Chinese & South East Asian Legal Clinic

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華越柬寮法律援助中心

Employment Standards Act

Workers' rights in Ontario

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Introduction

The Employment Standards Act (ESA) is a key piece of legislation to resolve workplace disputes and protect employees' rights in Ontario.

This brochure contains important information from the ESA about an employee's basic employment rights.

This brochure contains only general legal information. The law can change, and each person's situation is different. If you have any question about your specific situation, please consult your local community legal clinic, community agency or a lawyer.

This brochure is published by Chinese and Southeast Asian Legal Clinic. Its contents have been extracted from the following sources:

- Employment Standards Act 2000
- Ministry of Labour's Guide to the Employment Standards Act

Overview of the Employment Standards Act

The ESA provides protection for most employees in Ontario, including full-time, part-time, temporary workers, and students. Employers cannot contract out of an employment standard covered by the ESA, and employees cannot be forced to waive their rights under the ESA. Any contracting out or waiver of employment standard would be void.

However, not all occupations are subject to the protection of the Act. For example, the ESA does not apply to industries that fall under federal jurisdiction such as airlines, postal service, the federal civil service, banks, radio and television stations and inter-provincial railways.

Some industries and jobs also has exemptions provision under ESA.

The following is an overview of the ESA:

1. Wages and Tips

Minimum Wage

Minimum wage is the lowest rate an employer has to pay an employee. Full-time, part-time and temporary employees as well as those paid an hourly rate, commission, flat rate, piece rate or a salary are all entitled to minimum wage.

Starting from October 1, 2020, the minimum wage will be increased or adjusted each year by the inflation rate. The new rates to come into effect on October 1 will be published on or before April 1 of every year, beginning in 2020.

Minimum Wage	January 1, 2018 to September 30, 2020	October 1, 2020 to September 30, 2021
General employees	$14 /hour	$14.25
Liquor Server	$12.20/hour	$12.45
Student employees under 18	$13.15/hour	$13.40
Homeworkers*	$15.40/hour	$15.70

*Homeworkers are people who perform paid work at home such as sewing, answering telephone calls, preparing food for sale, writing

computer software for their employers in their own homes.

If the homeworker's wages are calculated using units of work completed, it still cannot be below the minimum wage threshold for general employees.

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

To find the most recent minimum wage requirements, please visit Ministry of Labour website at https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wagewww.labour.gov.on.ca.

Tips and Gratuities

A tip or gratuity is considered a payment voluntarily made to or left for an employee by a customer who intended for it to be kept by the employee or shared among the employees in a tip pool.

Employers are prohibited from withholding or making a deduction from an employee's tips or gratuities and they cannot require employees to return or give their tips or gratuities to the employer. If an employer withholds or deducts from an employee's tips or gratuities, this would be considered wages owed to the employee.

Employers can keep the tips and other gratuities that they earn for themselves and can only share the tip pool if they perform to a substantial degree the same work performed by the employees who commonly receive or share tips or other gratuities in the redistribution.

2. Hours of Work

For a regular workweek, 8 hours is the daily maximum daily hours an employee can be required to work and the weekly maximum hours is 48 hours. To exceed the 48 hour limit to a maximum 60 hours work week, the employer must have a written agreement with employee, and receive the approval of the Ministry of Labour.

An employee can cancel this agreement by giving the employer 2 weeks' written notice, while an employer can cancel the agreement by providing reasonable notice.

The working hour rule does not apply to the following industries: firefighting, construction, fishing, hunting, working from home, building management, funeral homes, farming, harvesting, housekeeping, real estate, , gardening, pool management, and executive positions…etc.

Breaks

Employee are entitle to a 30 minute unpaid eating period after 5 consecutive hours of work. Employers must provide employees with unpaid eating periods as described above but do not have to give employees any other kind of break. However, if employees who are required to remain at the workplace during a 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. If an employee is free to leave the workplace during breaks, the

employer does not have to pay for the break time.

When calculating overtime hours, paid and unpaid breaks will not be counted towards the total work time.

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, he or she must be paid the higher of the following two amounts:

- 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.

However, this rule does not apply to:

- students working at a children's camp, providing instruction to or supervising children, or in a recreational program run by a charity(including students over 18 years old)
- employees whole regular shift is 3 hours or less
- if the cause of the employee not being able to work at least 3 hours was beyond the employer's control

Hours Free From Work

In most cases, an employee must receive at least 11 consecutive hours off work each day. This requirement cannot be altered by a written agreement between the employer and employee.

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 in writing that the employee will receive less than eight hours off work between shifts.

3. Overtime Work

For most occupations, overtime begins after 44 hours of work in a work week. Workers must receive overtime pay, which is 1.5 times of regular pay for each additional hour worked over 44 hours. Overtime is calculated on a weekly basis. This applied to workers paid on hourly basis, on a fixed salary, or have a fluctuating salary.

If the employee and employer both agree, overtime pay can be replaced with paid time-off. For each overtime hour work, employee is entitle to 1½ hours off with paid. Paid time-off must be taken within three months from the week in which the overtime was earned or if both sides agree in writing, this time limit can be extended to 1 year. If an employee's job ends before he or she has taken the paid time off, the employee must receive overtime pay.

If an employee's hours of work change from to day but his or her 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 t overtime pay.

Calculation Example 1

Ms. Chen's regular pay is $18.00 an hour. She worked 53 hours this work week.

1. First Ms. Chen's overtime rate of pay is calculated: $18.00 X 1½ = $27.00.
   Ms. Chen's overtime rate of pay is $27.00 an hour.
2. The amount of overtime she worked is calculated: 53 hours – 44 hours = 9 hours of overtime.
3. Her overtime pay is calculated: 9 hours X $27.00 an hour = $243.00.
   Ms. Chen is entitled to $243.00 in overtime pay.
4. Finally, Ms. Chen's regular salary and overtime pay are added together is **$1035 =**
   Regular salary: **$792.00** (44 hours x $18.00 an hour) + Overtime pay: **$243.00**

Calculation Example 2

Mr. Ma's salary is $700.00 a week. He worked 50 hours this work week.

1. The regular (non-overtime) hourly rate of pay is calculated: $700.00 ÷ 44 = $15.91
   He was paid a regular rate of $15.91 for each hour he worked up to and including 44 hours.
2. His overtime rate is calculated: $15.91 regular rate X 1½ = $23.87
3. Then the amount of overtime he worked is calculated: 50 hours - 44 hours = 6 hours of overtime
4. His overtime pay is calculated: 6 hours X $23.87 an hour = $143.22
   He is entitled to $143.22 in overtime pay.
5. Finally, Mr. Ma's regular salary and overtime pay are added together:
   Regular salary: $700.00, Overtime pay: $143.22

   Total pay: $700.00 + $143.22 = $843.22

Overtime calculation on Averaging agreements

The law allows an employer and employee to sign an agreement for the purposes of calculating overtime pay, allowing them to average the employee's hours of work over a specified period to a maximum 4 weeks (176 hours) period.

These averaging agreements must get the Ministry of Labour approval and cannot exceed 2 years.

If the averaging method to calculate work hours is used, an employee would qualify for overtime pay if the average hours worked per week in the specified averaging period exceed 44 hours. For example, based on a four week averaging calculation method, if an employee worked 50 hours in the first 2 week, 38 hours in the third week and 38 hours in the fourth week, the total hours worked during the four-week period is 176 hours, The average hours worked per week is 44 hours; there is no overtime paid.

Overtime rules do not apply to the following industries: firefighting, , fishing, hunting, , building management, farming, taxi services, harvesting, real estate, gardening, pool management, and executive positions…etc. .

4. Public Holiday

Ontario has nine paid public holidays:

New Year's Day	Family Day
Good Friday	Victoria Day
Canada Day	Labour Day
Thanksgiving Day	Christmas
Boxing Day	

An employee can take time off on a public holiday, and still receive public holiday pay. The formula to calculate public holiday pay is the total regular wages earned by the employee in the four weeks prior to the public holiday divided by 20. The amount of wages earned in these four weeks includes vacation pay, but not overtime pay.

Calculation Example

Example 1 :

If you worked 5 days a week, and earned $100 per day, the calculation is:

- Daily wage = $100 x 5 days = $500, the total wages for the four weeks is $2000 ($500/week x 4)
- **$2000 divided by 20 = $100 (public holiday pay)**

Example 2 :

If you worked 5 days a week, and earned $100 per day, you took two weeks paid vacation leave during the four weeks before the public holiday and received $1000 vacation pay.

The calculation would be:

- For 10 days work in the 4 weeks, your wages were = $100 x 10 days = $1000,
- You received $1000 vacation pay during the four weeks,Total wages for the four weeks is $2000 ($1000 + $1000)
- **Public holiday pay: $2000 divided by 20 = $100**

If the public holiday does not fall on a regular work day for the employee or if the employee is taking time-off, they can still receive public holiday pay or time-off in lieu of holiday.

If the employee worked on the holiday, they have 2 choices:

a) Receive wages for the work day and be compensated with a substitute day off with public holiday pay or;
b) Receive 1.5 times the wages for a work day, plus pay for a public holiday (will not be given a substitute day off).

The substitute day off must be scheduled in the 3 month period following the public holiday. If both sides agree in writing, this time limit can be extended to 1 year.

In the following situations, the employee will lose their public holiday pay:

- If the day before or after the public holiday is a regular work day and the employee has failed to show up at or left the workplace without reasonable cause (if the employee is on paid annual leave, the regular work day would be 1 day before or after the leave).
- If the public holiday falls on a regular work day for the employee and the employee has no reasonable cause for leaving the workplace early.
- If the employee has agreed to work on a public holiday but fails to show up without reasonable cause.

Reasonable cause refers to a situation that is beyond the control of the employee such as illness, injury, personal or family emergency. The employee has the responsibility to prove that they are unable to work.

Rules on public holidays do not apply to: Farming, firefighting, fishing, hunting, building management, gardening, taxi drivers, real estate, and pool management…etc. Construction workers are entitled to public holiday pay that is the equivalent to 7.7% of their regular wages.

5. Vacation time and Vacation Pay

The amount of vacation time off and pay will depends on how long employee work for one employer.

Employees that work with one employer less than five years of employment are entitled to **2 weeks** of vacation time off after each 12-month vacation entitlement year. Employees with five or more years of employment are entitled to **3 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 and pay for the period from the hiring date to the day before the vacation entitlement year begins (called a "stub period").

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

- Temporary 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).

The paid vacation time must be used within 10 months after the employee qualifies for it. Vacation time arrangements are negotiated between the employee and employer, and are typically 1 or 2 weeks in duration. An employer and an employee may agree through a signed, written agreement that the paid annual vacation time be split into periods shorter than 1 week.

Vacation pay

Vacation pay for employee worked for one employer **less than 5 years** must be at least **4%** of the total annual gross wages earned during the entitlement year or stub period (where that applies).

If worked for one employer **5 years or more**, the vacation pay must be at least **6%** of the total annual gross wages earned during the entitlement year or stub period (where that applies).

The annual gross wage do not include vacation paid out or earned but not yet paid, tips and gratuities, transportation allowances, bonuses not relate to hours of work, travel allowances, severance pay, etc

The general rule is employer has to pay vacation pay before employee vacation starts. But they can also pay it on the every day regular wages pay period. If vacation already paid, employee will get the time off without pay.

When employment ends, an employee is entitled to be paid the vacation pay that she has earned and that has not yet been paid out. Vacation pay is also payable on termination pay but not on severance pay. An employee who is on leave under ESA will not lose vacation entitlement. An employee who is on unpaid leave can defer taken vacation entitlement until the end of leave

(or until some later date if the employer and employee agree).

The rules of vacation pay do not apply to the following industries/sectors: farming, fishing, and real estate…etc.

6. Establishing Agreements

The Employment Standards Act allows employers and employees to negotiate terms in written agreements that fall below the minimum standard requirements in the Act for hours of work, overtime calculation and vacation time off. These types of agreements must be in writing; as oral agreements are not legally binding.

Hours of Work:

An employer and an employee can establish an agreement to extend the regular 8 hour work day or 48 hour work week to 60 hours per 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 prepared by the Director of Employment Standards that describes the hours of work and overtime pay rules in the ESA. In most cases, an employee can cancel an agreement to work more hours by giving the employer two weeks' notice **in writing or electronically**, an employer can cancel the agreement by providing reasonable notice to employees. Once the agreement is revoked, an employee is not permitted to work excess daily or weekly hours even if the employer has an approval from the Director of Employment Standards for excess weekly hours.

Calculating Overtime Work:

An employer and an employee can establish an agreement to average the employee's hours of work over a specified period of 2 weeks or more instead of calculating pay based on one week's work hours. This agreement cannot be unilaterally canceled and must specify an expiry date, which cannot be more than 2 years after the agreement is signed. After the agreement expires, a new agreement can be established.

Paid Annual Vacation Time:

An employer and an employee can establish an agreement to split paid annual vacation time into periods shorter than 1 week instead of taking the usual 1 week off.

A written agreement will be considered void if:

- The employee did not voluntarily agree to sign the agreement, but was forced to do so.
- The agreement does not contain the signatures of both parties.
- The conditions of the agreement are unclear and ambiguous.
- At the time of signing the agreement, the employee did not understand the contents of the provisions.

As well, the agreement provisions can only be applied to the future, not traced back to past situations.

If the employer retaliates against the employee, for example, orders their dismissal, because the employee refuses to sign the agreement, the employer is violating the Employment Standards Act. The employee may file a complaint to the Ministry of Labour. If the employee is dismissed as a result of exercising their labour rights and entitlements, the Ministry of Labour may order

the employer to reinstate the employee or compensate them for their losses.

7. Leaves of Absence

Most of the short- and long-term leaves under ESA are unpaid, job-protected leaves. Family caregiver, sick, family responsibility, bereavement, critical illness, domestic or sexual violence, child death, and crime-related child disappearance are different types of leaves. The purposes of each type of leaves, their length, the employed requirement, family member's eligibility criteria vary.

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).

When an employee is on leave, the employer must continue to provide the employee with certain company benefit plans, employee continue to earn credit for length of employment, length of service, and seniority. In most cases, after the leave period ends, the employer must try to the best of its ability to reinstate the employee to their former position or assign then to another position of similar rank or seniority. The employee must be paid no less than what she/he was 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 he or she had not been on leave, the employer must pay the higher wage when the employee returns from leave.

Short time unpaid leave:

All full-time, part-time, permanent or contract employees have worked for an employer for at least **two consecutive weeks** are entitled to three type of unpaid short leaves per calendar year. They are sick, bereavement and family responsibility leave.

These type of leaves cannot carry over unused leave days to the next calendar year. It 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. But if employee takes only part of a day leave, the employer can count it as a full day of leave.

Sick leave:

Employees entitled to up to 3 days of job protected unpaid sick leave every calendar year due to own personal illness, injury or medical emergency.

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.

Bereavement leave

Employees are entitled to 2 days of unpaid bereavement leave each calendar year because of the death of specific family members.

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.

Family Responsibility leave

Employees are entitled to 3 days of unpaid family responsibility leave each calendar year because of specific family member illness, injury, medical emergency or urgent matters which is an event that is unplanned or out of the employee control, and can cause serious

negative consequences, including emotional harm, if not responded to.

Short leave specific family members are:

- 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

Employee must inform the employer before starting the above leave. Notice does not have to be given in writing. Oral notice is sufficient.

The employer may ask the employee to provide evidence "reasonable in the circumstances" to prove eligibility. There are certain information the employer can ask. Employer cannot require a medical note or ask for information about the diagnosis or treatment of the employee's or family member medical condition for sick leave and family responsibility leave. Proof for bereavement leave may be a death certificate, death notice or obiturary.

There are special rules for short leaves apply to some occupations.

Longer time leaves:

Domestic or Sexual Violence Leave

All employees who have been employed by their employer for at least **13 consecutive weeks** are entitled to this leave.

Domestic or sexual violence leave is a job-protected leave of absence. There are 2 lengths of domestic or sexual violence leave in each calendar year:

- up to 10 days (5 pay and 5 unpaid) and
- 15 weeks unpaid leave 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.

"Child" means a child, step child, foster child or the child you are legal guardian of, and who is under 18 years of age.

The leave could be taken for any of the following purposes:

- To seek medical care because of an injury or disability caused by violence
- To access help from victim services organization
- To seek psychological or other professional counselling
- To move temporarily or permanently
- To seek police or legal system's help for violence.

The 10 days and 15 weeks unpaid leave could be taken separately or consecutively. If an employee takes only part of a day, the employer can count it as a full day leave. If an employee takes only part of a week, the employer can count it as a full week leave.

While an employee is required to notify the employer in advance that he or she is 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 the leave if the

employee fails to do so. Employer could ask for the evidence and proof for taking the leave that's reasonable in the circumstances. The proof for this leave could be police reports, court documents and letter from a health professional or a counsellor.

Pregnancy and Parental Leave

All full-time, part-time, permanent or contract employees has employed for the same employer for at least **13 weeks** will be entitled to unpaid pregnancy and parental leave. Employees are not required to have actively worked 13 weeks but need to have been hired by the same employer 13 weeks before leave begin.

Pregnancy Leave

A pregnant employee can get up to 17 weeks of pregnancy leave. Pregnancy leave can start as early as 17 weeks before the due date, or as late as the day on which the infant is born. Employees can choose the start date of the pregnancy leave, but must provide their employer with two weeks' notice. The employer can request that the employee provide a doctor's note to confirm the due date. The employer cannot force the employee to take time off because of the employee's health/physical condition or put limitations on their work as a result of their pregnancy.

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, she may continue on the pregnancy leave until the birth of the child. If she has a live birth, the pregnancy leave will end on the date of the birth and then, in most cases, she will be able to commence her parental leave.

The employee may choose to have a shorter leave period. The pregnancy leave must be taken all at once and cannot be split into shorter periods.

An employee who has a miscarriage or stillbirth more than 17 weeks before her due date is not entitled to a pregnancy leave. If the miscarriage or stillbirth is within the 17 weeks preceding the due date, she is still eligible for at least 17 weeks of unpaid pregnancy leave and ends on the date that is the later of:

- 17 weeks after the leave began; or
- 6 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.

Notice requirements for pregnancy leave

An employee must give her employer at least two weeks' written notice before beginning her pregnancy leave.

Changing the date a pregnancy leave starts

Suppose an employee has given notice to begin a pregnancy leave. She can begin the leave earlier than she originally told her employer if she gives her employer new written notice at least two weeks before the new, earlier date.

Parental leave

Employees must have been employed by the same employer for at least 13 weeks before taken parental leave. Employee who have become new parents can take unpaid parental leave when a baby or child is born or first comes

into their care. Parental leave is not part of pregnancy leave and so a birth mother may take both pregnancy and parental leave. In addition, the right to a parental leave is independent of 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 her pregnancy leave or 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.

After the end of her pregnancy leave, an employee generally goes on parental leave. The employee may also return to work and start her parental leave after the child comes into her care (e.g. perhaps the baby is still in the hospital's care). Other employees who qualify for parental leave must begin their parental leave no later than 78 weeks after their baby is born or comes into their care.

Notice requirements for parental leave

An employee must give their employer at least two weeks' written notice before beginning a parental leave.

Employees who have taken pregnancy leave are entitled to 61 weeks of parental leave; employees who did not take pregnancy leave are entitled to 63 weeks of parental leave. An employer cannot require an employee to return from leave early. Employees can take a shorter leave if they wish but must give 2 weeks' notice to their employer. Parental leave must be taken all at one time after it is started and cannot be split into separate periods.

Pregnancy and parental leaves are unpaid. Qualified employees may apply to Service Canada's Employment Insurance program to receive EI maternity or parental leave benefits.

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. 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, contact Service Canada's Employment Insurance Automated Telephone Information Service at 1-800-206-7218.

Family Medical Leave

All full-time, part-time, permanent or contract employees are entitled to up to 28 weeks of unpaid family medical leave within a 52 weeks period to care for a family member with a serious medical condition with a significant risk of death occurring within a period of 26 weeks. The family member must have a doctor's certificate to prove that he/she has a serious illness with a significant risk of death within a period of 26 weeks. The specified family members do not have to live in Ontario in order for the employee to be eligible for family medical leave.

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.

The 28 weeks of family medical leave does not have to be taken all at once; the employee may split them into shorter periods and take them separately. However, the total leave time must be used within a 52 week period. The 52 week period begins the day a doctor's certificate is presented. Leave time is calculated in weeks (Sunday to Saturday). Even if the employee does not take a full week off, the employer may still calculate it as an entire week.

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 week, the employee will be entitled to a 28 week family medical leave for each of the specified family members.

The 28 week family medical leave ends when:

- the last day of the week in which the family member dies
- the 52 week period expires
- the 28 week medical leave ends.

Qualifying employees may also receive up to 26 weeks of compassionate Benefit of employment insurance benefit to care for the ill family member.

Family Caregiver Leave

All full-time, part-time, permanent or contract employees are entitle to up to 8 weeks per calendar year to provide care or support to certain family members for whom a qualified health practitioner has issued a certificate stating that he or she has a serious medical condition. One of the main differences between family medical leave and family caregiver leave is that the employee's family member who has a serious medical condition **does not** have a significant risk of death occurring within a period of 26 weeks

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; and

- 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.

The 8 weeks of family caregiver leave do not have to be taken all at once, and the employee may split them into shorter periods and take them separately. However, if the employee takes leave for periods of less than a full week, they are considered to have used up 1 week of their 8-week entitlement.

An employee must inform the employer in writing that he or she will be taking a family caregiver leave of absence. If an employee has to start a family caregiver leave before notifying the employer, he or she must inform the employer in writing as soon as possible after starting the leave. If the employee does not take the 8 week leave all at once, the employee is required to provide notice to the employer with respect to each part of the leave.

While an employee is required to tell the employer in advance that he or she is 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 and medical leaves if the employee fails to do so.

Critically Illness Leave

All employees who have been employed by their employer for at least 6 consecutive months may be entitled to this leave. Critically illness leave is unpaid job-protected leave of absence of up to 37 weeks in relation to a critically ill child, or 17 weeks in relation to a critically ill adult family member within a 52-week period from the date the family member become ill.

A “child” means a child, step-child, foster child, child who is under legal guardianship, or a minor child who is a family member from the list below, and who is under 18 years of age.

An adult family member means a person who is 18 years of age or older, and is

- 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; and
- critical illness leave may also be taken for a person who considers the employee to be like a family member.

A “critically ill ” means a person’s baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. It does not include chronic conditions.

An employee who intends to take critically ill child care leave must inform the employer in writing that he or she will be taking such leave and provide the employer with a written plan that indicates the weeks in which he or she will take

the leave. The leave does not have to be taken all at once, employee can split them into shorter periods and take them separately. However, if the employee takes leave for periods of less than a full week, they are considered to have used up 1 week of their 37 or 17 weeks entitlement.

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 employer grants permission in writing or 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 the plan so long as the requirements of the ESA are met.

Organ donor leave

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 to a maximum of 26 weeks in total. All employees who have been employed by their employer for at least 13 consecutive weeks to entitled to this leave.

Reservist Leave

Employees who are reservists and who are deployed to an international operation or to an operation within Canada that is or will be providing assistance in dealing with an emergency or its aftermath (including search and rescue operations, recovery from national disasters such as flood relief, military aid following ice storms, and aircraft crash recovery) are entitled under the ESA to unpaid leave for the time necessary to engage in that operation. In the case of an operation outside Canada, the leave would include pre-deployment and post-deployment activities that are required by the Canadian Forces in connection with that operation.

In order to be eligible for reservist leave, you must have worked for your employer for at least six consecutive months. Generally, reservists must provide their employer with reasonable written notice of the day on which they will begin and end 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 one pay period, whichever is later. Also, the employer is not required to continue any benefit plans during the employee's 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 the return date is postponed.

Child Death Leave

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 within the 105-week period that begins in the week the child died.

“Child” means a child, step-child or foster child who is under 18 years of age. All employees who have been employed by their employer for at least 6 consecutive months may be entitled to this leave.

The total amount of child death leave could be shared among different employees for the

same death is 104 weeks. The leave must be taken in a single period.

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.

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, but not give notice does not lose their right to the leave.

Crime-related child disappearance leave

All employees who have been employed by their employer for at least 6 consecutive months may be entitled to this leave. Crime-related child 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 within the 105-week period that begins in the week the child disappeared.

“Child” means a child, step-child or foster child who is under 18 years of age.

The total 104 weeks of crime related child disappearance leave could be shared among different employees for the same event . 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.

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.

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.

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 or contact them at 1-800-622-6232.

8. Termination Notice and Termination Pay

Termination of employment involves the following situations:

- 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;
- An employee faces constructive dismissal, which happens when the employer unilaterally makes significant changes to the terms and conditions of employment, and which leads the employee to resign within a

reasonable timeframe. The changes may include a significant reduction in pay, work location, hours of work, authority and position. Constructive dismissal may also be a result of harassment or abuse from the employer. Constructive dismissal is a relatively complex subject; employees should consult the Ministry of Labour or a community legal aid clinic for detailed advice.

- An employee has been laid off for a period that is longer than a "temporary layoff."

Generally, an employer does not need to provide a reason for dismissing an employee. However, employers cannot dismiss an employee or penalize them for exercising their labour rights under the Employment Standards Act.

If an employee has continuously worked for an employer for 3 months, and the employee is dismissed without cause, the employer must provide the employee with either a written notice of dismissal or termination pay. The length of notice the employee is entitled to receive depends on the period of employment which includes the entire time the employee was actively working and any time that he or she was not working but the employment relationship still existed, such as during a temporary lay-off or on leave. The employer can choose to give the employee the required notice in written form or provide termination pay. The employer can also provide less notice than is required if they pay termination pay for the balance of the notice period. The employer must pay the employee's termination pay within 7 days after the date of termination or on the employee's next regular pay date, whichever is later

Weekly termination pay is the equivalent of an employee's regular wages for 1 week. This does not include overtime pay, vacation pay, public holiday pay, and severance pay. If the employee does not get paid a fixed weekly wage or is paid on an hourly rate, the weekly termination pay will be the equivalent of average weekly pay over the last 12 weeks. If the employer chooses to pay termination pay in lieu of the notice period, they must also issue vacation pay that is 4% or 6% (where applicable) of the termination pay. During the statutory notice period, the employer cannot may not force an employee to take paid vacation or reduced wages.

The following chart outlines the periods of statutory notice required:

Length of Employment	Notice Required
3 months or less	None
3 months but less than 1 year	1 week
1 year but 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

a) Mass Termination Notice:

If a company has more than 50 employees, and the employees will be permanently dismissed within 4 weeks, they are entitled to receive a longer notice or more termination pay. The employer must submit form 1 to the Director of Employment Standards when mass termination occurs. The employer must post a copy of the form 1 submitted in workplace on the first day of the notice. The length of notice is determined by

the number of employees being dismissed and is unrelated to the employees' length of employment.

Notice periods required for mass termination:

- 50 to 199 employees: 8 weeks
- 200 to 499 employees: 12 weeks
- 500 or more employees: 16 weeks

The mass termination rules do not apply if:

- The number of employees being dismissed within a 4 week period is less than 10% of the total number of employees. The total number of employees consists of those who have been employed by the organization for 3 months or more.
- The terminations are not caused by the permanent discontinuance of all or part of the organization's operations.

b) Temporary Layoff Timeframe

Temporary layoffs are subject to the following 3 restrictions:

1. No more than 13 weeks of layoff in a period of 20 consecutive weeks
2. More than 13 weeks of layoff in a period of 20 consecutive weeks, but less than 35 weeks of layoff in a 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 employee under an employee insurance plan such as a medical or retirement plan, and the employee continues to make his/her contributions to maintain the employee's benefits plan; or
   - The employee receives supplementary unemployment benefits in addition to wages from the company; or
   - Aside from company wages, the employee isn't receiving supplementary unemployment benefits because they are employed elsewhere; or
   - The employer recalls the employer to work within the timeframe approved by the Ministry of Labour; or
   - The employer signs a temporary layoff agreement with a non-unionized employee to recall them to work within the specified timeframe.
3. The employer signs a temporary layoff agreement with a unionized employee for a longer layoff and recalls them to work within the specified timeframe. This applies only in unionized workplaces.

If the employer does not recall the employee to work within the timeframe of the temporary layoff, the layoff will then be considered permanent termination. The employer will have to provide termination pay according to the law.

c) Recall Rights

A recall right refers to the right of an employee on temporary layoff to be recalled to work. For unionized workplaces, the union representing the employee will clarify this right when establishing the collective agreement with the employer. An employee who has recall rights and is entitled to termination and severance pay because of a layoff of 35 weeks or more must choose to do one of the following:

- Keep his/her recall rights and give up termination and severance rights; or
- Give up recall rights and receive termination and severance pay.

If an employee is not represented by the union and choose to keep their recall rights or fail to make a choice, the employer must send the termination and severance pay to the Ministry of Labour, which holds the money in trust until the employee is recalled, gives up his/her recall rights or the recall timeframe expires. The union representing the employee must reach an agreement with the employer to make arrangements to hold the termination and severance pay in trust for the employee who choose to keep their recall rights or fail to make a choice. If they cannot reach an agreement and such arrangements cannot be made, the union must notify the Ministry of Labour and the employer. The employer must then send the termination and severance pay to the Ministry of Labour to hold in trust.

d) Exemptions to Notice of Termination

In the following situations, the requirements concerning notice of termination do not apply:

- The employee is guilty of serious misconduct, willful neglect of duty, insubordination with work instructions;
- The employee was hired for a specific length of time or to do a specific task. However, such an employee is entitled to receive notice of termination if:
  - The employment ends before the employment term or specified task is completed.
  - The employment time has exceeded the specified term or if the task is not completed more than 12 months after it was started.
  - The employment continues for 3 months or more after the term expires or the task is completed
- The employee refuses a reasonable offer of alternative employment from the employer
- The employee refuses to exercise his or her right to another position that is available under a seniority system.
- The employee is employed in construction.
- The employee builds, alters or repairs some types of ships
- The employee is on a temporary lay-off
- The employee does not return to work within a reasonable amount of time after being recalled from a temporary layoff.
- The employee is terminated as a result of a strike or lockout.
- The employee is terminated as an uncontrollable or unforeseen circumstance such as flood or fire which makes it impossible to continue employing worker (This does not include bankruptcy or operational failure).

These situations are relatively complex and potentially controversial. Employees should consult the Ministry of Labour or a community legal clinic for assistance.

9. Severance Pay

Terminated employees qualify for severance pay if they fulfill the following criteria:

- Worked for the employer for 5 or more years; and
- The employer has a payroll in Ontario of at least $2.5 million or has terminated the employment of 50 or more workers in the past 6 months.

The amount of severance pay depends on the length of an employee's employment; every year of employment equals one week's worth of severance pay to a maximum of 26 weeks of

severance pay. Weekly severance pay is the equivalent of 1 week's regular wages which doesn't include overtime pay. If the employee chooses to resign after receiving notice of termination from the employer, the employee is still entitled to severance pay. The employee must give the employer 2 weeks' notice during the notice period. An employee must receive severance pay either seven days after the employee's employment is severed or what would have been the employee's next regular pay day, whichever is later.

10. Working for Temporary Help Agency

If you find work through a temporary help agency and your wages are paid by the agency, then the temporary help agency is your employer. However, afterwards if you are hired by the workplace employer and the workplace employer issues your wages to you, the workplace employer becomes your employer. A temporary help agency must provide the written information about the agency, assignments and a copy of the information entitled "Your Employment Standards Rights: Temporary Help Agency Assignment Employees" to the assignment employee as soon as possible after the person becomes an employee.

Whenever you are assigned a job through a temporary help agency, the agency must provide the following information to you in writing: name of the workplace and contact information, general description of work, wages, working hours, paid period and pay day.

Temporary help agencies are prohibited from charging you a fee for becoming an employee of the agency, for assigning work to you, and for providing help preparing resumes or in preparing for job interviews. Temporary help agencies are also prohibited from charging you a fee for entering into a direct employment relationship with an agency's assignment employer unless the agency charges you the fee during the six months beginning on the first day you first begin working for the assignment company through the agency. If you are charged these fees, you can make a claim to the Ministry of Labour and ask for the return of your money.

The end of a job assignment does not mean the termination of the employment relationship between the worker and the temporary help agency. The employment relationship ends when you resign or the temporary help agency issues a termination notice to you. Termination of employment may also occur if it is triggered by a lay-off that lasts longer than a "temporary lay-off".

Temporary help agency has the same liability as employer for all provision under ESA. Worker of a temporary agency have the same rights as other employees to notice of termination.

Workers who are hired through a temporary help agency can recover unpaid wages from both the agency and the agency's assignment employer. Therefore, If the agency fails to pay the worker some or all of the wages including overtime and public holiday pay, the worker can file a claim against the agency *and* the assignment employer for the unpaid wages at the Ministry of Labour. The Ministry will enforce any order for unpaid wages against the agency and the client company because they are now jointly and

severally liable for any unpaid wages under the ESA.

11. Retail Workers

Rights to refuse to work Sunday:

ôNote 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.)

Employees who did not agree electronically or in writing at the time of hiring to work on Sundays may at some later point to work on Sundays or on a particular Sunday. They can later change their minds and decide not to work but must give at least 48 hours notice to employer.

12. Live-in Caregiver

Foreign workers working as live-in caregivers in Ontario have certain rights under the Employment Standards Act and the Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others) (EPFNA). Both legislation are enforced by the Ministry of Labour.

The ESA requires employers of foreign national live-in caregivers to provide all of their employees with a copy of the Employment Standards Poster within 30 days of the start of the employment. Employers are also required to provide an information sheet to the employee about their rights under the EPFNA. If the live-in caregiver's first language is not English, then the employer must provide a translated version of the Employment Standards poster and EPFNA information sheet if they are made available by the Ministry.

The EPFNA prohibits recruiters from charging any fees to caregivers for any service, and prohibits employers from recovering recruitment fees or other placement costs from caregivers. Recruiters and employers cannot ask caregivers to opt out of their rights under EPFNA or under the ESA. Recruiters and employers are also prohibited from taking or keeping any personal property of the caregivers, including passports, work permits, and birth certificates.

Live-in caregivers work for 8 hours a day and no more than 48 hours a week. If the work week hours go beyond 48, the employer must have a written agreement with the live-in caregiver and obtain approval from the Minister of Labour.

Live-in caregiver must have at least 11 consecutive hours off each day; and 24 consecutive hours off each week; or 48 consecutive hours off work in every two week period. Live-in caregivers must be paid overtime pay after working 44 hours of work each week.

An employer can take into account the room and board provided for the purposes of ensuring the minimum wage has been paid. The room provided must be fit for human habitation and reasonably furnished. The amounts are set out below:

- Private room weekly: $31.70
- Each meal $2.55, weekly maximum $53.55
- Room and board weekly: $85.25

For enquiries and contact with Ministry of Labour please call 1-800-531-5551 or 416 326-7160 or the Live-in Caregiver Hotline 1-866-372-3247.

13. Migrant Workers

As of November 20, 2015, all migrant workers under temporary foreign worker programs will be protected under the Employment Protection for Foreign Nationals Act, and the protections live-in caregivers enjoy under the EPFNA are equally available to all migrant workers. Under the EPFNA, migrant workers are protected against being charged fees by employment recruiters including fees associated with goods, benefits or services provided by the recruiters. Employers and recruiters are also prohibited from taking or keeping property belonging to foreign workers including passports and work permits. Migrant workers can also file claims to the Ministry of Labour to enforce their under the EPFNA.

14. Posting and Distributing Requirements

Employers must also provide all of their employees who are covered under the ESA, within 30 days of employment, with a copy of the Poster, either as a printed copy, a link to the document on an internet database, or as an attachment in an email. If the employee requests a copy of the poster in a language other than English, the employer must provide the translated version, if the Ministry of Labour has made it available, in addition to the English version.

All employers are also required to post the most recent version of the Employment Standards Poster in a conspicuous place in the workplace where it is likely to be seen by the employees. If the majority of the employees speak a language other than English in the workplace, the employer is required to a post a copy of the translated version, if the Ministry of Labour has made it available, next to the English version of the poster.

Procedures For Enforcing Rights Under the Employment Standards Act

1. Filing a claim with the Ministry of Labour

The Employment Standards Branch of the Ministry of Labour is responsible for handling claims filed by employees who are protected by the Employment Standards Act for violations of the ESA. Filing an Employment Standards Act claim is free.

Time Limit regarding claims:

The time limit to file a claim for all unpaid wages is 2 years from the date the wages came due.

Despite the limitations on recovery of wages and filing a claim, it **may** be possible to make a claim that would otherwise be outside the applicable time limit if:

- An employee has been told by the employer that he or she does not have an entitlement when the employer knew or could have taken steps to find out that the employee in fact does have an entitlement; and
- The employer's untrue statement was the cause of the employee's delay in filing his or her claim.

An officer can issue an order for all wages if it is determined that all wages were due and owing to the employee.

The Ministry of Labour will not accept a claim if:

- The employee's workplace is unionized. The affiliated union must represent the employee and file a claim based on the collective agreement signed with the employer.
- The employee has already taken other legal action and filed an application in court.

The applicant must fill out the Claim Form issued by the Ministry of Labour. The Claim Form can also be filled out online at: http://www.labour.gov.on.ca/english/es/forms/claim.php.

Once completed, the applicant must submit it in one of the following ways:

1 Online: https://www.esclaim.labour.gov.on.ca/welcome.aspx
2 By fax: 1-888-252-4684
3 By mail to:
Provincial Claim Centre
Ministry of Labour
70 Foster Drive, Suite 410
Roberta Bondar Place
Sault Ste. Marie, ON P6A 6V4

After receiving the claim form, the Ministry of Labour will begin their investigation. For instance, the Ministry may contact the employee or employer and request certain documents or conduct an investigation of the workplace. The Ministry may also ask the employee to provide documents such as copies of pay stubs, T4 slips, ROE.

The employment standards officer may arrange for the employer and employee to attend a fact finding meeting together where both sides can present relevant documents, evidence and their individual arguments and reasons. Both sides may attend the meeting with a representative or interpreter.

The employment standards officer may make a decision during the meeting or request further information and then notify the parties in writing of the decision. The decision will specify whether the employee's claim is successful, and the reason for the decision. If for example, the claim was for wages owing, the decision will direct the employer to pay the amount owed to the employee.

Both parties may file a request for review within 30 days after receiving the decision. The request for a review will then be dealt with by the Ontario Labour Relations Board. The Board will schedule a mediation meeting with the parties. If the matter is not settled, or there has not been an attempt at mediation, a hearing is scheduled. 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.

2. Taking Legal Action to Enforce Employee Rights

Aside from filing a claim with the Ministry of Labour, an employee may also choose to take legal action and sue his/her employer in civil court. The legal issues that can be dealt with through the courts are quite broad. One example is a wrongful dismissal claim which may lie outside of the scope of the Ministry of Labour, and which usually involves more highly paid professional employees seeking compensation in addition to the minimal entitlement under the ESA.

If the amount being claimed is less than $35,000, the employee can file a claim with the Small Claims Court.

If the amount being claimed exceeds $35,000, the employee must commence legal action with the Ontario Superior Court. This procedure is relatively complex and employees should retain a lawyer to represent them.

Ministry of Labour's Enforcement Powers

It is the responsibility of the Ministry of Labour to enforce the Employment Standards Act. If the Ministry receives a claim and after an investigation finds the employer to be in violation of the ESA, the employer must act according to the Ministry's decision and pay the unpaid wages. If the employer does not follow the Ministry's decision, the Ministry may issue the following orders:

1. Order to Pay Wages

If the employer does not follow the decision to pay unpaid wages, the Ministry may issue an Order to Pay Wages, forcing the employer to pay the wages owing. The order also requires the employer to pay administrative costs equivalent to 10% of the unpaid wages or $100, whichever is greater.

2. Compliance Order

If, for example, the employment standards officer discovers the employee was not given a meal break of at least 30 minutes after 5 consecutive hours of work, the Ministry may issue a compliance order directing them to comply with the relevant provisions of the Employment Standards Act.

3. Notice of Contravention

The Ministry of Labour may issue a Notice of Contravention with penalties if an employer violates the provisions of the ESA. If the employer does not keep proper payroll records or has contravened the mandatory posting requirements of the ESA, an officer can serve a notice of contravention with the following prescribed penalties:

- $250 for the first contravention;
- $500 for a second contravention in a 3 year period;
- $1000 for a third contravention in a 3 year period.

If an employer is found in contravention of any other provision of the ESA, the penalties prescribed are:

- $250 for the first contravention multiplied by the number of employees affected;
- $500 for a second contravention in a 3 year period multiplied by the number of employees affected;
- $1000 for a third contravention in a 3 year period multiplied by the number of employees affected.

For instance, if the employer is served an order by the Ministry of Labour to arrange a 30 minute meal break after a work period of 5 consecutive hours for 5 employees and the order is not complied with after a 6 week period, the Ministry may serve a Notice of Contravention with a penalty of $1250 (five employees x $250) along with a warning that further contraventions could result in further notices of contravention as well as prosecution.

4. Order to Compensate and/or Reinstate

If an employer violates the following provisions:

- Pregnancy, parental or personal emergency leave;
- The employee's refusal of a lie detector test;

- The right to refuse work on Sundays for retail employees;
- The employee's right to be free from reprisal as a result of exercising his/her rights under the ESA ;

The Ministry of Labour may issue an order to the employer directing them to compensate or reinstate the employee, or both. The compensation amount is decided by the Ministry of Labour, and there is no cap on the amount of the compensation order.

Where to get help?

For legal advice and representation, you can contact a lawyer or a community legal clinic. To find the community legal clinic in your area, you can phone Legal Aid Ontario, their toll free outside Toronto number is 1-800-668-8258, in Toronto, call
416-979-1446 or check their web site at www.legalaid.on.ca.

This booklet provides general information only. Each particular situation is different, and the law can change. If you have any legal problems, please contact a lawyer or local community legal clinic.