

FREQUENTLY ASKED QUESTIONS

Employment Standards Fact Sheet



What is the purpose of the Employment Standards Act, 2000 (ESA)?

The ESA sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

What work is not covered by the ESA?

Most employees and employers in Ontario are covered by the ESA. However, the ESA does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs 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
- Police officers (except for the Lie Detectors part of the ESA, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the ESA.

For a complete listing of other work categories not governed by the ESA, please check the ESA and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the ESA.

Are there rules in the ESA about wage increases?

The ESA does not address wage increases. It does provide for minimum wages. The minimum wage rates and scheduled increases are set out below:

Minimum Wage Increases for Specific Job Categories

| Minimum Wage Rate | February 1, 2006 | February 1, 2007 | March 31, 2008 | March 31, 2009 | March 31, 2010 |
|---|--|--------------------|--------------------|---------------------|---------------------|
| General Minimum Wage | \$7.75 per hour | \$8.00 per hour | \$8.75 | \$9.50 | \$10.25 |
| Student Minimum Wage | \$7.25 per hour | \$7.50 per hour | \$8.20 | \$8.90 | \$9.60 |
| Liquor Servers Minimum Wage | \$6.75 per hour | \$6.95 per hour | \$7.60 | \$8.25 | \$8.90 |
| Hunting and Fishing Guides Minimum Wage | \$38.75: Rate for working less than five consecutive hours in a day; \$77.50: Rate for working five or more hours in a day whether or not the hours are consecutive | \$40.00 | \$43.75 | \$47.50 | \$51.25 |
| | | \$80.00 | \$87.50 | \$95.00 | \$102.50 |
| Homeworkers Wage (110 % of the general minimum wage) | \$8.53 per hour | \$8.80 per hour | \$9.63 per hour | \$10.45 per hour | \$11.28 per hour |

Are sick leave and bereavement leave covered under the ESA?

Employees who work for employers that regularly employ at least 50 employees are entitled to personal emergency leave in certain situations.

Personal emergency leave is unpaid, job-protected leave of up to 10 days each year. It may be taken in the case of a personal illness, injury or medical emergency, or a death, illness, injury, medical emergency of, or urgent matter relating to, certain relatives. Please refer to *Your Guide to the Employment Standards Act* "Personal Emergency Leave" for more information.

Family medical leave is unpaid, job-protected leave of up to eight (8) weeks in a 26 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 stating that he or she has a serious illness with a significant risk of death occurring within a period of 26 weeks. Please refer to *Your Guide to the Employment Standards Act*: "Family Medical Leave" for more information.

Some employers have *paid* benefit plans for sickness, bereavement and other leaves of absence. These plans are not required by the ESA.

Must employees produce a doctor's note if asked for one by their employer?

An employer is allowed to ask an employee to provide evidence that he or she is eligible for a personal emergency leave. The employee is required to provide evidence that is reasonable in the circumstances.

If an employee is off sick, can he or she be fired?

If the sick day is a personal emergency leave day under the ESA, the employee cannot be penalized for taking the day off. Personal emergency leave days are job-protected under the Act.

Can employees take time off for doctor's appointments?

An employee whose employer regularly employs 50 or more employees is entitled to 10 personal emergency leave days per year. Personal emergency leave days can be used to attend a doctor's appointment if the appointment is because of an illness, injury or medical emergency. This leave is job-protected.

Do employees have to give notice to their employers when they quit their job?

The ESA does not address the issue of employees giving notice to the employer when they quit their job, except under the pregnancy and parental leave provisions, which require that employees give notice to their employer if they are not returning, and in cases where the employer is terminating the employment of 50 or more employees in a four-week period. Employees may be required to provide their employer with notice that they are quitting under other laws.

Can employees choose to take their employer to court for wrongful dismissal rather than filing a claim with the Ministry of Labour?

An employee can choose to sue an employer in a court of law for wrongful dismissal. However, an employee cannot sue an employer for wrongful dismissal *and* have a claim for termination or severance pay investigated by the ministry for the same termination or severance. The employee must choose one procedure or the other. Please refer to *Your Guide to the Employment Standards Act*, "Termination of Employment", and "Severance Pay."

What does the law say about coffee breaks?

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. The law does not require an employer to provide any breaks in addition to this eating period. However, if the employer does provide another type of a break, such as a coffee break, and the employee must remain at his or her workplace during the break, the employee must be paid at least the minimum wage for that time.

If an employee works late, is the employer required to provide a ride home?

Employers have no obligation to provide transportation to or from work under the ESA, although individual contracts of employment or a collective agreement may require it.

Do employers have the right to schedule an employee to work an overnight shift alone?

The ESA does not put restrictions on the timing of an employee's shift, other than the restrictions relating to hours of work (i.e., the maximum length of a work day, certain hours employees are entitled to be free of work, eating periods).

Do employees get paid more for working Sundays, or for working late at night?

There is nothing in the ESA that requires employees to be paid more for working Sundays, or late at night.

What if an employee has an agreement to receive more than the minimum requirements set out in the ESA?

If a provision in an agreement provides a greater right or benefit than an employment standard, then that provision applies.

Can an employee agree not to receive his or her rights under the ESA?

No employee can agree to give up his or her rights under the ESA (for example, the right to personal emergency leave). Any such agreement is invalid.

What are the rules about dress codes?

The employer is responsible for making decisions about dress codes, uniforms and other clothing requirements. An employer may make a deduction from wages to cover the cost of a uniform, or other clothing requirements if the employee has signed a specific written authorization permitting the deduction and setting out its amount.

However, a dress code cannot violate a collective agreement at the workplace, the *Ontario Human Rights Code* or the rules under the Occupational Health and Safety Act.

Are employees entitled to discounts on their employers' products?

This is not covered by the 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. The employer is also the one who determines how much the discount will be.

What about employment insurance and records of employment?

These come under the jurisdiction of the federal government. See the blue pages of your telephone book under "Employment, Human Resources and Social Development Canada, Employment Insurance Telemessage."

What are the rules about sexual harassment, harassment and discrimination?

For information, call your local Ontario Human Rights Commission office. See the Blue Pages of your telephone book under "Human Rights, Ontario Human Rights Commission."

Are pensions covered by the ESA?

The ESA does not require employers to provide pension plans. However, if they do, they are required to allow employees to continue participating in the plans (and certain other benefit plans, if these are provided) when on pregnancy, parental, personal emergency, family medical or declared emergency leave, under the Act. In addition, the ESA does not allow employers to discriminate on the basis of age, sex, marital status or same-sex partnership status in the provision of benefit plans, including pension plans, unless this is allowed by the Benefit Plans regulation under the ESA. For other information, call the Financial Services Commission 416-250-7250 or toll-free 1-800-668-0128.

What if the employer does not follow the ESA?

If an employee thinks the employer is not complying with the ESA, he or she can call the Employment Standards Information Centre at 416-326-7160 or toll free at 1-800-531-5551 for more information about the ESA and how to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the ESA. The ministry has a number of other options to enforce the ESA, including requesting voluntary compliance, issuing an order to pay wages, an order to reinstate and/or compensate, a notice of contravention, or issuing a ticket or otherwise prosecuting the employer under the Provincial Offences Act.

This fact sheet provides answers to frequently asked questions about minimum terms and conditions of employment as set out in the Employment Standards Act, 2000 (ESA) and its regulations. For complete information please refer to the ESA and the regulations.

For More Information

If you have questions about the Employment Standards Act, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160, toll free 1-800-531-5551, TTY 1-866-567-8893, or visit a ServiceOntario Centre in person.

Information and ESA publications can be found at the Employment Standards section of the Ministry of Labour's website, www.labour.gov.on.ca.

This fact sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

The Employment Standards Information Centre can be reached at 416-326-7160, toll-free at 1-800-531-5551, or, for Hearing Impaired TTY, at 1-866-567-8893.

Information on the ESA can also be found at the Employment Standards section of the Ministry of Labour's website: www.labour.gov.on.ca.

You can order copies of the ESA and related information materials from: Publications Ontario, 1-800-668-9938; Hearing Impaired TTY 1-800-268-7095, or the Ontario government E-Laws website at www.e-laws.gov.on.ca.

