leave early by giving the employer at least two weeks' advance written notice.

### Medical certificate

The employer may ask the employee to provide a medical certificate for the following reasons:

- Confirming that the employee has undergone or will undergo surgery to donate an organ;
- When the employee is to begin the leave if it is before the day of the organ donation surgery; and/or
- To extend a leave for a period of time because the employee is not yet able to perform the duties of their position.

The employee must provide the certificate to the employer as soon as possible after the employer's request.

### Rights during leave

Employees who take organ donor leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking an organ donor leave. See "Rights during pregnancy and parental leaves (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>) ."

## Reservist leave



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Employees who are reservists have a right to an unpaid leave of absence if they will not be performing the duties of their position because of any of these reasons:

- The employee is deployed to a Canadian Forces operation outside of Canada. This includes participation, whether inside or outside of Canada, in pre-deployment and post-deployment activities that are required by the Canadian Forces in connection with the operation.
- The employee is deployed to a Canadian Forces operation inside Canada that is, or will be, providing assistance in dealing with an emergency or its aftermath, including search and rescue operations, and recovery from national disasters, such as flood relief, military aid following ice storms and aircraft crash recovery.
- The employee is participating in Canadian Forces military skills training.

To be eligible for reservist leave, an employee must be employed by their employer for at least three consecutive months. Generally, reservists must provide their employer with reasonable advance notice in writing of the day on which they will begin and end the leave.

An employer may require an employee to provide evidence, reasonable in the circumstances, at a time, that is reasonable in the circumstances, that the employee is eligible for reservist leave. What is reasonable in the circumstances will depend on all the facts of the situation.

Employees on a reservist leave are entitled to be reinstated to the same position if it still exists or to a comparable position if it does not. Seniority and length of service credits continue to accumulate during the leave.

Unlike the case with other types of leave, an employer is entitled to postpone the employee's reinstatement for two weeks after the day on which the leave ends or until the first pay day after the leave ends, whichever is later.

An employee on reservist leave does not have the right to continue to participate in the benefit plans that employees on other statutory leaves do. The employer is not required to continue to make contributions to those plans during an employee's reservist leave. However, if the employer postpones the employee's reinstatement, the employee is entitled to resume participating in the plans, and the employer is required to pay the employer's share of premiums for them, during the period the reinstatement is postponed.

## Child death leave

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

Child death leave is an unpaid, job-protected leave of absence. It provides up to 104 weeks with respect to the death of a child.

Before January 1, 2018, an employee whose child had died as a result of a crime or the probable result of a crime was entitled to be on crime-related child death or disappearance leave. If an employee was on a crime-related child death or disappearance leave before January 1, 2018, an employee in that situation would continue on the leave for a maximum period of 104 weeks.

### Eligibility

Employees who have been employed by their employer for at least six consecutive months and who are covered by the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) are entitled to child death leave if a child of the employee dies.

An employee is not entitled to this leave if the child died as a result of a crime and the employee is charged with the crime, or if it is probable, considering the circumstances, that the child was a party to the crime.

"Child" means a child, step-child, child under the legal guardianship of the employee or foster child who is under 18 years of age.

Generally speaking, crime means an offence under the Criminal Code of Canada.

### Federal income support grant

An employee who takes time away from work because of the crime-related death of their child may be eligible for the Federal Income Support for Parents of Murdered or Missing Children grant. For information about this grant, visit Service Canada's website (<http://www.servicecanada.gc.ca/pmmc>) or contact them at 1-877-842-5601.

### Time of a child death leave

A leave for the death of a child must be taken within the 105-week period that begins in the week the child died. The leave must be taken in a single period.

### Sharing child death leave

The total amount of child death leave taken by one or more employees for the same death (or deaths that are the result of the same event) is 104 weeks.

The employees can take the leave at the same time or at different times. The sharing requirement applies whether or not the employees work for the same employer.

### Notice requirements: Advance notice and a written plan

An employee must inform the employer in writing that they will be taking a child death leave and must provide the employer with a written plan that indicates the weeks in which they will take the leave.

If an employee has to begin such a leave before notifying the employer, they must inform the employer in writing and provide the employer with a written plan as soon as possible after beginning the leave.

An employee who does not give notice does not lose their right to the leave.

#### Change in employee's plan

An employee may take a leave at a time other than that indicated in their original plan provided to their employer so long as the new dates meets the restrictions of the ESA and,

1. the employee requests permission from the employer to do so in writing and the employer grants permission in writing,  
or
2. the employee provides the employer with four weeks' written notice before the change takes place.

#### Evidence

An employer may require an employee who takes a child death leave to provide reasonable evidence of the employee's entitlement to the leave.

#### Rights during and at the end of child death leave

Employers do not have to pay wages when an employee is on a child death leave.

Employees who take child death leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, an employer cannot threaten, fire or penalize in any other way an employee for taking, planning on taking, being eligible or being in a position to become eligible to take a child death leave. See "Rights during pregnancy and parental leaves." (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>) "

## Crime-related child disappearance leave

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

Crime-related child death or disappearance leave is an unpaid job-protected leave of absence. It provides up to 104 weeks with respect to the crime-related disappearance of a child.

Note that if an employee's child disappeared prior to January 1, 2018 as a result or probable result of a crime, the employee is entitled to a leave of up to 52 weeks, and any employee who was on crime-related child disappearance leave as of December 31, 2017 will be entitled to complete the remaining period of the leave (to a maximum of 52 weeks).

#### Eligibility

Employees who have been employed by their employer for at least six consecutive months and who are covered by the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) are entitled to crime-related child disappearance leave if it is probable, considering the circumstances, that a child of the employee disappeared as a result of a crime.

An employee is not entitled to this leave if the employee is charged with the crime or if it is probable, considering the circumstances, that the child was a party to the crime.

"Child" means a child, step-child or foster child who is under 18 years of age.

Generally speaking, crime means an offence under the Criminal Code of Canada.

#### Federal income support grant

An employee who takes time away from work because of the crime-related death or disappearance of their child may be eligible for the Federal Income Support for Parents of Murdered or Missing Children grant. For information about this grant, visit Service Canada's website (<http://www.servicecanada.gc.ca/pmmc>) or contact them at 1-877-842-5601.

#### Timing of a crime-related child disappearance leave

A leave for the crime-related disappearance of a child must be taken within the 105-week period that begins in the week the child disappeared.

An employee must take the leave in a single period.

#### Change in circumstances

If an employee takes such a leave and the circumstances change and it no longer seems probable that the child disappeared as a result of a crime, the employee's entitlement to a leave ends on the day on which it no longer seems probable.

If an employee takes a leave relating to the disappearance of their child, and the child is found within the 104-week period that begins in the week the child disappears, the employee is entitled to remain on leave for 14 days after the day the child is found, if the child is found alive.

If the child is found dead, the employee, is entitled to remain on leave until the end of the week in which the child is found. However, the employee has a separate entitlement to child death leave of up to 104 weeks.

### Sharing crime-related child disappearance leave

The total amount of crime-related child disappearance leave taken by one or more employees under the [ESA](#) in respect of the same disappearance (or disappearances that are the result of the same event) is 104 weeks.

The employees who are sharing the leave can be on leave at the same time, or at different times; the [ESA](#) does not impose any restrictions in this regard. The sharing requirement applies whether or not the employees work for the same employer.

### Notice requirements: Advance notice and a written plan

An employee must inform the employer in writing that they will be taking a crime-related child disappearance leave and must provide the employer with a written plan that indicates the weeks in which they will take the leave.

If an employee has to begin such a leave before notifying the employer, they must inform the employer in writing and provide the employer with a written plan as soon as possible after beginning the leave.

An employee who does not give notice does not lose their right to the leave.

### Change in employee's plan

An employee may take a leave at a time other than that indicated in their original plan provided to their employer so long as the new dates meets the restrictions of the [ESA](#) and,

- a. d. the employee requests permission from the employer to do so in writing and the employer grants permission in writing;  
or
- b. e. the employee provides the employer with four weeks written notice before the change takes place.

### Evidence

An employer may require an employee who takes a crime-related child disappearance leave to provide reasonable evidence of the employee's entitlement to the leave.

### Rights during and at the end of crime-related child disappearance leave

Employers do not have to pay wages when an employee is on a crime-related child disappearance leave.

Employees who take crime-related child disappearance leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, an employer cannot threaten, fire or penalize in any other way an employee for taking, planning on taking, being eligible or being in a position to become eligible to take a crime-related child disappearance leave. See "Rights during pregnancy and parental leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>)."

## Domestic or sexual violence leave

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

Domestic or sexual violence leave is a job-protected leave of absence. It provides up to 10 days and 15 weeks in a calendar year of time off to be taken for specific purposes when an employee or an employee's child has experienced or been threatened with domestic or sexual violence. The first five days of leave taken in a calendar year are paid, and the rest are unpaid.

### Eligibility

Employees who have been employed by their employer for at least 13 consecutive weeks are entitled to domestic or sexual violence leave if the employee or the employee's child has experienced or been threatened with domestic or sexual violence, and the leave is taken for any of the following purposes:

- To seek medical attention for the employee or the child of the employee because of a physical or psychological injury or disability caused by the domestic or sexual violence
- To access services from a victim services organization for the employee or the child of the employee
- To have psychological or other professional counselling for the employee or the child of the employee
- To move temporarily or permanently
- To seek legal or law enforcement assistance, including making a police report or getting ready for or participating in a family court, civil or criminal trial related to or resulting from the domestic or sexual violence

An employee is not entitled to this leave if the employee committed the domestic or sexual violence.

"Child" means a child, step-child, child under legal guardianship or foster child who is under 18 years of age.

### Length of domestic or sexual violence leave

Employees are entitled to up to 10 full days of domestic or sexual violence leave every **calendar** year, whether they are employed on a full- or part-time basis.

There is no pro-rating of the 10-day entitlement. An employee who begins work partway through a calendar year is still entitled to 10 days during the remainder of that year.

Employees cannot carry over unused domestic or sexual violence leave days to the next calendar year. The 10 days of domestic or sexual violence leave do not have to be taken consecutively.

Employees can take domestic or sexual violence leave in part days, full days, or in periods of more than one day. If an employee takes only part of a day as domestic or sexual violence leave, the employer can count it as a full day of leave.

In cases where the employee takes part of a day, the employer still has to pay the employee for any part of the day that the employee worked, and has to include the hours worked for the purpose of determining whether overtime was worked or a daily or weekly limit on hours of work was reached.

Employees are also entitled to take up to 15 weeks of domestic or sexual violence leave within a **calendar year** for the purposes set out above. A “week” is defined as running from Sunday to Saturday.

The 15 weeks can be taken consecutively or separately.

The employee may take leave for periods less than a full week (for example, single days, at the beginning, middle or end of a week), but if they do, they are considered to have used up one week of their 15-week entitlement. If the employee is on leave for two or more periods within the same week (for example, on leave on Monday and Thursday of the same week), only one week of the 15-week entitlement is used up.

The employer cannot require the employee to take an entire week of leave if the employee only wants to take leave for a single day(s), cannot prevent the employee from working prior to taking a single day(s) of leave during a week, and cannot prevent the employee from returning to work after a single day(s) of leave during the week.

### **Domestic or sexual violence leave pay**

The first five days of domestic or sexual violence leave taken in a calendar year must be paid. The rest are unpaid. The first five days are to be paid whether the employee takes leave from the 15-week entitlement, or the 10-day entitlement.

### **Domestic or sexual violence pay – what is it and when is it payable?**

For domestic or sexual violence leave pay, an employee is generally entitled to be paid what they would have earned had they been at work and not taken the leave. If the employee is paid fully or partly by a performance-related method (like commission only, commission plus salary, commission plus hourly rate, or piece work) then they must be paid the greater of their hourly rate, or the applicable minimum wage for the time at work they missed because they were on domestic or sexual violence leave.

If the employee missed part of a day to take the leave, the employee would be entitled to be paid any wages they actually earned during the time they were at work in addition to domestic or sexual violence leave pay.

#### **Example:**

Chantelle usually works eight hours a day from 9:00am to 5:00pm. If she takes two hours off as domestic or sexual violence leave to attend a medical appointment, she will be entitled to two hours of domestic or sexual violence leave pay, and six hours of regular earnings for the time she spent at work. The employer may count the two hours of leave as an entire day of domestic or sexual violence leave and deduct it from Chantelle’s entitlement to domestic or sexual violence leave for the year.

### **Calculating domestic or sexual violence pay**

There are different ways to calculate domestic or sexual violence pay, depending on how the employee is paid, and whether the employee took a full day or part of a day of leave.

#### **Employees who are paid by an hourly rate**

Domestic or sexual violence pay is the hourly rate x the number of hours the employee did not work because they took the leave

#### **Example 1:**

Naila is paid \$19.00/hour and missed a full day of work to take domestic or sexual violence leave. She was scheduled to work nine hours. Domestic or sexual violence leave pay:  $\$19.00 \times 9 = \$171.00$

#### **Example 2:**

Paulo is paid \$17.50/hour and missed the first 2.5 hours of his shift to take domestic or sexual violence leave. He normally works 8 hours in a day.

Domestic or sexual violence leave pay:  $\$17.50 \times 2.5 = \$43.75$  (in addition to regular earnings for the hours he worked during the rest of the day).

#### **Employees who are paid a salary**

For an employee paid by salary, paying domestic or sexual violence is generally equal to salary continuance.

If the employee took leave for a full day:  $\text{salary} \div \text{number of days in pay period}$

#### **Example:**

Theresa is paid \$1500.00 per bi-weekly pay period and works a five day week. Domestic or sexual violence leave pay for one day =  $\$1500.00 \div 10 = \$150.00$ .

If the employee took leave for part of the day:  $\text{hourly rate (salary} \div \text{number of hours the employee normally works in a pay period)} \times \text{number of hours taken as domestic or sexual violence leave}$ .

**Example:**

Theresa is paid \$1500.00 per bi-weekly pay period and works a 40-hour week. She takes four hours of leave. Hourly rate:  $\$1500.00 \div 80 = \$18.75/\text{hour}$ . Domestic or sexual violence leave pay:  $\$18.75 \times 4 = \$75.00$  (in addition to any regular wages earned for the part of the day that she worked).

**Performance related wages**

Domestic or sexual violence leave pay for an employee paid fully or partly based on their performance is the greater of the employee's "hourly rate, if any" and minimum wage for the time the employee took for paid domestic or sexual violence leave. "Performance-related wages" can include commission, commission plus an hourly wage, piece work, or a flat-rate.

**Example 1: Employee earns an hourly rate + commission**

- Raquel earns \$19.00/hour plus two per cent commission on sales
- Raquel takes 6.5 hours of domestic or sexual violence leave
- **Domestic or sexual violence leave pay:**  $\$19.00 \times 6.5 = \$123.50$  (plus hourly wage for any hours worked + commission earned while the employee worked, if any)

**Example 2: Employee paid entirely by commission**

- Francesca earns 10 per cent commission on all sales, plus expenses and a car allowance
- Francesca is scheduled to work eight hours, makes sales of \$5000 and takes three hours of domestic or sexual violence leave
- **Domestic or sexual violence leave pay:** applicable minimum wage rate  $\times 3$  (in addition to \$500.00 commission earned while the employee worked, if any)

**Example 3: Employee is a homeworker paid by piece work**

- Paula earns \$3.50 per phone call answered
- Paula is scheduled to work 8.5 hours, works two hours, answers nine phone calls, and takes 6.5 hours of domestic or sexual violence leave
- **Domestic or sexual violence leave pay:** applicable minimum wage  $\times 6.5$  (in addition to regular wages earned on the day -  $\$3.50 \times 9$ )

**Employees who are scheduled to work overtime hours**

If an employee is scheduled to work a shift which will include overtime hours, and they miss all or part of the shift to take paid domestic or sexual violence leave, the employee will be entitled to the regular hourly rate only, not the overtime rate.

**Example:**

Pat is paid \$17.00/hour and was scheduled to work a Saturday shift of eight hours. She had already worked 44 hours in the same week. She missed her entire shift to take paid domestic or sexual violence leave.

**Domestic or sexual violence leave pay:**  $\$17.00 \times 8 = \$136.00$

**Employees who are scheduled to work hours when a shift premium is paid**

If an employee is scheduled to work a shift which will normally be paid at a higher rate due to a shift premium, and the employee misses all or part of the shift to take paid domestic or sexual violence leave, the employee will be entitled to the regular hourly rate only, not the regular hourly rate plus the shift premium.

**Example:**

Minh is paid \$19.00/hour and is paid an additional \$2.50/hour for working weekend shifts. She is scheduled to work a Saturday shift of nine hours and leaves after working two hours to take paid domestic or sexual violence leave.

**Domestic or sexual violence leave pay:**  $\$19.00 \times 7 = \$133.00$  (plus regular wages of  $\$19.00 + \$2.50 \times 2$  for the hours that she worked).

**If paid domestic or sexual violence leave pay is taken when an employee was scheduled to work on a public holiday**

If an employee qualifies to take domestic or sexual violence leave, this will also generally constitute "reasonable cause" for the purposes of public holiday entitlements. See the public holiday chapter for more information.

If an employee agrees to work (or is required to work) on a public holiday and misses some or all of the shift to take paid domestic or sexual violence leave, domestic or sexual violence leave pay will not include "premium pay" if the employee would have earned it had they worked instead of taking the leave.

**Example:**

Celina works in a restaurant and is required to work on Victoria Day. She is paid the "general" minimum wage. She is scheduled to work 10 hours on the public holiday, and the employer has decided to give her premium pay for all hours worked on that day, plus public holiday pay (but no substitute day off in the future).

Celina works 6 hours of the shift and takes the rest off as paid domestic or sexual violence leave.

**Entitlements**

Public holiday pay + premium pay for hours worked ("general" minimum wage  $\times 1.5 \times 6$  hours)

Domestic or sexual violence leave pay: \$0 because she is already receiving a full day's pay (6 hours at 1.5 = 9 hours).

### Notice requirements: Advance notice

There are two lengths of domestic and sexual violence leave that can be taken within a calendar year: a 10-day period which can be taken as either individual days or in any combination up to 10 days, and a 15-week period which can be taken continuously or not.

If an employee plans to take one or more days from the 10-day period, the employee must tell the employer that they will be doing so in advance. If the employee can't give notice, notice must be given to the employer as soon as possible after starting the leave. Notice doesn't have to be in writing.

If an employee plans to take one or more weeks or part weeks from the 15-week entitlement, the employee must tell the employer that they will be doing so in writing before the leave is taken. If the employee can't give notice, notice must be given to the employer in writing as soon as possible after starting the leave.

The employee does not have to use the 10-day leave first.

For both types of leave, the employee has to give notice to the employer that they are taking the leave every time the leave is taken.

An employee who does not give notice does not lose their right to the leave

### Example:

Maggie wants to take domestic or sexual violence leave for one week in March to relocate herself and her children to a new apartment. She has also been called as a witness at a criminal trial in October that is scheduled to take one week.

Maggie must give notice to her employer before she takes the leave in March, and again when she takes the leave in October, unless she is able to give notice for both leaves at the same time.

### Interaction with other leaves

Domestic or sexual violence, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, child death and crime-related child disappearance are different types of leaves. The purposes of the leaves, their length, the individuals for whom they can be taken and eligibility criteria vary.

See the respective chapters of this Guide for more information on each leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

### Evidence

An employer may require an employee to provide evidence reasonable in the circumstances that they are eligible to take domestic or sexual violence leave. What will be reasonable in the circumstances will depend on all of the facts of any given situation, such as the duration of the leave, whether there is a pattern of absences, whether any evidence is available, and the cost of the evidence.

### Rights during and at the end of domestic or sexual violence leave

Employees who take domestic or sexual violence leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, an employer cannot threaten, fire or penalize in any other way an employee for taking, planning on taking, being eligible or being in a position to become eligible to take a domestic or sexual violence leave. See "Rights during pregnancy and parental leaves" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>). "

## Declared emergency leave

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

### Overview

Three emergencies were declared in Ontario under the *Emergency Management and Civil Protection Act* (<https://www.ontario.ca/laws/statute/90e09?search=Emergency+Management+and+Civil+Protection+Act>) (EMCPA) because of COVID-19. They were in effect from:

- March 17, 2020 to July 24, 2020
- January 12, 2021 to February 9, 2021
- April 7, 2021 to June 2, 2021

The emergencies applied to the entire province of Ontario. There is no declared emergency in effect at this time.

During a declared emergency, an employee may have the right under the *Employment Standards Act, 2000* (ESA) to take declared emergency leave, which is an unpaid, job-protected, leave of absence.

**Employees are not currently entitled to take declared emergency leave.** However, during any of the declared emergencies set out above, an employee may have had the right to declared emergency leave if they met the qualifying conditions - see below.

### Qualifying for declared emergency leave

Employees were eligible to take declared emergency leave during the COVID-19 declared emergencies set out above if they were not performing the duties of their position because of the declared emergency and because:

1. An emergency order made under section 7.0.2 of the *Emergency Management and Civil Protection Act* (<https://www.ontario.ca/laws/statute/90e09>) (EMCPA) applied to the employee and causes them to not perform the duties of their position.

In order to meet this condition, the order had to have been directed at the employee, either individually, or as part of a group.

An employee was not eligible for this leave under this qualifying condition if they were **indirectly** affected by either:

- an emergency order, or
  - the consequences of someone else complying with an order
2. An order was made under the *Health Protection and Promotion Act* (<https://www.ontario.ca/laws/statute/90h07>) (HPPA) directed at the employee that prevented them from performing the duties of their position. An order under the HPPA can be made by the provincial government, local medical officers of health or the courts. For example, an order requiring an individual to self-isolate for a period of 14 days.
  3. The employee is needed to provide care or assistance to **at least one** of the following individuals because of the declared emergency:
    - the employee's spouse (of the same or opposite sex, whether or married or not)
    - a parent, step-parent or foster parent of the employee or the employee's spouse
    - a child, step-child or foster child of the employee or the employee's spouse
    - a child who is under legal guardianship of the employee or the employee's spouse
    - a brother, step-brother, sister or step-sister of the employee
    - a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
    - a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
    - a son-in-law or daughter-in-law of the employee or the employee's spouse
    - an uncle or aunt of the employee or the employee's spouse
    - a nephew or niece of the employee or the employee's spouse
    - the spouse of the employee's grandchild, uncle, aunt, nephew or niece
    - a person who considers the employee to be like a family member

### Examples

1. During a declared emergency, Khuper was not performing the duties of her position because she was needed to provide care or assistance to her mother who was in self-quarantine due to the COVID-19 outbreak.
2. During a declared emergency, Keaton was not performing the duties of his position because he needed to stay at home with his child whose school or child care centre was temporarily closed as a result of the COVID-19 outbreak.

Although employees are not currently entitled to take declared emergency leave under the ESA, an employee who qualified for declared emergency leave when one of the emergencies came to an end may be entitled to a different ESA leave – infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>). Entitlement to infectious disease emergency leave is not affected by the declared emergency coming to an end.

### Notice of leave

Generally, before starting a declared emergency leave of absence, an employee **must have informed their employer in writing or orally** that they will be taking the leave.

If the employee could not notify the employer before starting the leave, the employee could advise the employer of the leave as soon as possible after starting it.

The employee **will not have lost the right** to take leave if the employee failed to inform the employer.

### Evidence

An employer may require an employee who takes declared emergency leave to provide evidence that the employee was entitled to the leave. Both the evidence and the time it is required must be reasonable in the circumstances.

Depending on the circumstances, such evidence could include:

- a note from an employee's child care provider stating that child care was unavailable because of COVID-19
- a copy of an order that applies to the employee made under the HPPA
- a copy of an order that applies to the employee made under section 7.0.2 of the EMCPA

### When an employee is caring for a relative

When an employee takes a leave to provide care or assistance to a relative, the employer cannot require the employee to give details of the relative's medical condition or provide a medical note about the relative's illness.

The employer may only require the employee to disclose:

- the name of the relative
- the relative's relationship to the employee
- a statement that the absence was required because of the relative's illness and that there is a connection between the illness and the COVID-19 declared emergency

### Length of leave

There was no set limit on the number of days an eligible employee could take as declared emergency leave.

Employees are not entitled to declared emergency leave after the date that the emergency is terminated. The only exception is when an order made under section 7.0.2 of the EMCPA that applies to the employee is extended beyond the duration of the declared emergency.

An employee's right to declared emergency leave may have ended earlier than the last day of the declared emergency if:

- an order that applied to the employee, made under section 7.0.2 of the EMCPA, was revoked or no longer in effect
- an order that applied to the employee under the HPPA was revoked or no longer in effect
- the employee was no longer providing care or assistance to one of the specified individuals

Declared emergency leave did not have to be taken consecutively. Employees could take the leave in:

- part days
- full days
- periods of more than one day

Where an employee takes a part day of declared emergency leave, (for example, if the employee had to deliver urgently needed medication to a brother who is in self-isolation because of COVID-19), the employer is required to allow the employee to return to work for the remainder of the employee's shift. The employee is entitled to be paid the earnings for the portion of the shift the employee worked.

### Interaction with other leaves

There are different types of leaves under the ESA including:

- sick leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/sick-leave>)
- family responsibility leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-responsibility-leave>)
- family caregiver leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-caregiver-leave>)
- family medical leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave>)
- critical illness leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave>)
- bereavement leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/bereavement-leave>)
- infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>)

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

The purposes of the leaves, their length and eligibility criteria are different.

### Rights during leave

The ESA does not require employers to pay an employee while they are on declared emergency leave. However, employees may have a right to be paid under their employment contract or collective agreement. Employees who take declared emergency leave are generally entitled to the same rights as employees who take pregnancy or parental leave.

For example, employers are required to reinstate an employee at the end of the leave and are prohibited from threatening, firing or penalizing in any other way an employee who takes or plans on taking a declared emergency leave.

Learn more about the rights for employees taking pregnancy and parental leaves (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>).

### Employment insurance benefits and other federal supports

Employees who take declared emergency leave may be entitled to either:

- employment insurance benefits
- other federal government financial supports

Learn more about the federal government's financial supports (<https://www.canada.ca/en/services/benefits/covid19-emergency-benefits.html>) or contact Service Canada's Employment Insurance Automated Telephone Information Service at Toll-free: 1-800-206-7218.

The right to take time off work under the declared emergency leave provisions of the ESA is not the same as the right to the payment of employment insurance benefits or federal government supports. An employee may be entitled to declared emergency leave whether or not they have applied for or qualified for federal benefits or supports.



# COVID-19: temporary changes to ESA rules

## Temporary ESA rules no longer in effect

In response to the COVID-19 pandemic, the Ontario government made a regulation (<https://www.ontario.ca/laws/regulation/r20228>) that changed certain *Employment Standards Act* (ESA) rules during the COVID-19 period. The temporary rules ended on **July 30, 2022**.

## Overview

On May 29, 2020, the government made a regulation (<https://www.ontario.ca/laws/regulation/r20228>) under the *Employment Standards Act, 2000* (ESA) in response to COVID-19. **The rules in the regulation applied during the “COVID-19 period” which was from March 1, 2020 to July 30, 2022.**

During the COVID-19 period, a non-unionized employee was “deemed” (i.e. was automatically **considered**) to be on a job-protected unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) if their employer had temporarily reduced or eliminated their hours of work because of COVID-19.

### During the COVID-19 period, March 1, 2020 to July 30, 2022:

- A non-unionized employee whose employer temporarily reduced or temporarily eliminated their hours of work for reasons related to COVID-19 was deemed to be on a job-protected unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>).
- A non-unionized employee was not considered to be laid off if their employer temporarily reduced or temporarily eliminated their hours of work or wages for reasons related to COVID-19.
- A non-unionized employee was not considered to be constructively dismissed under the ESA if their employer temporarily reduced or temporarily eliminated their hours of work or wages for reasons related to COVID-19.

### Beginning on July 31, 2022:

- Employees are no longer **deemed** to be on unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>).
- The ESAs regular rules around constructive dismissal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-3>) have resumed. This means a significant reduction or elimination of an employee's hours of work or wages may be considered a constructive dismissal under the ESA, even if it was done for reasons related to COVID-19.
- The ESAs regular rules around temporary layoff (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-4>) have also resumed. For practical purposes, an employee's temporary layoff clock re-set on **July 31, 2022**.

Even though the COVID-19 period ended on July 30, 2022 and non-unionized employees are no longer **deemed** to be on unpaid infectious disease emergency leave, when the conditions are met, **unionized and non-unionized employees may continue to be eligible for unpaid infectious disease emergency leave** (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) if they are not performing the duties of their position for certain reasons related to COVID-19. As well, where applicable, unionized and non-unionized employees may have been eligible for paid infectious disease emergency leave, which was available until **March 31, 2023**.

Learn about the differences between an employee **taking** infectious disease emergency leave and an employee being **deemed** to have been on unpaid infectious disease emergency leave.

The regulation also affects the ESA rules around:

- temporary layoff (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-4>)
- constructive dismissal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-3>)
- termination (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>)
- severance (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>)

In addition, the regulation established that certain employment standards claims that were filed with the Ministry of Labour, Immigration, Training and Skills Development in relation to these rules were deemed not to have been filed.

## Deemed unpaid infectious disease emergency leave

During the COVID-19 period (March 1, 2020 – July 30, 2022), non-unionized employees **were deemed to be on unpaid** infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) when they were not performing the duties of their position because their employer temporarily reduced or temporarily eliminated their **hours of work** for reasons related to COVID-19.

An employee was only deemed to be on this leave for the work hours that were temporarily reduced or eliminated by the employer. In other words, employees did not have a right to this leave and to not attend work during hours the employer scheduled them to work, solely because the employer had otherwise temporarily reduced the employee's hours.

Most of the rules that apply to an employee on unpaid infectious disease emergency leave also applied to employees on this deemed leave. However, there were some differences, which are described below.

Even though an employee was **deemed** to be on unpaid infectious disease emergency leave under this regulation, they may have qualified for, and taken, unpaid infectious disease emergency leave under one of the other conditions set out in the ESA that qualify an employee for the leave (see infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) for information). Similarly, the employee in this

situation may have taken any other leave under the ESA.

An employee who was **deemed** to be on unpaid infectious disease emergency leave was exempt from the notice of leave requirements in the ESA. Since it was the employer's action (reducing or eliminating the employee's hours of work) that brought about the deemed leave, the employee did not need to notify their employer of the leave.

### Exceptions

The following employees **were not** deemed to be on an unpaid infectious disease emergency leave, even if they met the qualifying criteria.

Employees were not deemed to be on an unpaid infectious disease emergency leave if:

- they received written notice of termination in accordance with the ESA. In this situation they were **not** deemed to be on an unpaid infectious disease emergency leave during the notice period. If, however, the employer and employee agreed to withdraw the notice of termination, the employee may have been deemed to be on unpaid infectious disease emergency leave starting from the date the notice of termination was withdrawn (if the qualifying criteria for being deemed to be on leave after the date of the withdrawal were met)
- they were let go or dismissed from their employment for reasons unrelated to a constructive dismissal or a layoff longer than the period of temporary layoff
- their employment was terminated or severed as the result of a temporary layoff longer than the period of temporary layoff, or as the result of a constructive dismissal, where the termination occurred **prior to May 29, 2020**

### Rights during a deemed unpaid infectious disease emergency leave

The rights that apply to an unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) also generally applied to a deemed leave. This includes the right to:

- reinstatement
- be free from penalty
- earn credits for length of employment, length of service and seniority

### Benefit plans

The rights relating to participation in benefit plans are different in the context of a deemed leave. Employees deemed to be on unpaid infectious disease emergency leave were exempt from the ESA entitlement to continue participating in certain benefit plans in specific circumstances.

If an employee stopped participating in a benefit plan (including pension, life insurance, accidental death, extended health and dental plans) as of May 29, 2020, they did not have a right under the ESA to continue to participate in that particular benefit plan while on the deemed leave.

Similarly, if an employer had discontinued its contributions to a particular benefit plan before May 29, 2020, the employer was exempt from the ESA requirement to continue making its employer contributions to that particular benefit plan while the employee was on a deemed leave.

Any payments or benefits an employee received from an employer between March 1, 2020 and May 29, 2020 were unaffected by the deemed leave.

### Temporary layoff

During the COVID-19 period (March 1, 2020 – July 30, 2022), non-unionized employees **were not considered to be laid off under the** ESA if they were not performing the duties of their position because their **wages or hours of work** were temporarily reduced or temporarily eliminated by their employer for reasons related in whole or in part to COVID-19.

Where these conditions were met, the layoff clock for the employee was “frozen” during that time. This prevented a termination or severance of employment from happening by way of a layoff exceeding the length of a temporary layoff under the ESA.

For information on each of the conditions that must have been met for this temporary layoff “freeze” to have applied, please see Conditions for O. Reg. 228/20 temporary layoff and constructive dismissal rules to apply.

Note that where these conditions were met with respect to the non-unionized employee's **hours of work**, the employee was also deemed to be on a job-protected unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) during the time the employee was not performing their duties because of the reduction or elimination in hours.

The regulation had no impact on a termination or a severance that occurred prior to May 29, 2020 (the date the regulation was filed) resulting from the employee being laid off for a period longer than a temporary layoff.

**All other ESA rules, such as minimum wage requirements, continued to apply as usual.**

### Constructive dismissal

Learn more about constructive dismissal.

*Ontario Regulation 228/20* establishes that there was no constructive dismissal under the ESA where a non-unionized employee's **wages or hours of work** were temporarily reduced or temporarily eliminated by their employer for reasons related to COVID-19 from March 1, 2020 to July 30, 2022. This rule did not apply where the termination or severance resulted from a constructive dismissal that occurred before May 29, 2020. For a termination or severance resulting from a constructive dismissal to have occurred before May 29, 2020, it means the employee must have been constructively dismissed and quit their employment within a reasonable timeframe, all prior to May 29, 2020.

For a discussion of each of the conditions that must have been met in order for this rule to have applied, please see Conditions for O. Reg. 228/20 temporary layoff

and constructive dismissal rules to apply.

These rules affected only what constituted a constructive dismissal **under the ESA**. These rules did not address what constituted a constructive dismissal at common law.

Note that where these conditions were met with respect to the non-unionized employee's **hours of work**, the employee was deemed to be on a job-protected unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) during the time the employee was not performing their duties because of the reduction or elimination in hours.

**All other ESA rules, such as minimum wage requirements, continued to apply as usual.**

#### **Conditions for O. Reg. 228/20 deemed leave, temporary layoff and constructive dismissal rules to apply**

For an employee to have been deemed to be on unpaid infectious disease emergency leave and/or for the rules that modified temporary layoff and constructive dismissal under the ESA to have applied, the following five conditions must **all** have been met:

##### **1. The employee was not represented by a trade union**

The deemed leave and rules on temporary layoff and constructive dismissal that resulted from O. Reg. 228/20 did not apply to employees who were unionized, regardless of whether the employees were covered by a collective agreement. (Note that unpaid (and, where applicable, paid) infectious disease emergency leave itself does apply to employees who are unionized.)

##### **2. The employee was subject to a temporary reduction or elimination in hours of work and/or wages**

The employee must have been subject to one or more of the following in order to have been deemed to be on unpaid infectious disease emergency leave:

- a temporary reduction in hours of work
- a temporary elimination of hours of work

The employee must have been subject to one or more of the following for the rules that modified temporary layoff and constructive dismissal under the ESA to have applied:

- a temporary reduction in hours of work
- a temporary reduction in wages
- a temporary elimination of hours of work
- a temporary elimination of wages

The regulation sets out formulas to be used in determining whether the employee's hours of work and/or wages were reduced for the purposes of the regulation. Learn more about reduction in hours of work and/or wages.

This condition was only met where the reduction or elimination was temporary. The condition was not met if the reduction or elimination was a permanent change.

##### **3. It was the employer that temporarily reduced or eliminated the employee's hours of work and/or wages**

The temporary reduction or elimination of the employee's hours of work must have been initiated by the employer. In other words, the reduction or elimination in hours of work and/or wages could not have been caused by the employee. For example, if the employee was away from work because the employee elected to take a leave of absence, such as sick leave, family responsibility leave etc. or requested personal time away from work -- this condition was not met.

##### **4. The temporary reduction or elimination of the employee's hours of work and/or wages must have occurred for reasons related to COVID-19**

This condition was met where the employer's decision to temporarily reduce or temporarily eliminate an employee's hours of work and/or wages was made for reasons related to COVID-19.

In some cases, there may have been more than one reason an employer temporarily reduced or temporarily eliminated an employee's hours and/or wages. As long as one of the reasons was related to COVID-19, this condition was met. The reason for the reduction or elimination could have been directly or indirectly related to COVID-19.

Examples of reasons related to COVID-19 include:

- an employer's business or part of a business was ordered to suspend operations by an emergency order under the *Emergency Management and Civil Protection Act* (<https://www.ontario.ca/laws/statute/90e09>) or an order under the *Reopening Ontario (A Flexible Response to COVID-19) Act* (<https://www.ontario.ca/laws/statute/20r17>), 2020
- a brewer reduced its employees' hours because the demand for beer decreased since restaurants and pubs had been ordered to close temporarily pursuant to an emergency order
- a private children's bus service eliminated all of its employees' hours because schools were closed as a result of COVID-19

##### **5. The above four conditions must have occurred during the defined COVID-19 period**

The COVID-19 period ran from March 1, 2020 to July 30, 2022. The deemed leave and the modified rules in respect of temporary layoff and constructive dismissal

that applied as a result of O. Reg. 228/20 applied only when the four conditions above all occurred during the defined COVID-19 period.

For example, Felix's hours of work were temporarily reduced by his employer for reasons related to COVID-19 beginning on February 23, 2020 and ending on June 1, 2020.

The deemed unpaid infectious disease emergency leave applied only to the period of time from March 1, 2020 (the beginning of the COVID-19 period) to June 1, 2020 (the last day of the work week in which Felix experienced a reduction in hours of work). The deemed leave did not apply to the reduction in hours of work that occurred before March 1, 2020 (that is, from February 23, 2020 to February 29, 2020).

### Reduction in hours of work or wages

The deemed unpaid infectious disease emergency leave rules in the regulation applied only when a non-unionized employee's **hours of work** were temporarily reduced or temporarily eliminated by the employer for reasons related, in whole or in part, to COVID-19 between March 1, 2020 and to July 30, 2022.

The special rules in the regulation regarding temporary layoff and constructive dismissal applied when a non-unionized employee's **wages or hours of work** were temporarily reduced or temporarily eliminated by their employer for reasons related, in whole or in part, to COVID-19 between March 1, 2020 and to July 30, 2022.

This section describes how to determine whether an employee's **hours of work and/or wages** were considered to have been reduced for the purposes of the regulation.

As a first step, it must be determined which of the following three categories the employee falls into:

- the employee has a regular work week
- the employee does not have a regular work week
- the employee was not employed during the entire work week that came directly before March 1, 2020 (regardless of whether the employee has a regular work week or not)

The formulas that apply to employees in each of these categories are set out below.

#### 1. The employee has a regular work week:

- The employee's **hours of work** were considered to be reduced if the employee worked fewer hours in the work week than they worked in the last regular work week before March 1, 2020.
- The employee's **wages** were considered to be reduced if the employee earned less regular wages in the work week than they did in the last regular work week before March 1, 2020.

This work week cannot be used for the formula if, for any part of it, the employee was:

- on vacation
- not able to work
- not available for work
- subject to a disciplinary suspension
- not provided with work because of a strike or lock-out at their place of employment or elsewhere

If any one of the above situations applied during any part of the last work week before March 1, 2020, it is necessary to continue to look back work week by work week to find the first work week in which none of the above situations applied. That work week becomes the comparator week.

#### Applying this formula

In order to determine what is the last regular work week before March 1, 2020, it is necessary to first establish the employee's work week that included March 1, 2020. From there, look back one full work week. This will be the last full work week prior to March 1, 2020.

Note that "**work week**" is defined in the [ESA](#) to mean: a recurring period of seven consecutive days selected by the employer for the purpose of scheduling work, or if the employer has not selected such a period, a recurring period of seven consecutive days beginning on Sunday and ending on Saturday.

If none of the scenarios set out above (for example, on vacation, not able to work, etc.) applied for any part of the work week, then this is the work week used in the comparison. However, if, during that work week, any of the scenarios set out applied for any period of time, then it is necessary to continue to look back work week by work week to find the first work week in which none of the scenarios was present. That week becomes the comparator week.

Compare the hours worked or regular wages earned during the work week in question (the work week during the defined COVID-19 period – March 1, 2020 to July 30, 2022) to the hours worked or regular wages earned during the comparator week. If there was a reduction in hours and/or wages during the work week in question as compared to the comparator week, the employee is considered to have had a reduction in their hours of work or wages for the purposes of the regulation.

When applying the formula with respect to a reduction in wages, note that regular wages do not include any overtime pay, vacation pay, public holiday pay, premium pay, domestic or sexual violence leave pay, infectious disease emergency leave pay, termination pay, severance pay or termination of assignment pay payable to an employee.

For example, Claire is wondering if the modified rules with respect to temporary layoff applied to her during her work week from June 1, 2022 to June 7, 2022 and so she is seeking to determine if her hours of work were reduced for the purposes of the regulation.

Claire worked 28 hours during her last regular work week before March 1, 2020. However, during that week she was away sick for one day. Since Claire was not available for work for one day during that week, that work week cannot be used as her comparator week.

During the work week prior to that one, Claire worked for 35 hours. During that week, she was not on vacation, not unable to work, not unavailable for work, not subject to a disciplinary suspension nor was she not provided with work because of a strike or lockout. As such, this work week is to be used as her comparator week.

During her comparator work week, Claire worked 35 hours. During the June 1, 2022 to June 7, 2022 work week, Claire worked 15 hours. Since 15 hours is a reduction in hours as compared to her comparator week, Claire had a reduction in her hours of work for the purposes of the regulation.

## 2. The employee does not have a regular work week:

- The employee's **hours of work** were considered to be reduced if the employee worked fewer hours in the work week than the average number of hours they worked per work week in the 12 consecutive work weeks directly before March 1, 2020.
- The employee's **wages** were considered to be reduced if the employee earned less regular wages than the average amount of regular wages they earned per work week in the 12 consecutive work weeks directly before March 1, 2020.

Any work week in the 12-week period is excluded from the calculation if for any part of that work week the employee was:

- on vacation
- not able to work
- not available for work
- subject to a disciplinary suspension
- not provided with work because of a strike or lock-out at their place of employment or elsewhere

### Applying this formula

In order to find the period of 12 consecutive work weeks that preceded March 1, 2020, it is necessary to first establish the work week that included March 1, 2020. From there, look back 12 full work weeks. Note that the work week is based on the employer's work week and is not necessarily a calendar week.

Note that "**work week**" is defined in the ESA to mean: a recurring period of seven consecutive days selected by the employer for the purpose of scheduling work, or if the employer has not selected such a period, a recurring period of seven consecutive days beginning on Sunday and ending on Saturday.

Next, determine if during any of those 12 work weeks, any of the scenarios set out above (that is, not employed, on vacation, not able to work, etc.) applied for any period of time. If any of the scenarios applied during a work week, that work week is excluded from the averaging calculation; this means that the average is calculated over a period shorter than 12 weeks. For example, if the only scenarios that applied during the 12-week timeframe was that the employee was on vacation for one week, the average of the remaining 11 weeks would be calculated.

Compare the hours worked or regular wages earned during the work week in question (i.e. the work week during the defined COVID-19 period – March 1, 2020 to July 30, 2022) to the average hours worked or average regular wages earned determined by applying the formula above. If there was a reduction in hours and/or wages during the work week in question as compared to the averaged amount, the employee is considered to have had a reduction in their hours of work or wages for the purposes of the regulation.

When applying the formula with respect to a reduction in wages, note that regular wages do not include any overtime pay, vacation pay, public holiday pay, premium pay, domestic or sexual violence leave pay, infectious disease emergency leave pay, termination pay, severance pay or termination of assignment pay payable to an employee.

For example, Zala is wondering if the modified rules with respect to temporary layoff applied to her during her work week from June 1, 2022 to June 7, 2022. She wants to determine whether her hours of work were reduced for the purposes of the regulation.

Zala looks at a calendar to find her first work week before March 1, 2020. She then notes on the calendar the 12 full work weeks that precede that work week. Zala then looks at each of those 12 work weeks individually to determine if any of the scenarios applied to exclude any of those 12 weeks from her averaging calculation.

It turns out that during that 12-week period, she was on vacation for two weeks and she was away sick (in other words, unavailable for work) for a couple of days during another work week. Zala therefore excludes these three work weeks from the averaging calculation. None of the criteria applied to the remaining 9 weeks, and so those 9 weeks will be the weeks she averages .

Zala adds the number of hours she worked in each of these 9 weeks together and divides the answer by 9. She determines that, on average during this period, she worked 32 hours per week. During the June 1, 2022 to June 7, 2022 work week, Zala worked 10 hours.

Since Zala worked fewer hours during the June 1, 2022 to June 7, 2022 work week as compared to the average number of hours she worked in the relevant timeframe, Zala had a reduction in her hours of work for the purposes of the regulation.

## 3. The employee was not employed during the entire work week that immediately preceded March 1, 2020:

- The employee's **hours of work** were considered to be reduced if the employee worked fewer hours in the work week than they worked in the work week in which they worked the greatest number of hours.
- The employee's **wages** were considered to be reduced if the employee earned less regular wages than they did in the work week in which they earned the most regular wages.

### Applying this formula

This formula provides for a comparison between the work week in which the employee worked the greatest number of hours or earned the most regular wages -

regardless of when that occurred during the employment relationship - and the number of hours the employee worked or the regular wages the employee earned during the work week in question during the COVID-19 period (March 1, 2020 to July 30, 2022).

If the employee worked more hours or earned more regular wages during any previous work week than the work week in question, the employee is considered to have had a reduction in their hours of work or wages for the purposes of the regulation.

For example, Bianca is wondering if the modified rules with respect to temporary layoff applied to her employee Sam during his work week from June 1, 2022 to June 7, 2022. She wants to determine whether Sam's hours of work were reduced for the purposes of the regulation.

Sam was hired on May 1, 2020. Bianca looks at each of the work weeks Sam has worked since his date of hire and notes the number of hours he has worked in each work week. She then finds the work week with the greatest number of hours of work.

The greatest number of hours Sam worked in a single work week was 40 hours. During the work week from June 1, 2022 to June 7, 2022, Sam worked 15 hours. Since Sam worked fewer hours during the June 1, 2022 to June 7, 2022 work week as compared to the work week in which he worked the greatest number of hours, Sam had a reduction in his hours of work for the purposes of the regulation.

### Claims deemed not to have been filed

Subject to two exceptions set out below, where an employee files a claim with the Ministry of Labour, Immigration, Training and Skills Development **for termination or severance of employment** on the basis that the employee's wages or hours of work were temporarily reduced or temporarily eliminated by the employer for reasons related in whole or in part to COVID-19 during the defined COVID-19 period (March 1, 2020 and July 30, 2022), that part of **the claim is deemed not to have been filed**. Other parts of the claim will be investigated as usual.

Employees whose claims are deemed not to have been filed may choose to sue their employer for wrongful dismissal in court.

There are two exceptions to this rule. In these situations, a termination and/or severance claim **can** be filed with the ministry and will be investigated if :

- an employee was constructively dismissed and resigned in response to the reduction or elimination in hours of work or wages prior to May 29, 2020
- a layoff was longer than the length of a temporary layoff and resulted in a termination and/or severance before May 29, 2020

### End of the COVID-19 period

The modified rules described above apply only during the defined COVID-19 period (March 1, 2020 – July 30, 2022). **These rules are no longer in effect.**

#### As such, beginning on July 31, 2022:

- employees are no longer deemed to be on unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>)
- the ESA's regular rules around constructive dismissal resume. This means that a significant reduction or elimination of an employee's hours of work or wages may constitute a constructive dismissal under the ESA, even if the reduction or elimination was done for reasons related to COVID-19. (The employee would need to resign within a reasonable period in response to the constructive dismissal in order for the employee's employment to be considered terminated or severed)
- the ESA's regular rules around temporary layoff (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-4>) resume. This means that the "temporary layoff clock" once again starts ticking. For practical purposes, an employee's temporary layoff clock re-set on July 31, 2022
- employees are able to file termination and severance claims with the Ministry of Labour, Immigration, Training and Skills Development based on their employer temporarily reducing or temporarily eliminating their wages and/or hours of work after July 30, 2022, even if the reduction or elimination is for reasons related to COVID-19

**Note that unpaid infectious disease emergency leave** (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) **remains available to employees**. As well, where applicable, paid infectious disease emergency leave was available to employees until March 31, 2023.

An employee's ability to take unpaid infectious disease emergency leave is not connected to the definition of the COVID-19 period. This means that at the end of the COVID-19 period, even though employees are no longer **deemed** to be on unpaid infectious disease emergency leave, employees continue to have the right to take unpaid infectious disease emergency leave if they are not performing the duties of their position for certain reasons related to COVID-19. (for example, providing care to their child who was sick with COVID 19). Where applicable, employees may also have had the right to take paid infectious disease emergency leave, which was available until March 31, 2023. Learn more (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>) about eligibility for infectious disease emergency leave.

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## Infectious disease emergency leave

### Changes to ESA rules

#### Paid Infectious Disease Emergency Leave ended on March 31, 2023

The *Employment Standards Act, 2000* (ESA) was amended on April 29, 2021 to require employers to provide eligible employees with up to three days of paid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave#section-3>) for

certain reasons related to COVID-19. The leave was retroactive to April 19, 2021. Eligible employers could have applied to be reimbursed for these payments through the Workplace Safety and Insurance Board within 120 days of the date the employer paid the employee, or by July 29, 2023, whichever was earlier.

**Paid infectious disease emergency leave ended on March 31, 2023.**

#### Temporary ESA rules no longer in effect

In response to the COVID-19 pandemic, the Ontario government made a regulation (<https://www.ontario.ca/laws/regulation/r20228>) that temporarily changed certain *Employment Standards Act, 2000* (ESA) rules during the “COVID-19” period. The temporary rules ended on **July 30, 2022**. Learn more (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>).

This means that the COVID-19 period ended on July 30, 2022 and non-unionized employees **are no longer deemed** (i.e. automatically considered) to be on unpaid infectious disease emergency leave by the regulation (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>) made by the government. However, if certain conditions are met, **unionized and non-unionized employees may continue to be eligible for unpaid** (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave#section-2>) **infectious disease emergency leave** if they are not performing the duties of their position for certain reasons related to COVID-19. Employees may also have been eligible for paid infectious disease emergency leave, which was available until March 31, 2023.

## Overview

The ESA provides for two infectious disease emergency leaves relating to COVID-19. One leave is unpaid and continues to be available to employees. Another leave is paid and was available to employees from April 19, 2021 until March 31, 2023.

### Paid infectious disease emergency leave

Employees may have been eligible for up to **three days** of paid infectious disease emergency leave between April 19, 2021 and March 31, 2023.

Learn about:

- eligibility
- how to calculate infectious disease emergency leave pay
- if an employee took the leave when they were scheduled to work on a public holiday
- employee opt-out of paid leave
- length of the leave
- unpaid infectious disease emergency leave taken between April 19 and April 28, 2021
- employer reimbursement

### Unpaid infectious disease emergency leave

There is no specified limit to the number of days an employee can be on unpaid infectious disease emergency leave.

Learn about:

- reasons for taking infectious disease emergency leave
- situations where an employee was “deemed” to be on unpaid infectious disease emergency leave because their employer temporarily reduced or eliminated their hours of work for reasons related to COVID-19
- length of unpaid infectious disease emergency leave

### Unpaid infectious disease emergency leave

Employees have the right to take unpaid, job-protected infectious disease emergency leave if they are not performing the duties of their position because of specified reasons related to a designated infectious disease. This leave is available to all employees who are covered by the ESA.

Employers cannot threaten, fire or penalize an employee in any other way because the employee took or plans on taking an infectious disease emergency leave.

**The only disease for which unpaid infectious disease emergency leave may be taken at this time is COVID-19.** Although the ESA was amended to include unpaid infectious disease emergency leave on March 19, 2020, **the leave entitlements for COVID-19 are retroactive to January 25, 2020 and have no end date. An employee is entitled to take this unpaid leave so long as the conditions set out below are met.**

#### Reasons an employee may take unpaid infectious disease emergency leave

Employees can take unpaid infectious disease emergency leave if they will not be performing the duties of their position because of any of the following reasons:

1. The employee is under individual medical investigation, supervision or treatment related to a designated infectious disease. The medical investigation, supervision or treatment can be in Ontario or in another province, territory or country.

Examples include:

- An employee is not performing the duties of their position because they are under the medical supervision of a doctor:
  - due to having contracted COVID-19
  - because of mental health reasons relating to COVID-19
- An employee is not performing the duties of their position because they left work in order to get a COVID-19 vaccination or are experiencing a side effect from the COVID-19 vaccination. In both of these situations, the employee is under individual medical treatment (which includes preventative actions, such

as vaccinations and recovery from associated side effects) related to COVID-19.

2. The employee is following a COVID-19 related order issued under section 22 or 35 of the *Health Promotion and Protection Act* (<https://www.ontario.ca/laws/statute/90h07%20>) .
3. The employee is in quarantine, isolation (voluntary or involuntary), or is subject to a control measure, and the quarantine, isolation or control measure was implemented as a result of information or directions related to a designated infectious disease that was issued to the public (in whole or in part) to one or more people, through any means, including print, electronic or broadcast (for example, television or radio):
  - by a public health official. This means a public health official of the Government of Canada or any of the following people within the meaning of the Ontario Health Protection and Promotion Act:
    - the Chief Medical Officer of Health or Associate Chief Medical Officer of Health
    - a medical officer of health or an associate medical officer of health
    - an employee of a board of health
  - by someone who is qualified to practice as a physician or a nurse either in Ontario or in the jurisdiction where the employee is located (for example, another province, territory or another country) **and** who has provided care or treatment to the employee, whether or not the care or treatment was related to the designated infectious disease (such as an employee who has an immune deficiency was told by his physician to self-isolate and not go to work during the infectious disease outbreak)
  - by Telehealth Ontario
  - by the Government of Ontario or Canada
  - by a municipal council in Ontario
  - by a board of health
4. The employee is under a direction given by their employer in response to the employer's concern that the employee might expose other individuals in the workplace to a designated infectious disease.

Examples include where the employer directed an employee to stay at home for a period of time because the employee recently travelled internationally and the employer is concerned they may expose others in the workplace to a designated infectious disease.

5. The employee is providing care or support to any of these individuals because of a matter related to a designated infectious disease:
  - the employee's spouse (of the same or opposite sex, whether or not married)
  - a parent, step-parent or foster parent of the employee or the employee's spouse
  - a child, step-child or foster child of the employee or the employee's spouse
  - a child who is under legal guardianship of the employee or the employee's spouse
  - a brother, step-brother, sister or step-sister of the employee
  - a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
  - a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
  - a son-in-law or daughter-in-law of the employee or the employee's spouse
  - an uncle or aunt of the employee or the employee's spouse
  - a nephew or niece of the employee or the employee's spouse
  - the spouse of the employee's grandchild, uncle, aunt, nephew or niece
  - a person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met (currently there are no prescribed conditions)
  - any individual prescribed as a family member for the purposes of this section (currently, there are no additional prescribed family members)

Examples include:

- Providing care for their child whose school or child care was closed because of a designated infectious disease (in this case, COVID-19) or because the employee did not send their child to school or child care out of fear the child would be exposed to COVID-19.
- Providing care to their child who was sick with COVID-19 or who stayed home because of COVID-19 protocols at the school or child care (for example, the child was showing signs of illness and the school or child care centre advised the child to isolate and get tested before returning).
  - This also includes where the employee's child had a symptom that did not automatically require the child to stay away from school or child care, but the employee was concerned the symptom may relate to COVID-19 and chose to keep their child home as a precautionary measure.
- Providing care or support to their child who is getting vaccinated against COVID-19 or is experiencing side effects from the vaccine, even if the child is not under the care of a medical practitioner for those side effects.
- Providing care to their child because the child's babysitter is in quarantine, isolation or sick because of COVID-19.
- Providing care to a child because the summer camp that the employee's child was scheduled to attend closed down to help prevent the spread of COVID-19.
- Providing care to the employee's 10-year-old brother, who was visiting the employee from another city without his parents, and who was unable to return home because of travel restrictions imposed to prevent the spread of COVID-19.
- Providing care or support to an elderly mother who is in self-isolation due to COVID-19.



The employee can be providing the care or support in Ontario or in another province, territory or country.

6. The employee is directly affected by travel restrictions related to a designated infectious disease and, under the circumstances, cannot be reasonably expected to travel back to Ontario.

For example, this would include an employee who is on a cruise ship that is not permitted to dock in any country because of the concern that passengers are infected by a designated infectious disease.

There may be some situations where an employee is affected by travel restrictions (for example where there are no international commercial airline flights available) but the employee has other options available to travel back to Ontario. This condition will be met if it would not be reasonable to expect the employee to use alternative options.

What is reasonable will depend on the circumstances. For example, an employee was vacationing in Mexico City when Canada banned all flights from Mexico for two weeks. The employee could rent a car or take a series of buses and trains to return to Ontario but that would not be a reasonable expectation in the circumstances.

This provision applies only where the employee is **directly** affected by the travel restrictions. In other words, it applies only where the **employee's** travel back to Ontario is affected.

This provision applies only when the employee is caught by travel restrictions while **outside** of Ontario.

7. The employee was subject to an order that related to COVID-19 under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (<https://www.ontario.ca/laws/statute/20r17>) (ROA).

In order to meet this condition, the order must have been directed at the employee, either individually, or as part of a group.

For example, an order that required restaurants to close down applied to owners of restaurants. It did not apply to the employees of restaurants even though they were affected by the closure.

However, this did apply, for example, to an employee who was subject to a ROA order that prohibited employees who work in a long-term care home from also working for another health service provider.

For instance, an employee who has two jobs – one at a long-term care home and one at a retirement home – who was not working at one of the homes as a result of this order, was entitled to take unpaid infectious disease emergency leave from the employer that they were temporarily not working for.

The ROA took effect on July 24, 2020. Certain orders that had previously been emergency orders under the Emergency Management and Civil Protection Act (EMCPA) were continued as orders under the ROA on that date. All orders continued under ROA have now been revoked.

Note that if an EMCPA order was directed at an employee (either individually or as part of a group) and, as a consequence, the employee was not performing the duties of their position between March 17, 2020 and **July 24, 2020**, they were entitled to take declared emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/declared-emergency-leave>) or unpaid infectious disease emergency leave.

During the COVID-19 period (March 1, 2020 to July 30, 2022), a non-unionized employee whose employer temporarily reduced or eliminated their hours of work for reasons related to COVID-19 was **deemed** to be on a job-protected unpaid infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>). See the “COVID-19: Temporary changes to ESA rules” (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>) chapter for more information.

### Employee deemed to be on unpaid infectious disease emergency leave

There is a regulation under the ESA that sets out the circumstances in which an employee was “deemed” (i.e. automatically considered) to be on unpaid infectious disease emergency leave, as opposed to taking unpaid infectious disease emergency leave. Only a non-unionized employee could be deemed to be on unpaid infectious disease emergency leave.

Subject to a few exceptions, during the COVID-19 period (which was from March 1, 2020 to July 30, 2022), a non-unionized employee was deemed to be on unpaid infectious disease emergency leave any time the employee was not performing their duties because their employer had temporarily reduced or temporarily eliminated their hours of work for reasons related to COVID-19.

Even though an employee was **deemed** to be on infectious disease emergency leave, the employee may still have **elected to take** an unpaid infectious disease emergency leave if the employee met the qualifying conditions for taking the leave.

Most of the same rules that apply to an employee who takes infectious disease emergency leave also applied to employees who were **deemed** to be on infectious disease emergency leave. Learn more about “deemed” infectious disease emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>).

An employee who was **deemed** to be on unpaid infectious disease emergency leave may have qualified for and taken any other leave under the ESA.

### Absences before March 19, 2020

Although the ESA was amended to provide an entitlement to unpaid infectious disease emergency leave for COVID-19 on March 19, 2020, the leave entitlements are retroactive to January 25, 2020.

This means that an employee could retroactively designate absences from work between January 25, 2020 and March 18, 2020 as unpaid infectious disease emergency leave **if the reason for the absence met the criteria for the leave**.

All of the rights that are associated with infectious disease emergency leave (for example, the right to be reinstated at the end of a leave and protection against being penalized for having taken the leave) apply to absences from January 25, 2020 onward.

#### Employees who were fired on or after January 25, 2020

If an employee was fired on or after January 25, 2020 because the employee was absent from work for a reason that meets the criteria for unpaid infectious disease emergency leave, **the employer was required to reinstate the employee** to the position the employee most recently held with the employer if it still existed (or to a comparable position if it did not) as of March 19, 2020.

If the employer did not reinstate the employee as of March 19, the employer could be ordered by an employment standards officer to reinstate the employee and to pay compensation to the employee.

The requirement to reinstate **does not apply** if the employment of the employee was ended solely for reasons unrelated to the leave.

#### Other ESA leave entitlements used before March 19, 2020

An employee may have used other ESA leave entitlements for absences before March 19, 2020. The employee does not get those leave credits reinstated. For example, in accordance with information related to COVID-19 from Telehealth Ontario, an employee self-isolated on March 16, 17 and 18, 2020. The employee used **three days** of unpaid ESA sick leave for that time. Those three days are not credited back to the employee.

#### Length of unpaid infectious disease emergency leave

There is no specified limit to the number of days an employee can be on unpaid infectious disease emergency leave.

Employees have the right to be away from work on unpaid infectious disease emergency leave only for as long as the event that triggered the entitlement to the leave lasts. After the triggering event is over, the employee's normal obligations to be at work resume.

Unpaid infectious disease emergency leave absences do not have to be taken consecutively. Employees can take the leave in part days, full days or periods of more than one day.

When an employee takes a part day of unpaid infectious disease emergency leave (for example, to deliver urgently needed medication to a brother who is in isolation because of COVID-19), the employer must allow the employee to return to work for the remainder of the employee's shift. The employee is entitled to be paid the earnings for the portion of the shift that the employee works.

#### Paid infectious disease emergency leave

The ESA was amended on April 29, 2021 to require employers to provide eligible employees with **up to three days** of paid infectious disease emergency leave for certain reasons related to COVID-19. Paid infectious disease emergency leave was retroactive to April 19, 2021 and ended on March 31, 2023.

Although paid infectious disease emergency leave was extended into 2023, employees were not entitled to additional days specific to 2023. Employees were entitled to **up to three days total** during the period in which paid infectious disease emergency leave was available (April 19, 2021 to March 31, 2023).

Eligible employers could have applied to the Workplace Safety and Insurance Board (WSIB) to be reimbursed for these payments, within 120 days of the date the employer paid the employee, or by July 29, 2023, whichever was earlier. Find out about the reimbursement process at [Ontario.ca/COVIDworkerbenefit](https://www.ontario.ca/covidworkerbenefit) (<https://www.ontario.ca/covidworkerbenefit>).

This leave was available to all employees who were covered by the ESA and met the eligibility criteria.

Employers could not threaten, fire or penalize an employee in any other way because the employee took or planned to take a paid infectious disease emergency leave.

#### Eligibility for paid infectious disease emergency leave

To be eligible for paid infectious disease emergency leave, an employee:

- must have had an eligible reason for taking the leave
- must **not** have had certain paid leave entitlements under their employment contract on April 19, 2021

If an employee's employment contract (including a collective agreement) provided a greater right or benefit than the paid infectious disease emergency leave standard under the ESA, then the terms of the contract applied instead of the standard in the ESA.

#### Reasons for taking the leave

An employee was eligible for the leave if the employee was not performing the duties of their position because of any of the following reasons:

1. The employee was under individual medical investigation, supervision or treatment related to a designated infectious disease. The medical investigation, supervision or treatment could have been in Ontario or in another province, territory or country.

Examples included:

- An employee was not performing the duties of their position because they were under the medical supervision of a doctor:
  - due to having contracted COVID-19 or
  - because of mental health reasons relating to COVID-19.

- An employee was not performing the duties of their position because they left work in order to get a COVID-19 vaccination or were experiencing a side effect from the COVID-19 vaccination. In both of these situations, the employee was under individual medical treatment (which included preventative actions, such as vaccinations and recovery from associated side effects) related to COVID-19.
2. The employee was following a COVID-19 related order issued under section 22 or 35 of the *Health Promotion and Protection Act* (<https://www.ontario.ca/laws/statute/90h07>) .
3. The employee was in quarantine, isolation (voluntary or involuntary), or was subject to a control measure, and the quarantine, isolation or control measure was implemented as a result of information or directions related to a designated infectious disease that was issued to the public (in whole or in part) to one or more people, through any means, including print, electronic or broadcast (for example, television or radio):
- by a public health official. This meant a public health official of the Government of Canada or any of the following people within the meaning of the *Ontario Health Protection and Promotion Act*:
    - the Chief Medical Officer of Health or Associate Chief Medical Officer of Health
    - a medical officer of health or an associate medical officer of health
    - an employee of a board of health
  - by someone who:
    - was qualified to practice as a physician or a nurse either in Ontario or in the jurisdiction where the employee was located (for example, another province, territory or another country), **and**
    - had provided care or treatment to the employee, whether or not the care or treatment was related to the designated infectious disease (such as an employee who had an immune deficiency was told by his physician to self-isolate and not go to work during the infectious disease outbreak)
  - by Telehealth Ontario
  - by the Government of Ontario or Canada
  - by a municipal council in Ontario
  - by a board of health
4. The employee was under a direction given by their employer in response to the employer's concern that the employee might have exposed other individuals in the workplace to a designated infectious disease.
5. The employee was providing care or support to a specified individual (see the list of specified individuals below) because the individual was:
- under individual medical investigation, supervision or treatment related to the designated infectious disease (this included medical investigation, supervision or treatment of physical or mental health issues related to the designated infectious disease), or
  - was in quarantine, isolation (voluntary or involuntary), or was subject to a control measure, and the quarantine, isolation or control measure was implemented as a result of information or directions related to a designated infectious disease that was issued to the public (in whole or in part) or to one or more people, and through any means, including print, electronic or broadcast (for example, television or radio) by a public health official. This meant a public health official of the Government of Canada or any of the following people within the meaning of the *Ontario Health Protection and Promotion Act*:
    - the Chief Medical Officer of Health or Associate Chief Medical Officer of Health
    - a medical officer of health or an associate medical officer of health
    - an employee of a board of health
    - by someone who was qualified to practice as a physician or a nurse either in Ontario or in the jurisdiction where the employee was located (for example, another province, territory or another country) **and** who had provided care or treatment to the employee, whether or not the care or treatment was related to the designated infectious disease (such as an employee who had an immune deficiency was told by his physician to self-isolate and not go to work during the infectious disease outbreak)
    - by Telehealth Ontario
    - by the Government of Ontario or Canada
    - by a municipal council in Ontario
    - by a board of health

**List of specified individuals:**

- the employee's spouse (of the same or opposite sex, whether or not married)
- a parent, step-parent or foster parent of the employee or the employee's spouse
- a child, step-child or foster child of the employee or the employee's spouse
- a child who is under legal guardianship of the employee or the employee's spouse
- a brother, step-brother, sister or step-sister of the employee
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- a son-in-law or daughter-in-law of the employee or the employee's spouse
- an uncle or aunt of the employee or the employee's spouse

- a nephew or niece of the employee or the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- a person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met (currently there are no prescribed conditions)
- any individual prescribed as a family member for the purposes of this section (currently, there are no additional prescribed family members)

Examples included:

- Providing care or support to their child who was getting vaccinated against COVID-19 or was experiencing side effects from the vaccine, even if the child was not under the care of a medical practitioner for those side effects. (Note that individual medical treatment included receiving a vaccine for COVID-19 and recovery from side effects).
- Providing care or support to an elderly father who was sick with COVID-19.

### Right to paid leave under an employment contract

Employees who had certain rights to paid leave under their employment contract (which includes a collective agreement) may not have been eligible for paid infectious disease emergency leave or may have been entitled to fewer than three days of paid leave under the ESA.

Where, on April 19, 2021, an employee was entitled to a paid leave under their employment contract for one or more of the same reasons that paid infectious disease emergency leave could have been taken under the ESA, the number of paid days under the contract may have reduced the number of days of paid infectious disease emergency leave the employee was eligible to take under the ESA.

This only applied if both:

- the amount of pay under the employment contract was at least as much as the employee would have been entitled to receive under the ESA's paid infectious disease emergency leave formula; and
- the employee's employment contract did not contain conditions for taking the leave that were more restrictive than what was set out in the ESA for taking paid infectious disease emergency leave

**In order for an employee's three days of ESA paid leave to have been reduced, all four of the following criteria must have been met on April 19, 2021:**

#### 1. Some overlap of reasons for taking leave under the employment contract with reasons for taking paid infectious disease emergency leave under the ESA

The employee's employment contract provided the employee with paid leave for one or more of the same reasons that paid infectious disease emergency leave could have been taken under the ESA.

**Examples where a paid leave entitlement under an employment contract overlapped with one or more of the same reasons as paid infectious disease emergency leave under the ESA include:**

- An employee had an entitlement to paid sick days under their employment contract. If, for example, the paid leave under the contract could have been taken for contracting COVID-19 (one of the reasons for which an employee could take paid infectious disease emergency leave), this would have been a paid leave for one of the same reasons that paid infectious disease emergency leave could be taken under the ESA.
- An employee had paid "floater days" under their employment contract that could have been taken for any reason. This would have been a paid leave for one of the same reasons for which an employee could take paid infectious disease emergency leave (since the floater days could be taken for any of the same reasons an employee could take paid infectious disease emergency leave).
- An employee had an entitlement to paid "family days" under their employment contract. If, for example, the "family days" under the contract could have been taken in order to provide care and support to a relative who contracted COVID-19 (one of the reasons for which an employee could take paid infectious disease emergency leave), this would have been a paid leave for one of the same reasons that paid infectious disease emergency leave could be taken under the ESA.

#### 2. Employee had paid leave entitlements under their employment contract remaining on April 19, 2021

On April 19, 2021, the employee had paid leave that met criterion 1 above available to them. In other words, on April 19, 2021, the employee had not already taken all of the paid leave they had available under their contract that was available to be taken by the employee for one or more of the same reasons that paid infectious disease emergency leave could be taken under the ESA.

Example of an employee who had paid leave available to them on April 19, 2021:

- An employee's employment contract provided two paid sick days and one "floater day" that met criterion 1 above. The employee took the two paid sick days in January 2021 and had no more paid sick days available on April 19, 2021. The employee had not used the "floater" day by April 19, 2021 and so that day remained available to the employee. In this example, the employee had one day of paid leave that met criterion 1 available to them on April 19, 2021.

#### 3. Paid leave under employment contract was at least as much as pay for paid infectious disease emergency leave under ESA

The employee's employment contract provided pay for the leave that was at least as much pay as the employee would have been entitled to receive under the paid infectious disease emergency leave formula under the ESA (learn about calculating the infectious disease emergency leave pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave#section-3>)).

**Example of when an employee's entitlement to paid leave under their employment contract was at least as much pay as paid infectious disease emergency leave under the ESA.**

If the employee had paid sick days under the employment contract that paid the employee's full wages while the employee was on the leave, this criterion was met. However, if, for example, the employee's sick days under the contract of employment were paid at 75% of the employee's wages, depending on the length of the employee's leave and the employee's wage rate, this criterion may ultimately not have been met.

**4. No extra conditions for taking paid leave under the employment contract**

The employee's employment contract incorporated all of the ESAs general provisions concerning leaves (such as the right to continue to participate in benefit plans during the leave and the anti-reprisal protection), and did not contain conditions for taking the leave that were more restrictive than what was set out in the ESA for taking paid infectious disease emergency leave.

**Examples of when there were extra conditions for taking paid leave under the employment contract include:**

- Under the ESA, an employer could not require an employee to provide a note from a doctor as evidence of the employee's entitlement to paid infectious disease emergency leave. If the contract required the employee to provide their employer with a doctor's note in order for the employee to take the paid leave under the contract of employment, this criterion was not met.
- Under the ESA, a qualified employee could take paid infectious disease emergency leave at any time, including part-way through a day. If getting paid leave under the contract was conditional on the employee providing advance notice to and/or approval from the employer, this criterion was not met.

**Where all four criteria were met**

If all four of the above criteria were met, the employee's three-day entitlement to paid infectious disease emergency leave under the ESA was reduced by the amount of leave available to the employee under their employment contract.

**Below are some examples of how this reduction worked:**

**Example 1: An employee was entitled to paid sick leave under their employment contract, but the employee used up all of the leave prior to April 19, 2021**

Denise was entitled to ten fully paid sick days each calendar year under her employment contract. This was the only paid leave available to her under her employment contract. There were no conditions under her employment contract that were more restrictive than those in the ESA. Denise had a back injury in February and used all ten of her paid sick days.

Denise had no paid leave available to her under her employment contract on April 19, 2021. She was therefore entitled to three days of paid infectious disease emergency leave.

**Examples 2, 3 and 4: An employee was entitled to paid leave under their employment contract and had not taken all of that leave prior to April 19, 2021**

**Example 2:** Anthony was entitled to five fully paid sick days of leave each calendar year under his employment contract. This was the only paid leave available under his employment contract. There were no conditions under his employment contract that were more restrictive than those in the ESA. He took three of the five paid sick days in January 2021. On April 19, 2021, Anthony had two paid leave days remaining under his contract. Anthony was therefore entitled to one (3 – 2 = 1) paid infectious disease emergency leave day under the ESA. This is because on April 19, 2021, Anthony had two paid leave days available under his contract that could have been taken for one or more of the reasons for which paid infectious disease emergency leave could be taken, which met the minimum pay requirements of paid infectious disease emergency leave.

**Example 3:** Quim was entitled to five fully paid days of sick leave under his employment contract each calendar year. This was the only paid leave available under his employment contract. There were no conditions under his employment contract that were more restrictive than those in the ESA. Quim took two of the five days in January 2021. On April 19, 2021, Quim had three paid days remaining under the contract.

Quim was therefore entitled to zero (3 – 3 = 0) paid infectious disease emergency leave days under the ESA. This is because on April 19, 2021, Quim had three employer-paid days of leave available under his contract that could have been taken for one or more of the reasons for which paid infectious disease emergency leave could be taken and which met the minimum pay requirements of paid infectious disease emergency leave.

**Example 4:** Alexander was entitled to four hours of paid leave, under his employment contract, to receive a COVID-19 vaccine. This was the only paid leave available under his employment contract. There were no conditions under his employment contract that were more restrictive than those in the ESA. Alexander did not use the leave before April 19, 2021. On April 19, 2021, Alexander had four hours of leave remaining under the contract.

Alexander was entitled to three days minus four hours of paid infectious disease emergency leave under the ESA. This is because on April 19, 2021, he had four hours of paid leave available under his contract that met the minimum pay requirements for paid infectious disease emergency leave and could have been taken for one or more of the reasons paid infectious disease emergency leave could be taken under the ESA.

**Example 5: An employee was hired after April 19, 2021**

Kristy was hired on May 1, 2021 and had five fully paid family responsibility days under her employment contract. This was the only paid leave available under her employment contract. There were no conditions under her employment contract that were more restrictive than those in the ESA. Given that she did not have any paid leave under her employment contract on April 19, 2021 (since she was not employed by the employer at that time), she was entitled to three days of paid infectious disease emergency leave under the ESA.

**Example 6: An employee's entitlement to paid leave under their employment contract "refreshed" after April 19, 2021**

Nicholos was entitled to five fully paid sick leave days each year under his employment contract. This was the only paid leave available under his employment contract. There were no conditions under his employment contract that were more restrictive than those in the ESA. These paid sick days were renewed every year on Nicholos's employment anniversary date, which was May 1. On April 19, 2021 Nicholos had used up all his paid sick days under his employment contract. As a result, he was entitled to three paid infectious disease emergency leave under the ESA. This was the case even though his paid sick leave days under his employment contract would have been renewed on May 1, 2021.

#### Differences from how contractual entitlements are treated under other leaves

Note that this scheme was different from the statutory scheme that applies in the sick leave, family responsibility leave, and bereavement leave contexts in the ESA. In the context of those leaves, the question of whether a leave under the employment contract also counts as leave under the ESA is answered **at the time the employee takes the leave**, and happens **only if both the ESA and employment contract provide a right to leave for the reason the employee was absent**.

The approach was very different in the context of paid infectious disease emergency leave. Rather than providing all employees with three paid infectious disease emergency leave days against which contractual paid days may have later been counted, in the paid infectious disease emergency leave context, **the employee's leave entitlements under the employment contract on April 19, 2021 may have reduced the amount of paid infectious disease emergency leave available to the employee**. The analysis involved a comparison of the reasons for the leave entitlements that were available to the employee under the contract with the reasons for paid infectious disease emergency leave available under the ESA.

It is important to note that the reasons for leave under the contract and the reasons for leave under the ESA did not have to match perfectly in order for the contract to have reduced the employee's three-day ESA entitlement. If a reason for leave under the contract was also one of the reasons the paid leave was available under the ESA, the three-day entitlement under the ESA was reduced (assuming the paid leave under the employment contract met all the other relevant criteria).

This meant that there could have been situations where an employee did not have the right to paid leave under either the contract or the ESA when the employee was, after April 19, 2021, away for a reason that the ESA sets out as a qualifying reason for a paid infectious disease leave entitlement. In this situation, the employee would have had a right to **unpaid** infectious disease emergency leave under the ESA.

For example, the only entitlement to paid leave under Akhseh's employment contract was three fully paid "family days". These days could have been used to care for a specified individual who contracted COVID-19. These were therefore contractual days that could have been used for one or more of the reasons for which paid infectious disease emergency leave could be taken under the ESA.

As a result, if Akhseh had three of these days available under his contract on April 19, 2021 and there were no conditions under his employment contract that were more restrictive than those in the ESA, then he would not have been entitled to any days of paid infectious disease emergency leave under the ESA. If Akhseh wanted paid time off to get tested for COVID-19 or to get vaccinated against COVID-19, he would not have had a right to paid leave under his contract or under the ESA but would have had an entitlement to take that time as unpaid infectious disease emergency leave.

#### It was the employee's decision as to whether to claim paid infectious disease emergency leave

A question may arise in the situation where an employee had entitlements to both contractual leave and paid infectious disease emergency leave and the employee was absent for a reason that entitled the employee to the leave under both the contract and the ESA. The question is which entitlement (the contractual leave entitlement or the statutory leave entitlement) must be taken first. (This may have been relevant for several reasons, including for purposes of tracking the employee's remaining contractual and statutory entitlements and because employers are eligible to be reimbursed only for payments made for statutory paid infectious disease emergency leave).

The ESA does not set out which entitlement must be taken first in this situation. It is the policy of the Employment Standards program that it was the employee's decision whether or not to claim a statutory paid infectious disease emergency leave when the employee was absent for a reason that qualified for that leave.

#### Calculating infectious disease emergency leave pay for eligible employees

An employee who qualified for paid infectious disease emergency leave was generally entitled to be paid what they would have earned had they worked and not taken the leave, up to a maximum of \$200 per day. If the employee was paid fully or partly by a performance-related method (like commission only, commission plus salary, commission plus hourly rate, or piece work) then they were entitled to their hourly rate or the applicable minimum wage, whichever was more, for the work time they missed because they were on paid infectious disease emergency leave.

If the employee missed part of a day to take the leave, the employee was entitled to be paid any wages they actually earned during the time they were at work (in addition to the infectious disease emergency leave pay for the part of the day they took as leave).

Infectious disease emergency leave pay is considered "wages" under the ESA. This means employers must generally have paid employees' infectious disease emergency leave pay no later than the pay day for the pay period in which the paid infectious disease emergency leave was taken. Vacation pay is payable on infectious disease emergency leave pay. (Note the only exception to the requirement for the employer to pay the infectious disease emergency leave pay to the employee by the pay day for the pay period in which the leave was taken is where the employee elected, in writing, by May 12, 2021 to retroactively take the paid leave for one or more days between April 19, 2021 and April 28, 2021. In that situation, the employer must have paid the employee by the pay day for the pay period in which the employee provided the written election.)

#### Determining the amount of time taken for the leave

The amount of paid infectious disease emergency leave taken on a single day is calculated by deducting the number of hours actually worked, if any, from the total number of hours in the work day.

#### Example

Dena was entitled to paid infectious disease emergency leave. Dena usually worked eight hours a day. If she took two hours off work as infectious disease

emergency leave to be vaccinated against COVID-19, she was entitled to two hours' paid infectious disease emergency leave, and six hours of regular earnings for the time she spent at work.

An employee may have been required to report to work at a particular time, but did not have a shift or work period of a specified length. In that case, the employer was required to make a reasonable estimate of how long the employee would have worked on that day. For example, it could have been reasonable for an employer to take an average of the number of hours worked by all the employees in the same position as the employee who took leave. If another employee was called in to replace the employee on the day, it could have been reasonable to refer to the length of that employee's shift.

#### **Formula for infectious disease emergency leave pay**

There are different ways to calculate an employee's pay for infectious disease emergency leave depending on how the employee was paid, and whether the employee took a full day or part of a day of leave.

#### **Employees who are paid by an hourly rate**

The employee's pay entitlement was the hourly rate x the number of hours the employee did not work because they took the leave.

##### **Example 1:**

Nicolas was entitled to paid infectious disease emergency leave. Nicolas was paid \$19 per hour and missed a full day of work due to COVID-19 testing and isolation. He was scheduled to work nine hours. His infectious disease emergency leave pay was  $\$19 \times 9 = \$171$ . If this calculation resulted in an amount greater than \$200, Nicolas would have only been entitled to receive \$200 and not the calculated amount.

##### **Example 2:**

Joshua was entitled to paid infectious disease emergency leave. Joshua was paid \$17.50 per hour and missed the first 2.5 hours of his shift to be vaccinated against COVID-19. He normally worked 8 hours in a day.

His infectious disease emergency leave pay was  $\$17.50 \times 2.5 = \$43.75$ . (In addition to his infectious disease emergency leave pay, he was also entitled to his regular earnings for the hours he worked during the rest of the day). If Joshua's infectious disease emergency leave pay had resulted in an amount greater than \$200, Joshua would have only been entitled to receive \$200 and not the calculated amount. This \$200 maximum applied only to the infectious disease emergency leave pay, not to his total wages for the day.

#### **Employees who were paid a salary**

For an employee paid by salary, infectious disease emergency leave pay was generally equal to salary continuance, subject to the \$200 daily maximum.

If the employee took leave for a full day, the amount of infectious disease emergency leave pay was the lesser of \$200 and  $\text{salary} \div \text{number of days in pay period}$ .

##### **Example 1:**

Maeve was entitled to paid infectious disease emergency leave. Maeve was paid \$3,000 per bi-weekly pay period and worked a five day week. Her infectious disease emergency leave pay for one day was the lesser of \$200 and her daily pay of \$300 ( $\$3,000 \div 10 = \$300$ ). Maeve was therefore entitled to \$200 in infectious disease emergency leave pay.

If the employee took leave for part of the day, the calculation was:  $\text{hourly rate (salary} \div \text{number of hours the employee normally worked in a pay period)} \times \text{number of hours taken as paid infectious disease emergency leave}$ . If this calculation resulted in an amount greater than \$200, the employee would have only been entitled to receive \$200 and not the calculated amount.

##### **Example 2:**

Katie was entitled to paid infectious disease emergency leave. Katie was paid \$1,500 per bi-weekly pay period and worked a 40-hour week. She took four hours of leave. Her hourly rate was  $\$1,500 \div 80 = \$18.75$  per hour. Her infectious disease emergency leave pay was  $\$18.75 \times 4 = \$75$ . (In addition to her infectious disease emergency leave pay, she was also entitled to her regular earnings for the part of the day that she worked).

If Katie's infectious disease emergency leave pay had resulted in an amount greater than \$200, she would have been entitled to receive \$200 and not the calculated amount. This \$200 maximum applied only to the infectious disease emergency leave pay, not to her total wages for the day.

#### **Performance-related wages**

The infectious disease emergency leave pay an employee was entitled to where the employee was paid fully or partly based on their performance was the greater of the employee's hourly rate, if any, and minimum wage for the time the employee took for paid infectious disease emergency leave, to a maximum of \$200 per day. "Performance-related wages" include commission, commission plus an hourly wage, piece work or a flat-rate.

##### **Example 1: Employee earned an hourly rate plus commission**

Raquel was entitled to paid infectious disease emergency leave. She earned \$19.00 per hour plus 2% commission on sales.

Raquel was scheduled to work eight hours. She worked 1.5 hours and took 6.5 hours of paid infectious disease emergency leave.

**Raquel's infectious disease emergency leave pay:**  $\$19 \times 6.5 = \$123.50$ .

(In addition to infectious disease emergency leave pay, she was also entitled to her hourly wage for the 1.5 hours worked and commission she earned while she worked, if any).

If Raquel's infectious disease emergency leave pay calculation resulted in an amount greater than \$200, Raquel would have only been entitled to receive \$200. This

\$200 maximum applied only to the infectious disease emergency leave pay, not to the employee's total wages for the day.

**Example 2: Employee paid entirely by commission**

Francesca was entitled to paid infectious disease emergency leave. She earned 10% commission on all sales, plus expenses and a car allowance.

Francesca was scheduled to work eight hours. She worked a portion of the day and made sales of \$5,000. She took three hours of paid infectious disease emergency leave.

**Francesca's infectious disease emergency leave pay:** applicable minimum wage rate  $\times$  3.

(In addition to infectious disease emergency leave pay, Francesca was also entitled to receive the \$500 in commission she earned while she worked.) If the infectious disease emergency leave pay calculation resulted in an amount greater than \$200, Francesca would have only been entitled to receive \$200 and not the calculated amount. This \$200 maximum applied only to the infectious disease emergency leave pay, not to her total wages for the day.

**Example 3: Employee was a homeworker paid by piece work**

Paula was entitled to paid infectious disease emergency leave. She earned \$3.50 per phone call answered.

Paula was scheduled to work 8.5 hours, but worked only two hours, answered nine phone calls, and took 6.5 hours of paid infectious disease emergency leave.

**Paula's infectious disease emergency leave pay:** applicable minimum wage  $\times$  6.5

(In addition to infectious disease emergency leave pay, Paula was also entitled to receive her regular earnings for the day —  $\$3.50 \times 9$ .)

If Paula's infectious disease emergency leave pay calculation resulted in an amount greater than \$200, Paula would have only been entitled to receive \$200. This \$200 maximum applied only to the infectious disease emergency leave pay, not to her total wages for the day.

**Employees who were scheduled to work overtime hours**

If an employee was scheduled to work a shift which included overtime hours, and they missed all or part of the shift to take paid infectious disease emergency leave, the employee was entitled to the regular hourly rate only, not the overtime rate.

**Example:**

Pat was entitled to paid infectious disease emergency leave. Pat was paid \$17 per hour and was scheduled to work a Saturday shift of eight hours. She already worked 44 hours in the same week. She missed her entire shift to take paid infectious disease emergency leave.

**Infectious disease emergency leave pay:**  $\$17 \times 8 = \$136$ . If Pat's infectious disease emergency leave pay calculation resulted in an amount greater than \$200, Pat would have only been entitled to receive \$200.

**Employees who were scheduled to work hours when a shift premium would have been paid**

If an employee was scheduled to work a shift which would normally be paid at a higher rate due to a shift premium, and the employee missed all or part of the shift to take paid infectious disease emergency leave, the employee was entitled to the regular hourly rate only, not the regular hourly rate plus the shift premium.

**Example:**

Minh was paid \$19 per hour and was paid an additional \$2.50 per hour for working weekend shifts. She was scheduled to work a Saturday shift of nine hours and left after working two hours to take paid infectious disease emergency leave.

**Infectious disease emergency leave pay:**  $\$19 \times 7 = \$133$

(In addition to infectious disease emergency leave pay, Minh was also entitled to receive her regular earnings for the hours she worked  $(\$19 + \$2.50) \times 2$ .)

If Minh's infectious disease emergency leave pay calculation resulted in an amount greater than \$200, she would have only been entitled to receive \$200. This \$200 maximum applied only to the infectious disease emergency leave pay, not to her total wages for the day.

**If paid infectious disease emergency leave was taken when an employee was scheduled to work on a public holiday**

If an employee qualified to take paid infectious disease emergency leave, this would have also generally been considered "reasonable cause" for the purposes of public holiday entitlements. See the public holiday chapter (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>) for more information.

If an employee agreed to work (or was required to work) on a public holiday and missed some or all of the shift to take paid infectious disease emergency leave, infectious disease emergency leave pay did not include "premium pay" if the employee would have earned it had they worked instead of taking the leave on the holiday.

**Example:**

Arvinder worked as a manager in a restaurant and was required to work on Victoria Day. She was paid the general minimum wage. She was scheduled to work 10 hours on the public holiday, and the employer decided to give her premium pay for all hours worked on that day, plus public holiday pay (but no substitute day off in the future).

Arvinder worked 6 hours of the shift and took 4 hours off as paid infectious disease emergency leave. **Arvinder was entitled to:**



## 1. Entitlements from the Public Holidays part of the ESA:

- Public holiday pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays#section-3>) calculated in accordance with the public holiday rules of the ESA
- Premium pay for the hours worked on the public holiday in accordance with the public holiday rules of the ESA (general minimum wage x 1.5 x 6 hours)

## 2. Entitlements from the Paid Infectious Disease Emergency Leave part of the ESA:

- No additional amount as infectious disease emergency leave pay

Note that Arvinder was not entitled to premium pay for the four hours taken as paid infectious disease emergency leave.

**Explanation:**

Arvinder met the requirements to take paid infectious disease emergency leave. Infectious disease emergency leave pay generally ensured that employees did not lose wages for the time they were not working when on paid infectious disease emergency leave, up to a maximum of \$200 per day. In the case of Arvinder who took paid infectious disease emergency leave on a public holiday where she was scheduled to work and earn premium pay plus public holiday pay, her entitlements under the public holiday rules in the ESA already provide that she earned the amount she would have earned (minus premium pay) had she not taken the leave. As such, in this situation, Arvinder was not entitled to receive any amount in infectious disease emergency leave pay over and above her public holiday entitlements. Note that even though she was not entitled to any infectious disease emergency leave pay, one day of her statutory paid infectious disease emergency leave allotment was used (unless she provided notice in writing to her employer within the specified time frame electing to take the time as unpaid infectious disease emergency leave instead – see heading below). The public holiday pay and premium pay that Arvinder was entitled to under the ESAs public holiday rules was not infectious disease emergency leave pay. This is important because it means that the amount Arvinder was entitled to receive for the public holiday was not subject to the \$200 daily infectious disease emergency leave pay maximum. Similarly, an employer could not be reimbursed for this amount through the employer reimbursement program (as the amount paid was what the employer owed Arvinder under the ESAs public holiday rules, regardless of the leave of absence).

**Employee opt-out of paid leave**

Where an employee was entitled to both unpaid and paid infectious disease emergency leave, it was the default that the days of paid infectious disease emergency leave were taken first, unless the employee opted out of the paid leave.

Receiving infectious disease emergency leave pay may have negatively affected an employee's eligibility for, or the amount of, benefits they were entitled to under other programs. To avoid this issue, employees may have chosen **not** to take paid infectious disease emergency leave under the ESA by opting out of the **paid** leave and taking the time as **unpaid** infectious disease emergency leave instead.

To opt out of paid infectious disease emergency leave, employees must have advised their employer in writing of their decision to take the time as **unpaid** infectious disease emergency leave. This written notice must have been made **before the end of the pay period in which the leave occurred**. If the employee did not advise the employer in writing by this deadline the employee would have been entitled to paid infectious disease emergency leave.

An employee did not lose a day of paid infectious disease emergency leave if they opted out of the paid leave and instead chose to treat the absence as unpaid infectious disease emergency leave. In this situation, the paid infectious disease emergency leave could have been taken for the next eligible absence.

**Length of paid infectious disease emergency leave**

Employees may have been entitled to up to three full days of paid infectious disease emergency leave whether they were employed on a full or part-time basis. See the heading "Eligibility - right to paid leave under the employee's contract of employment" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave#section-3>) for information about how an employee's contract of employment may have affected the number of days the employee was entitled to receive as paid infectious disease emergency leave. Where an employee was entitled to both unpaid and paid infectious disease emergency leave, it was the default that the days of paid infectious disease emergency leave were taken first, unless the employee opted out from the payment.

Employees had the right to be away from work on paid infectious disease emergency leave only for as long as the event that triggered the entitlement to the leave lasted. After the triggering event was over, the employee's normal obligations to be at work resumed. Employees could take paid infectious disease emergency leave in part days, full days or in periods of more than one day. When an employee took a part day of paid infectious disease emergency leave (for example, to get a vaccination against COVID-19), the employer must have allowed the employee to return to work for the remainder of the employee's shift. If an employee only took part of a day as paid infectious disease emergency leave, the employer could count it as a full day of leave.

**Example: Part-day paid infectious disease emergency leave**

Sujata was entitled to three days of paid infectious disease emergency leave. Sujata came to work as usual but developed a cough halfway through her shift. Based on direction provided by public health officials in respect of COVID-19, she left work to self-isolate and to make arrangements to get a COVID-19 test.

Sujata had the right to be on paid infectious disease emergency leave and to receive infectious disease emergency leave pay for the half-day she took to self-isolate and get a COVID-19 test. Her employer could (but did not have to) count the absence as a full day of paid infectious disease emergency leave.

The employer was only allowed to count the half-day absence as a full day of leave when determining if Sujata's three-day entitlement has been used up. The employer must have, for example, still paid Sujata for the half day that she worked, and had to include the hours worked to determine whether she worked overtime, or reached her daily or weekly limit on hours of work.

Employers can only apply to be reimbursed for a maximum of three calendar days even if they chose not to count part days as full days of paid leave.

**Unpaid infectious disease emergency leave taken between April 19 and April 28, 2021**

Although the ESA was amended to include paid infectious disease emergency leave on April 29, 2021, the entitlement to paid infectious disease emergency leave was deemed to have started on **April 19, 2021**.

Eligible employees who took an unpaid infectious disease emergency leave between April 19, 2021 and April 28, 2021 for a reason for which they could have taken paid leave, could have taken those days as paid leave instead. To do this, employees must have advised their employer of their election in writing no later than **May 12, 2021**.

### Employer reimbursement for paid leave

Eligible employers were entitled to be reimbursed the amount of infectious disease emergency leave pay that they paid to their employees, up to \$200 per employee per day taken.

Eligible employers must have made their application for reimbursement (<https://www.ontario.ca/covidworkerbenefit>) to the Workplace Safety and Insurance Board (WSIB) within 120 days of the date the employer paid the employee, or by July 29, 2023, whichever was earlier.

This was a program of the Ministry of Labour, Immigration, Training and Skills Development. The Ministry provided funding to the WSIB to administer this program. This program was not a WSIB program and was not funded by the WSIB's insurance fund. Eligible employers did not need to be registered with the WSIB in order to have received this reimbursement.

If an employee took only part of a day as paid infectious disease emergency leave, the employer could have counted – but did not have to count – it as a full day of leave.

Employers could only apply to be reimbursed for a maximum of three days even if they chose not to count part days as full days of paid leave. For example, if an employee took a half day of paid leave on a Monday, two full days of paid leave on the Tuesday and Wednesday and an additional half day on the Thursday, the employer could only apply for reimbursement for three of these days.

### Rights during leave

Employees who take unpaid infectious disease emergency leave and/or paid infectious disease emergency leave are generally entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking either of these leaves.

Learn more about rights for employees taking pregnancy and parental leaves (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-3>).

### Interactions with other ESA rules

#### Interaction with other leaves

In addition to unpaid infectious disease emergency leave and paid infectious disease emergency leave, there are different types of leaves under the ESA including:

- sick leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/sick-leave>)
- family responsibility leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-responsibility-leave>)
- family caregiver leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-caregiver-leave>)
- family medical leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave>)
- critical illness leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave>)
- bereavement leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/bereavement-leave>)
- declared emergency leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/declared-emergency-leave>)

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

The purposes of the leaves, their length and eligibility criteria are different. Learn more about the different types of leave in their respective chapters in the ESA.

#### Interaction with vacation rules

Employees earn vacation time (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation#section-1>) under the ESA, by completing a vacation entitlement year (or stub period). Because there is no break in the employment relationship while an employee is on infectious disease emergency leave, the time on leave counts toward the completion of a vacation entitlement year or stub period.

For example, an employee on infectious disease emergency leave for all or only part of a vacation entitlement year would have earned a full two or three (depending on the employee's length of employment) weeks of vacation time at the end of the vacation entitlement year. The vacation pay earned during that vacation entitlement year would be a minimum of 4% or 6% (depending on the employee's length of employment) of any wages — which includes infectious disease emergency leave pay — actually earned during the year.

Where an employee's contract provides that "paid vacation" is earned through active service (for example, 1.5 paid vacation days for each month of service or three weeks paid vacation for each year of service) an employee on leave may not earn either vacation time and/or pay while on leave. However, at the end of the vacation entitlement year or stub period, the employer must ensure the employee receives the greater of what was in fact earned under the contract and the minimum vacation time and vacation pay they would have earned under the ESA.

Get more information on vacation rules (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>), including examples of how this works.

#### Interaction with public holiday rules

Under the ESA, employees are not entitled to public holiday (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>) entitlements if

they fail without reasonable cause to work all of their last regularly scheduled day of work before the public holiday or all of their first regularly scheduled day of work after the public holiday. This is referred to as the “last and first rule” (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays#section-2>)”.

An employee who is on infectious disease emergency leave when a public holiday occurs will meet the “first and last rule” if they worked their “first and last rule” if they worked their **last scheduled day of work before the leave** and **their first scheduled day of work after the leave**. If the employee failed to work either or both of those days, they will still meet the “first and last rule” if they had reasonable cause for failing to work on those day(s).

For example, Bonnie is on infectious disease emergency leave when the Labour Day holiday occurs. If Bonnie worked her last regularly scheduled day of work before her leave started, and her first regularly scheduled day of work after her leave ended (or had reasonable cause for failing to work either or both of those days), she will be entitled to the paid public holiday.

Get more information about the [ESAs](https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays) public holiday (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>) rules.

## Notice of leave

An employee must generally advise the employer that the employee will be taking an infectious disease emergency leave before starting the leave.

If advance notice cannot be provided, the employee must inform the employer as soon as possible after starting the leave.

Notice can be given in writing or orally.

While an employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take the leave if the employee fails to do so.

Where an employee was entitled to both unpaid and paid infectious disease emergency leave, it was the default that the days of paid infectious disease emergency leave were taken first, unless the employee opted out by notifying their employer in writing before the end of the pay period in which the leave occurred that they choose to take unpaid infectious disease emergency leave. Note that an employee who was **deemed** to be on infectious disease emergency leave as a result of *Ontario Regulation 228/20* (<https://www.ontario.ca/laws/regulation/r20228>) was not required to advise their employer of the deemed leave. They were simply considered to be on leave.

## Proof of entitlement

An employer may require an employee to provide evidence reasonable in the circumstances at a time that is reasonable in the circumstances that the employee is eligible for infectious disease emergency leave. However, **employers cannot require an employee to provide a certificate from a physician or nurse as evidence**. Employers are not prohibited under the [ESA](#) from requiring medical notes in the context of issues such as return-to-work situations or for accommodation purposes.

What is considered reasonable in the circumstances will depend on all the facts of the situation, such as:

- the duration of the leave
- whether there is a pattern of absences
- whether any evidence is available and the cost of the evidence

If it is reasonable in the circumstances, evidence may take many forms, such as:

- a copy of the information issued to the public by a public health official advising of quarantine or isolation (for example, a print out, screen shot or recording of the information)
- a copy of an order to isolate that was issued to the employee under section 22 or section 35 of the *Health Protection and Promotion Act* (<https://www.ontario.ca/laws/statute/90h07>)
- an email from a pharmacy or from a public health department indicating the employee’s appointment date and time to receive a COVID-19 vaccination

Employers can only require the evidence at a time that is reasonable in the circumstances. What is considered reasonable in the circumstances will depend on all of the facts of the situation.

## Examples of “reasonable in the circumstances”

### If an employee is in isolation or quarantine

If an employee is in isolation or in quarantine, it will not be reasonable to require an employee to provide the evidence during the quarantine or isolation period if the employee would have to leave home to obtain the evidence.

However, if the employee has electronic evidence that can be sent from home, it may be reasonable to require the employee to send it during the isolation or quarantine period.

### Whether an employer can require a positive COVID-19 test

The question may arise as to whether an employer can require an employee who takes infectious disease emergency leave because they believe they have contracted COVID-19 to provide a positive COVID-19 test result as proof of entitlement to the leave.

Whether it is reasonable for the employer to require the employee to provide a positive COVID-19 test result will depend on all of the circumstances.

For example, if the employee had taken a test before starting the leave or during the leave, and had evidence from the test indicating a positive result, it would be reasonable for the employer to require the employee to provide that evidence.

As another example, if an employee is too sick to leave home for a polymerase chain reaction (PCR) test or is not permitted to access a PCR test through the provincial testing system, it would not be reasonable in the circumstances to require the employee to provide the results from a PCR test from a provincial testing location as proof of entitlement to the leave.

Whether it would be reasonable for an employer to require an employee to provide evidence of the results from a private PCR test or from a rapid antigen test as proof of entitlement to the leave would depend on the circumstances, including factors such as the employee's ability to access the test and its cost.

### Employment insurance benefits and other federal supports

Employees who take unpaid infectious disease emergency leave or who took paid infectious disease emergency leave may also be entitled to either:

- employment insurance benefits
- other federal government financial supports

Learn more about the federal government's financial supports (<https://www.canada.ca/en/services/benefits/covid19-emergency-benefits.html>) or contact Service Canada's Employment Insurance Automated Telephone Information Service at Toll-free: 1-800-206-7218.

The right to take time off work under the infectious disease emergency leave provisions of the ESA is not the same as the right to the payment of employment insurance benefits or other federal government supports. An employee may be entitled to a leave under the ESA whether or not they have applied for or qualified for federal benefits or supports.

Note that receiving paid infectious disease emergency leave may have negatively affected an employee's eligibility for or the amount of benefits they were entitled to under some federal programs. To avoid this issue, employees may have chosen **not** to take paid infectious disease emergency leave they were entitled to under the ESA by opting out of **paid** infectious disease emergency leave and taking the time as **unpaid** infectious disease emergency leave instead.

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Termination of employment

### Changes to ESA rules

#### Temporary ESA rules no longer in effect

In response to the COVID-19 pandemic, the Ontario government made a regulation (<https://www.ontario.ca/laws/regulation/r20228>) that changed certain *Employment Standards Act, 2000* (ESA) rules during the COVID-19 period. The temporary rules (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>) ended on **July 30, 2022**.

### Termination of employment defined

A number of expressions are commonly used to describe situations when employment is terminated. These include "let go," "discharged," "dismissed," "fired" and "permanently laid off."

Under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) a person's employment is terminated if the employer:

- dismisses or stops employing an employee, including where an employee is no longer employed due to the bankruptcy or insolvency of the employer;
- "constructively" dismisses an employee and the employee resigns, in response, within a reasonable time;
- lays an employee off for a period that is longer than a "temporary layoff".

In most cases, when an employer ends the employment of an employee who has been continuously employed for three months, the employer must provide the employee with **either written notice of termination, termination pay or a combination** (as long as the notice and the number of weeks of termination pay together equal the length of notice the employee is entitled to receive).

The ESA does not require an employer to give an employee a reason why their employment is being terminated. There are, however, some situations where an employer **cannot** terminate an employee's employment even if the employer is prepared to give proper written notice or termination pay. For example, an employer cannot end someone's employment, or penalize them in any other way, if any part of the reason for the termination of employment is based on the employee asking questions about the ESA or exercising a right under the ESA, such as refusing to work in excess of the daily or weekly hours of work maximums, or taking a leave of absence specified in the ESA. Please see the chapter on reprisals (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>) .

### Qualifying for termination notice or pay in lieu

Certain employees are not entitled to notice of termination or termination pay under the ESA. Examples include: employees who are guilty of wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer. Other examples include construction employees, employees on temporary layoff, employees who refuse an offer of reasonable alternative employment and employees who have been employed less than three months.

There are a number of other exemptions to the termination of employment provisions of the ESA. See "Exemptions to notice of termination or termination pay." Please also refer to the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

The termination-of-employment rules are entirely separate from any entitlements an employee may have to be paid severance pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>) under the ESA.

## Constructive dismissal

A constructive dismissal may occur when an employer makes a significant change to a fundamental term or condition of an employee's employment without the employee's actual or implied consent.

For example, an employee may be constructively dismissed if the employer makes changes to the employee's terms and conditions of employment that result in a significant reduction in salary or a significant negative change in such things as the employee's work location, hours of work, authority, or position. Constructive dismissal may also include situations where an employer harasses or abuses an employee, or an employer gives an employee an ultimatum to "quit or be fired" and the employee resigns in response.

The employee would have to resign in response to the change within a reasonable period of time in order for the employer's actions to be considered a termination of employment for purposes of the ESA.

Constructive dismissal is a complex and difficult subject. For more information on constructive dismissal, please contact the Employment Standards Information Centre at 1-800-531-5551.

## Temporary layoff

An employee is on temporary layoff when an employer cuts back or stops the employee's work without ending their employment (for example, laying someone off at times when there is not enough work to do). The mere fact that the employer does not specify a recall date when laying the employee off does not necessarily mean that the lay-off is not temporary. Note, however, that a lay-off, even if intended to be temporary, may result in constructive dismissal if it is not allowed by the employment contract.

For the purposes of the termination provisions of the ESA, a "week of layoff" is a week in which the employee earned less than half of what they would ordinarily earn (or earns on average) in a week.

A week of layoff does not include any week in which the employee did not work for one or more days because the employee was not able or available to work, was subject to disciplinary suspension, or was not provided with work because of a strike or lockout at their place of employment or elsewhere.

Employers are not required under the ESA to provide employees with a written notice of a temporary layoff, nor do they have to provide a reason for the lay-off. (They may, however, be required to do these things under a collective agreement or an employment contract.)

### Under the ESA, a "temporary layoff" can last:

- A. B. not more than 13 weeks of layoff in any period of 20 consecutive weeks;  
**or**
- B. C. more than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks of layoff in any period of 52 consecutive weeks, where:
  - the employee continues to receive substantial payments from the employer;  
**or**
  - the employer continues to make payments for the benefit of the employee under a legitimate group or employee insurance plan (such as a medical or drug insurance plan) or a legitimate retirement or pension plan;  
**or**
  - the employee receives supplementary unemployment benefits;  
**or**
  - the employee would be **entitled** to receive supplementary unemployment benefits but isn't receiving them because they are employed elsewhere;  
**or**
  - the employer recalls the employee to work within the time frame approved by the Director of Employment Standards;  
**or**
  - the employer recalls the employee within the time frame set out in an agreement with an employee who is not represented by a trade union;  
**or**
- C. D. a layoff longer than a layoff described in 'B' where the employer recalls an employee who is represented by a trade union within the time set out in an agreement between the union and the employer.

If an employee is laid off for a period longer than a temporary layoff as set out above, the employer is considered to have terminated the employee's employment. Generally, the employee will then be entitled to termination pay.

## Written notice of termination and termination pay

Under the ESA:

- an employer can terminate the employment of an employee who has been employed continuously for three months or more if the employer has given the employee proper **written notice** of termination and the notice period has expired;  
**or**
- an employer can terminate the employment of an employee **without** written notice or with **less** notice than is required if the employer pays **termination pay** to the employee.

## Written notice of termination

An employee is entitled to notice of termination (or termination pay instead of notice) if they have been continuously employed for at least three months. A person is considered "employed" not only while they are actively working, but also during any time in which they are not working but the employment relationship still exists (for example, time in which the employee is off sick or on leave or on lay-off).

The amount of notice to which an employee is entitled depends on their "period of employment". An employee's period of employment includes not only all time while the employee is actively working but also any time that they are not working but the employment relationship still exists, **with the following exceptions:**

- if a lay-off goes on longer than a temporary lay-off, the employee's employment is deemed (or considered) to have been terminated on the first day of the lay-off—any time after that does not count as part of the employee's period of employment, even though the employee might still be employed for purposes of the "continuously employed for three months" qualification;
- if two separate periods of employment are separated by more than 13 weeks, only the most recent period counts for purposes of notice of termination.

It is possible, in some circumstances, for a person to have been "continuously employed" for three months or more and yet have a period of employment of less than three months. In such circumstances, the employee would be entitled to notice because an employee who has been continuously employed for at least three months is entitled to notice, and the minimum notice entitlement of one week applies to an employee with a period of employment of any length less than one year.

The following chart specifies the amount of notice required:

### Amount of notice required if an employee has been continuously employed for at least three months

Period of employment	Notice required
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 or more	8 weeks

**Note:** Special rules determine the amount of notice required in the case of mass terminations – where the employment of 50 or more employees is terminated at an employer's establishment within a four-week period.

### Requirements during the statutory notice period

During the statutory notice period, an employer must:

- not reduce the employee's wage rate or alter any other term or condition of employment;
- continue to make whatever contributions would be required to maintain the employee's benefits plans; and
- pay the employee the wages they are entitled to, which cannot be less than the employee's **regular wages** for a **regular work week** each week.

### Regular rate

This is an employee's rate of pay for each non-overtime hour of work in the employee's work week.

### Regular wages

These are wages other than overtime pay, vacation pay, public holiday pay, premium pay, domestic or sexual violence leave pay, termination of assignment pay, termination pay and severance pay and certain contractual entitlements.

### Regular work week

For an employee who usually works the same number of hours every week, a regular work week is a week of that many hours, not including overtime hours.

Some employees do not have a regular work week. That is, they do not work the same number of hours every week or they are paid on a basis other than time. For these employees, the "regular wages" for a "regular work week" is the average amount of the regular wages earned by the employee in the weeks in which the employee worked during the period of 12 weeks immediately preceding the date the notice was given.

An employer is not allowed to schedule an employee's vacation time during the statutory notice period unless the employee—**after** receiving written notice of termination of employment—agrees to take their vacation time during the notice period.

If an employer provides longer notice than is required, the statutory part of the notice period is the last part of the period that ends on the date of termination.

## How to provide written notice

In most cases, written notice of termination of employment must be addressed to the employee. It can be provided in person or by mail, fax or e-mail, as long as delivery can be verified.

There are special rules for providing notice of termination if an employee has a contract of employment or a collective agreement that provides seniority rights that allow an employee who is to be laid off or whose employment is to be terminated to displace ("bump") other employees.

In that case, the employer must post a notice in the workplace (where it will be seen by the employees) setting out the names, seniority and job classification of those employees the employer intends to terminate and the date of the proposed termination. The posting of the notice is considered to be notice of termination, as of the date of the posting, to an employee who is "bumped" by an employee named in the notice. However, this notice of termination must still meet the length requirements set out in the ESA.

There are also special rules regarding how notice is provided when there is a mass termination.

## Termination pay

An employee who does not receive the written notice required under the ESA must be given termination pay in lieu of notice. Termination pay is a lump sum payment equal to the **regular wages** for a **regular work week** that an employee would otherwise have been entitled to during the written notice period. An employee earns vacation pay on their termination pay. Employers must also continue to make whatever contributions would be required to maintain the benefits the employee would have been entitled to had they continued to be employed through the notice period.

### Example: Regular work week

Sarah has worked for three and a half years. Now her job has been eliminated and her employment has been terminated. Sarah was not given any written notice of termination.

Sarah worked 40 hours a week every week and was paid \$17.00 an hour. She also received four per cent vacation pay. Because she worked for more than three years but less than four years, she is entitled to three weeks' pay in lieu of notice.

1. Sarah's regular wages for a regular work week are calculated:

$$\text{\$17.00 an hour} \times 40 \text{ hours a week} = \text{\$680.00 a week}$$

2. Her termination pay is calculated:

$$\text{\$680.00} \times 3 \text{ weeks} = \text{\$2040.00}$$

3. Then her vacation pay on her termination pay is calculated:

$$4\% \text{ of } \text{\$2040.00} = \text{\$81.60}$$

4. Finally, her vacation pay is added to her termination pay:

$$\text{\$2040.00} + \text{\$81.60} = \text{\$2121.60}$$

Result: Sarah is entitled to \$2121.60. The employer must also ensure continued coverage for any benefit or pension plans that applied to her for three weeks.

### Example: No regular work week

Gerry has worked at a nursing home for four years. He works every week, but his hours vary from week to week. His rate of pay is \$17.00 an hour, and he is paid 6 per cent vacation pay.

Gerry's employer eliminated his position and did not give Gerry any written notice of termination. Gerry was ill and off work for two of the 12 weeks immediately preceding the day his employment was terminated. Gerry earned \$1,800.00 in the 12 weeks before the day on which his employment ended.

Gerry is entitled to four weeks of termination pay.

1. Gerry's average earnings per week are calculated:

$$\text{\$1,800.00 for 12 weeks} / 10 \text{ weeks (Gerry was off sick for two weeks therefore these weeks are not included in the calculation of average earnings)} = \text{\$180.00 a week}$$

2. His termination pay is calculated:

$$\text{\$180.00} \times 4 \text{ weeks} = \text{\$720.00}$$

3. Then his vacation pay on his termination pay is calculated:

$$6\% \text{ of } \text{\$720.00} = \text{\$43.20}$$

4. Finally, his vacation pay is added to his termination pay:

$\$720.00 + \$43.20 = \$763.20$

Result: Gerry is entitled to \$763.20. The employer must also ensure continued coverage for any benefit or pension plans that applied to him for four weeks.

### When to pay termination pay

Termination pay must be paid to an employee **either** seven days after the employee's employment is terminated or on the employee's next regular pay date, whichever is **later**.

### Mass termination

Special rules for notice of termination may apply when the employment of 50 or more employees is terminated at an employer's establishment within a four-week period. This is often referred to as mass termination. (Note: an "establishment" can, in some circumstances, include more than one location.)

When a mass termination occurs, the employer must submit Form 1 (Notice of termination of employment) (<https://forms.mgcs.gov.on.ca/en/dataset/016-1552>) to the Director of Employment Standards. Any notice to the affected employees would not be considered to have been given until the Form 1 was received by the Director; in other words, notice of mass termination is not considered to be effective until the Director of Employment Standards receives the Form 1.

In addition to providing employees with individual notices of termination, the employer must post a copy of the Form 1 provided to the Director of Employment Standards in the workplace where it will come to the attention of the employees it affects on the first day of the notice period.

The amount of notice employees must receive in a mass termination is not based on the employees' length of employment, but on the number of employees who have been terminated. An employer must give:

- Eight weeks' notice if the employment of 50 to 199 employees is to be terminated
- 12 weeks' notice if the employment of 200 to 499 employees is to be terminated
- 16 weeks' notice if the employment of 500 or more employees is to be terminated

### Exception to the mass termination rules

The mass termination rules do not apply if:

1. The number of employees whose employment is being terminated represents not more than 10 per cent of the employees who have been employed for at least three months at the establishment,  
**and**
2. None of the terminations are caused by the permanent discontinuance of all or part of the employer's business at the establishment.

### Mass termination: Resignation by an employee

An employee who has received termination notice under the mass termination rules who wants to resign before the termination date provided in the employer's notice must give the employer at least one week's written notice of resignation if the employee has been employed for less than two years. If the employment period has been two years or more, the employee must give at least two weeks' written notice of resignation. However, the employee does not have to give notice of resignation if the employer constructively dismisses the employee or breaches a term of the contract.

### Temporary work after termination date in notice

An employer can provide work to an employee who has been given notice of termination on a temporary basis in the 13-week period **after** the termination date set out in the notice without affecting the original date of the termination and without being required to provide any further notice of termination to the employee when the temporary work ends.

If an employee works **beyond** the 13-week period after the termination date and then has their employment terminated, the employee will be entitled to a new written notice of termination as if the previous notice had never been given. The employee's period of employment will then also include the period of temporary work.

### Recall rights

A "recall right" is the right of an employee on a layoff to be called back to work by their employer under a term or condition of employment. This right is commonly found in collective agreements.

An employee who has recall rights and who is entitled to termination pay because of a layoff of 35 weeks or more may choose to:

- keep their recall rights and not be paid termination pay (or severance pay, if they were entitled to severance pay) at that time;  
**or**
- give up their recall rights and receive termination pay (and severance pay, if they were entitled to severance pay).

If an employee is entitled to both termination pay and severance pay, they must make the same choice for both.

If an employee who **is not** represented by a trade union elects to keep their recall rights or fails to make a choice, the employer must send the amount of the termination pay (and severance pay, if any) to the Director of Employment Standards, who holds the money in trust.

If an employee who **is** represented by a trade union elects to keep their recall rights or fails to make a choice, the employer and the trade union must try to come to an arrangement to hold the termination pay (and severance pay, if any) in trust for the employee. If they cannot come to an arrangement, and the trade union advises the employer and the Director of Employment Standards in writing that efforts have failed, the employer must send the termination pay (and severance pay, if any) to the Director of Employment Standards, who holds the money in trust.



If an employee chooses to give up their recall rights or if the recall rights expire, the money that is held in trust must be sent to the employee.

If the employee accepts a recall back to work, the money that is held in trust will be returned to the employer.

### Special rule for unionized employees in certain industries

A special rule that applied to employees who were represented by a trade union and their employers in the hospitality, tourism, and convention and trade show industries has ended. The special rule did not apply to the Crown or certain public organizations. This rule was in effect from December 17, 2020 until July 30, 2022.

For this special rule to have applied, the employer and the trade union representing its employees must have entered into an agreement. If they did:

- the employer was not required to pay the employee's termination pay (and severance pay, if any) in trust for the employee,
- the trade union may have elected to retain recall rights on behalf of some or all of the employees it represented, so long as the employee did not already elect to be paid termination pay (and severance pay, if any),
- if the trade union elected to retain the employee's recall rights, the employee could not give up the right to be recalled and be paid termination pay (and severance pay, if any) before a date agreed upon by the union and the employer, and
- the trade union could not renounce the recall right on behalf of an employee.

Read the regulation with the special rule ([https://www.ontario.ca/laws/regulation/r20764?mc\\_cid=6fa6d42134&mc\\_eid=5399659462](https://www.ontario.ca/laws/regulation/r20764?mc_cid=6fa6d42134&mc_eid=5399659462)).

### Exemptions to notice of termination or termination pay

Many of these exemptions are complex. Please contact the Employment Standards Information Centre, 1-800-531-5551, if you need more information. Please also refer to the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>).

The notice of termination and termination pay requirements of the [ESA](#) do not apply to an employee who:

- is guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the employer. Note: "wilful" includes when an employee intended the resulting consequence or acted recklessly if they knew or should have known the effects their conduct would have. Poor work conduct that is accidental or unintentional is generally not considered wilful;
- was hired for a specific length of time or until the completion of a specific task. However, such an employee will be entitled to notice of termination or termination pay if:
  - the employment ends before the term expires or the task is completed; or
  - the term expires or the task is not completed more than 12 months after the employment started; or
  - the employment continues for three months or more after the term expires or the task is completed;
- is employed in construction. This includes employees who are doing off-site work in whole or in part who are commonly associated in work or collective bargaining with employees who work at the construction site;
- builds, alters or repairs certain types of ships
- has their employment terminated when they reach the age of retirement in accordance with the employer's established practice, but only if the termination would not contravene the *Human Rights Code* (<https://www.ontario.ca/laws/statute/90h19>).
- has refused an offer of reasonable alternative employment with the employer;
- has refused to exercise their right to another position that is available under a seniority system.
- is on a temporary lay-off
- does not return to work within a reasonable time after being recalled to work from a temporary layoff;
- is terminated during or as a result of a strike or lockout at the workplace;
- has lost their employment because the contract of employment is impossible to perform or has been frustrated by an unexpected or unforeseen event or circumstance, such as a fire or flood, that makes it impossible for the employer to keep the employee working. (This does not include bankruptcy or insolvency or when the contract is frustrated or impossible to perform as the result of an injury or illness suffered by an employee.)

See also: Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>)

### Wrongful dismissal

#### Rights greater than [ESA](#) notice of termination, termination pay, severance pay

The rules under the [ESA](#) about termination and severance of employment are minimum requirements. Some employees may have rights under the common law that are greater than the rights to notice of termination (or termination pay) and severance pay under the [ESA](#). An employee may want to sue their former employer in court for "wrongful dismissal". Employees should be aware that they cannot sue an employer for wrongful dismissal **and** file a claim for termination pay or severance pay with the ministry for the same termination or severance of employment. An employee must choose one or the other. Employees may wish to obtain legal advice concerning their rights.

## Severance pay

#### Changes to [ESA](#) rules

**Temporary ESA rules no longer in effect**

In response to the COVID-19 pandemic, the Ontario government made a regulation (<https://www.ontario.ca/laws/regulation/r20228>) that changed certain *Employment Standards Act* (ESA) rules during the COVID-19 period. The temporary rules ended on **July 30, 2022**. Learn more (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>).

**Overview**

"Severance pay" is compensation that is paid to a qualified employee who has their employment "severed." It compensates an employee for losses (such as loss of seniority) that occur when a long-term employee loses their job.

Severance pay is not the same as termination pay, which is given in place of the required notice of termination of employment.

**When severance occurs**

A person's employment is "severed" when their employer:

- dismisses or stops employing the employee, including where an employee is no longer employed due to the bankruptcy or insolvency of their employer;
- "constructively" dismisses (please refer to "constructive dismissal" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-2>)) the employee and the employee resigns in response within a reasonable time;
- lays the employee off for 35 or more weeks in a period of 52 consecutive weeks;  
For the purposes of the Severance provision, an employee who receives **less than one quarter** of the wages they would have earned at the regular rate for a regular work week (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#requirements>) is considered to have been on a week of layoff. A week of layoff does not include a week when the employee is unavailable for work, unable to work, suspended for disciplinary reasons, or not provided with work because of a strike or lockout at their place of employment or elsewhere. Although the 52 weeks are consecutive, the 35 weeks do not have to be consecutive.
- lays the employee off because all of the business at an establishment closes permanently (an "establishment" can, in some circumstances, include more than one location); or
- gives the employee written notice of termination and the employee resigns after giving two weeks' written notice, and the resignation takes effect during the statutory notice period.

**Employee resigns after receiving notice of termination**

An employee who has been given a written notice of termination can resign and continue to keep the right to severance pay. To keep this right, the employee must give the employer **two weeks'** written notice of their resignation. The resignation must also take effect during the **statutory notice period**—the period of written notice that is required to be given by the employer.

If an employer provides longer notice than is required, the statutory part of the notice period is the last part of the period that ends on the date of termination.

**Example**

Heather has worked for seven years and is entitled to seven weeks' notice of termination under the ESA. Heather's employer gives her 10 weeks' notice. Heather must give her employer at least two weeks' written notice of her resignation. As long as Heather's resignation takes effect during the statutory notice period, in this case the last seven weeks of the 10-week notice period, she continues to be entitled to severance pay.

**Qualifying for severance pay**

An employee qualifies for severance pay if their employment is severed and:

- they have worked for the employer for five or more years (including all the time spent by the employee in employment with the employer, whether continuous or not and whether active or not)  
**and**
- their employer:
  - has a global payroll of at least \$2.5 million;  
**or**
  - severed the employment of 50 or more employees in a six-month period because all or part of the business permanently closed.

Previously, the Employment Standards Program policy stated that to meet the payroll condition, the employer must have had a payroll **in Ontario** of at least \$2.5 million. The policy changed in response to a court decision. The payroll condition now relates to the employer's **global** payroll.

**Amount of severance pay**

To calculate the amount of severance pay an employee is entitled to receive, multiply the employee's **regular wages** for a **regular work week** by the sum of:

- the number of completed years of employment;  
**and**
- the number of completed months of employment divided by 12 for a year that is not completed.

The maximum amount of severance pay required to be paid under the ESA is 26 weeks.

**Calculating severance pay**

**Example: A regular work week**

Susan regularly works 40 hours a week and is paid \$17.00 an hour. Her employer has a payroll of more than \$2.5 million. Her employer gives Susan seven weeks' notice of termination, and Susan works for the notice period. At the end of the notice period, Susan's employment is severed. On that date, Susan has been employed for seven years, nine months and two weeks.

Here's how to calculate Susan's severance pay entitlement.

1. Calculate Susan's regular wages for a regular work week.  
 $\text{Susan usually works 40 hours a week} \times \$17.00 = \$680.00$
2. Number of Susan's completed years = 7
3. Divide the number of complete months Susan was employed in the incomplete year by 12.  
 $\text{Susan worked 9 complete months} \div 12 = 0.75$
4. Add the number arrived at in Step 2 (7) to the number arrived at in Step 3 (0.75),  
 $7 + 0.75 = 7.75$
5. Multiply Susan's regular wages for a regular work week (\$680.00) by the number arrived at in Step 4 (7.75).  
 $\$680.00 \times 7.75 = \$5270.00$ .

Result: Susan is entitled to \$5270.00 in severance pay.

A special method of calculating severance pay is used for employees who are paid on a basis other than time worked.

**Example: Employee paid on a basis other than time worked**

Kwesi works as a commission salesperson at his employer's high-tech retail store. He is paid commissions on sales made and not on the basis of time worked.

Kwesi's employer decides to downsize and Kwesi is given eight weeks' written notice of termination of employment. He works the notice period and his employment is severed. On the date his employment is severed, he has been employed for nine years, six months and three weeks.

Kwesi's employer has a payroll of more than \$2.5 million. In the last 12 weeks of his employment, Kwesi has received \$7,723.00.

To calculate Kwesi's severance pay entitlement.

1. Calculate Kwesi's "regular wages for a regular work week"-the average of the regular wages he received in the weeks he worked during his last 12 weeks of employment.  
 $\$7,723.00 \div 12 = \$643.58$
2. Number of completed years = 9
3. Divide the number of complete months Kwesi was employed in the incomplete year by 12  
 $\text{Kwesi worked 6 complete months} \div 12 = 0.5$
4. Add the number arrived at in Step 2 (9) and the number arrived at in Step 3 (0.5)  $9 + 0.5 = 9.5$
5. Multiply Kwesi's regular wages for a regular work week (\$643.58) by the number arrived at in Step 4 (9.5)  $\$643.58 \times 9.5 = \$6,114.01$ .

**Result:** Kwesi is entitled to \$6,114.01 in severance pay.

**When to pay severance pay**

An employee must receive severance pay either seven days after the employee's employment is severed or on what would have been the employee's next regular pay day, whichever is **later**.

However, an employer may pay severance pay in installments with the **electronic or written** agreement of the employee or the approval of the Director of Employment Standards, Ministry of Labour, Immigration, Training and Skills Development. An installment plan cannot be for more than three years. If an employer fails to make a scheduled payment, all of the employee's severance pay becomes due immediately.

**Exemptions from severance pay**

Many of these exemptions are complex. Please contact the Employment Standards Information Centre, Toll-free: 1-800-531-5551, if you need help with these exemptions. Please also refer to the special rule tool (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>).

An employee is not entitled to severance pay if they:

- have refused an offer of "reasonable alternative employment" with the employer;
- have refused "reasonable alternative employment" that is available to the employee through a **seniority system**;
- have their employment severed and retires on a full pension recognizing all years of service that would have been worked in the normal course. (Canada Pension Plan benefits do not qualify.);
- have their employment severed because of a permanent closure of all or part of the employer's business that the employer can show was caused by the

economic effects of a strike;

- are employed in construction, including employees who are working off-site and who are commonly associated in work or collective bargaining with employees who work at the construction site;
- are employed in the on-site maintenance of buildings, structures, roads, sewers, pipelines, mains, tunnels or other works;
- are guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and was not condoned by the employer; or
- have lost their employment because the contract of employment is impossible to perform or has been frustrated by an unexpected or unforeseen event or circumstance. This does not include bankruptcy or insolvency or when the contract is frustrated or impossible to perform as the result of an injury or illness suffered by an employee.

## Recall rights

A "recall right" is the right of an employee on layoff to be called back to work by their employer under a term or condition of employment. If an employee is entitled to both termination pay--because of a layoff of 35 weeks or more--and severance pay, they must make the same choice for both. Please refer to "Recall rights" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#recall>) in the "Termination of employment" chapter.

## Wrongful dismissal

### Rights greater than ESA notice of termination, termination pay, severance pay

The rules under the ESA about termination and severance of employment are minimum requirements. Some employees may have rights under the common law or other legislation that give them greater rights than notice of termination (or termination pay) and severance pay under the ESA; because such rights generally cannot be enforced under the ESA, some employees may choose to sue an employer in a court for "wrongful dismissal" or pursue other options. Employees should be aware that they cannot sue an employer for wrongful dismissal and file a claim for termination pay or severance pay with the ministry for the same termination or severance of employment; an employee must choose one or the other. Employees may wish to obtain legal advice concerning their rights.

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

# Non-compete agreements

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Overview

Effective October 25, 2021 employers are prohibited from entering into employment contracts or other agreements with an employee that include a non-compete agreement.

A non-compete agreement is defined as an agreement, or any part of an agreement, between an employer and employee that prohibits the employee from engaging in any business, work, occupation, profession, project or other activity that is in competition with the employer's business, after the employment relationship between the employee and the employer ends.

### Time-limited or geographically restricted

An agreement, or part of an agreement, may be considered a non-compete agreement whether or not it is time-limited or geographically restricted.

Examples include:

- An agreement that prohibits the employee from engaging in work that is in competition with the employer's business for six months after the employment relationship ends is a non-compete agreement. If the agreement has no expiry date it is still a non-compete agreement.
- An agreement that prohibits the employee from engaging in work that is in competition with the employer's business after the employment relationships ends within 100 km of the employer's workplace is a non-compete agreement. If the agreement has no geographic restriction it is still a non-compete agreement.

### Before, during and after employment relationship

Entering into non-compete agreements is prohibited before the employment relationship begins, during the employment relationship and after it ends.

Examples of prohibited non-compete agreements include non-compete agreements entered into by:

- a potential employer and an applicant for employment before an employment relationship begins
- an employee with their employer during the employment relationship
- a former employee and their former employer after the end of the employment relationship

## Exceptions

There are two exceptions to non-compete agreements being prohibited under the ESA:

The first exception applies where **all** the following occur:

- there is a sale or lease of a business or a part of a business that is operated as a sole proprietorship or a partnership

- immediately following the sale, the seller becomes an employee of the purchaser
- as part of the sale, the purchaser and seller enter into an agreement that prohibits the seller from engaging in any business, work, occupation, profession, project or other activity that is in competition with the purchaser's business after the sale

The second exception applies to executives:

- The **ESA** does not prohibit employers from entering into non-compete agreements with executives. An executive is any person who holds the office of:
  - chief executive officer
  - president
  - chief administrative officer
  - chief operating officer
  - chief financial officer
  - chief information officer
  - chief legal officer
  - chief human resources officer
  - chief corporate development officer
  - any other chief executive position

Employees may have a greater right under their employment contract or the common law. If you have questions about the enforceability of a non-compete agreement that applies to either of these exceptions, please talk to a lawyer.

### Non-compete agreements entered into before October 25, 2021

The **ESA** **does not prohibit** non-compete agreements that were entered into before October 25, 2021. However, employees may have greater rights under the common law. If you have questions about the enforceability of a non-compete agreement that was entered into before October 25, 2021, please talk to a lawyer.

### Non-solicit and non-disclosure agreements

A **non-solicit** agreement in an employment contract prohibits an employee from soliciting, or actively pursuing, clients, customers, vendors, business partners or other employees of their employer, during the employment relationship or after the employment relationship has ended. The non-solicit agreement often, but not always, applies only for a specified period after the end of the employment relationship.

A **non-disclosure** agreement in an employment contract prohibits an employee from sharing confidential company information and processes.

The **ESA** prohibits non-compete agreements. The **ESA** **does not** prohibit non-solicit agreements or non-disclosure agreements. However, employees may have greater rights under the common law. If you have questions about the enforceability of non-solicit and non-disclosure agreements, please talk to a lawyer.

The proper terminology may not always be used in agreements. When determining whether an agreement falls within the definition of a non-compete agreement, the substance of the agreement is what matters, not the words that are used.

For example, an employment contract may have a heading that says "Non-Competition" in relation to a sentence that says, "The employee will not, for two years after the end of the employment contact any person, firm, corporation, or governmental agency who was a customer of the employer at any time during the employee's employment with the employer." Despite the heading "Non-Competition", the substance of the sentence is about soliciting rather than competing and does not fall into the definition of a non-compete agreement.

### Enforcement

Employees, applicants for employment and former employees can file a claim (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim>) with the Ministry of Labour, Immigration, Training and Skills Development if they believe that they entered into a prohibited non-compete agreement on or after October 25, 2021. They can also file a claim if they believe they were penalized because they refused to enter into a prohibited non-compete agreement. This is considered a reprisal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>).

The **ESA** does not prohibit employees and employers from resolving disputes about the enforceability of non-compete agreements in the courts.

## Continuity of employment

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The purpose of the continuity of employment provisions of the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (**ESA**) is to ensure that an employee's past employment is recognized when:

- the business the employee works for is sold or transferred in any other way to a new owner;
- and

- the employee continues to work in the business for the new owner.

It also applies to an employee of a building services provider when:

- the employer no longer holds the contract at the building where the employee works;  
**and**
- the employee is hired to work for the new provider at the same location.

### Building services provider

This is a person or company that provides cleaning, security, or food services for a premises. A building services provider can also provide property management, parking garage, parking lot and concession stand services related only to the building, its occupants and visitors. A building services provider includes the owner or manager of a building if that owner or manager provides these services to a building that they own or manage.

The ESA also has specific provisions that apply **only** to building services providers and their employees. (See the "Building services providers (https://www.ontario.ca/document/your-guide-employment-standards-act-0/building-services-providers) " chapter for more information.)

### Determining entitlements

Most employees are entitled to vacations, pregnancy leave, parental leave, sick leave, family responsibility leave, bereavement leave, critical illness leave, organ donor leave, domestic or sexual violence leave, child death leave or crime-related child disappearance leave, notice of termination or termination pay and severance pay. However, in the case of some of these entitlements an employee would not be eligible for them until they have been employed by the employer for a certain minimum time, while in the case of other rights, such as notice of termination or severance pay, the amount of an employee's entitlement varies according to the length of employment with the employer. The continuity of employment provisions provide that a person's length of employment with the seller of a business or a previous building services provider is attributed, or "flows through" to the purchaser of the business or to the new building services provider. This means that where there is a sale of a business or a change in building service providers and an employee of the seller or previous provider is hired by the purchaser or new provider, they do not start as a "new employee" for purposes of these ESA entitlements but instead gets "credit" for their past employment.

When a person's length of employment is attributed to a new employer, the new employer has to recognize the time the person worked for the previous employer. This "earned" time must be credited toward any rights the employee has that are based on their length of employment.

#### Example: When a business is sold

Richard has worked for 10 years as a mechanic. His employer, Kim, decides to retire and sell the garage to her son, who chooses to continue to employ Richard. Richard wants to carry on working in the business, and he accepts the job with the new owner.

Because Richard's employment does not end with the transfer of the business, the length of time he worked for Kim must be recognized for any rights he has that are based on his length of employment. For example, since Richard has five or more years of employment, he earns three weeks of vacation time after completion of each vacation entitlement year. He also earns six per cent vacation pay. If the son terminates Richard's employment one year after the transfer, Richard will be entitled to eight weeks' notice rather than just one week, because his time with Kim is treated as if it was employment with the son.

#### Example: When part of a business is sold

Talia works for a dairy that produces milk and ice cream. The dairy sells the ice cream division so that it can concentrate on milk production. The buyer offers to continue to employ Talia, and she agrees to work for the new owner.

Talia's employment does not end with the sale. The total time Talia was employed by the business must be taken into account when determining any rights Talia may have with the new employer.

#### Example: When a building services provider is replaced

Xiu has worked for two years for ABC Cleaning. Her employer has a contract with a building owner to provide cleaning services in the owner's building. The contract is for a specific period of time, and when it expires the owner contracts with a new company, DEF Cleaning.

Xiu is hired by DEF Cleaning and continues to work in this building. In hiring her, DEF Cleaning must recognize Xiu's length of employment with ABC Cleaning for any rights she has that are based on her length of employment.

#### Example: When a service is contracted to a building services provider

Jim has worked for MNO Insurance for six years as a cleaner. His job is to keep MNO's office building clean. MNO decides to contract this service to a cleaning company, GHI Cleaning. GHI Cleaning chooses to hire Jim, and he continues working in the building.

Jim's length of employment with MNO is included when determining his length of employment with GHI.

### Continuity of employment and entitlements to vacation time and pay

Under the ESA, an employee whose period of employment is less than five years earns two weeks of vacation upon completion of a 12-month vacation entitlement year. Four per cent of their gross wages earned in that entitlement year are then accrued as vacation pay.

An employee with five or more years of employment earns three weeks of vacation once they have completed a 12-month vacation entitlement year. In this case, six per cent of the gross wages earned in that entitlement year are accrued as vacation pay.

The employer must ensure the vacation is taken no later than 10 months after the vacation entitlement year ends and, generally, the vacation pay accrued in respect of that vacation entitlement year is due at that time. (See "When to pay vacation pay (https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation#vacationpay) ").

**Example: When a business is sold**

Roman has worked for a business for 16 months when the business is sold. He has not taken any vacation at the time of the sale. Roman continues to work for the new owner, and his previous employment with the seller must be recognized by the new owner. The new owner must give Roman the vacation he earned in his first 12 months of employment with the seller within six months of hiring him. In addition, the purchaser must pay Roman the vacation pay accrued in respect of that vacation entitlement year (if it has not yet been paid). The purchaser will also be liable for the vacation pay Roman accrued in the last four months of employment with the seller.

As Roman's total employment time is less than five years, his entitlement will be based on two weeks' vacation after each completed vacation entitlement year and four per cent vacation pay per vacation entitlement year.

However, if Roman had already been employed by the business for eight years prior to the sale, he would be entitled to three weeks' vacation after each completed vacation entitlement year and six per cent vacation pay per vacation entitlement year. Roman is not required to work for the new owner for an additional five years to be eligible for the greater vacation time and pay entitlements.

**Example: When a building services provider is replaced**

Matti has worked as a cleaner with a company for 38 months when the company loses its cleaning contract. He is immediately hired by the company that won the contract. The new provider must recognize Matti's employment with his former employer.

Matti has already taken two weeks of vacation for each of his first two vacation entitlement years with his former employer. His new employer must therefore give him the two weeks of vacation earned in respect of his third vacation entitlement year (and the years that follow, so long as Matti stays with the new employer). The vacation must be taken within 10 months of the completion of the third vacation entitlement year (8 months after he was hired by the new building services provider).

**Note:** A building service provider who stops providing services at a premises and who stops employing an employee has to pay the employee the amount of any accrued (accumulated) vacation pay:

- within seven days of the date the provider stops providing services to the premises;
- or**
- on the employee's next pay day;

whichever is later.

**Example: When a business is sold**

Amy has worked for an accounting firm for three years. The firm is sold and Amy starts working for the new owner. The sale occurred four weeks before Amy's due date, and she will have started her employment with the new owner only four weeks before her baby is due.

Amy's employment with the old business is deemed to have been employment with the new owner. She is considered to have started her employment three years and four weeks before her baby is due, and so she qualifies for pregnancy leave.

**Example: When a building services provider is replaced**

Hannah has worked for five years in a hospital cafeteria for 123 Foods. Hannah is eight months pregnant, and she intends to begin her pregnancy leave in one month's time on the date her baby is due. However, 123 Foods is replaced by a new services provider, 456 Foods, which hires Hannah.

Because 456 Foods must recognize Hannah's years of employment with the previous provider, she is considered to have started her employment five years and one month before her due date. Hannah is therefore entitled to pregnancy leave.

To qualify for a parental leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/pregnancy-and-parental-leave#section-2>), an employee who is a new parent must have been employed by their employer for at least 13 weeks before the leave begins.

**Example: When a business is sold**

Marilyn, Leigh's same-sex partner, has worked for a printing company for 13 years. Leigh gave birth six months ago. The printing company was sold when the baby was five months old and Marilyn continues to work for the new owner.

Marilyn planned to take a parental leave when the baby was seven months old. Her total length of employment with the business is attributed to the new owner. Therefore, her total length of employment is more than 13 weeks, and so she is qualified for the parental leave.

**Example: When a building services provider is replaced**

Raph has worked for a security services company as a security guard for three years. His employer provides security services at a local credit union. Raph and his wife Janet have a three-month-old son.

Raph planned on taking a parental leave when his son was five months old. The security services company was replaced by another company at the end of its contract, one month before Raph was planning to begin his parental leave.

Raph is hired by the new security services company. He qualifies for parental leave because the new services provider must recognize his total length of employment at the credit union premises, which is more than the 13 weeks he needs to qualify under the ESA.

To qualify for a critically ill child care leave (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/critically-ill-child-care-leave>), the parent of a critically ill child must have been employed by their employer for at least six consecutive months.

**Example: When a business is sold**

Caitlin has worked as a paleontologist with a research company for one year. The company's owner retired and the company is purchased by another company. Caitlin starts working for the new company. Two months after starting with the new company, her child becomes critically ill.

Caitlin's employment with the old company is deemed to have been employment with the new company. She is considered to have one year and two months of employment with the new company and so she qualifies for critically ill child care leave.

**Example: When a building services provider is replaced**

Wayne has worked as a cleaner for a building cleaning company, ABC Cleaning for one year; he worked at the same building throughout this time. ABC Cleaning's contract expires and it is taken over by a new provider, DEF Cleaning. Wayne is hired by DEF Cleaning. One month after starting with the new provider, Wayne's child becomes critically ill.

Wayne's employment with the former provider ABC Cleaning is deemed to have been employment with the new provider. He is considered to have been employed by DEF Cleaning for one year and one month and so he qualifies for critically ill child care leave.

To qualify for a crime-related child disappearance leave or a child death leave, the parent of the child must have been employed by their employer for at least six consecutive months.

**Example: When a business is sold**

Anna has worked at a retail store for one year. The store was sold to another company, which Anna started to work for. Three months after starting with the new company, her child disappeared and it was probable that it was the result of a crime.

Anna's employment with the old company is deemed to have been employment with the new company. She is considered to have been employed by the new company for one year and three months and so she qualifies for crime-related child disappearance leave.

**Example: When a building services provider is replaced**

Bob has worked as a security guard for a security services company for three years. The company's contract to provide security services at the premises where Bob worked expires and it is taken over by a new provider. Bob is hired by the new provider. One month after starting with the new provider, Bob's child dies.

Bob's employment with the former provider is deemed to have been employment with the new provider. He is considered to have three years and one month of employment with the new provider and so he qualifies for child death leave.

**Continuity of employment and entitlements to termination of employment and severance of employment**

In most cases, when a person's employment is going to be ended by an employer, the employee is usually entitled to receive either written notice of termination, termination pay, or a combination of both. Some employees are also entitled to receive severance pay. The length of the notice or the amount of termination pay or severance pay depends on how long the person has been employed.

**Example: When a business is sold**

Janie Marie has worked for a retail chain of stores for 10 years. All of the stores have been sold to a new owner, and the new owner continues to employ Janie Marie. Six months after buying the business, the new owner decides to downsize, and Janie Marie's employment is ended.

Janie Marie's length of employment with the business is attributed to the new owner. Since she is considered to have been employed with the business for 10½ years, she is entitled to receive the maximum period of written notice or pay in lieu of notice required under the ESA, in this case eight weeks.

Because Janie Marie is considered to have been employed with the business for more than five years and her new employer's payroll is greater than \$2.5 million annually, she is also entitled to 10½ weeks of severance pay.

**Example: When a building services provider is replaced**

Arnold has worked as a site supervisor at a premises for a building cleaning company, ABC Cleaning, for four years. ABC Cleaning's contract expires and it is taken over by a new services provider, DEF Cleaning. Arnold is hired by DEF Cleaning to continue as site supervisor at the premises and works for them for another four years before DEF terminates his employment.

Arnold is entitled to either eight weeks' written notice of termination of employment or eight weeks' pay in lieu of notice from DEF Cleaning. This is because DEF Cleaning must recognize his length of employment with the previous employer as if it had been employment with DEF.

Arnold may also be entitled to severance pay if DEF Cleaning's payroll is more than \$2.5 million or more than 50 employees have their employment ended within a six-month period as a result of a permanent discontinuance of all or part of DEF Cleaning's business at an establishment.

**Exception: 13-week gap in employment when there is a sale of business**

Where there has been a sale of a business, an exception to the continuity of employment provision occurs if there is a 13-week gap in employment.

A person's employment with a previous employer is not deemed to have been employment with the new owner if the employee is hired by the new owner more than 13 weeks after the employee's last day of employment with the seller or the day of the sale, whichever is earlier.

**Example: When an employee is hired more than 13 weeks after stopping work with the seller**

John works for Rick & Fred Taxis which is having financial difficulties. His employment is ended by the owners and, 10 weeks later, the business is sold to a new owner, Tamarack Taxis. Tamarack Taxis does not immediately offer to hire John.



After eight weeks, the new owner realizes that he needs more staff. He calls John and asks him to return to his old job. John does, but his employment with the previous owner is not attributed to Tamarack Taxis because he was hired more than 13 weeks after his last day of employment with the previous owner.

**Example: When an employee is hired more than 13 weeks after the day of the sale**

Trevor works as the manager at Jeff's Restaurant. Jeff decides to sell the business, and Trevor works until the date the restaurant is sold. The new owner decides to manage the restaurant himself and does not hire Trevor.

After 16 weeks, the new owner realizes that he is not able to manage the restaurant as well as Trevor did, and he asks him to return to his job as manager. Trevor agrees, and he starts working again in the business.

Trevor's employment with the previous owner is not deemed to have been employment with the new owner because he was hired more than 13 weeks after the date of the sale of the business.

**Exception: 13-week gap in employment when there is a change of building services providers**

Where there has been a change of building services providers, an exception to the continuity of employment provision occurs if there is a 13-week gap in employment.

A person's employment with a previous services provider is not deemed to have been employment with the new provider if the employee is hired by the new provider more than 13 weeks after the employee's last day of employment with the previous provider or the day the new provider began to provide the services, whichever is earlier.

**Example: When an employee is hired more than 13 weeks after employment was ended**

Maggie has worked for four years as a parking garage attendant for RST, a building services provider. RST cuts back on its staff and terminates Maggie's employment. Three weeks after her termination, a new building services provider takes over the operation of the parking garage. Three months later, the new provider hires Maggie to work as an attendant at the same parking garage.

Maggie's employment with RST is not deemed to have been employment with the new services provider because there was a gap of more than 13 weeks between the date her employment was terminated by RST and the date she was hired by the new provider.

**Example: When an employee is hired more than 13 weeks after a new provider takes over**

Al works as a car jockey at a parking lot operated by the owner of an office building. Because the owner provides parking lot services to the building that it owns, it is considered to be a building services provider.

The owner decides that it wants to contract the operation of the parking lot to TUV, a building services provider. Al has been employed by the building owner for three years.

Al's employment is terminated and his last day of work coincides with the last day the lot is operated by the building owner. The next day the new building services provider, TUV, takes over the operation.

TUV does not immediately offer to hire Al. However, six months later, it hires him to work as a car jockey.

Al's employment with the building owner is not attributed to TUV because he was hired more than 13 weeks after his last day of employment with the owner of the office building (who was the previous building services provider).

**Special circumstances**

Please contact the Employment Standards Information Centre, 1-800-531-5551 for further information about any of the following circumstances:

- when a business has been taken over by a landlord due to non-payment of rent;
- when a business has been taken over by a trustee or receiver due to a bankruptcy or receivership; and
- when a business is a franchise operation.

## Building services providers

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As well as the continuity of employment provisions already discussed, additional provisions of the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) apply only to employers and employees in the building services provider sector.

A building services provider is a person or company that provides cleaning, security, or food services for a premise. A provider can also offer property management, parking garage, parking lot and concession stand services related only to a building, its occupants and visitors.

The owner or manager of a building is considered a building services provider if that owner or manager provides these services to the building that they own or manage.

**Termination and severance of employment**

If a building services provider is replaced by a new provider, the new provider may choose not to hire the employees of the former provider. However, the **new** provider must then, in most cases, comply with the Termination and Severance of Employment sections (Part XV) of the **ESA** as if these employees had been terminated and/or severed by the new provider.

### Example

Jan has worked for ABC Foods for 10 years as a cook in a cafeteria. The company has a contract to provide food services in an office building. When the contract expires, ABC ends their employment relationship with Jan. DEF Foods is contracted to provide the food services, but because DEF Foods has its own staff it does not hire Jan.

DEF Foods is responsible for paying Jan's termination pay and her severance pay (if applicable), even though she was never employed by DEF Foods. Jan is entitled to eight weeks' pay in lieu of notice and, if she is entitled to severance pay, 10 weeks of severance pay. These payments are based on the length of time she was employed with ABC Foods.

A **new** building services provider does not have to provide termination or severance pay to an employee:

1. who continues to be employed by the previous provider;
2. whose work with the previous provider included providing services at the premises but who did not perform their job **primarily** at those premises during the 13 weeks before the date the new provider began to provide services;
3. whose work included providing services at the premises but who:
  - was not actively at work immediately before the date the new provider began to provide services; **and**
  - did not perform their job primarily at the premises during the most recent 13 weeks they were actively employed;
4. who did not perform their job at the premises for at least 13 weeks during the 26-week period before the new provider began to provide services (this does not include any time the employee was on pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critically ill child care, organ donor, reservist, domestic or sexual violence, child death, or crime-related child disappearance leave, or time the building services were temporarily not being provided);
5. who refuses an offer of employment with the new provider that is reasonable in the circumstances.

If exemptions 2, 3, 4 or 5 apply, the employee is **still entitled to termination and/or severance pay from the previous provider**.

### Providing information

When a building services provider is considering seeking a contract to become the new provider of services at a building, it can ask the building's owner or manager for certain information about the employees who are working at the building for the current services provider. This information can help the potential new provider decide whether, and on what terms, to make a bid to take over the provision of the services, and the number of employees, if any, it will retain if it wins the contract.

A potential new provider can ask for information on:

- each employee's job classification or job description;
- the wage rate actually paid to each employee;
- a description of any benefits provided to each employee, including the cost of each benefit and the benefit period to which the cost relates;
- the number of hours each employee works in a regular work day and in a regular work week or, if the employee's hours of work vary from week to week, the number of non-overtime hours for each week worked by the employee during the 13 weeks prior to the date the request for information was made;
- the date each employee was hired by the provider;
- any period of employment attributed to the current provider because of the continuity of employment provisions of the **ESA**;
- the number of weeks each employee worked at the premises in the 26 weeks before the request for information was made. (The 26 weeks would not include any period during which the provision of services was temporarily discontinued or during which the employee was on a pregnancy, parental, family medical, family caregiver, critically ill child care, crime-related child disappearance, child death, domestic or sexual violence, sick, family responsibility, bereavement, organ donor, declared emergency or reservist leave);
- a statement indicating whether either of the following paragraphs applies to each employee:
  - the employee's work, before the date of the request date, included providing services at the premises, but the employee **did not** perform their job **primarily at those premises** during the 13 weeks before the request was made;
  - the employee's work included providing services at the premises, but the employee **was not actively at work** immediately before the date the request was made, and the employee did not perform their job **primarily at the premises** during the most recent 13 weeks of active employment.

If a company becomes the new provider of the services at a building, it has the right to ask for the name, residential address, and telephone number of each employee.

If a building owner or manager receives a request for information from a new or potential new services provider, it has the right to get the necessary information from the current or former services provider.

Anyone who receives information about employees under this provision must use it only for the purposes of complying with the building services providers provisions of the **ESA** and determining their obligations or potential obligations under those provisions and shall not disclose the information except as required by those provisions.

## Small business

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## Overview

Under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), most employers and employees in Ontario have certain obligations and rights, known as "employment standards."

This chapter provides a summary of important employment standards that employers and employees should be aware of, including:

- payment of wages
- hours of work and overtime
- vacations
- public holidays
- leaves of absence and more

## Key employment standards

The following are important employment standards that employers and employees should be aware of. You can learn more about them in their respective chapters in this guide.

Use the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to check compliance with hours of work, overtime, public holidays, termination, severance and other employment standards entitlements.

### Hours of work (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/hours-work>)

There are limits to the number of hours employees can work in a day and week. An employee can agree to work more hours, but only if there is a written agreement (including electronically) between the employee and employer.

### Minimum wage (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage>)

Most employees are entitled to be paid at least the minimum wage. There is a general minimum wage that applies to most employees, and there are specialized minimum wages for:

- students
- homeworkers
- hunting, fishing and wilderness guides

### Vacation time and pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation>)

Most employees who have worked less than five years at their job earn at least two weeks of vacation time (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/vacation#section-1>) after every 12 months. They must also be paid at least 4% of the wages they earned as vacation pay. Most employees who have worked five or more years earn at least three weeks of vacation time and must be paid at least 6% of the total wages they earned as vacation pay.

### Public holidays (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>)

Ontario has nine public holidays every year. Most employees are entitled to take these days off work with public holiday pay. Employees can agree in writing (including electronically) to work on a public holiday and be paid public holiday pay plus premium pay or be paid their regular wages and receive a substitute day off in addition.

### Termination notice and pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>)

If you are terminating an employee's job, that employee qualifies for written notice, termination pay instead of notice, or a combination of both. The amount of notice or pay depends on how long the employee has been working for you.

### Severance pay (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>)

Severance pay is paid to qualified employees who have had their employment severed. Severance pay is not the same as termination pay, which is given in place of the required notice of termination of employment. If an employee qualifies for severance pay, they must receive it in addition to any termination pay or notice.

### The employment standards poster (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/mandatory-poster-and-information-sheets-employers>)

The employment standards poster is provided to inform employees about their rights under the ESA. Employers must provide all employees covered under the ESA with a copy of the most recent version of the employment standards poster within 30 days of hiring them. It is available in multiple languages and can be downloaded for free (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/mandatory-poster-and-information-sheets-employers#section-1>) from the government of Ontario website.

### Leaves of absence

Under the [ESA](#), eligible employees are entitled to several types of job-protected leaves of absence. Employees cannot be terminated for asking for or taking these leaves of absence. Learn more about leaves of absence by selecting an available leave from the table of contents in this guide.

#### **Record keeping** (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/record-keeping>)

Employers must keep written records about each employee for a certain time period. Records can either be kept by the employer or someone authorized to keep them on their behalf (such as an accountant or a payroll company). Regardless, these records must be readily available for a Ministry of Labour, Immigration, Training and Skills Development employment standards officer if they ask for them.

For information on other employment standards covered under the [ESA](#) refer to the main page (<https://www.ontario.ca/document/your-guide-employment-standards-act-0#section-1>) of this guide. You can also learn about exemptions or special rules (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) that apply to some industries and jobs.

### **How employment standards are enforced**

#### **Complaints and investigations** (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-2>)

If an employee feels their rights have been violated under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)), they can file a complaint with the Ministry of Labour, Immigration, Training and Skills Development and have that complaint investigated by an employment standards officer. Employers will be provided with an opportunity to participate in the investigation and may be asked to supply evidence, records or other information. If an employment standards officer determines that an employee's rights have been violated, the employer may be required to remedy the violation (for example, by paying money owed to the employee). In addition, the employer can be issued an administrative fine and be prosecuted.

Employers cannot punish their employees for claiming or asking about their rights under the [ESA](#). Punishing an employee for exercising their rights is known as a 'reprisal.' (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>) Employers that commit a reprisal can be ordered to financially compensate employees.

#### **Inspections** (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-1>)

The [ESA](#) is enforced by employment standards officers who visit businesses throughout Ontario to educate employers on their obligations and ensure employees' rights are protected. Watch our video (<https://www.youtube.com/watch?v=JHlnu1qcjYk>) about what to expect during an employment standards inspection.

Employment standards officers can visit businesses even if there have been no complaints filed. These officers will help correct areas where businesses are not complying with the [ESA](#). Employment standards officers usually provide advance notice of an inspection. They will review an employer's records and speak to both the employer and their employees.

If there are issues of non-compliance, the employment standards officer will discuss them with the employer and, depending on the violation, they may provide an opportunity to correct the issues before taking enforcement action such as issuing an order. There are several types of orders:

- order to pay direct – wages (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-5>)
- order to pay wages (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-6>)
- compliance order (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-7>)
- order to compensate and/or reinstate (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-10>)

Employers must comply with the order according to its terms. If employees or employers are not satisfied with an officer's decision, they may have the right to apply for a review (appeal) to the Ontario Labour Relations Board (<http://www.olrb.gov.on.ca/>) within 30 days.

#### **Penalties and prosecutions**

Violating the [ESA](#) can result in monetary penalties (a ticket (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-8>) or notice of contravention (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-9>) ) or court orders (prosecutions (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-19>) ) worth tens of thousands of dollars or more. When the employer is an individual and not a corporation, they can also face jail time. Directors of corporations can be held personally liable for their company's violations and can face fines or jail sentences or both. Some names of convicted employers and directors are posted online (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/employment-standards-enforcement-statistics>) . Instead of incurring the cost of these penalties, businesses can save money and avoid potential jail time by acting in compliance with the law.

## **Agricultural employees**

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### **Overview**

All agricultural employees, working in Ontario, are protected under the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)). This includes temporary foreign workers.

Depending on the category the agricultural employee falls into, different rules and standards may apply. The 4 categories are:

1. farm employees

2. harvesters
3. near farmers
4. landscape gardeners

If the employee's work falls into more than one category, how they spend most of their time, at work, determines which rules and standards apply.

### Foreign nationals

Agricultural employees who are also foreign nationals, in Ontario for immigration or a foreign temporary employee program also have rights under the *Employment Protection for Foreign Nationals Act, 2009* (<https://www.ontario.ca/laws/statute/09e32>) (EPFNA).

Learn more about employment protection for foreign nationals ([https://www.labour.gov.on.ca/english/es/spotlight\\_fn.php](https://www.labour.gov.on.ca/english/es/spotlight_fn.php)) .

### Farm employees

A farm employee is a person employed on a farm whose work is a direct part of the primary production of certain agricultural products. Primary production includes planting crops, cultivating, pruning, feeding and caring for certain livestock.

### Rights under the ESA

- regular payment of wages and wage statements
- leaves of absence
- termination notice and / or pay and severance pay
- equal pay for equal work

Learn more about special rules or exemptions for farm employees (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/agriculture-growing-breeding-keeping-and-fishing#section-0>) .

### Harvesters

A harvester is a farm employee employed on a farm to harvest, or bring in, crops of fruit and vegetables or tobacco for marketing or storage. There are some special rules for these employees.

### Rights under the ESA

- regular payment of wages and wage statements
- leaves of absence
- termination notice and / or pay and severance pay
- equal pay for equal work
- minimum wage (special rules apply for harvesters who are paid on a piece-work basis)
- vacation with pay (after being employed for 13 weeks as a harvester)
- public holidays (after being employed for 13 consecutive weeks as a harvester)

Learn more about special rules or exemptions for harvesters (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/agriculture-growing-breeding-keeping-and-fishing#section-6>) .

### Near farmers

Near farmers are employees whose work is directly related to:

- the growing of flowers or trees and shrubs for retail and wholesale trade
- the growing, transporting and laying of sod
- the breeding and boarding of horses on a farm
- the keeping of fur-bearing mammals (as defined in the *Fish and Wildlife Conservation Act, 1997*, and including foxes, lynxes, martens, mink and racoons) for circulation or commercial production of pelts

### Rights under the ESA

- regular payment of wages and wage statements
- leaves of absence
- termination notice and / or pay and severance pay
- equal pay for equal work
- minimum wage
- vacation with pay

Learn more about special rules or exemptions for near farmers (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/agriculture-growing-breeding-keeping-and-fishing>) .

## Landscape gardeners

Parks gardeners and greenskeepers on a golf course are considered to be “landscape gardening” employees. People working on retaining walls, and those who spray roads and industrial sites for weeks are not “landscape gardening” employees, neither are the office employees in a landscape gardening company.

### Rights under the ESA

- regular payment of wages and wage statements
- leaves of absence
- termination notice and / or pay and severance pay
- equal pay for equal work
- minimum wage
- eating periods and daily, weekly and biweekly rest periods
- vacation with pay

Learn more about special rules or exemptions for landscape gardeners (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/household-landscaping-and-residential-building-services#section-2>) .

## Domestic workers

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### Overview

Domestic workers have the same rights under Ontario's *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), whether they work part-time or full-time, and whether they live in or out of their employer's home.

### The difference between domestic and home workers

#### Domestic workers

Domestic workers are not the same as homeworkers. They work in a private home directly for the person who owns or rents the home. Not by a business or agency.

They are hired to work in a private home and do things such as, housekeeping, or provide care, supervision or personal assistance to children or people who are elderly, ill or disabled.

For example, a worker who prepares food in a private residence, for the people living there to eat, is a domestic worker.

A person who provides occasional, short-term care, supervision or personal assistance to children is **not** considered a domestic worker.

#### Homeworkers

Homeworkers do paid work, from their own homes, for an employer. This could include online research, preparing food for resale, sewing, telephone soliciting, manufacturing, and word processing.

For example, a worker who prepares food at their home, for resale by their employer, is a homemaker.

### Rights under the ESA

The *Employment Standards Act* ([https://www.ontario.ca/laws/statute/00e41?\\_ga=2.195342956.1330209225.1548271345-1699692134.1480627715](https://www.ontario.ca/laws/statute/00e41?_ga=2.195342956.1330209225.1548271345-1699692134.1480627715)) (ESA) contains employment rights on the following, which apply to most employees in Ontario, including domestic workers:

- minimum wage
- regular payment of wages
- hours of work protections (for example, maximum hours of work, daily and weekly/bi-weekly rest periods)
- overtime pay
- vacation with pay
- public holidays
- pregnancy and parental leave
- sick leave
- family responsibility leave
- bereavement leave
- family caregiver leave
- family medical leave

- critical illness leave
- organ donor leave
- reservist leave
- crime-related child disappearance leave
- child death leave
- domestic or sexual violence leave
- termination notice and/or pay in lieu of notice
- severance pay
- equal pay for equal work

Employers are required to provide their employees with a copy of the Ministry of Labour, Immigration, Training and Skills Development's, Employment Standards Poster (<https://www.ontario.ca/page/posters-required-workplace#section-1>) , within 30 days from the date they were hired.

If an employee requests a copy of the poster in a language other than English and there's a published a version in that language, the employer must provide the translated version, in addition to the English copy.

Learn more about special rules or exemptions for domestic workers (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/household-landscaping-and-residential-building-services#section-0>) .

### Domestic workers who are temporary foreign workers

In Ontario, domestic workers who are also foreign nationals, working or looking for work, under the foreign temporary employee program or for immigration purposes have:

- generally the same rights under the *Employment Standards Act* (ESA) as all other Ontario employees
- additional rights under the *Employment Protection for Foreign Nationals Act, 2009* (<https://www.ontario.ca/laws/statute/09e32>) (EPFNA)

Learn more about the employment protection for foreign nationals ([https://www.labour.gov.on.ca/english/es/spotlight\\_fn.php](https://www.labour.gov.on.ca/english/es/spotlight_fn.php)) .

### Minimum wage rate

The **general minimum wage rate**, in Ontario, is **\$16.55 per hour**.

The **student minimum wage** rate, in Ontario, is **\$15.60 per hour**.

Domestic workers (who are not students under the age of 18) must be paid the general minimum wage.

For more information see the chapter on minimum wage (<http://ontario.ca/minimumwage>) .

### Room and meals for a domestic worker when calculating minimum wage

An employee's gross pay must add up to at least the minimum wage for all hours worked **before** any deductions are made for such things as Canada Pension Plan (<https://www.canada.ca/en/services/benefits/publicpensions/cpp.html>) (CPP), Employment Insurance (<https://www.canada.ca/en/services/benefits/ei.html>) (EI) and income tax.

However, if the employer provides room and/or board to the domestic worker, they:

- can include the amounts for room only, meals only or room and meals in the calculation of the employee's pay.
- must pay the worker at least the minimum wage (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage>) .

#### Amounts if providing room only

- \$31.70 per week, for a private room
- \$0.00 for a non-private room

In order to be considered wages, the room provided **must**:

- be reasonably furnished
- be fit for human residence
- be supplied with clean bed linen and towels
- have access to proper toilet and washroom facilities

#### Amounts if providing meals only

- \$2.55 for each meal
- \$53.55 per week for all meals

#### Amounts if providing both room and meals

- \$85.25 per week for a private room
- \$53.55 per week for a non-private room

#### Example of how to calculate room and/or board

Diondra works 40 hours per week as a domestic worker and her regular hourly wage is \$16.55 per hour, the general minimum wage. Therefore, Diondra is entitled to \$662 gross pay per week ( $\$16.55 \times 40$ ).

Her employer provides her with a private room and meals and is therefore considered to have paid Diondra \$85.25 (weekly maximum allowed for room and board). In this scenario, Diondra's pay calculation for the week would be:

\$576.75 (regular wages) + \$85.25 (room and board) = **\$662** (which amounts to  $\$16.55 \times 40$  hours)

## Homeworkers

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Overview

Homeworkers are employees who do paid work out of their own homes for an employer (for example, online research, preparing food for resale, sewing, telephone soliciting, manufacturing, word processing).

Independent contractors are not homeworkers under the *Employment Standards Act* (ESA).

### The difference between homeworkers and domestic workers

Homeworkers are not the same as domestic workers.

Homeworkers do paid work out of their own homes for an employer.

Domestic workers work in a private home directly for the person who owns or rents the home. They do things such as housekeeping and cooking, or provide care, supervision or personal assistance to children or people who are elderly, ill or disabled.

For example, employees who prepare food at home for resale by their employer are homeworkers, but employees who prepare food in a private residence for the people living there to eat are domestic workers.

### Rights under the ESA

Homeworkers are eligible for:

- minimum wage
- regular payment of wages (wages are paid on a recurring pay period on a recurring pay day, and written wage statements are provided for each pay)
- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay
- written job details
- hours of work protections (for example, maximum hours of work, and daily and weekly/bi-weekly rest periods)
- overtime pay
- vacation with pay
- public holidays
- pregnancy and parental leave
- sick leave
- family responsibility leave
- bereavement leave
- family caregiver leave
- family medical leave
- critical illness leave
- organ donor leave
- reservist leave
- crime-related child disappearance leave
- child death leave
- domestic or sexual violence leave
- notice of termination



- notice of termination of assignment (applies to assignment employees of a temporary help agency)
- severance pay
- equal pay for equal work

Employers are required to provide their employees with a copy of the ministry's Employment Standards Poster (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/mandatory-poster-and-information-sheets-employers#section-1>) within 30 days of the date anyone becomes an employee.

If an employee requests a copy of the poster in a language other than English and the ministry has published a version in that language, the employer must provide the translated version in addition to the English copy.

Learn more about special rules or exemptions for homeworkers (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules/other-industries-and-jobs#section-1>).

### Minimum wage rate

Minimum wage (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage>) is the lowest hourly wage an employer can pay employees. The **general minimum wage** rate is **\$16.55 per hour** (as of October 1, 2023).

There is a special minimum wage rate for homeworkers that is higher than the general minimum wage rate. A **homeworker** is entitled to a minimum wage rate of **\$18.20 per hour** (as of October 1, 2023).

Full-time and part-time homeworkers are entitled to this rate. Students of any age who are employed as homeworkers must also be paid the homeworker's minimum wage.

### Calculating minimum wage for homeworkers who are being paid piece-work rate

The amount that a homeworker is paid must be at least **equal** to minimum wage. Homeworkers who are paid on a piece-work rate (a way of calculating pay that is based on the amount of work an employee completes, and not on the hours worked) can calculate whether they are being paid at least the minimum wage in the following way:

- Take the total amount earned over the pay period and divide it by the number of hours worked in the same period. This is their average hourly rate.
- Compare that average hourly rate to the homeworkers' minimum wage rate in effect over that same pay period. (If overtime hours were worked, the calculation is more complicated.)

#### Example:

A homeworker received \$350 as piece-work pay for the pay period October 4 to October 10, 2023 as payment for 25 hours of work in that pay period. The homeworker received the equivalent of \$14 an hour in that pay period, but the homeworkers' minimum wage rate in effect from October 1, 2023 was \$18.20.

Based on the homeworkers' minimum wage, the employee should have earned \$455.

Result: The employer must therefore pay an additional \$105 to the employee (\$455 minus \$350).

### Written job details an employer must give a homeworker

Employers must advise homeworkers **in writing** of:

- the type of work they are being employed to do
- the amount to be paid for an hour of work in a regular work week if the homeworker is being paid by the number of hours worked
- where the homeworker is being paid based on the amount of work they complete
  - the amount to be paid for each article or thing manufactured in a regular work week
  - the number of articles or things to be completed by a certain date or time if the employer requires a certain number to be completed by a certain date or time
- an explanation of how pay will be determined when the homeworker is being paid on some other basis

Employers must keep detailed records of hours worked, wages and deductions. They must give all employees a written wage statement with each pay that shows the full details of the pay period.

The written wage statement must set out the:

- pay period for which the wages are being paid
- wage rate, if there is one
- gross amount of wages and unless the employee is given the information in some other manner, such as in an employment contract how the gross wages were calculated
- amount and purpose of each deduction from the wages
- net amount of wages

### Information and records employers must keep

Employers who employ homeworkers are required to keep a register containing the name, address and wage rate(s) of the homeworker. This must be kept for three years after the homeworker has stopped working for the employer.

In addition, all employers in Ontario, including anyone who employs homeworkers, must keep written records (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/record-keeping>) about each person they hire.

#### Exception for hours of work records

If an employee receives a fixed salary for each pay period, and the salary does not change unless the employee works overtime, the employer is only required to record the:

- employee's hours **in excess** of those hours in the employee's regular work week, and
- number of hours **in excess** of eight per day—or in excess of the hours in the employee's regular work day, if that's more than eight hours.

## Retail workers

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

There are certain rights in the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) that apply only to employees of **most** retail businesses (see "Exclusions"). A retail business is a business that sells goods or services to the public.

#### The right to refuse to work on public holidays

Most employees of a retail business have the right to refuse to work on a public holiday even if the employee does not qualify for the public holiday (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>) .

If an employee has agreed **electronically or in writing** to work on a public holiday, the employee can later decline to work on that day by giving the employer at least 48 hours' notice before the employee's work on the public holiday was to begin.

Where the public holiday falls on a day that would ordinarily be a working day, most retail employees qualify for the public holiday off work with public holiday pay.

Where the public holiday falls on a day that would not ordinarily be a working day, or the employee is on vacation, most retail employees qualify for a substitute day off with public holiday pay.

#### The right to refuse to work on Sundays

There are two sets of rules for employees of retail businesses. The rule that applies depends on whether the employee was hired before or after September 4, 2001.

##### Sunday rules for employees hired before September 4, 2001

An employee of a retail business who was hired before September 4, 2001 has the right to refuse to work on Sundays.

If an employee has agreed to work on Sundays, whether or not the agreement was made when they were hired, the employee can later decline to work on a Sunday by giving the employer at least 48 hours' notice before the employee's work was to begin.

##### Sunday rules for employees hired on or after September 4, 2001

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 they agreed electronically or in writing at the time of being hired to work on Sundays, unless they are refusing to work on Sundays because of religious belief or observance (in which case the employee must give the employer notice before the Sunday at least 48 hours before the Sunday work was to begin). Note that if a Sunday falls on a public holiday, the employee could refuse to work on the day, even if they had agreed at the time of hire to work on Sundays. (This is because the refusal to work is because the day is a public holiday, not because it is a Sunday.)

An employee who **did not agree** electronically or in writing at the time of being hired to work on Sundays may agree at some later point to work on Sundays or on a particular Sunday. In that case, the employee could subsequently decline to work the Sunday(s) by giving the employer at least 48 hours' notice before the employee's work was to begin.

Note that an employer cannot make an agreement to work on Sundays a condition of hire if doing so would violate the *Human Rights Code* (<https://www.ontario.ca/laws/statute/90h19>) . Contact the Ontario Human Rights Commission (<http://www.ohrc.on.ca/en>) for further information.

#### No reprisals

An employee must not be dismissed, intimidated or penalized in any other way because they exercised their rights under this section.

#### Exclusions

Retail businesses are **excluded** from these provisions if their main business is to:

- sell prepared meals (e.g., restaurants, cafeterias, cafés);
- rent living accommodations (e.g., hotels, tourist resorts, camps, inns);
- provide educational, recreational or amusement services to the public (e.g., museums, art galleries, sports stadiums, theatres, bars, nightclubs);
- sell goods and services that are secondary to the **businesses** described above and are located on the same premises (e.g., museum gift shops, souvenir shops in sports stadiums).

## Young workers' rights

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Overview

A young worker in Ontario is any employee under the age of 25. In most cases, young workers have the same rights under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) as other employees.

Below you will find information for young workers related to:

- pay
- breaks
- holidays
- unpaid wages
- job termination

You cannot be penalized by your employer in any way if you:

- ask your employer to follow the [ESA](#)
- ask questions about rights under the [ESA](#)
- file a complaint under the [ESA](#)
- exercise or try to exercise your rights under the [ESA](#)
- give information to an employment standards officer (ESO)
- take or plan to take any of the leaves available under the [ESA](#). Learn more about leaves of absence by selecting an available leave from the table of contents in this guide
- are subject to a garnishment order (a court order to have wages deducted to pay a debt)
- participate in a legal proceeding under the [ESA](#) or section 4 of the *Retail Business Holidays Act*
- refuse to take a lie detector test

If you believe you have been penalized, or your employer has threatened to penalize you for any of the above reasons, you can file a claim (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim>) with the Ministry of Labour, Immigration, Training and Skills Development.

### Your pay

Your employer must establish a regular pay period and pay day. On or before pay day, your employer must provide you with a wage statement (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/payment-wages#section-2>) .

Employers can pay wages by (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/payment-wages#section-0>) :

- cash
- cheque
- direct deposit, which includes Interac e-Transfer, into the employee's account at a bank or other financial institution.

### Minimum wage

Minimum wage is the lowest wage rate (amount of money) an employer can pay employees, whether they are full-time or part-time. Employers must pay young workers at least the minimum wage, no matter how you are paid. This includes:

- hourly
- salary
- commission
- flat rate
- piece rate

There are several minimum wage rates in Ontario, including:

- **general minimum wage** rate that applies to most employees
- **student minimum wage** rate that applies to students under the age of 18 who:
  - work no more than 28 hours a week when school is in session
  - work during a school holiday (A school holiday includes summer holidays and breaks during the academic year. For example, Christmas holidays and March break.)

Learn more about the current minimum wage rates (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage#section-0>) .

### Exceptions from earning minimum wage

Not all students are entitled to the minimum wage. Students who are not entitled to minimum wage include those:

- in training for occupations, such as architecture, law, professional engineering, medicine and optometry
- secondary school students in a work experience program authorized by their school board
- post-secondary students working in co-operative or work experience programs approved by their college or university
- working under a program approved by a private career college registered under the *Private Career Colleges Act, 2005* (<https://www.ontario.ca/laws/statute/05p28>)
- employed as students instructing or supervising children or employed as a student at a camp for children, unless working as wilderness guides.

Learn more about industries and jobs with exemptions or special rules (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

### Tips or other gratuities

Employers cannot withhold tips or other gratuities from young workers or make deductions from their tips to cover such things as spillage, breakage, losses or damage. However, employers can make deductions from tips or other gratuities if it is authorized by statute or a court order, or if the amount will be distributed to other employees as part of a tip pool.

Learn more about tips or other gratuities (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/tips-or-other-gratuities>) .

### Vacation pay

Young workers with less than five years of employment are entitled to a minimum of two weeks of paid vacation after every 12 months of employment, starting from the date they are hired.

If your employer bases your vacation days on a date that is different from when you were hired, you are still entitled to a proportionate amount of paid vacation days.

If you have worked five years or more, you will be entitled to a minimum of three weeks of vacation time after every 12 months of employment.

If you have worked fewer than five years somewhere, your vacation pay is at least 4% of your total wages.

If you have worked more than five years at the same place, your vacation pay is at least 6% of your total wages.

Learn more about vacations and vacation pay (<https://www.labour.gov.on.ca/english/es/pubs/guide/vacation.php>) .

### Overtime pay

Employers have to pay young workers overtime pay of at least one-and-a-half times their regular rate of pay for each hour of work beyond 44 hours a week.

If you and your employer agree electronically or in writing, you can take one-and-a-half hours of paid time off work (lieu time) for each hour of overtime worked. This paid time off must be taken within 3-12 months of that work week.

Some jobs are not eligible for overtime, including:

- installing and maintaining swimming pools
- landscape gardening
- growing, transporting and laying sod
- students instructing or supervising children
- students working at a children's camp

### Pay records and mandatory pay slips

Employers must keep detailed records of:

- the hours you work
- your wages
- deductions

This includes providing a "pay stub" or "pay slip" with each pay period. Young workers should also keep track of their own hours worked.

### Three-hour shift rule

If you typically work more than three hours a day and your employer asks you to work less, they must pay you for a minimum of three hours at your regular rate of pay – even if you work less than three hours. The only exception is if your employer is unable to provide work due to a cause beyond their control, such as lightning or power failure that stops work.

Unless you also work as a wilderness guide, the three-hour rule does not apply to students of all ages who work:

- at a children's camp
- instructing or supervising children
- in a recreational program run by a charity

### Deducting the cost of uniforms or other items

Some employers require you to pay for work uniforms or other items as a condition for employment. They can deduct the cost of the uniform or other items from your wages only if you **agree in writing**. You should ask your employer about any special requirements before accepting a job.

Even if you have agreed in writing, your employer cannot make any deductions from your wages:

- if there is a cash shortage and more than one person has access to a cash register
- due to faulty work, such as a mistake in a credit card transaction, work that is spoiled or rejected, or a situation where tools are broken or a company vehicle is damaged

## Your breaks and holidays

### Lunch and coffee breaks

Young workers cannot work more than five hours in a row without getting a 30-minute eating period. If you and your employer agree, you can take the 30-minute eating period as two breaks in a five-hour work period. Meal breaks are usually unpaid unless paid meal breaks are in your contract.

Employers do not have to give you “coffee” breaks or any other kind of break other than the eating period.

### Paid public holidays

Young workers are entitled to take the following nine public holidays off with pay:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Boxing Day

Public holiday pay is calculated by adding all of the regular wages earned in the four work weeks before the work week in which the public holiday falls, plus any vacation pay payable to the employee in the same four work weeks (the four work weeks before the work week with the public holiday), then dividing the total by 20. Visit the Employment Standards Self-Service Tool (<https://www.apps.labour.gov.on.ca/es-self-service-tool/>) to see how much you should be paid for public holidays.

If the public holiday falls on a day when you would normally work and you are not on vacation, you may be required to work if you work in a:

- hotel, motel or tourist resort
- restaurant or tavern
- hospital
- continuous operation workplace (a workplace that does not shut down more than once a week, like oil refineries or alarm monitoring companies)

### Most employees are entitled to be paid premium pay (time and a half) for every hour they work on a public holiday.

If you work on a statutory holiday, you may be eligible for a substitute holiday. A substitute holiday is when you are given a different day off because you worked on the statutory holiday. Learn more about special rules around substitute holidays ([https://ontariogov.sharepoint.com/sites/MOL-DW/eop/Communications/Digital/Ontario.ca Migration/Young workers/ONCON-5825\\_MLTSD\\_NC\\_Young workers\\_v5.docx](https://ontariogov.sharepoint.com/sites/MOL-DW/eop/Communications/Digital/Ontario.ca%20Migration/Young%20workers/ONCON-5825_MLTSD_NC_Young%20workers_v5.docx)) .

### When you don't have the right to a paid holiday

You do not have the right to a paid public holiday or a substitute holiday if you fail to work all of your last regularly scheduled shift before or first regularly scheduled shift after the public holiday without reasonable cause (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays#section-2>) .

You have “reasonable cause” for missing work when something beyond your control prevents you from working. For example:

- absences related to sick leave or family responsibility leave, such as an illness, injury or medical emergency for family members and dependent relatives
- absences for bereavement leave
- family caregiver, family medical, domestic or sexual violence and critical illness leave

You are responsible for showing your employer that you have a ‘reasonable cause’ for not working.

Learn more about public holidays.

### Agreeing to work on a public holiday

If you agree electronically or in writing to work on a holiday, you are entitled to both:

- public holiday pay
- a substitute holiday with public holiday pay

Alternatively, if you and your employer agree electronically or in writing, you can get public holiday pay for the day you work, plus premium pay at time and a half for each hour worked on the holiday. In this case, you would not be entitled to a substitute holiday on top of that.

### Retail workers, public holidays and Sundays

There are specific rights for workers in retail businesses. These rights apply to:

- sales employees
- non-sales employees, such as managers
- employees who work in a retail business, even if their employer is not a retail business (for example, cleaners and security guards who work for a cleaning or security company and are assigned to work in a retail business)

Retail workers have the right to refuse to work on public holidays, even if they do not qualify for public holiday pay.

Retail workers hired before September 4, 2001 have the right to refuse to work on Sundays. After that date, if you agreed electronically or in writing when you were hired that you would work on Sundays, then you cannot refuse to work on Sundays except for reasons of religious belief or observance.

Learn more about retail workers and holidays (<https://www.labour.gov.on.ca/english/es/pubs/guide/retail.php>) .

## Job termination and unpaid wages

### Job termination

If you have been employed for an employer for three straight months, they must give you advance notice in writing and/or termination pay when they end your employment.

The amount of notice depends on how long you worked for them. If you worked for them for:

- three months or more but less than one year, they must give you one week's notice
- one year or more but less than three years, they must give you two weeks' notice
- more than three years, they must give you one week's notice for each year worked, to a maximum of eight weeks

Your employment is not terminated if you are "temporarily laid off."

Learn more about termination of employment (<https://www.labour.gov.on.ca/english/es/pubs/guide/termination.php>) .

If you worked for an employer for at least five years, you may also be entitled to severance pay when your employment ends. You may qualify for severance pay if your employment is severed and:

- you have worked for the employer for five or more years (including all time spent in employment with the employer, whether continuous or not and whether active or not) and
- your employer either:
  - has a global payroll of at least \$2.5 million
  - severed the employment of 50 or more employees in a six-month period because all or part of the business permanently closed

### Recovering unpaid wages

If you cannot recover wages you are owed from an employer, please contact the Ministry of Labour, Immigration, Training and Skills Development (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim#section-6>) to file a claim. If you believe your employer has violated your employment rights, you must file a claim within two years of the alleged incident(s).

Learn more about this and other situations concerning recovering wages (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-claim#section-6>) .

## Temporary help agencies

The information in this chapter is currently being updated to reflect amendments to the ESA that came into force on July 1, 2023. Consequently, some of the information below is out of date. Please check back soon for updates.

Temporary help agencies employ people to assign them to perform work on a temporary basis for clients of the agency. The duration of the assignment does not matter. Such employees are called "assignment employees".

Under the ESA, temporary help agency assignment employees generally have the same rights as other employees. There are also rules in the ESA that apply specifically to assignment employees, temporary help agencies and clients of temporary help agencies.

This chapter provides information about the rights and rules that apply only to assignment employees, temporary help agencies, and clients of temporary help agencies. Information about other rights and benefits under the ESA are found in other chapters within the Guide.

## The employment relationship

Where a temporary help agency and person agree, verbally or in writing, that the agency will assign (or try to assign) the person to perform work on a temporary basis for its clients, the agency is the employer of that person and the person is an assignment employee of the agency.

Once there is an employment relationship between an agency and an assignment employee, the relationship continues whether or not the employee is on an assignment (working) with a client of the agency on a temporary basis. The fact that an assignment ends does not in itself mean that the employment relationship ends.

### Example

Joel and a temporary help agency agree on June 1<sup>st</sup> that the agency will try to find Joel temporary work with one of its clients. Two months pass before the agency assigns Joel to work for a client on August 1<sup>st</sup>. The client ends the assignment on September 1<sup>st</sup>. The agency does not terminate Joel's employment and he does not quit.

One month goes by before Joel is given a second assignment on October 1<sup>st</sup>. The assignment ends on December 31<sup>st</sup>. The agency also gives Joel written notice that it is terminating his employment with the agency on that date.

In this scenario, Joel was an assignment employee with the temporary help agency (i.e., had an employment relationship with the agency) from June 1<sup>st</sup> to December 31<sup>st</sup>.

## A work assignment

A work assignment begins on the first day the employee does work for, or receives training from, a client of the agency. It ends when the term of the assignment ends, or when the assignment is ended by the agency, the assignment employee, or the client.

## Record keeping requirements

An agency must record the number of hours an assignment employee worked for each client in each day and each week. The client(s) must also record the number of hours the assignment employee worked for them in each day and each week.

The agency and client(s) must retain those records for three years after the day or week to which the information relates. These records must be readily available for inspection by an employment standards officer, even if the agency and/or client(s) has arranged for another person to retain the records.

## Information assignment employees must receive when hired by an agency

A temporary help agency must provide the following written information to an assignment employee as soon as possible after the person becomes an employee:

- the legal name of the agency, as well as any operating or business name of the agency (if it is different from the legal name);
- contact information for the agency, including its address, telephone number and one or more contact names; and,
- a copy of the information sheet published by the Director of Employment Standards entitled "Your employment standards rights: Temporary help agency assignment employees ([https://www.labour.gov.on.ca/english/es/pubs/is\\_tha.php](https://www.labour.gov.on.ca/english/es/pubs/is_tha.php)) ". If the language of the employee is one other than English, the temporary help agency must provide this document to the employee in that language, if it is available from the Ministry.

## Information assignment employees must receive when offered work assignments

A temporary help agency is also required to provide the following information to an assignment employee when offering him or her a work assignment with a client:

- the legal name of the client, as well as any operating or business name of the client (if it is different from the legal name);
- contact information for the client, including its address, telephone number and one or more contact names;
- the hourly or other wage rate or commission and benefits associated with the assignment;
- the hours of work;
- a general description of the work;
- the estimated term of the assignment (if known when the offer is made); and,
- the pay period and pay day.

This information can be provided verbally when the work assignment is offered, but must be provided in writing as soon as possible.

## Prohibitions on charging fees to assignment employees and restricting assignment employees from accepting employment with clients

1. A temporary help agency is not allowed to charge a fee to an assignment employee, or prospective assignment employee, for:
  - becoming an employee of the agency;
  - the agency assigning or trying to assign the employee to perform temporary work for a client; or,
  - the agency providing the employee with help in preparing resumes or in preparing for job interviews, even if the employee is told they can choose whether to take that assistance or not.
2. An agency is prohibited from attempting to restrict an assignment employee from accepting direct employment with an agency client. It also cannot charge the employee a fee for accepting direct employment with a client of the agency.

### Prohibitions on charging fees to clients and restricting clients from hiring assignment employees

1. A temporary help agency is not allowed to charge a fee to a client of the agency for entering into a direct employment relationship with an agency's assignment employee **unless** the agency charges the fee during the six months beginning on the first day the assignment employee first begins working for that client through the agency;
2. An agency is not allowed to restrict a client from entering into a direct employment relationship with an assignment employee.

### Job references

A temporary help agency is not allowed to stop its client(s) from providing a job reference for an assignment employee.

Terms of a contract or an agreement (whether or not in writing) that impose any of the above fees or restrictions are void.

### Equal pay for equal work

Special rules regarding "equal pay for equal work" applied to assignment employees between April 1, 2018 and December 31, 2018. The law changed on January 1, 2019. Since that date, the rules no longer apply. Please see the Equal Pay for Equal Work (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/equal-pay-equal-work>) chapter of this Guide for more information.

### Public holidays

Temporary help agency assignment employees generally have the same public holiday rights as other employees. Please see "Public holidays (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays>)" for more information. You may also wish to refer to the public holiday pay calculator.

#### When employee is on assignment and a public holiday falls on a day that would ordinarily be a working day

Generally, if a public holiday falls on a day when the employee is on an assignment and that day would ordinarily be a working day under the terms of the assignment, the employee is entitled to the day off with public holiday pay. Public holiday pay is all of the **regular wages earned** by the employee in the four work weeks before the work week with the public holiday **plus** all of the **vacation pay payable** to the employee with respect to the four work weeks before the work week with the public holiday, **divided by 20**. There are some situations in which a pay period other than the pay period immediately preceding the public holiday is used to calculate public holiday pay.

**If the public holiday occurs after July 1, 2018**, the amount of public holiday pay an employee is entitled to is all of the **regular wages earned** by the employee in the four work weeks before the work week with the public holiday **plus** all of the **vacation pay payable** to the employee with respect to the four work weeks before the work week with the public holiday, **divided by 20**.

**If the public holiday occurs between January 1, 2018 and June 30, 2018**, the amount of public holiday pay an employee is entitled to is all the **regular wages** earned in the pay period before the holiday, **divided by the number of days the employee worked** in that period. There are some situations in which a pay period other than the pay period immediately preceding the public holiday is used to calculate public holiday pay.

The employee may also agree, electronically or in writing, to work on the holiday and in that case will:

- have a right to their regular pay for that day and a substitute day off with public holiday pay;  
**or, if the employee and the employer agree**
- get premium pay for every hour worked on the holiday plus public holiday pay.

#### Example

Two months after her last assignment, Munira is placed on a two-week assignment working Monday through Thursday each week. She is paid \$1000 per week and has a weekly pay period that runs from Monday to Sunday. The current assignment begins one week prior to the week Family Day occurs and ends the Thursday following the holiday. She would ordinarily have worked on the day the holiday fell (pursuant to her assignment) so is entitled to Family Day as a day off with public holiday pay.

Her public holiday pay is calculated as the regular wages she earned (\$1,000) within the pay period prior to the holiday, divided by four (the number of days she worked in that period). Her public holiday pay for Family Day is \$250.

#### When employee is on assignment and a public holiday falls on a day that would not ordinarily be a working day

If the employee is on assignment but the holiday falls on a day that is not ordinarily a working day for the employee, the employee will generally get a substitute day off with public holiday pay. The employee may also agree (electronically or in writing) to public holiday pay only.

#### Example

Shana is on an assignment from March 1 to April 30 and is scheduled to work only Tuesdays and Thursdays of each week. She earns \$500 per week on this assignment. There is one public holiday during this assignment - Good Friday - which falls on the first Friday in April. Since Fridays are not days that she is ordinarily scheduled to work pursuant to her assignment, Shana is entitled to a substitute day off for Good Friday with public holiday pay calculated as if the substitute day was a public holiday.



The substitute day off must be scheduled within three months following the public holiday or within 12 months if Shana and her employer agree electronically or in writing. The public holiday pay is based on all the regular wages earned in the pay period prior to the substitute day, divided by the number of days Shana works in that period.

The substitute day off is scheduled for Thursday, April 29. She worked four days and earned \$1,000 in regular wages in the pay period prior to the substitute day off, and is therefore entitled to \$250 in public holiday pay. Alternatively, Shana may agree (electronically or in writing) to public holiday pay only for Good Friday (with no substitute day off).

#### **When a public holiday falls on a day when the employee is not on an assignment**

If the holiday falls on a day that the employee is not on assignment, the employee will generally be entitled only to public holiday pay for the holiday.

#### **Example**

Willie ends a six-month assignment on Friday, February 12. He had been earning \$800, working 4 days a week while on that assignment. He has a weekly pay period that runs from Sunday to Saturday. He is offered another assignment that begins on April 15, which he accepts. Family Day falls on February 15, but because he is on a lay-off when the holiday occurs, he is entitled only to public holiday pay for Family Day (no substitute day off).

The public holiday pay is calculated as the regular wages earned (\$800) in the pay period prior to the holiday, divided by four (the number of days he worked in that period). In this case, Willie is entitled to \$200 in public holiday pay.

#### **Example**

Shafayat ends a six-month assignment on May 30. Canada Day falls on July 1. He was available and able to work, but was not offered another assignment between May 30 and July 1. Because he is on a lay-off when the holiday falls, his only entitlement is public holiday pay. His public holiday pay is calculated as the regular wages earned and vacation pay payable in the four work weeks prior to the week in which the holiday falls, divided by 20. Because he has no earnings for that period, his public holiday pay for Canada Day is \$0.

#### **Termination of assignment**

Termination of assignment – which differs from termination of employment – occurs when an assignment employee has his/her assignment with a client terminated, yet remains employed with the temporary help agency.

A temporary help agency is required to provide an assignment employee with **either one week's written notice of termination of assignment, termination of assignment pay or a combination of the two, if:**

1. the assignment employee is assigned to perform work for a client;
2. the assignment had an estimated term of three months or more at the time it was offered to the employee; **and**
3. the assignment is terminated before the end of its term.

The temporary help agency does not have to provide notice of termination of assignment if the assignment employee is offered work with a client lasting one week or more during the notice period that is reasonable under the circumstances.

Certain assignment employees are not entitled to notice of termination of assignment or termination of assignment pay, e.g. employees who are guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by neither the temporary help agency nor the client.

#### **Pay in lieu of notice**

Should the temporary help agency elect to provide the assignment employee with pay in lieu of notice of termination of assignment, the amount shall be equal to the wages the assignment employee would have earned had the one weeks' notice been provided.

#### **Termination of employment**

Temporary help agency assignment employees generally have the same rights as other employees to notice of termination. Please refer to "Termination of employment" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment>) " for more information. However, some termination rules apply only to assignment employees; they are described below.

#### **Requirements during notice period**

During each week of notice, an assignment employee is entitled to be paid of the wages they are entitled to receive, which cannot be less than,

1. In the case of a termination other than a termination that results from a lay-off going on longer than a "temporary lay-off", the total amount of wages earned by the assignment employee in the 12 weeks ending on the employee's last day of work for a client of the agency, divided by 12;
- or**
2. In the case of a termination that results from a lay-off going on longer than a "temporary lay-off", the total amount of wages earned by the assignment employee in the 12 weeks before the deemed termination date, divided by 12. The deemed termination date is the first day of the lay-off.

#### **Pay in lieu of notice**

If the employee is being terminated without working notice, pay in lieu of notice is calculated as the amount of wages earned in the 12 weeks ending on the employee's last day of work for a client of the agency or, in the 12 weeks before the deemed termination date, if the termination is triggered by a lay-off going on longer than a "temporary lay-off", divided by 12, and multiplied by the number of weeks of notice to which the employee is entitled.

#### **Termination resulting from a lay-off**

Termination of employment may be triggered by a lay-off that lasts longer than a "temporary lay-off". An assignment employee is considered to be on a week of

layoff if they are not assigned by the agency to perform work for a client of the agency during that week. A week is not counted as a week of layoff (i.e., is an "excluded" week) if, for one or more days, an assignment employee

- is not able to work;
- is not available for work;
- refuses an offer by the agency that would not constitute constructive dismissal (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-3>);
- is subject to a disciplinary suspension; or,
- is not assigned to perform work for a client of an agency because of a strike or lock-out at the agency.

For information on how a lay-off results in termination of employment, please refer to temporary lay-off (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-4>) in the Termination of employment Chapter.

### Mass termination

A temporary help agency assignment employee may also have a right to mass notice of termination of eight, 12 or 16 weeks. Assignment employees may have a right to mass notice of termination if 50 or more have their employment terminated by their agency in a single four-week period because their assignments at a single client's establishment ended.

### Example

Christine is one of 100 assignment employees who are assigned by ABC Staffing Services, a temporary help agency, for an anticipated ten-month period of work at one of its clients, DEF Manufacturing.

After six months, DEF Manufacturing changes its production plans and ends the assignments of the 100 ABC Staffing Services employees immediately. Because the assignments with DEF end, and ABC does not anticipate being able to find other assignments for 70 of its affected assignment employees, ABC terminates the employment of these 70 employees, including that of Christine, without notice.

The agency tells the remaining 30 employees that it will try to place them in other assignments, i.e., that it is maintaining its employment relationship with them.

The 70 employees that are being terminated are entitled to mass notice of termination. Because the number of employees who have been terminated is between 50 and 199, Christine and each of the other affected employees are entitled to eight weeks' pay in lieu of notice.

### Severance of employment

Temporary help agency assignment employees generally have the same rights as other employees to severance pay. An employee is entitled to severance pay if their employment is severed, they have been employed for at least five years and certain other conditions are met. (The five-year threshold is based on the total time the employee is employed by the agency, not the duration of any particular assignment.) Please refer to "Severance pay" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>) for more information. However, some severance pay some rules apply only to assignment employees; they are described below.

However, some severance pay some rules apply only to assignment employees; they are described below.

### Calculating severance pay

To calculate the amount of severance pay an assignment employee is entitled to receive:

1. Either
  - a. e. in the case of a severance other than a severance that results from a lay-off going on for 35 weeks or more in a 52-week period, take the total amount of wages earned by the assignment employee for work done for clients of the agency during the 12-week period ending on the last day the employee did work for a client of the agency; **or**
  - b. f. in the case of a severance that results from a lay-off going on for 35 weeks or more in a 52-week period, take the total amount of wages earned by the assignment employee for work done for clients of the agency in the 12 weeks before the first day of the lay-off;
2. divide the amount in 1(a) or 1(b) by 12;
3. multiply the result in 2 above by the lesser of 26 and the sum of:
  - the number of years of employment the employee has completed; **and**
  - the number of completed months of employment in the incomplete year, divided by 12.

### Severance resulting from a lay-off

One of the ways in which a severance of employment may be triggered is by a lay-off that lasts for 35 weeks or more in a 52-week period. <sup>[3]</sup> An assignment employee is considered to be on a week of layoff if they are not assigned by the agency to perform work for a client of the agency during that week. A week is not counted as a week of layoff (i.e., is an "excluded" week) if, for one or more days, an employee:

- is not able to work;
- is not available for work;
- refuses an offer by the agency that would not constitute constructive dismissal;
- is subject to a disciplinary suspension; or,
- is not assigned to perform work for a client of an agency because of a strike or lock-out at the agency.

For information on how a lay-off results in the severance of employment, please refer to the "Severance pay" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/severance-pay>) " chapter.

### Reprisal by a client of an agency

As the employer of an assignment employee, a temporary help agency is not allowed to penalize an assignment employee for doing things such as asking questions about their [ESA](#) rights, filing a claim under the [ESA](#) or otherwise exercising their rights. Please refer to "Reprisals" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/reprisals>) " for more information.

In addition, a client of a temporary help agency is not allowed to penalize a temporary help agency assignment employee because, for example, they have asked about their [ESA](#) rights, asserted those rights, or asked the client or the agency to comply with the [ESA](#). That means a client is not allowed to:

- intimidate the employee;
- refuse to have the employee perform work;
- refuse to allow the employee to start an assignment;
- terminate the assignment of the employee; or,
- otherwise penalize or threaten to penalize the employee

for any of the above stated reasons.

### Enforcement of temporary help agency employment rules

Assignment or prospective assignment employees who believe their agency is not complying with the [ESA](#), and assignment employees who believe the agency or a client of the agency has penalized them for, among other things, asking about or for their [ESA](#) rights, may file a claim with the Ministry of Labour, Immigration, Training and Skills Development. Please see the chapter "Filing an employment standards claim" (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/filing-employment-standards-claim>) " for more information.

For information on how rights under the [ESA](#) are enforced, please refer to the Role of the Ministry of Labour, Immigration, Training and Skills Development (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry-labour>) .

There are additional ways the Ministry of Labour, Immigration, Training and Skills Development can enforce the [ESA](#) when there are violations of some of the rights specific to assignment employees:

- If an agency has charged an assignment employee or a prospective assignment employee a prohibited fee, an employment standards officer may issue an order to recover the fees for the employee;
- If an agency has interfered with the assignment employee getting direct employment with a client of the agency **or** prevented a client from providing a job reference for an assignment employee, and the assignment employee has suffered damages as a result, an officer may order compensation for any loss incurred; **and/or**,
- If a client of the agency has penalized an assignment employee, an officer may issue an order for compensation for any loss incurred and/or reinstatement in the assignment

### Agency and client jointly and severally liable for unpaid wages

As the employer of the assignment employee, the agency is liable for all wages that are unpaid. However, as of November 20, 2015, if an assignment employee performs work for a client and the agency fails to pay the employee for some or all of the wages owed for that pay period, the client(s) may be jointly and severally liable together with the agency for some or all of those unpaid wages. Specifically, clients may be liable for unpaid regular wages, overtime pay, public holiday pay and public holiday premium pay.

If an assignment employee performs work for more than one client in any pay period, each client is liable for an amount that is proportional to the hours worked for the client, relative to the total hours the employee worked for all clients of the agency, in that pay period.

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Lie detector tests

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

A "lie detector test" means an analysis, examination, interrogation or test that is taken or performed by means of a machine and is used to assess a person's credibility.

For the purposes of the lie detector provisions of the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) ([ESA](#)):

"**Employer**" also includes a prospective employer and a police governing body.

"**Employee**" also includes an applicant for employment, a police officer and a person who is applying to be a police officer.

### Prohibition of testing

It is against the law for an employer or anyone on behalf of an employer to directly or indirectly require, request, enable or influence an employee to take a lie

detector test.

### **An employee's right to refuse**

An employee has the right:

- not to take a lie detector test;
- not to be asked to take a lie detector test; and
- not to be required to take a lie detector test.

### **Disclosure**

No one may disclose to an employer that an employee has taken a lie detector test, and no one can disclose to an employer the results of a lie detector test taken by an employee.

### **Use of lie detectors by the police**

Nothing in this part of the ESA prevents a person from:

- being asked by a police officer to take a lie detector test;
- consenting to take a lie detector test; and
- taking a lie detector test;

if the test is administered on behalf of a police force in Ontario or by a member of a police force in Ontario in the course of the investigation of an offence.

## **Benefit plans**

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

Employers are not required to provide employee benefit plans. However, if an employer does decide to provide them, the rules against discrimination under the ESA must be complied with.

### **The anti-discrimination rule**

The ESA prohibits discrimination between employees or their dependants, beneficiaries or survivors because of the age, sex or marital status of the employee.

There are some exceptions to the anti-discrimination rules. They are complex. If you require further information, please contact the Employment Standards Information Centre at 1-800-531-5551.

### **Plans affected**

The anti-discrimination rule applies to benefit plans including:

- superannuation, retirement and pension benefits;
- termination benefits;
- death benefits (including life insurance plans);
- disability benefits (including short-term and long-term disability plans);
- sickness benefits;
- accident benefits; and
- medical, hospital, nursing, drug or dental benefits.

The rule against discrimination applies to both the plan's contribution requirements and its benefit payments (though as noted, there are some exceptions).

### **Grounds on which discrimination is not allowed**

Employees and their dependants, beneficiaries or survivors must not be treated differently because of the employee's age, sex or marital status.

#### **Age**

An employer cannot discriminate because of the age of an employee if the employee is 18 or over but under 65.

#### **Sex**

An employer cannot discriminate between male and female employees, or against pregnant employees. Also, there cannot be a distinction between employees because they are, or are not, the head of a household or the primary wage earner.

#### **Marital status**

An employer cannot discriminate between single and married (whether same or opposite-sex couples) employees, including those who live in common-law marriages (whether same or opposite-sex couples), or against unmarried employees supporting dependent children.

**While an employee is on a leave of absence: Certain benefit plans**

An employee who is on pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, organ donor, domestic or sexual violence, child death or crime-related child disappearance leave has the right to continue to participate in pension plans, life insurance plans, accidental death plans, extended health plans and dental plans during their leave.

An employee who is on a reservist leave does not have the right to continue to participate in these plans during their leave. However, if the employer postpones the employee's reinstatement, the employer is required to pay the employer's share of premiums for certain benefit plans related to their employment and allow the employee to participate in such plans for the period during which the return date is postponed.

A female employee may be entitled to disability benefits during that part of the leave during which she would not have been able to work for health reasons related to her pregnancy or childbirth.

Other benefit plans may allow employees on other types of leave that are not provided for in the ESA to continue to participate in the plan while they are on leave. In that case, employees on pregnancy, parental, sick, family responsibility, bereavement, declared emergency, family caregiver, family medical, critical illness, organ donor, reservist, domestic or sexual violence, child death or crime-related child disappearance leave are also allowed to continue to participate in such plans while they are on leave (this includes any leave negotiated between an employee or union and an employer that is longer than the ESA provides).

## Filing a claim

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>).

In Ontario, you may file a claim with the Ministry of Labour, Immigration, Training and Skills Development if you believe the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA), *Employment Protection for Foreign Nationals Act* ([https://www.ontario.ca/laws/statute/09e32?\\_ga=2.162135292.157767052.1577989521-1699692134.1480627715](https://www.ontario.ca/laws/statute/09e32?_ga=2.162135292.157767052.1577989521-1699692134.1480627715)) (EPFNA) or *Protecting Child Performers Act* (<https://www.ontario.ca/laws/statute/15p02>) (PCPA) is being violated.

If you've lost your job, please visit Employment Ontario (<https://www.ontario.ca/page/employment-ontario>) to learn how they can help you get training, build skills or find a new job.

**Filing a claim**

You can file a claim online for any issues relating to the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) or *Employment Protection for Foreign Nationals Act* ([https://www.ontario.ca/laws/statute/09e32?\\_ga=2.162135292.157767052.1577989521-1699692134.1480627715](https://www.ontario.ca/laws/statute/09e32?_ga=2.162135292.157767052.1577989521-1699692134.1480627715)) (EPFNA).

[File a claim \(https://www.apps.labour.gov.on.ca/eclaim/\)](https://www.apps.labour.gov.on.ca/eclaim/)

You can also file a claim online for issues relating to the *Protecting Child Performers Act* ([https://www.ontario.ca/laws/statute/15p02?\\_ga=2.162135292.157767052.1577989521-1699692134.1480627715](https://www.ontario.ca/laws/statute/15p02?_ga=2.162135292.157767052.1577989521-1699692134.1480627715)) (PCPA).

[File a PCPA claim](#)

**Watch the filing a claim video** (<https://youtu.be/dkEafO8aM9k>) to understand what to expect when filing an employment standard claim. **Please note:** Video is being updated to reflect a new log-in system. Check back soon for updates.

**If you have already started a claim**

If you have already started or filed a claim through the claimant portal, you can:

- sign in to continue your claim
- check the status of your claim
- upload documents to your claim

**Creating a My Ontario account**

If you have previously signed up for the claimant portal using a ONE-Key account, please select the sign-in / create account button and create a My Ontario account using the same email address that was used when you enrolled in the claimant portal. If you do not use the same email address, you will not be able to see any of your previously submitted claims. Learn more about My Ontario Account (<https://profile.signin.ontario.ca/help>).

[Sign-in / create account \(https://signin.ontario.ca/\)](https://signin.ontario.ca/)

**Watch the claimant portal video** (<https://youtu.be/1kzUmcMf5PY>) for an overview of the portal features, including how to sign-up and use the portal. **Please note:** Video is being updated to reflect a new log-in system. Check back soon for updates.

**Internet browser requirements**

To file a claim online using e-claim or to access the claimant portal you should use:

- Chrome
- Firefox
- Microsoft Edge
- Safari

Other browsers may work, but they are not supported by the e-claim or claimant portal.

#### PDF claim forms

You can also file an ESA or EPFNA claim using the PDF claim form (<https://forms.mgcs.gov.on.ca/en/dataset/016-mol-es-002>) .

Submit your claim by:

- fax to 1-888-252-4684 or
- mail to:  
Provincial Claims Centre  
Ministry of Labour, Immigration, Training and Skills Development  
70 Foster Drive, Suite 410  
Roberta Bondar Place  
Sault Ste. Marie, Ontario  
P6A 6V4

#### Employment Standards Act claims

Most employees working in Ontario are covered by the ESA. However, some employees are not covered by the ESA and some employees who are covered by the ESA have special rules and/or exemptions that may apply to them.

A claim may be made when you believe your employer has violated your rights under the ESA.

Examples of ESA violations include:

- Failure to pay an employee the correct rate of pay and/or public holiday pay, vacation pay or other wages they are entitled to under the ESA.
- Not providing an employee with time off for an entitled leave of absence under the ESA or penalizing an employee for taking such a leave.
- Not providing an employee with wage statements or other required documents.

For more information, visit Your Guide to the Employment Standards Act ([https://www.ontario.ca/document/your-guide-employment-standards-act-0?\\_ga=2.245518020.1369973253.1563888571-117218594.1480519190](https://www.ontario.ca/document/your-guide-employment-standards-act-0?_ga=2.245518020.1369973253.1563888571-117218594.1480519190)) or the Guide to special rules and exemptions (<https://www.ontario.ca/document/industries-and-jobs-exemptions-or-special-rules>) .

The ESA is not the only law that applies to Ontario workplaces. The rules under the ESA are minimum requirements. You may have greater rights under:

- an employment contract
- collective agreement
- the common law
- other legislation

If you have questions about your entitlements, you may wish to contact a lawyer (<https://lso.ca/>) .

#### Time limits for filing an ESA claim

There are time limits that apply to filing an ESA claim. Generally, you must file a claim within two years of the alleged ESA violation. This two-year time limit is referred to as the “**limitation period**.” If you file a claim within the two-year limit an employment standards officer will investigate the claim.

Similarly, if your employer owes you wages, the wages must have been owed to you in the two years before your claim was filed for the wages to be recoverable under the ESA. This two-year period is referred to as the “**recovery period**.”

#### Employment Protection for Foreign Nationals Act claims

A claim may be made when you believe your employer or a recruiter has violated your rights under the EPFNA.

The EPFNA applies to foreign nationals who work or are seeking work in Ontario through an immigration or foreign temporary employee program. For example, if you are working or looking for work in Ontario through the federal Temporary Foreign Worker Program, or the Seasonal Agricultural Worker Program, the EPFNA would likely apply to you.

Examples of EPFNA violations include:

- a recruiter charging you any fees
- an employer charging you for hiring costs (with limited exceptions)
- a recruiter or employer holding onto your property (such as a passport)
- a recruiter or employer punishing you for asking about or exercising your EPFNA rights

Foreign nationals employed in Ontario also have rights under the ESA. For example, if you are not being paid all wages owed, you may be able to file a claim under

the ESA.

### Time limits for filing an EPFNA claim

Generally, you must file your EPFNA claim within three-and-a-half years of the date of the alleged EPFNA violation. Similarly, an employment standards officer can generally issue an order for money owed to you under the EPFNA in the three-and-a-half-year period before the date you filed an EPFNA claim.

Learn more about your rights under the EPFNA (<https://ontario.ca/epfna>) .

### Protecting Child Performers Act claims

The *Protecting Child Performers Act* ([https://www.ontario.ca/laws/statute/15p02?\\_ga=2.158777715.830663072.1589199544-1699692134.1480627715](https://www.ontario.ca/laws/statute/15p02?_ga=2.158777715.830663072.1589199544-1699692134.1480627715)) (PCPA) provides certain workplace protections to child performers who are under 18 years of age working in the live and recorded entertainment industries.

It includes minimum rights with respect to hours of work, breaks and payment of travel expenses.

The PCPA applies to:

- child performers
- their parents
- their guardians
- employers

Sections are enforced by the Health and Safety Program or the Employment Standards Program.

Learn more about the rights of child performers under the PCPA (<https://www.ontario.ca/page/child-performers>) and read the Child Performers Guideline (<https://www.ontario.ca/document/child-performers-guideline>) .

### Filing a PCPA claim

You can file a PCPA claim if you believe workplace protections have not been provided to a child performer in Ontario. Filing a claim is free.

To file a claim, you must be either:

- a child performer under 18 years of age
- the parent or guardian of a child performer under 18 years of age

The child performer must not be covered by a collective agreement.

To file a claim:

1. Download the claim form (<https://forms.mgcs.gov.on.ca/en/dataset/016-1966>) from the forms repository and save it to your computer.
2. Open the form with Adobe Reader (download Adobe Reader (<https://get.adobe.com/reader/>) for free).
3. Fill in the form with all the required information.
4. Select “submit by email” to submit the form.

Please only file your claim once.

After you file a claim:

- You will receive an email confirmation that includes your claim number.
- Ministry of Labour, Immigration, Training and Skills Development (<https://www.ontario.ca/page/ministry-labour-immigration-training-skills-development>) staff will investigate your claim as quickly as possible.

### Time limits to filing a PCPA claim

Generally, a PCPA claim must be filed within two years of the alleged PCPA violation.

### When a claim cannot be filed

Generally, these are the situations when a claim cannot be filed:

- You have taken court action against your employer for the same issue.
  - **Note:** If you file a claim with the Ministry of Labour, Immigration, Training and Skills Development and decide to pursue your rights through the courts, you must withdraw your submitted claim within two weeks after it is filed.
- You are represented by a union and covered by a collective agreement.

This claim form is not intended for you if:

- You work in an industry that falls under federal jurisdiction (<https://www.canada.ca/en/services/jobs/workplace/federal-labour-standards.html>) .
- You want to file a complaint about occupational health and safety ([https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint?\\_ga=2.140776564.77718575.1591637858-1699692134.1480627715](https://www.ontario.ca/page/filing-workplace-health-and-safety-complaint?_ga=2.140776564.77718575.1591637858-1699692134.1480627715)) .
- You want to file a human rights complaint under the *Human Rights Code* (<https://www.ontario.ca/laws/statute/90h19>) .

- You want to file a claim with the Workplace Safety and Insurance Board (<https://www.wsib.ca/en>) (WSIB).

### If you need assistance

Employees can phone the Employment Standards Information Centre for assistance in identifying and defining issues under the [ESA](#), [EPFNA](#) and [PCPA](#) and finding ways to resolve them. Contact the Employment Standards Information Centre at:

- 416-326-7160
- toll free in Ontario: 1-800-531-5551
- TTY (for hearing impaired): 1-866-567-8893

## Employment standards enforcement statistics

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer.ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Enforcement overview

The Ministry of Labour, Immigration, Training and Skills Development (MLITSD) enforces the *Employment Standards Act, 2000* ([http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_00e41\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm)) ([ESA](#)) and its regulations, which set out the minimum employment standards that most employers must follow. Learn more about the ministry's role enforcing the [ESA](#) (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry>) .

The source of the data on this page is the Employment Standards Program's case management system. Due to the ongoing nature of the ministry's enforcement activities, these numbers may be subject to change. The data reported here is current as of April 28, 2023.

### Claim investigations

Investigations (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-2>) are initiated when a claim is filed against an employer, alleging a violation under the [ESA](#).

The top violations found during claim investigations in 2022–23 were:

- payment of wages
- vacation pay/vacation time
- termination pay
- public holidays/public holiday pay
- overtime pay

Below are the most recent claim investigation numbers from 2023 to 2018.

Fiscal year (April 1–March 31)	Claim investigations
2022–23	11,718
2021–22	8,807
2020–21	11,200
2019–20	18,965
2018–19	22,434

### Inspections

The Ministry of Labour, Immigration, Training and Skills Development conducts inspections (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-1>) of workplaces, focusing on high-risk sectors and repeat violators, to increase compliance with the [ESA](#) and the *Employment Protection for Foreign Nationals Act* (EPFNA) (<https://www.ontario.ca/page/employment-rights-and-obligations-foreign-nationals>) . Inspections are initiated by the ministry and do not require a claim to be filed against the employer.

The purpose of inspections is to:

- enforce the [ESA](#) and the [EPFNA](#), and their regulations
- communicate the requirements, and raise awareness and understanding of the [ESA](#) and the [EPFNA](#)
- promote self-reliance in the workplace

The top employment standards violations discovered during inspections in 2022–23 were:



- public holidays/public holiday pay
- overtime pay
- vacation pay/vacation time
- minimum wage
- payment of wages

Below are the most recent inspection numbers from 2023 to 2018.

Fiscal year (April 1 – March 31)	Inspections completed
2022–23	788
2021–22	215
2020–21	252
2019–20	2,490
2018–19	2,345

### Prosecutions

When individual employers and corporations fail to comply with the [ESA](#) and its regulations, MLITSD may prosecute due to non-compliance.

Below are the most recent prosecution numbers from 2023 to 2018.

Fiscal year (April 1–March 31)	Part I tickets ( <a href="https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-8">https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-8</a> ) issued	Part III prosecutions ( <a href="https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-19">https://www.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-19</a> ) initiated	Total prosecutions
2022–23	33	7	40
2021–22	22	12	34
2020–21	21	2	23
2019–20	10	37	47
2018–19	29	50	79

### Convictions

The following table lists individual employers or companies who were convicted of an offence under the [ESA](#) and/or its regulations for the month(s) listed. This includes Part I Tickets, Part III Prosecutions and summons under Part I (<https://www.ontario.ca/laws/statute/90p33#BK46>) of the *Provincial Offences Act* (<https://www.ontario.ca/laws/statute/90p33>) .

Information about convictions under the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) , is posted on the Ontario government website for one year from the date of posting.

- |                  |               |                 |
|------------------|---------------|-----------------|
| • December 2022  | • August 2022 | • April 2022    |
| • November 2022  | • July 2022   | • March 2022    |
| • October 2022   | • June 2022   | • February 2022 |
| • September 2022 | • May 2022    | • January 2022  |

#### December 2022

Name	Court location	Type of prosecution	Fine <sup>1</sup>	Conviction date	Violation

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Miakouchkina Aksana	Brampton	Part III Prosecution	\$6,250.00	December 13, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136
Miakouchkine Gregori	Brampton	Part III Prosecution	\$3,750.00	December 13, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136
1764353 Ontario Ltd. o/a Ontario Disability	Brampton	Part III Prosecution	\$5,000.00	December 13, 2022	Fail to comply with an order to pay under s. 103(8), s. 132

**November 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Mota Octavio	Burlington	Part III Prosecution	\$5,000.00	November 25, 2022	Fail to comply with an order to pay under s. 103(8), s. 132

**October 2022**

There were no convictions reported for October 2022.

**September 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Buddy Lowe Enterprises Inc	St. Catharines	Part III Prosecution	\$6,875.00	September 9, 2022	Fail to comply with an order to pay under s. 103(8), s. 132

**August 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Parkhill Meats Limited	London	Part I Ticket	\$355.00	August 4, 2022	Fail to pay minimum wage, s. 23(1)

**July 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Dibiase Giuseppe	Brampton	Part III Prosecution	\$2,500	July 4, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136

**June 2022**

There were no convictions reported for June 2022.

**May 2022**

There were no convictions reported for May 2022.

**April 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Arellano Alejandro C	Burlington	Part III Prosecution	\$1,875.00	April 5, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Arellano Alejandro C	Burlington	Part III Prosecution	\$3,125.00	April 5, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136
Arellano Alejandro C	Burlington	Part III Prosecution	\$5,000.00	April 5, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136
Tateishi Arthur R	Orangeville	Part I Ticket	\$355.00	April 4, 2022	Fail to produce records or provide assistance, s. 91(8)

**March 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$3,750.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$3,750.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$2,500.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Novita Wellness Institute Ltd	Toronto	Part III Prosecution	\$1,125.00	March 22, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Santina Calidonna	Toronto	Part III Prosecution	\$18,750	March 22, 2022	Failing as a director to comply with an order to pay under s.106, s.136
Argo Employment Agency Corp	London	Part I Ticket	\$355.00	March 28, 2022	Fail to give wage statement within time allowed after employment ends, s. 12.1
Argo Employment Agency Corp	London	Part I Ticket	\$355.00	March 28, 2022	Fail to make records, s. 15(1)

**February 2022**

There were no convictions reported for February 2022.

**January 2022**

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Adam Ethbert Abel O/A Beaufitil DYN	London	Part III Prosecution	\$875.00	January 24, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Des Gibb & Professional Corporation	Kitchener	Part III Prosecution	\$31,250.00	January 21, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
The Grand Olympia Inc	Hamilton	Part III Prosecution	\$10,000.00	January 20, 2022	Fail to comply with an order to pay under s. 103(8), s. 132
Snap Tax & Accounting Inc	Newmarket	Part III Prosecution	\$1,875.00	January 14, 2022	Fail to comply with an order to pay under s. 103(8), s. 132

Name	Court location	Type of prosecution	Fine <sup>[1]</sup>	Conviction date	Violation
Bono Rosa	Newmarket	Part III Prosecution	\$610.0 0	January 14, 2022	Failing as a director to comply with an order to pay under s. 106, s. 136

## Role of the ministry

The information in this chapter is currently being updated to reflect amendments to the [ESA](#) that came into force on July 1, 2023. Consequently, some of the information below is out of date. Please check back soon for updates.

The Ministry of Labour, Immigration, Training and Skills Development administers the *Employment Standards Act* (<https://www.ontario.ca/laws/statute/00e41>) (ESA) and its regulations by:

- providing compliance support
- conducting inspections of payroll records and workplace practices to ensure the [ESA](#) is being followed
- investigating and resolving complaints
- enforcing the [ESA](#) and its regulations

### Compliance support

The ministry offers a wide range of publications and services to help employees and employers understand their rights and comply with their obligations. These include:

- an employment standards poster (<https://www.ontario.ca/page/posters-required-workplace>), which employers must provide to employees who are covered by the [ESA](#) within 30 days of their date of hire
- a catalogue of fact sheets and information sheets covering a variety of employment topics
- a suite of interactive online tools and resources (<https://www.ontario.ca/document/your-guide-employment-standards-act-0/educational-resources>) to help employers and employees understand provisions of the [ESA](#), such as the employment standards self-service tool.

The ministry is also involved in outreach initiatives such as information seminars and workshops for employer groups, employment counsellors, and professional associations.

### Inspections

Employment standards officers conduct inspections of payroll and other records, including a review of employment practices. An officer performing an inspection will usually visit the employer's business location. Officers may notify the employer in writing before the inspection, but are not required to. A notice may set out a list of records and other documents the employer must provide during the inspection. The employer is required to produce the records requested and must answer questions that the officer thinks may be relevant.

An officer is able to take away records or other information for review and copying. The employer is welcome to ask questions, and to request further information.

### Investigating complaints

When a claim is assigned for investigation, the employment standards officer may conduct their investigation by telephone, through written correspondence, by visiting the employer's premises or by requiring the employee and/or the employer to attend a meeting. During an investigation, both parties have the opportunity to present the facts and arguments they believe are important to their case. If a claim has been submitted against the client of a temporary help agency regarding a possible reprisal or unpaid wages, employment standards officers have the same powers of investigation with respect to the client as they do for an employer. The officer will make a decision based on the best available evidence which may include employer records, client records, employee records, and interviews.

During an investigation, there are strict timeframes that apply to requests for documents from employees, employers and clients of temporary help agencies. If the information is not provided in a timely manner, a decision may be made without consideration of those materials. Similarly, if both parties were required to attend a meeting but one did not show up, the employment standards officer may make a decision based solely on the evidence provided to the officer before the meeting and the evidence provided by the other party at the meeting.

### Meetings

The purpose of the meeting is to allow the officer to gather evidence from each party. Each party speaks directly to the officer, in the presence of the other party (whether in person or by teleconference), rather than the parties speaking directly to each other. If one party wants to ask the other party a question, the question must be directed through the officer.

The format of each meeting depends on the case and the approach of individual officers. However, most meetings proceed as follows:

- first, the claimant provides their account of what happened, and provides any evidence (documents or the testimony of witnesses) or refers to any evidence already provided.
- the employer then provides its account of what happened, and provides any evidence or refers to any evidence already provided
- the parties are given an opportunity to challenge the other party's account of what happened. The officer makes further inquiries of both parties where necessary

- both parties are then given one last opportunity to provide or refer to any further evidence that may help the officer in making a decision.

After investigating a claim, the employment standards officer makes a decision about whether the employer **has** or **has not** followed the ESA.

If the officer finds that the employer **has** complied with the ESA:

- the employee is notified in writing of this decision, and can apply for a review within 30 days.

If the officer finds that the employer **has not** complied with the ESA:

- the officer may issue an order against the employer. (For more information, see "Enforcement (<https://edit.ontario.ca/document/your-guide-employment-standards-act-0/role-ministry#section-4>) ", below.)
- the officer may require an employer to post a notice containing specific information about administration or enforcement of the ESA, and/or a copy of the report or part of the report with the officer's findings.

## Settlement

An employee and employer or the client of a temporary help agency can enter into a settlement to resolve their dispute. A settlement is an agreement made between an employee and their employer that will resolve the claim. The ESA allows this option in certain circumstances after a claim has been filed.

In some cases, the investigation of a claim could take months; particularly where there are multiple complex issues that require the review of a large number of documents and records. A quick resolution to a claim may be important to some claimants and employers. If the employer and the employee are willing to work together to find a mutually acceptable solution, they may try to settle a claim.

If the employee and employer do what they agreed to under the settlement, the claim is considered to be withdrawn and the investigation comes to an end.

Claimants and employers are not required to resolve a claim by entering into a settlement.

If a settlement is made, the employee and their employer will have to inform the ministry in writing of the terms of the settlement. The Notification of Section 112 Settlement Form (<https://forms.mgcs.gov.on.ca/en/dataset/016-mol-es-047>) and Section 112 Terms of Settlement (<https://forms.mgcs.gov.on.ca/en/dataset/016-mol-es-048>) forms can be used to inform the ministry of a settlement.

Complete the Notification of Section 112 Settlement form and attach the Section 112 Terms of Settlement and send both documents to the Ministry of Labour, Immigration, Training and Skills Development:

### By mail :

Provincial Claims Centre  
Ministry of Labour, Immigration, Training and Skills Development  
70 Foster Drive, Suite 410, Roberta Bondar Place  
Sault Ste. Marie, ON  
P6A 6V4  
**By fax:** 1-888-252-4684

**By email:** [esdocuments@ontario.ca](mailto:esdocuments@ontario.ca) (<mailto:esdocuments@ontario.ca>)

If the employer or the claimant fails to do what they said they would do in the settlement, the employer or the claimant can call the employment standards officer that was assigned to the claim. The name and telephone number of the employment standards officer can be found on the letter that they sent after the settlement was entered into. The employment standards officer will determine whether to resume the investigation of the claim.

If a claimant believes that the employer used fraud (lied to get the claimant to agree to the settlement) or coercion (used force or intimidation to get the claimant to agree to the settlement), the claimant can apply to the Ontario Labour Relations Board to have the settlement set aside.

## Enforcement

Once an employment standards officer has made a decision that a contravention of the ESA has occurred, the officer can issue an order to pay direct – wages, an order to pay wages, a compliance order, a ticket, a notice of contravention or, for certain violations, an order to reinstate and/or compensate an employee. (More information about each of these follows.)

An officer can issue one or more orders, tickets and/or a notice of contravention in the course of an investigation or inspection.

In the case of a reprisal by a client of a temporary help agency, an officer can issue an order to reinstate in the assignment and/or compensate an employee for any loss incurred as a result of the contravention.

Employers and clients of temporary help agencies have the right to appeal an officer's order or a notice of contravention by making an application for review to the Ontario Labour Relations Board. The employer also has a number of options if an officer has issued a ticket.

Employees who have filed a claim or for whom an order has been issued have the right to appeal an order to pay wages or an order for compensation/reinstatement issued against their employer or against a client of a temporary help agency.

### Order to pay direct - wages

An order to pay direct - wages is issued and served on an employer for wages, tips or other gratuities owed to an employee or employees where the employer agrees to pay the employee directly.

The employer must comply with the order according to its terms, including paying the wages directly to the employee.

## Order to pay wages

An order to pay wages is issued and served on an employer or a client of a temporary help agency for wages, tips or other gratuities owed to an employee or employees.

The employer or the client of a temporary help agency must comply with the order according to its terms, including paying the wages to the Director of Employment Standards in trust, or appeal the order within 30 days of the date the order is served. The order also requires the employer to pay an administrative cost of 10 per cent of the amount of the order, or \$100, whichever is greater.

## Compliance order

An officer can issue a compliance order if the officer finds that the employer has contravened a provision of the ESA. The officer can order an employer or other person to stop contravening the provision, and to take certain steps or stop taking certain steps in order to comply with it. The order must also specify a date by which the employer or other person must comply with the order. These orders cannot require payment of wages or compensation.

### Example of a compliance order in addition to an order to pay wages

While investigating Lisa's claim for overtime pay, the employment standards officer discovered the employer was not giving the five employees proper meal breaks of at least 30 minutes after every five consecutive hours of work. Also, the employer had not provided the employment standards poster as required under the ESA.

In addition to the order to pay wages, the officer issued and served on the employer a compliance order directing it to:

- ensure that employees would receive their proper meal breaks;
- provide the poster required by the ESA;
- post a copy of the compliance order in a conspicuous place at the workplace for a minimum of six months.

## Tickets

An offence notice (commonly called a "ticket") can be issued under Part I of the *Provincial Offences Act* (<https://www.ontario.ca/laws/statute/90p33>). Typically, tickets are issued for less serious ESA violations. Tickets will be issued to the employer responsible for the offence. Ticketable offences fall into three categories:

- administrative and enforcement offences (for example, failure to retain records)
- contraventions of wage-based employment standards (for example, failure to pay overtime pay)
- contraventions of non-wage-based employment standards (for example, requiring employees to work hours in excess of daily or weekly limits)

Tickets carry set fines of \$295, with a victim fine surcharge added to each set fine plus court costs. If issued a ticket, an employer can choose to pay the fine or appear in a provincial court to dispute the charge set out in the ticket.

## Notice of contravention

Employment standards officers have the power to issue notices of contravention with prescribed penalties when they believe someone has contravened a provision of the ESA. The penalty amount (payable to the "Minister of Finance") must either be paid or appealed **within** 30 days of the date the notice was served.

If the notice relates to a contravention of the poster requirements of the ESA or a failure to keep proper payroll records or to keep these records readily available for inspection by an employment standards officer, an officer can issue a notice of contravention with the following prescribed penalties:

- \$250 for a first contravention;
- \$500 for a second contravention in a three-year period;
- \$1,000 for a third contravention in a three-year period.

If an officer has found a contravention of any other provision of the ESA, the penalties prescribed are:

- \$250 for a first contravention multiplied by the number of employees affected;
- \$500 for a second contravention in a three-year period multiplied by the number of employees affected;
- \$1,000 for a third contravention in a three-year period multiplied by the number of employees affected.

### Example of when there are further violations

Six weeks after serving the compliance order on Lisa's former employer, the officer visited the employer and conducted a further audit. The officer found that the employer was now paying overtime to all employees and had posted a copy of the compliance order. However, the employer had not provided a copy of the ESA poster and had not ensured that its five employees received proper meal breaks.

As a result, the officer issued and served a notice of contravention on the employer for failing to provide a copy of the ESA poster (\$250 penalty) and failed to give proper meal breaks to five employees ( $5 \times \$250 = \$1,250$ ).

The officer also informed the employer that further violations could result in future notices of contravention being issued and/or prosecution by the ministry.

## Order to compensate and/or reinstate

In the case of some violations, an officer can make an order requiring an employer to reinstate or compensate an employee or both. The violations in question relate to the following provisions of the ESA:

- pregnancy, parental, sick, family medical, bereavement, family caregiver, family medical, critically ill child care, organ donor, reservist, domestic or sexual violence, child death and crime-related child disappearance leave
- the right to refuse to work on a Sunday for certain retail employees;
- reprisal against an employee for exercising their rights under the ESA.

The officer can order compensation for any reasonable, foreseeable loss the employee may have incurred. There is no maximum amount for an order for compensation.

### Types of wages and compensation

An employment standards officer can order an employer to pay an employee the following:

1. **Actual unpaid wages** (including vacation pay on the amount of unpaid wages). These are wages that were actually earned by the employee, but not paid.
2. **Compensation for direct earnings loss** (including vacation pay on such earnings). This is what the employee would have earned but did not earn because of the violation.
3. **Pre-reinstatement compensation** (i.e., compensation for losses incurred prior to reinstatement). This is the lost "earnings" (including vacation pay calculated on those earnings) from the date that the employee should have been reinstated to the date that the employee was reinstated.
4. **Payment for time required to find a new job** (compensation) or termination pay (wages), including vacation pay. This may be payable when the employer terminates an employee's employment, and the employment standards officer does not issue an order for reinstatement and the employer does not reinstate voluntarily.
5. **Severance pay** (wages). This may be payable when:
  - the employer severed the employee's employment;
  - the employment standards officer does not issue an order for reinstatement; and
  - the employer does not reinstate voluntarily.
6. **Compensation for expenses** that the employee incurred in trying to find new employment. This may be payable if the employer terminated the employee's employment and the employment standards officer does *not* issue an order for reinstatement, and the employer does not reinstate voluntarily, or if the employee was reinstated, but the employee looked for a job before the employment standards officer issued the order or *before* the employer reinstated voluntarily.
7. **Compensation for loss of reasonable expectation of continued employment**. This is to compensate the employee if they were deprived of a job that they were entitled to. This may be payable if the employer terminated the employee's employment, and the employment standards officer does not issue an order for reinstatement and the employer does not reinstate voluntarily.
8. **Compensation for emotional pain and suffering**. This may be payable if an employee experienced emotional pain and suffering because of the employer's contravention.
9. **Compensation for benefit plan entitlements**. This is where the employer's contravention of the ESA resulted in the employee losing benefit plan coverage. The employment standards officer can order compensation for:
  - costs that the employee had because the benefit plan coverage stopped (for example, the cost of dental work and prescription drugs); and/or
  - replacement cost for coverage.
10. **Compensation for other reasonably foreseeable damages**. Generally, the types of damages listed above will cover the kinds of losses the employee suffered because of the contravention. However, any reasonably foreseeable damages may be made the subject of a compensation order.

### Review (appeal) of an officer's decision

Reviews are conducted by the Ontario Labour Relations Board (<http://www.olrb.gov.on.ca/english/homepage.htm>) , an independent, quasi-judicial tribunal. If employees, employers or clients of temporary help agencies are not satisfied with an officer's decision, they may have the right to apply for a review (appeal). They must complete an Application for Review, setting out the facts and reasons for the application **within 30 days of service of the order or notice**.

To obtain an Application for Review form contact:

Ontario Labour Relations Board  
505 University Avenue, 2<sup>nd</sup> Floor  
Toronto, ON M5G 2P1  
Tel: 416-326-7500  
Fax: 416-326-7531

The Application for Review form must be submitted to:

The Registrar  
Ontario Labour Relations Board  
505 University Avenue, 2<sup>nd</sup> Floor  
Toronto, ON M5G 2P1

### Employee appeals

An employee who files a claim can appeal an officer's refusal to issue an Order to Pay Wages, an Order to Pay Fees, an Order to Pay Compensation and/or Reinstatement or a Compliance Order.



An employee for whom an order has been issued (whether or not they filed a claim) can appeal the amount of an officer's Order to Pay Wages or an officer's Order to Pay Compensation and/or Reinstatement.

For employees, the Application for Review must be submitted **within 30 days** of :

- the date the letter advising the employee that an order has been issued against the employer or client of a temporary help agency, or
- the date of the letter advising that the officer has refused to issue an order has been served on the employee.

### Employer appeals

For employers and clients of temporary help agencies, the Application for Review must be submitted **within 30 days of the date of being served** with an order or notice.

Employers and clients of temporary help agencies can apply for a review of:

- an Order to Pay Wages (the employer and client of a temporary help agency must pay the full amount of the order plus applicable administrative fees to the Director of Employment Standards in trust)
- an Order to Pay Fees (and client of a temporary help agency must pay the full amount of the order plus applicable administrative costs to the Director of Employment Standards in trust)
- a Compliance Order (these orders do not require payment of wages or compensation)
- a Notice of Contravention (the employer or client of a temporary help agency does not have to pay the amount of the penalty before the review hearing can proceed)

In addition, employers and clients of temporary help agencies can apply for a review of an Order to Pay Compensation and/or Reinstatement an employee. The employer or the client of a temporary help agency must pay the amount owing under the order or \$10,000 (whichever is lesser) to the Director of Employment Standards in trust.

### Offence notice ("ticket")

Employers who receive a ticket must, within 15 days of the receipt of the ticket, choose one of the following:

- Plead guilty by paying the amount owing on the ticket.
- Plead guilty with an explanation to a Justice of the Peace. The employer must bring their ticket to the Provincial Offences Court to provide explanations as to why the amount or time of payment of the ticket should be reduced.
- Plead not guilty and fill out the notice of intention to appear in court. The court will schedule a trial.

An employer who does not elect one of the above options within 15 days of receiving the ticket, will be deemed not to dispute the charge.

### Delivering materials to the provincial director of employment standards

The copy of the Application for Review Form and other documents should be sent, in order of preference, as follows:

- email to [appforreview.directorofES@ontario.ca](mailto:appforreview.directorofES@ontario.ca) (<mailto:appforreview.directorofES@ontario.ca>)
- fax to 1-855-251-5025
- regular mail (street address is below)
- courier or hand delivery (street address is below)

### Payments

Payments must be made to the "Director of Employment Standards in trust" within 30 days of service of the order. It is to be made by cheque, money order or letter of credit. It is strongly recommended that the approved template (<https://forms.mgcs.gov.on.ca/en/dataset/on00469>) for letters of credit is used.

Forward payments to:

#### Address for mail, courier or hand delivery:

Director of Employment Standards  
Employment Practices Branch  
Ministry of Labour, Immigration, Training and Skills Development  
400 University Avenue  
9<sup>th</sup> Floor  
Toronto, ON M7A 1T7

The ministry will issue a proof of payment to the employer or client of a temporary help agency, and will hold the payment in trust.

### Letters of credit

A letter of credit is a formal written promise made by a financial institution (usually a bank) to pay money to a third party.

An employer, recruiter or other person who has a monetary order issued against them, can request a letter of credit from their bank to pay (in full or part) the Director of Employment Standards. You are strongly encouraged to use this approved letter of credit template (<https://forms.mgcs.gov.on.ca/en/dataset/on00469>) when you make a request.

Examples of monetary orders that can be issued against an employer, recruiter or other person under the [ESA](#) and the *Employment Protection for Foreign Nationals Act, 2009* (EPFNA) are:

- Order to Pay Compensation ([ESA](#) and [EPFNA](#))
- Order to Pay Wages ([ESA](#))
- Order to Recover Fees ([ESA](#))
- Order to Repay Fees ([EPFNA](#))
- Order to Repay Costs ([EPFNA](#))

If the director demands payment, the bank will make the payment automatically.

If an employer, recruiter or other person is required to pay money into trust to start an appeal, they can:

- pay the required amount of the order in trust to the Director of Employment Standards
- provide a letter of credit from a bank to the Director of Employment Standards in a form that is acceptable to the director.

The director will usually find a letter of credit acceptable if it:

- is irrevocable, so it cannot be recalled or repealed
- will be automatically renewed when it expires
- is an original document issued by a bank or another financial institution with an office in Ontario
- permits "partial drawings," meaning the director can demand and receive payment less than the entire amount mentioned in the letter of credit (this is in case the review of the order is partially successful, and the Board reduces the amount)
- has no other conditions

If an employer, recruiter or other person wants the director to consider a letter of credit as an acceptable form of payment, despite not meeting these criteria, they can provide to the director in writing any additional details for consideration.

## The review process

When a request for a review is received, an officer of the Ontario Labour Relations Board will sometimes schedule a mediation meeting with the parties. (Note that no mediation meeting takes place in the case of a notice of contravention.) If the matter is settled at this meeting, the minutes of the settlement are drawn up and signed off by the parties.

If the matter is not settled, or there has not been an attempt at mediation, a hearing is scheduled. The parties have a right to appear at the hearing, present their information in full and explain why they think the employment standards officer was right or wrong.

The board can amend, overturn or uphold the employment standards officer's order or notice of contravention. The board can also issue a new order.

After reviewing an employment standards officer's **refusal** to issue an order, the board may issue an order or uphold the officer's refusal.

The board's decisions are final and binding, although an employee, employer, or client of a temporary help agency may apply to Divisional Court for Judicial Review.

## Collections

If an employer or client of a temporary help agency does not apply for a review within 30 days of the date the order or Notice of Contravention was served, the order or notice is final and binding. If the employer or client of a temporary help agency has not paid the required amount, the Director of Employment Standards forwards the order or notice to a collector.

The director may authorize the collector to collect a reasonable fee and/or costs from the employer or client of a temporary help agency. The fees and costs are added to the amount of the order.

## Prosecution (other than by way of a ticket)

An employer or other person who is believed to have committed an offence under the [ESA](#) can be prosecuted under Part III of the *Provincial Offences Act*. It is an offence for an employer or other person to:

- contravene the [ESA](#) or regulations
- make or keep false records or other documents that must be kept under the [ESA](#)
- provide false or misleading information under the [ESA](#)
- fail to comply with an order, direction or other requirement under the [ESA](#) or regulations

If convicted, the employer or other person could be subject to a fine or a term of imprisonment or both. Individuals, if convicted of an offence, can be fined up to \$50,000, imprisoned for up to 12 months, or both.

A corporation can be fined up to \$100,000 for a first conviction. If the corporation has already been convicted of an offence under the [ESA](#), it can be fined up to \$250,000 for a second conviction. For a third or subsequent conviction, the corporation can be fined up to \$500,000.

In addition to imposing a fine or term of imprisonment, a court could also order the convicted person (including a corporation) to take whatever action is necessary to remedy the violation, including paying wages and compensating and/or reinstating an employee.

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

## Additional information

Tell us what you think about the information on this page and how you're using it. Take our survey (<https://survey.alchemer-ca.com/s3/50122708/ES-Ontario-ca-Content>) .

### Employee discounts

Discounts are not covered by the *Employment Standards Act, 2000* (<https://www.ontario.ca/laws/statute/00e41>) (ESA). The employer is responsible for deciding whether employees get a discount on products the employer makes or sells, or on services the employer provides. However, if there is a discount, the employer is the one who determines how much the discount will be.

### Dress codes

Generally, the employer is responsible for making decisions about dress codes, uniforms and other clothing requirements--and about who pays for them.

An employer may make a deduction from wages to cover the cost of a uniform or other clothing requirements with the signed, specific written authorization from the employee permitting the deduction and setting out the amount of the deduction.

A dress code cannot violate a collective agreement at the workplace, the *Human Rights Code* (<https://www.ontario.ca/laws/statute/90h19>) or the *Occupational Health and Safety Act* (<https://www.ontario.ca/laws/statute/90o01>) .