

# KNOW YOUR RIGHTS

## EMPLOYMENT STANDARDS

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### What are Employment Standards and why are they important?

- Employment standards in Ontario are outlined in the **Employment Standards Act (ESA)** and set out your minimum legal rights and entitlements as a worker.
- Employers are **legally required** to maintain their responsibilities listed in the ESA.
- Many workers do not know their rights and are vulnerable to exploitation and unfair treatment by employers.
- Understanding employment standards means being able to protect and defend your rights under the law.

### Who is covered by the ESA?

- Almost all people working in Ontario, whether unionized or not, are covered by the ESA.
- This includes international students and people working on most temporary work permits.

### Who is *not* covered by the ESA?

- Your job falls under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways;
- You are working in a program approved by a college of applied arts and technology or university (like a co-op or apprenticeship);
- You are a high school student working under a program authorized by the school board and that operates in the school that you are enrolled;
- Your work is part of a community participation program under the Ontario Works Act, 1997;
- You are a police officer; or
- You are a young offender working as part of a sentence or order of a court, or an inmate taking part in a work or rehabilitation program.

### Employment Standards Include:

- Hours of work and overtime
- Minimum wages
- Vacation pay and public holiday pay
- Wage deductions
- Termination
- Personal leaves

Please refer to the full **Know Your Rights** pamphlet for more information about employment standards

### Hours of work

The ESA sets out standards for the maximum hours of work by day and by week, including rules on overtime pay, breaks and rest periods.



### Daily Limit:

- The daily maximum number of hours in a workday is **eight hours**, unless the employer establishes a regular workday of more than eight hours, in which case the maximum number of hours is the number of hours in the regular workday.
- This daily limit of eight hours or the number of hours in a regular workday can be exceeded only if you agree to work hours in excess of the daily limit.

### Weekly Limit:

- **48 hours** is the maximum number of hours most workers can be required to work in a week.
- The weekly maximum can only be exceeded (up to 60 hours) if you agree in writing and the hours are approved by the Director of Employment Standards at the Ministry of Labour.

### Rest Periods / Breaks:

- You are entitled to a paid, **30-minute eating period** after no more than 5 hours of work, which you can agree with your employer to split into two shorter breaks.
- You are entitled to **24 consecutive hours off** work each work week, or **48 consecutive hours off** every two work weeks.

### Know Your Rights!

Your Employer **cannot** suspend, reduce your pay, punish you, or threaten you with termination because you

- ask questions about your employment rights; or
- insist that your employment rights be respected

## Minimum Wage

As of March 31, 2010, the minimum wage for most Ontario workers is **\$10.25 / hour**.



## Overtime Pay

- Overtime pay is calculated on a **weekly basis**.
- Every hour you work **after 44 hours** a week is considered **overtime**.
- A rate of 1.5 times your regular wage ("time and a half") should be paid for every hour you work over 44.
- Even if you agree to work more than 48 hours a week, your employer must pay you "time and a half" for every hour worked after 44.
- An employee and an employer can agree in writing that the employee will receive **paid time off instead** of overtime pay. This is called "banked" time or "time off in lieu".
- An employer and an employee can't agree that the employee will give up his or her right to overtime pay.

## Public Holiday Pay

A Public Holiday (also called a Statutory Holiday) is established by law as a non-working day, which most workers receive as a day off with pay.

- There are **9 paid public holidays** in Ontario: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, and Boxing Day (December 26).
- If you qualify for holiday pay, you are entitled to take these days off work and receive public holiday pay.
- If a public holiday falls during your vacation or on a day that you are not regularly scheduled to work, you are entitled to another day off with public holiday pay.

If you **work on a public holiday** you are entitled to:

- **Public holiday pay plus** premium pay of at least **1.5 times your regular hourly rate** for the hours worked on the public holiday; or
- Your regular rate of pay for the hours worked on the holiday, plus another day off with public holiday pay.

### Know Your Rights!

Your Employer **cannot** suspend, reduce your pay, punish you, or threaten you with termination because you:

- refuse to work more than the maximum daily or weekly hours of work; or
- refuse to sign an agreement to work more than the maximum daily or weekly hours of work, or to average your overtime

## Averaging Overtime

- Your employer may ask you to average your work hours over two or more weeks to calculate overtime pay.
- **Overtime averaging can result in** you receiving **less overtime pay** than you would have received if your hours were not averaged.
- Overtime hours can only be averaged if you and your employer establish an agreement and the employer has received approval from the Ministry of Labour's Director of Employment Standards.
- You are not obligated to average your overtime hours and should not sign the agreement if you do not want to have your hours averaged.
- These agreements are to have an expiry date and can only be cancelled if you and your employer agree.

## How is my holiday pay calculated?

- Public holiday pay is calculated by taking the total amount of your regular wages (including vacation pay) in the four weeks before the work week in which the public holiday occurred, divided by 20.
  - Eg: 80 hours worked in 4 weeks = 4 hours pay
- Calculate your public holiday pay using the Ministry of Labour's on-line calculator: [http://www.labour.gov.on.ca/english/es/tools/disclaimer\\_php.php](http://www.labour.gov.on.ca/english/es/tools/disclaimer_php.php)

## You qualify for public holiday pay, unless:

- You fail without reasonable cause to work on the last regularly scheduled day of work before the public holiday of your first regularly scheduled day of work after the public holiday (this is the "last and first rule"); or
- You fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.
- See KYR for special rules pertaining to certain industries

## Vacations & Vacation Pay

- You are entitled to an **annual vacation of at least 2 weeks with vacation pay equal to 4%** of your annual earnings, including any overtime pay.
- Your employer must pay you any outstanding vacation pay upon termination.
- You may be permitted to work through some or all of earned vacation time with your employer's agreement and approval from the Ministry of Labour's Director of Employment Standards.
- If you work through some or all of earned vacation time, the employer must still pay you your outstanding vacation pay.



### Know Your Rights! International Students

If you are an international student working on or off campus, **the ESA applies to you.**

An employer **cannot** violate any of the employment rights covered under the ESA, including:

- hours of work
- overtime
- holiday pay

If your employer has tried to violate any of your rights, contact the Ontario Ministry of Labour.

## Wage Deductions

There are only three types of deductions that an employer can legally make from an employee's wages:

### Statutory Deductions:

- These are the deductions that employers must make due to federal and provincial laws. Statutory deductions include Income Tax, Canada Pension Plan, and Employment Insurance.

### Written Authorization:

- An employer can make deductions to your pay if you provide written consent. Written consent must include the amount being deducted and provide a method of calculating the specific amount to be deducted.

### Court Orders:

- A court may determine that an employee owes the employer money, the court does not have to specifically say an employer may deduct the amount from wage payment, but an employer may do so if the court rules in the employers.

Even with a signed authorization, an **employer cannot make a deduction from your wages** to cover a loss due to **"faulty work"**, like a mistaken credit card transaction, a customer who fails to pay, work that is spoiled, or a situation where tools or company property is damaged.

Earnings Information	Current	Year to Date
Annual Gross	4,389.30	
Deductions	0.00	
Net Pay	0.00	
Overtime	0.00	
<b>EARNINGS TOTAL</b>	<b>4,389.30</b>	<b>5,277.30</b>
Pre-Taxable Gross	351.14	418.18
Net Taxable Gross	3,971.12	4,859.12
Statutory & Other Deductions	Current	Year to Date
Federal Withholding	311.17	311.17
Provincial Federal Withholding	0.00	0.00
State Withholding	135.96	135.96
Other Withholding	0.00	0.00

## What can I do if my employer is violating my employment rights?

- Inform:** Tell your employer that your employment rights have been violated under the ESA: some employers don't know the law and need to be informed of their responsibilities.
- Document:** Keep records of all correspondence and conversations with your employer, including dates, times and details.
- Gather Allies:** If your fellow employee are also being affected, speak to them and ask them to keep records of their experiences.
- File a Claim:** If your employer persists in violating your rights, contact the Ministry of Labour to **file a claim**. The Ministry will begin an investigation of your situation. If your employer terminates you because you have defended your employment rights, you can **file a claim for reprisal** with the Ministry.
- Get Support:** Several organizations help workers defend their employment rights and navigate the Ministry of Labour processes. Contact the Workers' Action Centre or the York Community Services Legal Clinic for help and advice.

## Personal Emergency Leave

If your employer regularly employs more than 50 employees, you have the right to take **up to 10 days of unpaid job-protected leave** each calendar year due to illness, injury, and certain other emergencies and urgent matters.

- You are required to advise your employer that you are taking leave.
- If you can't advise your employer of the leave before taking it, you must tell them as soon as possible after commencing the leave.
- If you are absent for only part of a day, your employer might treat this leave as a full day.
- You may be required to provide evidence of the circumstances related to the leave.



## What Events are Covered by Personal Emergency Leave?

- Personal illness, injury or medical emergency;
- Death, illness, injury, medical emergency or an urgent matter relating to the following of your **family members**:
  - Your spouse (same or opposite sex, married or common-law)
  - Your parent, step-parent or foster parent
  - Your grandparent or step-grandparent
  - Your child, step-child, foster child, grandchild or the spouse of your child
  - Your sibling
  - Any relative who is dependent on you for care or assistance.

## Termination Notice and Pay

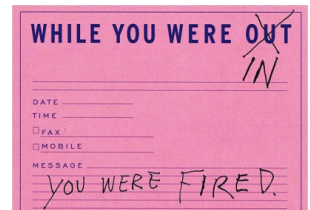
Under the ESA, your employment is considered terminated if the employer:

- Dismisses you, refuses or is unable to continue to employ you;
- “Constructively” dismisses you – by negatively changing your working conditions so much that you feel dismissed – and you resign in response, within a reasonable time; or
- Lays you off for a period that is longer than a “temporary lay-off” including lay-offs due to the bankruptcy and insolvency of the employer (*See KYR regarding temporary layoffs*).

Employers are **not legally** required to tell their employees why they are being laid off except in mass layoff situations.

## Notice of Termination

If you've been employed somewhere for **3 months or more**, your employer must provide you with a **written notice of termination** before terminating you.



The **minimum notice** you must receive depends on how long you're worked somewhere:

- More than 3 months but less than 1 year = 1 week
- More than 1 year but less than 3 years = 2 weeks
- More than 3 years, but less than 4 years = 3 weeks
- Each year of employment adds another week of required notice, up to a maximum of 8 weeks.

## Termination Pay

Your employer can terminate you without written notice or with less notice than is required *if* they pay you **termination pay**. Termination pay is a lump sum of money equal to the amount of money you would have earned had you been given written notice.

### Know Your Rights Fact Sheet Series

For more information about your rights at work, check out the other fact sheets in the KYR series:

- Issue #2: Health & Safety at Work
- Issue #3: Human Rights at Work
- Issue #4: Unions

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- York International

## For more information and support

- *Know Your Rights* (full version): [www.yorku.ca/crws/rights](http://www.yorku.ca/crws/rights)
- Employment Standards, Ontario Ministry of Labour: [www.labour.gov.on.ca/english/es](http://www.labour.gov.on.ca/english/es) | 416.326.7160 | 1.800.531.5551
- Ontario Labour Relations Board: [www.olrb.gov.on.ca](http://www.olrb.gov.on.ca) | 416.326.7500
- York Community Services Legal Clinic: [www.ycservices.com](http://www.ycservices.com) | 416.653.5400 x 5
- Workers' Action Centre: [www.workersactioncentre.org](http://www.workersactioncentre.org) | 416.531.0778