

Employment Standards Act, 2000

OVERVIEW

Please Note: This presentation is intended to provide general information about the *Employment Standards Act, 2000*. It does not constitute legal advice. To determine your rights and obligations please refer to the: [*Employment Standards Act, 2000*](#) and its [*Regulations*](#).

What is the *Employment Standards Act, 2000*?

- The *Employment Standards Act, 2000 (ESA)* sets minimum standards for wages and certain other conditions of employment in Ontario.
- Employers and employees cannot contract out of or waive any of these employment standards.
- Employers can offer a greater right or benefit above these standards.

Exceptions, Exemptions and Special Rules

- The *ESA* does not apply to certain individuals, for example:
 - Federal jurisdiction (e.g. banks, airlines, etc.).
 - Some students in work experience programs.
 - Office holders (e.g. judges, politicians.).
 - People who do community participation under the *Ontario Works Act, 1997*.
- Certain industries and/or jobs are exempted from particular minimum standards of the *ESA* or have special rules about how the minimum standards apply.

(For a complete listing, please see the *ESA* and its regulations.)

Posting Requirements

- The Ministry has prepared and published a poster called,
“What You Should Know About The Ontario Employment Standards Act”
which contains a brief summary of the main standards of the *ESA*.
- Employers are required to post this document (currently version 4.0) in the workplace in a place where it is likely to come to the attention of their employees.
- Where the majority language in a workplace is not English, the employer is required to see if a translation is available from the ministry and if there is, post the translation along side the English poster.

Basics

An employer must:

- Establish a recurring pay period and pay day.
- Pay wages by cash or cheque at the workplace or an agreed alternate location, or by direct deposit.
- Provide a wage statement, in written or electronic form, with all required information.
- Keep records for three years.
- Make only authorized deductions (e.g. Income tax, EI, CPP); cannot deduct wages for poor workmanship.

Minimum Wage

- Must be paid – no matter how the employee is paid (e.g. hourly, salary, commission, flat rate, piece rate) and is determined on a pay period basis (i.e., generally, total wages divided by total hours in pay period).
- As of March 31, 2010:
 - General \$10.25
 - Homeworkers \$11.28
 - Liquor Servers \$8.90
 - Students* \$9.60

**** Must be under 18 years of age working 28 hours or less a week, or during a school holiday.***

Hours of Work

- **Daily limits:** Eight hours a day *or* the number of hours in a regular work day if it's more than eight.
 - Longer hours allowed with a *written* agreement of employee.
- **Weekly limits:** 48 hours in a work week.
 - Longer hours allowed with a written agreement of employee *and* approval from the Director of Employment Standards.
- **Eating periods:** Must not work more than five consecutive hours without getting 30-minute unpaid eating period free from work.
- **Daily rest:** 11 consecutive hours each day and eight hours between shifts.
- **Weekly/biweekly rest:** 24 consecutive hours in a work week, or 48 consecutive hours in every period of two consecutive work weeks.

Overtime Pay, Public Holidays

- **Overtime Pay:**
 - 1.5 x regular rate after 44 hours/week (most cases);
 - provisions for time-in-lieu with written agreement; and
 - provisions for averaging with written agreement and Ministry approval.
- **Public Holidays:** There are nine public holidays per calendar year:
 - New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day.
- **To be entitled to the public holiday off with pay:**
 - Employees must work their scheduled shift before and after the public holiday unless reasonable cause (something beyond employee's control prevents them from working).
- **Public Holiday Pay:**
 - Regular wages earned plus vacation pay payable in the four work weeks prior to the work week in which the public holiday falls, divided by 20.

Vacation & Vacation Pay

- Employees are entitled to:
 - **Vacation time** – Two weeks of vacation time after completion of Vacation Entitlement Year (VEY), and
 - **Vacation pay** – 4% of gross wages earned in the VEY.
- Employer can decide vacation timing, with the following restrictions:
 - No later than 10 months after the completion of the VEY.
 - Can only be in one-week or two-week blocks, unless the employee requests in writing to take vacation in shorter periods and the employer agrees in writing to this request.

Leaves of Absence

- Job protected, unpaid time off work for:
 - Pregnancy Leave (17 weeks)
 - Parental Leave (35 or 37 weeks)
 - Personal Emergency Leave (10 days)
 - For workplaces where 50 or more employees are regularly employed
 - Declared Emergency Leave
 - Family Medical Leave (eight weeks)
 - Reservist Leave (deployment period)
 - Organ Donor Leave (13 weeks)

Leaves of Absence *(continued)*

- The right to leave consists of the right to:
 - be away from work (if qualifying criteria met).
 - not be penalized in any way for being eligible to take a leave, intending to take a leave, or taking a leave.
 - In most cases, be reinstated to job most recently held (if it still exists) or a comparable position (if the most recently held position does not exist) at the end of the leave.
 - continue to accrue length of service.
 - continue to participate in certain benefit plans (except Reservist Leave).
- For information on entitlement to Employment Insurance benefits when on a leave, please contact Service Canada.

Notice of Termination

- Generally, when employee has their employment terminated, he or she is entitled to written notice of termination or termination pay.
- **Written Notice:** there are certain requirements an employer must meet during the notice period.

Length of Employment

Notice of Termination

Less than 3 months

None

3 months to less than 1 year

1 week

1 year to less than 3 years

2 weeks

3 years to less than 4 years

3 weeks

After 4 years

1 week per completed year up to 8 weeks

- Employer can pay termination pay in place of working notice.
- Special rules for “temporary layoffs” and when 50 employees or more are terminated in a 4 week period (“mass terminations”).

Ministry of Labour

Severance Pay

- Employees whose employment is severed may be entitled to severance pay.
- **Qualification:**
 - Employed five years or more, and
 - Employer has \$2.5 million payroll,
Or,
 - Permanent discontinuance of all or part of employer's establishment and employee is one of 50 or more employees whose employment is severed within six-month period.
- **Severance pay calculation:**
 - (Regular wages for regular work week) x [(# of completed years of employment) + (# of completed months of employment for a year not completed)] ÷12.

Reprisals

- An employer or anyone acting on their behalf is prohibited fromreprising against an employee.
- A reprisal is when an employer or person acting on their behalf, intimidates, dismisses, or otherwise penalizes an employee or threatens any of the above because the employee:
 - Asks the employer to comply with the *ESA*.
 - Makes enquiries about his or her rights.
 - Files a claim.
 - Attempts to exercise or exercises a right.
 - Gives information to an Employment Standards Officer.
 - Participates in a proceeding as a witness.
 - Becomes eligible to take a leave, intends to take a leave, or takes a leave.
 - Is subject to a garnishment order.
 - Refuses to take a lie detector test.

Investigation & Inspection Process

- **Investigations** are usually started in response to a complaint, on an approved form, by an employee.
- **Inspections** are generally conducted on a proactive basis.

Role of Employment Standards Officer:

- Are assigned to investigate claims or conduct proactive inspections.
- Can *investigate* and conduct *inspections* by telephone, written correspondence, visit to employer's premises and/or meeting.
- Bound by rules of natural justice:
 - Duty to act fairly and impartially.

Enforcement

- Employers who contravene the *ESA* can be ordered to:
 - Comply with the *ESA*.
 - Pay an employee the amount of wages owing up to a maximum of \$10,000.
 - Reinstate and/or compensate an employee in certain cases (e.g. Reprisals or Leave of Absence contraventions [no maximum dollar amount]).
 - Pay an administrative cost.
 - Pay an escalating monetary penalty (Notice of contravention).
 - \$250 per affected employee for 1st offence.
 - Can increase for 2nd and 3rd offences.

Provincial Offences Act

- **Part I Certificate of Offence:** \$295*
- **Part I Summons:** Fine up to \$1,000* (requirement to attend court).
- **Part III Prosecutions:**
 - **Individuals:** Fines up to \$50,000* and/or jail term up to 12 months.
 - **Corporations:** Fines up to \$500,000*.
- Name of anyone convicted of an offence and information about the offence, can be published on the internet.

* Plus Victim Fine Surcharge

Need More Information?

- **Employment Standards Information Centre:**
416-326-7160 or 1-800-531-5551
- Visit www.labour.gov.on.ca for:
 - *Your Guide to the ESA, 2000.*
 - Education, Outreach and Partnership (EOP) page for the Employer Workbook and interactive tools on issues like termination, severance and public holidays.
- Ontario Government E-Laws website:
<http://www.e-laws.gov.on.ca>