



The Employment Standards Workbook



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This workbook has been prepared to assist employers and employees in understanding some of their obligations and rights under the Employment Standards Act (ESA) and its regulations. It does not take the place of the ESA and its regulations and it should not be considered to offer any legal advice on your particular situation.

INTRODUCTION

Who is this Workbook for?

This Workbook is a tool designed to help Ontario employers and employees understand and comply with the Employment Standards Act (ESA), which sets out minimum standards that workplace parties have to follow.

How is it useful?

Thousands of employment standards claims are filed each year. Some of these complaints result in hundreds of businesses being prosecuted each year in Ontario.

In a Claim or an Inspection

If an employee files an employment standards claim against an employer, the employer will receive a notice from the Ministry of Labour. Sometimes a claim can be settled without an investigation. This Workbook may help both employers and employees understand whether a claim is valid and determine the best way to resolve it.

The Employment Standards (ES) Program conducts **proactive inspections**. Businesses are selected using various methods, such as randomly, or based on sector or past claims history, etc. If a violation is found, a variety of enforcement tools may be issued such as: a Compliance Order, a Notice of Contravention or an Order to Pay; there could also be a Certificate of Offence issued or other prosecution initiated under the Provincial Offences Act. The inspection will generally include a review of the employer's payroll records, and interviews with the employer and a number of employees.

How do I use this Workbook?

The Workbook has been designed with a busy person in mind – you! It addresses some of the core standards that make up the Employment Standards Act (ESA). The Workbook presents the information in a clear and understandable way for easy reading.

However, the Workbook does not cover every obligation and right found in the ESA and its regulations. Consulting [Your Guide to the Employment Standards Act, 2000](#) will provide you with more complete information on these topics. The guide is available at: Ontario.ca/ESAGuide

The 12 standards covered in this Workbook:

1. The ESA Poster
2. Payment of Wages and Wage Statements
3. Deductions from Wages
4. Tips and Other Gratuities
5. Record Keeping
6. Hours of Work
7. Eating Periods
8. Overtime Pay
9. Minimum Wage
10. Public Holidays
11. Vacation with Pay
12. Termination and Severance

Additional resources found in each chapter:

- Important links
- Examples and exercises to help you
- Checklists
- Interactive tools

Before getting started, here are some helpful hints:

- We strongly suggest that you refer to the [Special Rule Tool](#), which will help you determine if your industry or occupation is exempt from a standard or subject to a special rule. This, and other tools, can be found at Ontario.ca/ESAtools.
- If you wish to speak to someone about your specific situation, please contact our Employment Standards Information Centre toll-free at 1-800-531-5551 from 8:30 a.m. to 5 p.m., Monday to Friday. Service is available in multiple languages.
- Certain industries are not covered by the ESA, but by federal law. To see a [list of Federally Regulated Businesses and Industries](#), visit: <http://www.labour.gc.ca/eng/regulated.shtml>.

1. THE EMPLOYMENT STANDARDS POSTER

Posting and distributing the poster shows employees that employers are aware of the law and their legal obligations. It also lets employees know what their rights are.

To help ensure that employers understand their obligations and employees know their rights, the Minister of Labour has prepared and published a poster entitled *Employment Standards in Ontario* (also known as the Employment Standards Poster). All employers covered by the ESA in the province (excluding the Crown) must display this poster in the employer's workplace. Employers must also provide all of their employees who are covered under the ESA with a copy of the poster.

The poster contains a brief summary highlighting the main standards of the ESA, including:

- hours of work
- rest periods
- overtime pay
- minimum wage
- payment of wages
- vacation time and pay
- public holidays
- leaves of absence from work
- termination notice and pay
- reprisals

Posting Requirements

The employer must display the poster in the workplace where it is likely to be seen by employees. If the majority language in the workplace is something other than English and the ministry has published a version in that language, the employer must post a translated version next to the English version. All multilingual material is available on the Ministry of Labour's website at: Ontario.ca/employmentrights.

Providing Copies

Changes in the law that came into force on May 20, 2015 require employers to provide any employees who are covered under the ESA with a copy of the most recent version of the Employment Standards Poster. Any new employees hired after May 20, 2015 must be given a copy within 30 days of their date of hire.

If an employee requests a copy of the poster in a language other than English and the ministry has published a version in that language, the employer must provide the translated version in addition to the English copy. All multilingual material is available on the Ministry of Labour's website at: Ontario.ca/employmentrights.

An employer may provide the poster as a printed copy or as an attachment in an email to the employee. In addition, an employer may provide the poster via a link to the document on an internet database, but only if the employer ensures the employee has reasonable access to that database (i.e. must ensure the employee has access to a computer and is able to access a working link to the document) **and** ensures the employee has access to a printer **and** that the employee knows how to use the computer and the printer.

Copies of the poster can be obtained:

- free from the Ministry of Labour’s website at Ontario.ca/ESAposter;
- *and*
- for the cost of shipping and handling from ServiceOntario Publications, 1-800-668-9938.

Hanging the poster in the workplace, distributing the poster to employees and ensuring the standards described in it are followed is an excellent employee relations practice. It’s also the law.

Employment Standards Poster Checklist

Please verify that:

- There is a copy of the ESA poster posted in your workplace.
- It is the current version (visit Ontario.ca/ESAposter to verify).
- It is posted where it will come to the attention of employees.
- If required, it has been posted in a second language.
- If the business has multiple locations, there is a copy posted in each one.
- Employees were provided with a copy of the current version of the poster within 30 days of being hired (visit Ontario.ca/ESAposter to verify).
- Employees were provided with a translated version of the poster in addition to a copy in English if requested and the ministry had a published version in that language.

2. PAYMENT OF WAGES AND WAGE STATEMENTS

Proper wage statements (often called pay stubs) and payroll records are important elements of good business. They are also **required under the Employment Standards Act (ESA)**.

Creating and providing wage statements achieves three important functions:

1. It shows that the employer is being open about what and how they pay their employees.
2. It shows that the employer is complying with the ESA by creating accurate records.
3. Documenting this information will help prevent future disputes over pay.

An employer must:

1. Establish a recurring pay period and a recurring pay day; and
2. Pay all wages earned in a pay period – other than accrued vacation pay – on or before the pay day for that period.

Wage statements create common understanding between employer and employee, showing that the employee has been paid for the time worked in the manner they both agreed to.

Wage Statement Requirements

The wage statement an employer gives its employee must include information about:

- The pay period for which the wages are being paid;
- The employee's wage rate (if one exists);
- The gross amount of wages – before taxes and other deductions – and how it was calculated (unless the employee is given the information in some other way, as in an employment contract);
- The amount and purpose of each wage deduction;
- Amounts deemed to have been paid to the employee because of room and board provisions (if applicable), and
- The net amount of wages.

The wage statement must be in writing (**or** provided by email if the employee is able to make a paper copy at the workplace).

An employer must keep a copy of the information contained in an employee's wage statement for three years from the time it was given.

Example of Pay Period

In this example, the pay period runs from Friday the 11th to Thursday the 17th, and the payday for this period is the following Wednesday the 23rd.

Calendar Illustrating a Regular Pay Period & Regular Pay Day						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23*	24	25	26
27	28	29	30			

* In this example, all the employee's earnings during the pay period from the 11th to the 17th of the month must be paid on the 23rd. (Earnings from the 18th to the 24th will be paid on the 30th)

IMPORTANT NOTE: Some employees earn commissions based on sales they make. In these situations, it is common for the commission to not be paid until the goods or services have been delivered to the customer and the employer has received payment. This is allowed if the employee expressly or implicitly agrees to the arrangement.

Wage Statement Checklist

Please verify that:

- A recurring pay period and a recurring pay day has been established in your workplace.

Please note that employers are required by law to establish a recurring pay period and a recurring pay day.

- Employees receive a written wage statement (pay stub) on their regular pay day.

Please note that employers are required by law to provide employees with wage statements.

Please verify that the following are included in wage statements:

- Start and end dates of the work period for which pay is given.
- Wage rate, if applicable (e.g., \$15 per hour).
- Gross amount (before deductions) paid.
- If vacation pay is being paid on that pay day, that information is itemized separately on the regular wage statement or is provided separately on its own wage statement.
- Method used to calculate gross wages (unless information is given another way).
- Each deduction made from the gross amount with explanation.
- Net amount being paid.

Employees:

While it is the employer's responsibility to record and keep information used in creating wage statements, it may also be beneficial for employees to keep wage statements provided to them.

3. DEDUCTIONS FROM WAGES

You should be aware that under the Employment Standards Act (ESA), only three types of deductions can be made from an employee's wages: statutory deductions, deductions authorized by a court order and deductions authorized by the employee in writing (subject to certain restrictions and conditions). For more information, watch our [video on illegal deductions from wages](#) available at: http://www.labour.gov.on.ca/english/gallery/es/v_deductions.php

Statutory Deductions

These are deductions made according to federal and provincial legislation. They include Income Tax, Employment Insurance Premiums and Canada Pension Plan contributions. The money deducted must be remitted to the proper authorities.

Court Orders/Garnishment

A court may order an employer to deduct an amount from an employee's wages. The money deducted must be paid out in accordance with directions contained in the court order.

Written Authorization

An employer may deduct money from an employee's wages if the employee has agreed to this in writing, subject to certain rules. Written authorization **must** state that the employee authorizes the deduction from his or her wages. It must also specify the amount of money deducted or a method of calculating the amount of money to be deducted.

It is not enough to have an oral statement that the employee authorizes the deduction, or to have a written statement that the employee owes money to the employer without stating that the amount can be deducted from the employee's wages.

IMPORTANT NOTE: A deduction from wages, even with signed authorization from the employee, is not allowed if it pertains to:

- **A loss due to faulty work. For example, a mistake in a credit card transaction, work that is spoiled or rejected, or damage to company tools/vehicles.**
- **A cash shortage or lost or stolen property if a person other than the employee had control over or access to the cash or property. For example, if customers leave without paying the bill (commonly referred to as "dine and dash").**

Deductions from Wages Checklist

Employers, please verify that:

- The only types of deductions from employees' wages are either statutory deductions, court ordered deductions, or deductions for which there is a written authorization.

Employers and employees, please verify that if deductions from wages are made on the basis of a written authorization, that the written authorization:

- States that the employee authorizes the deduction.
- Includes either the amount of the deduction or a method for calculating the amount.

Employers and employees, even with a written authorization in place, please verify that the deduction(s) are not being made for:

- Faulty work.
- Cash shortages/lost or stolen property where someone other than the employee had access to the cash or property.

4. TIPS AND OTHER GRATUITIES

Generally, an employer cannot withhold, make deductions from, or make an employee return his or her tips and other gratuities to them, unless they are:

- Following a court order or statute, or
- Redistributing them as part of a tip pool.

Deductions from tips and other gratuities to cover things like spillage, breakage, losses or damage, etc. are not allowed.

For more information visit [Ontario.ca/tipsandgratuities](https://www.ontario.ca/tipsandgratuities).

Court Orders/Garnishment

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

Statutory Deductions

These are deductions made according to federal and provincial legislation. They include Income Tax, Employment Insurance Premiums and Canada Pension Plan contributions. The money deducted must be remitted to the proper authorities.

Tip Pooling

IMPORTANT NOTE: An employer generally cannot share in a tip pool unless he or she is a sole proprietor, partner, director or shareholder in the business and regularly performs to a substantial degree the same work performed by some or all of the employees who share in the redistribution, or by employees of other employers in the same industry who commonly receive tips and other gratuities.

Example A

John is a director and manager of a restaurant that employs servers, bartenders, chefs and hostesses. John has a tip pooling practice in place whereby he collects a percentage of his servers' tips and then redistributes them among the chefs, the hostesses and the bartender. In this circumstance, John does not perform to a substantial degree the same work performed by some or all of the employees who share in the redistribution, or by employees of other employers in the same industry who commonly receive tips or other gratuities therefore John may not participate in the tip pool.

Example B

Daisy is the sole proprietor of a hair salon and works at her salon as a stylist. When salon patrons pay for their services they often include a tip for their stylist. Daisy collects these tips and provides them to the stylists at the end of their shift. She also runs a tip pool where a percentage of the tips collected are redistributed to salon support staff (e.g. hair washers, styling assistants, etc.). In this case, Daisy may participate in the tip pool because she performs to a substantial degree the same work performed by some or all of the employees who share in the redistribution, or by employees of other employers in the same industry who commonly receive tips or other gratuities.

Tips and Gratuities Checklist

Employers, please verify that:

- The only time you are withholding, making deductions from or requiring employees to turn over their tips and other gratuities is when doing so is authorized by a statute, court order, or if it is part of a tip pooling arrangement.
- The only time you are taking a portion of a tip pool for yourself is if you are a sole proprietor, partner, director or shareholder in the business **and** you regularly perform to a substantial degree the same work performed by some or all of the employees who share in the redistribution (or by employees of other employers in the same industry who commonly receive or share tips and other gratuities).
- While there is no responsibility on the part of an employer to keep records regarding tips and gratuities, it would be beneficial to document your practices relating to tips and gratuities, including tip pooling, electronic tip payments, and any deductions made pursuant to statute or court order.

Employees:

- While there is no responsibility on the part of the employee to keep records, it is beneficial to track the tips and other gratuities you receive from customers or as part of a tip pool, and any amounts that you may contribute to a tip pool.

5. RECORD KEEPING

Employers must keep certain records concerning employees. There are many forms to help businesses in this area. (For example, refer to the [Canadian Payroll Association](http://www.payroll.ca/) <http://www.payroll.ca/>)

The Employment Standards Act (ESA) requires that employers keep written records about each employee for a certain time period. Records can either be kept by the employer or someone authorized to keep them on the employer's behalf (for example, an accountant or a payroll company). Regardless, these records have to be readily available for a Ministry of Labour employment standards officer.

Other chapters of this workbook often include a records checklist for the particular standard being discussed. Below is a list of record keeping rules:

Specific Rules

1. Records of each employee's name, address and employment start date must be kept for three years after the employment ends.
2. The date of birth of any students under 18 must be recorded and kept until they turn 21 or for three years after their employment ends, whichever happens first.
3. The number of hours that non-salaried employees worked each day and each week must be recorded. In the case of salaried employees, (i.e., those who are paid a fixed amount for each pay period, which doesn't vary with hours worked, unless more than 44 hours are worked in a week), employers must record the hours worked in excess of their regular work week, and those in excess of eight hours a day (or the employee's regular work day).
4. An employer must keep all documents relating to an employee's leave (e.g., pregnancy, parental, family medical, etc.) for three years after the day the leave has expired.
5. If an employer employs homeworkers, a register must be kept showing each homeworke's name, address and wage rate. This information can be deleted from the register three years after the homeworke's employment ends.

Record Keeping Checklist

Employers, please verify that:

- Your records are kept in a manner that follows the five specific rules described above.

Employees:

- While it is the employer's responsibility to keep records, it may also be beneficial for employees to keep a daily record of hours worked.

6. HOURS OF WORK

There are limits to the number of hours most employees can be required or allowed to work. Generally, the daily and weekly limits are eight hours and 48 hours, respectively. However, some businesses and/or employees are exempt or subject to special rules. The [Special Rule Tool](#) (available at Ontario.ca/ESAtools) can help you find out if an exemption or special rule applies.

Daily Limits of Work

The maximum number of hours most employees can be required or allowed to work in a day is eight hours *or* the number of hours an employer has established as the employee's regular work day, if it is longer than eight hours.

Exception to Daily Limits of Work

Generally speaking, an employee can be required or allowed to work more than the daily limit only if he/she has agreed in writing **and** was provided with the handout entitled *INFORMATION FOR EMPLOYEES: About Hours of Work and Overtime Pay*, prior to the agreement. The agreement must contain an acknowledgement that the information sheet was provided. This information sheet can be found on the Ministry of Labour's website at Ontario.ca/EmploymentStandards, under "Topics and Publications".

IMPORTANT NOTE: Even if these conditions are met, generally an employee still must have 11 consecutive hours free from work in each day (24 hour period). For more information about Daily Rest, see the [Hours of Work & Overtime Tool](#) (available at Ontario.ca/ESAtools).

Weekly Limits of Work

The maximum number of hours most employees can be required or allowed to work in a week is 48 hours.

Exceptions to Weekly Limits of Work

Generally speaking, an employee can be required or allowed to work more than the weekly limit only if he or she has agreed in writing and was provided with the handout entitled *INFORMATION FOR EMPLOYEES: About Hours of Work and Overtime Pay*, prior to the agreement. The agreement must contain an acknowledgement that the information sheet was provided. Unlike the daily limits of work, the approval of the ministry's Director of Employment Standards is also required. (The weekly limit can be exceeded while an application for approval is pending, but certain conditions and restrictions apply.) For more information on the hours of work and overtime provisions, see the [Hours of Work & Overtime Tool](#) (available at [Ontario.ca/ESAtools](#)).

Things to Consider

- If an employer plans to have a work week that is longer than 48 hours or to average hours of work for overtime purposes, the *Applications for Approval of Excess Hours or for Averaging Hours of Work* provides step-by-step instructions. The application is available at [Ontario.ca/ESAforms](#). It is also strongly suggested that employers visit the [Hours of Work & Overtime Tool](#) (available at [Ontario.ca/ESAtools](#)) for a more complete understanding of these employment standards.
- Requiring or allowing employees to work more than 48 hours per week without the approval of the ministry's Director of Employment Standards is a violation of the ESA, **unless**:
 - the employee is exempt;
 - one of the ESA's "exceptional circumstance" provisions applies; or
 - in certain cases, an approval application is pending.
- An agreement between an employee and an employer to work additional daily or weekly hours, or an approval from the Director of Employment Standards for excess weekly hours, does not mean that the employee is not entitled to overtime pay. They are separate standards.

Employer Posting Requirements

Employers are required to post a copy of the application in at least one conspicuous place in every workplace where it is likely to come to the attention of the employees it applies to. The application must remain posted until an approval or notice of refusal is issued.

If 30 days pass from the date the application was served on the Director of Employment Standards and the employer has not been notified that the application has been refused, the employer may:

- In the case of an Application for Excess Weekly Hours of Work, schedule employees to work up to the maximum of 60 hours per work week, provided that the conditions prescribed in the ESA are met.
- In the case of an Application to Average Hours of Work for Overtime Pay Purposes, average hours of work over a period of two work weeks provided that the conditions prescribed in the ESA are met.

If the application is refused, a copy of the Notice of Refusal must be posted in at least one conspicuous place in the workplace so that it is likely to come to the attention of the employees covered by the application. The employer must keep the Notice of Refusal posted for 60 days following its date of issue.

IMPORTANT NOTE: Application forms for excess weekly hours of work or to average hours of work for overtime purposes are available at [Ontario.ca/ESAforms](https://www.ontario.ca/ESAforms). If you are considering an averaging application, it is suggested you consult the “Overtime Averaging” section of the [Hours of Work & Overtime Tool](https://www.ontario.ca/ESAtools), available at [Ontario.ca/ESAtools](https://www.ontario.ca/ESAtools).

The remainder of this chapter has been written with the assumption that employees are not exempt from regular hours of work rules and are not covered by special rules.

Hours Free from Work

Employees are entitled to a certain number of hours free from having to do work. These times include:

- Daily rest periods
- Time off between shifts
- Weekly or bi-weekly rest periods

Daily Rest Period Requirements

In most cases, an employee is required to receive at least 11 consecutive hours off work each day (i.e., within a 24 hour period, not necessarily a calendar day).

The daily rest requirement applies even if the employer has received approval from the ministry’s Director of Employment Standards to exceed weekly limits on hours of work. This requirement cannot be altered by a written agreement between the employer and employee.

IMPORTANT NOTE: This rule does not apply to employees who are on call and called in to work during a period when they would not normally be working. For more information, see the “Daily Rest” section of the [Hours of Work & Overtime Tool](https://www.ontario.ca/ESAtools) (available at [Ontario.ca/ESAtools](https://www.ontario.ca/ESAtools)).

Time Off Between Shifts

Employers must give their employees at least eight hours off work between shifts, unless:

- the employee and employer agree **in writing** that the employee will receive less than eight hours off work between shifts, or
- the total time worked on both shifts does not exceed 13 hours.

For more information, visit the “Rest Between Shifts” section of the [Hours of Work & Overtime Tool](#) for (available at Ontario.ca/ESAtools)

Example

Monica works in a restaurant. She is on split shifts, working from 11:30 a.m. to 2:30 p.m. and then from 4 p.m. to 7 p.m. The total time of her two shifts is six hours. Monica does not need to have eight hours off between the shifts because her total hours worked on the shifts does not exceed 13 hours.

Weekly or Bi-weekly Rest

Employees must receive at least:

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

Exceptional Circumstances

There are exceptional circumstances where an employer may require employees to work more than the daily or weekly work limits, or to work during a period that otherwise requires time off for the employee. The ESA’s exceptional circumstances apply only when it is necessary to avoid *serious interference* with the ordinary working of the employer’s operations. This is explained further below.

Exceptional Circumstances exist when:

- There is an emergency;
- Something unforeseen occurs that would interrupt the continued delivery of essential public services, **regardless of who delivers these services**;
- Something unforeseen occurs that would interrupt continuous processes;
- Something unforeseen occurs that would interrupt seasonal operations; and/or
- It is necessary to carry out urgent repair work to the employer's plant or equipment.

Examples include, but are not limited to:

- a natural disaster/very extreme weather;
- a major equipment failure;
- fire or flood (even if not caused by a natural disaster or extreme weather); and/or
- an accident or breakdown in machinery that prevents others in the workplace from doing their jobs (e.g., the shutdown of an assembly line in a manufacturing plant).

Examples of situations that are not considered exceptional circumstances:

- Rush orders being filled;
- Periods of inventory-taking;
- When an employee does not show up for work;
- Poor weather slows shipping or receiving;
- During seasonal busy periods (e.g., Christmas); and/or
- During routine or scheduled maintenance.

IMPORTANT NOTE: Requiring an employee to work hours in excess of the daily or weekly limits, or during a period that requires time off for the employee in circumstances that are not exceptional (as described above), is illegal.

Miscellaneous Things to Remember

Night Shifts

The ESA does not put restrictions on the timing of an employee's shift other than the requirements for daily rest and time off between shifts, as described earlier. Also, the ESA does not require an employer to provide transportation to or from work if an employee works late.

Travel Time

The ministry considers the time an employee spends getting to or from a place where work was or will be performed (with the exception of commuting time) as working time. Commuting time is usually not seen as working time. Commuting time for an employee who has a regular work location is the time it takes him or her to get to work from home and vice versa. There are some situations where commuting time has been seen as working time (e.g., an employee takes a work vehicle home in the evening for the convenience of the employer or where the employee is required to transport supplies or other staff to or from the workplace or work site).

Training Time

Time spent by an existing employee in training that is required by the employer or by law is considered to be working time. An example would be training that is a condition to continued employment in a position.

Time spent in training that is optional to the employee (i.e., not required by the employer in order for the employee to continue in his or her job) would not be considered working time. An example of this would be if an employee was looking for a new position with the employer and training was necessary to obtain that position.

Hours of Work Checklist

Employers, please verify that employees in your workplace receive the correct:

- Daily rest periods.
- Time off between shifts.
- Weekly or bi-weekly rest periods.

Employers, please also verify that:

- You have a record of the hours worked by your non-salaried employees each day and week, and a record of the excess daily and weekly hours worked by salaried employees.
- You have kept these for three years after the day or week of work.

Employees:

- While it is the employer's responsibility to keep records, it may also be beneficial for you to keep a daily record of hours worked.

7. EATING PERIODS

Most employees are entitled to an eating period (meal break) during their shift. The length and timing of the eating period is somewhat flexible, recognizing work demands. Meal breaks, whether paid or unpaid, are generally not considered working time and are therefore not typically counted toward the limits on hours of work, overtime pay or minimum wage. For more information, visit the “Eating Periods” section of the [Hours of Work & Overtime Tool](#) (available at Ontario.ca/ESAtools).

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

Meal breaks are unpaid unless the employee's employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work during the eating period.

Non-Eating Period Breaks

There is no requirement for an employer to give their employees coffee breaks or any other kind of break other than eating periods.

Time spent by an employee on a coffee break or other non-eating period break during which he or she is required to remain at the workplace is considered to be working time under the Employment Standards Act. If the employee is free to leave the workplace during the coffee break or other type of break, it is not considered to be working time.

Eating Periods Checklist

Employers, please verify that:

- Your employees work no more than five hours in a row before receiving a 30-minute meal break.
- Employee(s) who are splitting the 30-minute eating period into two periods have agreed to this, either in writing or orally, and that both periods are taken within five consecutive hours.
- Employee(s) are free from work during the meal break(s), even if time spent on the eating period is paid by the employer.
- Break time is treated as work time for employee(s) who are given additional non-eating period break(s) – such as coffee breaks – if they are required to remain at the workplace during the break.

8. OVERTIME PAY

For most employees, overtime begins after working 44 hours in a work week, regardless of whether they are full-time, part-time, students or casual employees. After 44 hours, they must receive overtime pay for each hour worked, which is a minimum of 1.5 times the employee's regular rate of pay (often called "time and a half"). However, some businesses and/or employees are exempt or have special conditions. The [Special Rule Tool](#) (available at Ontario.ca/ESAtools) can help you find out if this applies.

Helpful Tip: If you are reviewing this chapter to understand how special rules apply when the overtime threshold for a particular type of work is higher than 44 hours, or when a lower overtime threshold is in place because of an employment contract, the following material is still relevant. You simply need to replace 44 hours with the particular overtime threshold that applies to your situation.

Averaging hours of work for overtime pay purposes can only be done if an employer has applied for and received approval from the Ministry of Labour's Director of Employment Standards. The employer also needs to have an employee's written agreement to average his or her hours of work.

For more information about overtime, visit the "Overtime" section of the [Hours of Work & Overtime Tool](#) (available at Ontario.ca/ESAtools). The form for applying for averaging hours can be found at: Ontario.ca/ESAforms.

Common Questions About Overtime Pay

Q. Is there a daily overtime pay requirement?

A. Unless the employee's employment contract or collective agreement provides the employee with a right to overtime pay when the number of hours worked in a day exceeds a certain amount, overtime pay is not calculated on a daily basis.

Q. Can managers and supervisors earn overtime pay?

A. Managers and supervisors are not covered by overtime rules. However, it is not enough to simply call an employee a 'manager' or 'supervisor.' For the employee to be exempt from the overtime provisions found in the Employment Standards Act (ESA), he or she must do work that is supervisory or managerial in nature, and only do non-managerial or non-supervisory work on an irregular or exceptional basis.

Example

If a manager of a shoe store performs the duties of the employees he or she manages every day from noon to 1 p.m. to cover the lunch rush, the performance of these non-managerial duties is not irregular. Therefore, the managerial/supervisory exemption to overtime pay would not apply and the employee would be entitled to overtime pay if he or she works more than 44 hours in a week.

Q. What if an employee does more than one kind of work during the week?

A. If an employee does different kinds of work in a week, entitlement to overtime pay will hinge on whether at least 50 per cent of the working hours were spent in a job category that is covered by overtime pay rules. If they were, the employee is entitled to overtime pay if he or she worked more than 44 hours in that week.

Q. How is overtime pay calculated when there is a public holiday during the week?

A. This depends on whether the employee works on the public holiday or not, and how he or she is paid. The following table outlines the **three possibilities**:

Scenario	Outcome
Employee has the day off with public holiday pay.	No hours were worked on the public holiday. As such, there are no hours to count for that day for overtime pay purposes.
Employee works on the public holiday and gets Premium Pay * plus public holiday pay for the day.	Hours worked on the public holiday do not count for overtime pay purposes.
Employee works on the public holiday, is paid at straight time and receives a substitute day off (for which he or she will receive public holiday pay).	Hours worked on the public holiday do count for overtime pay purposes.

***Premium Pay** is 1.5 times the employee’s regular rate. Please see Chapter 9 for a full explanation of public holiday rules.

Calculating Overtime Pay

Overtime pay calculations vary depending on the type of payment arrangement between an employer and an employee. For more information about overtime and how it is calculated, see the “Overtime” section of the [Hours of Work & Overtime Tool](http://Ontario.ca/ESAtools) (available at Ontario.ca/ESAtools).

Categories of Employees by Payment Arrangements

- Hourly
- Hourly rate, plus commissions
- Fixed (unchanging) salary
- Salary for set hours
- Piecework or straight commission
- Mixed hourly rate

On the following five pages, examples are given of overtime pay calculations for each of the above categories of employees. These descriptions and examples are intended to help you quickly determine the type of payment arrangement(s) that are in place and how to calculate overtime pay in each situation.

IMPORTANT NOTE: In these examples, “regular pay” means pay for all non-overtime hours in the work week.

A) Hourly

This is the most straightforward arrangement. An employee who is paid an hourly rate receives that amount for every hour worked up to 44 hours per week. For any hours over that, the employee receives time and a half his or her regular hourly rate for each hour worked.

Example A: Ravi’s regular pay is \$14 per hour. This week Ravi worked 46 hours.

Calculating his overtime pay:

1. Ravi’s hours of overtime are calculated:
 - 46 hours – 44 hours per week = 2 overtime hours
2. His overtime rate is calculated:
 - \$14 per hour x 1.5 = \$21.00 per hour (overtime rate)
3. Then his overtime wages are calculated:
 - 2 hours x \$21.00 per hour = \$42.00
4. Finally, Ravi’s regular pay for the week is added to his overtime wages:
 - Regular Pay: 44 hours x \$14 per hour = \$616
 - Overtime pay: 2 hours x \$21.00 = \$42.00
 - Total Pay = \$658.00 (\$616 + \$42)

Therefore, Ravi is owed \$658.00 for this week of work.

B) Hourly Rate Plus Commission

An employee in this category receives an hourly rate for all hours worked. He or she also receives commissions as part of his or her weekly pay.

For this employee, a regular rate must be established. This is not the same as the hourly rate; it is calculated as his or her total earnings in a week, divided by the number of non-overtime hours he or she worked in that week. This regular rate is then used to calculate the amount of overtime pay that is owed.

Example B: Justine is paid \$15.00 an hour, plus commission. In one work week, she worked 47 hours and was paid \$705.00 in hourly wages, plus \$100 in commission.

Calculating her overtime pay:

1. Justine's regular rate is calculated:
 - $\$705.00 + \$100 = \$805.00$ (total wages paid)
 - $\$805.00 \div 44 \text{ hours} = \18.30 per hour (regular rate)
2. Then her overtime rate is calculated:
 - $\$18.30 \text{ per hour} \times 1.5 = \27.45 per hour (overtime rate)
3. Next her overtime wages are calculated:
 - $47 \text{ hours} - 44 \text{ hours} = 3 \text{ hours of overtime}$
 - $3 \text{ hours} \times \$27.45 \text{ per hour} = \82.35 earned in overtime wages
4. Finally, the amount already paid at regular wage for the 3 hours of overtime is subtracted from the overtime calculation (Note: She was already paid \$15.00/hour for all the hours she worked, including those 3 overtime hours):
 - $3 \text{ hours} \times \$15.00 \text{ per hour} = \45.00 (regular rate for overtime hours)
 - $\$82.35 - \$45.00 = \$37.35$ (outstanding amount still needed to be paid).

Therefore, Justine is entitled to a total pay of \$842.35 for that week.

C) Fixed (Unchanging) Salary

An employee on a fixed salary is someone whose hours of work may change from day to day but whose weekly salary stays the same. The fixed salary is actually the employee's pay for all hours worked up to and including 44 hours per week (or a lower threshold that has been set out in an employment contract; e.g., 40 hours per week). Additional hours must be paid at an overtime rate.

Example C: Sharon's fixed salary is \$800 per week. This week she worked 48 hours.

Calculating her overtime pay:

1. Sharon's regular rate is calculated:
 - $\$800 \text{ salary} \div 44 \text{ hours} = \18.18 per hour
 - Note: Sharon's salary of \$800 covers her first 44 hours of work.
2. Next, her overtime rate is calculated:
 - $\$18.18 \text{ per hour} \times 1.5 = \27.27 per hour (overtime rate)

3. Her overtime wages are calculated:

- 4 hours x \$27.27 per hour = \$109.08

4. Finally, Sharon's regular pay for the week is added to her overtime wages:

- Reg. Pay = \$800 (salary)
- Overtime Pay = \$109.08
- Total Pay = \$909.08 (\$800 + \$109.09)

Therefore, Sharon is entitled to \$909.08 in total pay for that week.

D) Salary for Set Hours

An employee receiving a salary for a set number of hours is someone who is paid a set salary for a set number of hours in the work week. However, his or her salary is adjusted if he or she works more or less than the set number of hours. Hours up to 44 are paid at straight time. Additional hours (more than 44 hours) must be paid at an overtime rate.

Example D: Ben's contract states that he is to be paid a "salary" of \$700 per week and has a regular work week of 40 hours. However, if Ben works less than or more than 40 hours in the week, the employer reduces or increases Ben's pay.

The reductions or increases to his weekly salary are calculated based on an hourly rate of \$17.50, determined by dividing the "salary" of \$700 per week by the number of hours in a regular work week (40 hours). For example, if Ben misses three hours of work in his regular 40 hour work week because of a medical appointment, he is paid \$647.50 for that week. In another week, if he has put in an additional two hours to finish a project, he is paid \$735.

In the example below, Ben works 50 hours one week.

Calculating his overtime pay:

1. Ben's regular rate is calculated:

- \$700 salary ÷ 40 hours = \$17.50 per hour

2. His non-overtime earnings are calculated:

- \$17.50 per hour x 44 hours = \$770

3. His overtime rate is calculated:

- \$17.50 per hour x 1.5 = \$26.25 per hour (overtime rate)

4. His hours of overtime are calculated:

- 50 hours – 44 hours per week = 6 overtime hours

5. Overtime wages are then calculated:

- 6 hours x \$26.25 per hour = \$157.50

6. Finally, Ben's regular pay for the week is added to his overtime wages:

- Regular Pay: \$770
- Overtime Pay: \$157.50
- Total Pay: \$927.50 (\$770 + \$157.50)

Therefore, Ben is entitled to \$927.50 in total pay for the week.

E) Piecework or Straight Commission

Piecework or straight commission employees are paid according to what they produce. Their wages are calculated based on the number of pieces they complete or commissions they earn rather than on the number of hours they work.

IMPORTANT NOTE: Regular pay is pay for all non-overtime hours in the work week.

Example E: Becka is paid on a piecework basis. Rhian earns straight commissions on sales or offers to purchase goods or services that are normally made at the employer's place of business. They both worked 48 hours this work week and each received a total of \$528.

Calculating their overtime pay:

1. Their regular rate is calculated:

- $\$528 \div 44 \text{ hours} = \12 per hour

2. Their overtime rate is then calculated:

- $\$12 \text{ per hour} \times 1.5 = \$18 \text{ per hour (overtime rate)}$

3. Their hours of overtime are calculated:

- $48 \text{ hours} - 44 \text{ hours} = 4 \text{ hours overtime}$

4. Overtime wages are then calculated:

- $4 \text{ hours} \times \$18 \text{ per hour} = \72
- Note: They are **both** entitled to \$72 in overtime pay in addition to \$528 in regular pay.

5. Finally, their regular pay for the week is added to their overtime wages:

- Regular Pay: \$528
- Overtime Pay: \$72
- Total Pay: \$600

Therefore, Becka and Rhian are both entitled to \$600 in total pay.

F) Mixed Hourly Rate

This is when an employee performs two types of work that have two different rates of pay.

Example F: Aaron works at two different jobs for his employer. For job A he is paid \$12 an hour, while for job B he is paid \$15. One week he worked a total of 60 hours (36 hours at job A and 24 hours at job B). He received only “straight time” for all the hours he worked. He was paid a total of \$792 (\$432 for job A and \$360 for job B).

Because Aaron has two different hourly rates (depending on what job he is doing for his employer), determining his “regular rate” for overtime pay purposes requires a “weighted average” calculation. This is an average hourly rate based on the proportionate amount of time spent in job A and the proportionate amount of time spent in job B. This requires several steps:

1. Determine the percentage of time Aaron spent in each job:
 - Job A: 36 hours out of a total of 60: $36 \div 60 = 60\%$
 - Job B: 24 hours out of a total of 60: $24 \div 60 = 40\%$
2. Using those percentages, determine how many of Aaron’s non-overtime hours (44) should be considered to have been spent on job A and how many should be considered to have been spent on job B:
 - Job A: 60% of 44 hours = 26.4 hours
 - Job B: 40% of 44 hours = 17.6 hours
3. Multiply those hours by the hourly rate for each job to determine how much of Aaron’s total pay should be considered to have been paid for his non-overtime hours:
 - Job A: 26.4 hours x \$12 per hour = \$316.80
 - Job B: 17.6 hours x \$15 per hour = \$264
 - Total pay for non-overtime hours = $(\$316.80 + \$264) = \$580.80$
4. Divide the total pay for non-overtime hours by 44 to obtain Aaron’s regular rate:
 - $\$580.80 \div 44 = \13.20 per hour
5. Multiply the regular rate by 1.5 to determine the overtime pay rate:
 - $\$13.20 \times 1.5 = \19.80 per hour (overtime rate)
6. Multiply the overtime hours by the overtime pay rate to determine Aaron’s overtime pay entitlement:
 - $(60-44) \times \$19.80 = \316.80
7. Aaron was paid “straight time” for all hours worked, including the overtime hours. Therefore, he has received \$211.20 of his overtime entitlement:
 - $\$792$ total paid - $\$580.80$ paid for non-overtime hours = $\$211.20$

8. To determine the outstanding overtime pay entitlement that is due, deduct the total overtime entitlement from the amount that he was already paid:

- $\$316.80 - \$211.20 = \$105.60$

Therefore, Aaron must be paid an additional \$105.60 to satisfy his overtime pay entitlement.

Time Off In Lieu Instead of Overtime Pay

An employee and an employer can agree in writing that the employee will receive paid time off work instead of overtime pay (referred to as “banked” time or “time off in lieu”).

If such an agreement has been made, the employee must be given a minimum of 1½ hours of paid time off work for each hour of overtime worked. The paid time off must be taken either:

- within three months of the week in which the overtime was earned; or
- within 12 months, if the employee agrees in writing.
- For more information about Overtime and Time Off in Lieu and how it is calculated see the “Overtime and Time Off in Lieu” section of the [Hours of Work & Overtime Tool](#) (available at [Ontario.ca/ESAtools](#)).

IMPORTANT NOTE: If the employment relationship ends before an employee has taken the paid time off, he or she must receive overtime pay and it must be paid no later than seven days after the date the employment ended or on what would have been the employee’s next pay day.

An employee can make an agreement to take time off in lieu of overtime pay. *However*, an employer and an employee cannot agree that the employee will give up his or her right to overtime pay under the Employment Standards Act (ESA). Also, an employer cannot lower an employee's regular rate to avoid paying time and a half after 44 hours (or other overtime threshold that applies) in a work week.

Overtime Pay Checklist

Employers and employees, please verify:

- That the type of work employees perform is:
- Covered by regular overtime pay rules, and that overtime pay is applied after 44 hours of work in the week, or at a lower threshold if provided for in an employment contract, OR
 - Covered by special rules for overtime, and that overtime pay is applied after the legislated threshold of hours worked in the week is reached, OR
 - Not covered by (exempt from) regular overtime pay rules.

- If the work is covered by regular or special overtime pay rules, that:
 - work performed beyond the overtime threshold for the work week is paid at a rate of at least 1 ½ times the employee's regular rate of pay for each hour of overtime worked, OR
 - if a written agreement between the employer and employee is in place, that work performed beyond the overtime threshold for the work week is taken as paid lieu time off at a rate of at least 1 ½ hours of paid time off for each hour of overtime worked.

- If paid lieu time off is given for overtime hours worked, that:
 - The paid time off is taken within three months of the week in which overtime was worked, OR
 - If stated in a written agreement between the employee and employer, that the paid time off in lieu of overtime pay is taken within 12 months of being worked, and
 - If employment ends before all paid time off in lieu of overtime hours are taken, that the employee receives overtime pay for the remaining lieu time.

- An employee no longer working with the employer receives all outstanding overtime pay within seven days of their employment ending or on the date that would have been the employee's next pay day, whichever is later.

- Where an employer wishes to average hours of work for overtime pay purposes, that the employer has:
 - 1) obtained written authorization from each affected employee to average hours for overtime pay purposes, and
 - 2) applied for and received approval from the Director of Employment Standards.

9. MINIMUM WAGE

IMPORTANT NOTE: This resource is for illustrative purposes only. The minimum wage rates are subject to annual indexation based on the rate of inflation. If that rate is changed, the new rate will be published on or before April 1 and will come into effect on October 1. For the current rates, please visit Ontario.ca/minimumwage.

The minimum wage is the lowest hourly pay rate that an employer can pay an employee. Most employees are eligible for minimum wage. However, a few employers and employees are exempt. To see if this exemption applies to your situation, please see the Special Rule Tool (available at Ontario.ca/ESAtools).

Employees Who Must Receive Minimum Wage

- Full-time
- Part-time
- Casual
- Those paid an hourly rate
- Those paid a commission (where, in the case of sales commissions, the employee is a route salesperson or the sales or offers to purchase goods or services are normally made at the employer's place of business)
- Those paid a piece rate
- Those paid a flat rate, or
- Those paid a salary

Minimum Wage Rates

Minimum Wage Type	Description	Amount as of October 1, 2016
General Minimum Wage	Rate that applies to most employees.	\$11.40 per hour
Student Minimum Wage	Rate that applies to students under the age of 18 who work 28 hours a week or less when school is in session or work during a school holiday.	\$10.70 per hour

Minimum Wage Type	Description	Amount as of October 1, 2016
Liquor Servers' Minimum Wage	Rate that applies to employees who serve liquor directly to customers or guests in licensed premises as a regular part of their work. <i>Note: "Licensed premises" are businesses for which a license or permit has been issued under the Liquor License Act.</i>	\$9.90 per hour
Hunting and Fishing Guides' Minimum Wage	Rate is based on blocks of time instead of by the hour. They are entitled to one rate for working less than five consecutive hours in a day, and a different rate for working five hours or more in a day –whether or not the hours are consecutive.	\$56.95 (rate for working less than five consecutive hours in day) \$113.95 (rate for working five or more hours in day, regardless if the hours are worked consecutively)
Homeworkers' Minimum Wage	Rate applies to employees who do paid work in their own homes. For example, they may sew clothes for a clothing manufacturer, answer telephone calls for a call centre or write software for a high-tech company. <i>Note: Students under the age of 18 who are employed as homeworkers must be paid the homeworkers' minimum wage.</i>	\$12.55 per hour

Calculating General Minimum Wage

Example: Julia worked 37.5 hours in one week. She is paid on a weekly basis. The minimum wage applicable to Julia is \$11.40 per hour.

Since compliance with minimum wage is based on pay periods, Julia must earn at least \$427.50 (37.5 hours × \$11.40 per hour = \$427.50) in this work week.

IMPORTANT NOTE: Eating periods are not included when counting how many hours an employee works in a week.

Calculating Minimum Wage for Those on Commission

As in the case of most other employees, if an employee's pay is based completely or partly on commission, and the employee's sales or offers to purchase goods or services are normally made at the employer's place of business (or the employee is a route salesperson), the total amount paid for a pay period divided by the total hours the employee worked must equal at least the minimum wage.

Example: Luba works on commission and has a weekly pay period. One week, she earned \$150 in commission and worked 25 hours. The minimum wage is \$11.40 an hour.

The minimum wage (\$11.40) multiplied by the number of hours worked in the pay period (25 hours) is \$285.00. Luba is owed the difference between her commission pay (\$150) and the required regular pay at the minimum wage rate (\$285.00). **Luba's employer owes her \$135.00.**

IMPORTANT NOTE: The calculation is more complicated where overtime hours are worked. Industry-specific and job-specific exemptions and special rules may apply to some salespeople who earn commission. Please see the [Special Rule Tool](#) for details (available at Ontario.ca/ESAtools).

Minimum Wage: Room and Board Provision

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

Example: The amounts that are designated "paid to the employee" for room and board are calculated as a value on top of their wages (not deducted). For example, if Sam gets paid \$381.30 per week and receives a private room and board, which is valued at \$85.25, then he is deemed to be making \$466.55 per week for purposes of determining whether he has been paid at least the minimum wage.

Calculating whether minimum wage has been paid: \$466.55 per week/37 hours = \$12.61 per hour.

Therefore, Sam is considered to have been paid at least the general minimum wage (\$11.40 per hour).

When an employer is providing room and/or board (i.e. meals), the following dollar equivalents are considered to be paid as wages when assessing the employer's compliance with minimum wage.

Domestic Workers

- Private room - \$31.70 a week
- Non-private room - \$0

- Both room and board (i.e. meals):
 - i. \$85.25 a week if the room is private
 - ii. \$53.55 a week if the room is not private

Harvesters of fruit, vegetables or tobacco

- Serviced housing accommodation - \$99.35 a week
- Unserviced housing accommodation (e.g. housing accommodation where the light, fuel, heat, water, gas or electricity are not provided at the employer's expense) - \$73.30 a week
- Room:
 - \$31.70 a week if the room is private
 - \$15.85 a week if the room is not private
- Board (i.e. meals) - \$2.55 a meal, but not more than \$53.55 a week
- Both room and board:
 - \$85.25 a week if the room is private
 - \$69.40 a week if the room is not private

All other employees

- Room:
 - \$31.70 a week if the room is private
 - \$15.85 a week if the room is not private
- Board (i.e. meals) - \$2.55 a meal, but not more than \$53.55 a week
- Both room and board:
 - \$85.25 a week if the room is private
 - \$69.40 a week if the room is not private

Miscellaneous Standards to Consider

Travel Time and Training Time

Travel time, time spent on mandatory training (for existing employees) and, in certain uncommon circumstances, commuting time are considered to be hours of work for minimum wage purposes. Employers can establish different rates for different types of work as long as they are still complying with the minimum wage and overtime pay provisions.

Employees Sent Home After Working Less Than Three Hours

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 whichever of the following amounts is the highest:

- Three hours at a minimum wage, or
- The employee's regular wage for the time actually worked.

For example, if an employee who is a liquor server is paid \$12 per hour and works only two hours, he or she is entitled to three hours at minimum wage.

The liquor servers' minimum wage is \$9.90 per hour, and is calculated by multiplying \$9.90 by three hours of work, which totals \$29.70. She is entitled to three hours at minimum wage instead of two hours at her regular wage because \$12 per hour x 2 hours of work equals only \$24.

IMPORTANT NOTE: The Three-Hour Rule does not apply to:

- 1. Students of all ages.**
- 2. Employees whose regular shift is three hours or less.**
- 3. Situations where the cause of the employee not being able to work at least three hours was due to: fire, lightning, power failure, storms or similar cases beyond the employer's control that resulted in a work stoppage.**

When the Minimum Wage Changes

If the minimum wage rate changes during a pay period, the pay period will be treated as if it were two separate pay periods and the employee will be entitled to at least the minimum wage that applies in each of those periods.

Minimum Wage Checklist

Employers and employees, please verify that:

- The type of work being performed is covered by the minimum wage standard under the ESA and its regulations. Work *not* covered by (exempt from) minimum wage requirements can be found in the [Special Rule Tool](#) (available at Ontario.ca/ESAtools).
- When non-student employees are sent home after working less than three hours – and they usually work longer – they are paid the greater of: their regular rate for the time worked **or** three hours at minimum wage (except where there is a work stoppage due to fire, lightening, power failure, storms or similar circumstance that is beyond the employer's control).

- Total earnings in a pay period for employees paid completely or partly by commission, or who are paid on a piece work basis, equal at least the minimum wage for total hours worked.

Employers and employees, if the work being performed is covered by special rules, please verify:

- Employees are being paid the correct minimum wage for that type of work.

10. PUBLIC HOLIDAY PAY

These are days that most employees are entitled to have off work with pay under the Employment Standards Act (ESA). While most employees are eligible for the public holiday entitlement, some employees work in jobs that are not covered by the public holiday provisions of the ESA. To see if this exemption applies to you, please see the [Special Rule Tool](#) for details (available at Ontario.ca/ESAtools).

Public Holidays in Ontario

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

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

What is Public Holiday Pay?

Public holiday pay is the amount of money a qualified employee is entitled to receive for a public holiday. The amount of public holiday pay an employee is entitled to varies between employees. It is based on the regular wages* the employee earned and any vacation pay that was payable in the four work weeks prior to the work week in which the public holiday fell, divided by 20.

*** Regular wages are wages other than overtime pay, public holiday pay, vacation pay, premium pay, termination pay and severance pay.**

Public holiday pay does not necessarily amount to an employee's regular daily earnings, due to the nature of the calculation for public holiday pay. It is also important to note that **receiving time off and receiving public holiday pay are separate considerations**. One does not always guarantee an entitlement to the other.

Although vacation pay is not considered to be part of one's regular wages, the calculation for public holiday pay includes any vacation pay that was payable to the employee during any of the four work weeks prior to the work week in which the public holiday fell.

How Employees Qualify for Public Holiday Pay

Entitlement to public holidays begins as soon as an employee starts working. Employees who qualify can take the day off work and be paid public holiday pay. To qualify, an employee must work his or her last regularly scheduled day before and first regularly scheduled day after the public holiday, or have reasonable cause for failing to do so. This will be explained in more detail in the examples presented below.

In some situations, the public holiday pay entitlement might work out to be zero. It does not matter if an employee is full time, part time, permanent or on a time-limited arrangement when determining if he or she qualifies for the public holiday entitlements.

The 'Last and First Rule'

Employees who fail, without reasonable cause, to work all their last regularly scheduled day of work before the public holiday or all their first scheduled day of work after the public holiday are not entitled to public holiday pay. (Note: This does not mean simply the last calendar day before the public holiday and the first calendar day after the public holiday—it means the last scheduled day of work before the public holiday and the first scheduled day of work after the public holiday.)

For example, an employee who has asked for and received approval to take off the day before the public holiday is still entitled. As the employer agreed to the employee being off the day before the holiday, it would not be considered a scheduled day of work. Also, employees on vacation, on leave or on a lay-off are also entitled as long as they worked their last scheduled day before and their first scheduled day after the holiday, or had reasonable cause for failing to do so.

If an employee fails to work either of those days, but had reasonable cause, he or she will still qualify for the public holiday entitlements. An employee is generally considered to have "reasonable cause" for missing work when something beyond his or her control prevents the employee from working. It is the employee's responsibility to show he or she has reasonable cause for the absence.

How to Calculate the Four-Work Week Period Before the Work Week With a Public Holiday

The "four work weeks before the work week with the public holiday" mentioned earlier does not necessarily refer to the four calendar weeks immediately before the holiday. This period is based on the *employer's* work week.

A work week is a recurring period of seven consecutive days that the employer has established for the purpose of scheduling work. If the employer does not establish a work week, the default is Sunday to Saturday.

Example of Work Schedule

Suppose your work week runs from Thursday to Wednesday. Christmas Day falls on a Tuesday. The four work weeks you would use to calculate public holiday pay for Christmas Day are the four weeks counting backwards from the Wednesday before Christmas Day (December 25):

Calendar Illustrating a Work Schedule						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
November 18	19	20	21	22 Week 1	23 Week 1	24 Week 1
25 Week 1	26 Week 1	27 Week 1	28 Week 1	29 Week 2	30 Week 2	December 1 Week 2
2 Week 2	3 Week 2	4 Week 2	5 Week 2	6 Week 3	7 Week 3	8 Week 3
9 Week 3	10 Week 3	11 Week 3	12 Week 3	13 Week 4	14 Week 4	15 Week 4
16 Week 4	17 Week 4	18 Week 4	19 Week 4	20	21	22
23	24	25	26	27	28	29
30	31					

In this example, the employee's regular wages and his or her vacation pay with respect to the four work weeks indicated by the shaded area (November 22 to December 19) would be used to calculate public holiday pay.

How to Calculate Public Holiday Pay

On the following few pages, examples are given of holiday pay calculations. These descriptions and examples are intended to help you quickly determine the type of situation you have and how to calculate each type of public holiday payment arrangement. The [Public Holiday Calculator](#) (available at: Ontario.ca/ESAtools) can help you.

Example 1: A Typical Case

Iryna works five days a week and earns \$100 a day. She worked her last regularly scheduled work day before the public holiday and her first regularly scheduled day after the holiday. She receives her vacation pay when her vacation is taken. She was not on vacation during the four work weeks leading up to the public holiday.

Calculating her public holiday pay:

1. Iryna's regular wages are calculated:
 - \$100 per day x 5 days = \$500 per week
 - \$500 per week x 4 work weeks = \$2,000
2. Iryna earned \$2,000 of regular wages in the four work weeks before the public holiday.
 - No vacation pay is owed because she only receives vacation pay when she takes her vacation. Because she was not on vacation during the four work week period, she is not entitled to vacation pay.
3. Finally, her total wages earned and vacation pay payable are added together and divided by 20.
 - $\$2,000 + \$0 = \$2,000$
 - $\$2,000 \div 20 = \100

Therefore, Iryna is **entitled to \$100** in public holiday pay.

Example 2: When vacation time is involved

Brock works five days a week and earns \$100 a day. He was on vacation for two of the four work weeks before the work week in which the public holiday fell. He received \$1,000 in vacation pay in those two weeks and his regular wages in the other two weeks during the four work weeks prior to the work week with the public holiday. Brock worked his last regularly scheduled work day before the public holiday and his first regularly scheduled work day after the holiday.

Calculating his public holiday pay:

1. Brock's regular wages are determined:
 - \$100 per day x 10 days = \$1,000

2. The amount of vacation pay payable is determined.
 - \$1,000 in vacation pay was payable to Brock in the four work weeks prior to the work week with the public holiday.
3. Finally, his total wages earned and vacation pay payable are added together and divided by 20.
 - $\$1,000$ (regular wages) + $\$1,000$ (vacation pay payable) = $\$2,000$
 - $\$2,000 \div 20 = \100

Therefore, Brock is **entitled to \$100** in public holiday pay.

Example 3: Where vacation pay is included in every pay cheque

Bert earns \$1,500 in regular wages in the four work weeks prior to the work week with the public holiday. He and his employer have agreed in writing that he will receive 4% vacation pay on each pay cheque (see Chapter 10 for information on when this is acceptable).

Calculating his public holiday pay:

1. Bert makes \$1,500 in regular wages.
2. The amount of vacation pay payable is calculated:
 - $\$1,500 \times 4\% = \60
3. Finally, his regular wages earned and vacation pay payable are added together and divided by 20.
 - $\$1,500$ (regular wages) + $\$60$ (vacation pay) = $\$1,560$
 - $\$1,560 \div 20 = \78

Therefore, Bert is entitled to \$78 in public holiday pay.

Example 4: When an employee is on a leave

Zoe usually works five days a week, earning \$100 a day. She receives vacation pay before she goes on vacation. On June 10, she went on a 17-week pregnancy leave, followed by a 35-week parental leave. During her leaves, she was not paid wages or vacation pay. She received maternity and parental benefits from the federal Employment Insurance program, but these benefits are not considered wages.

Zoe is entitled to public holiday pay for the public holidays that fell during her leave as long as she:

- worked her last regularly scheduled day before her leave; and
- her first regularly scheduled day after her leave, or
- had reasonable cause for failing to do so.

Calculating her public holiday pay:

1. Zoe went on leave June 10 and only worked seven days during the four work weeks before the Canada Day public holiday. Her regular wages earned are calculated:
 - \$100 per day x 7 days = \$700
2. Her vacation pay payable is calculated:
 - No vacation pay is owed because she had no vacation pay payable during the four work week period.
3. Finally, her regular wages earned and vacation pay payable are added together and divided by 20.
 - \$700 (regular wages) + \$0 (vacation pay) = \$700
 - \$700 ÷ 20 = \$35

Therefore, Zoe is entitled to \$35 in public holiday pay for the Canada Day public holiday. However, she does not receive any public holiday pay for other holidays that fell during her leave because she did not earn wages or have vacation pay payable during the four work weeks before each of those holidays.

Example 5: When an employee is on a layoff throughout the four work weeks preceding the holiday

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

Eugene was recalled to work on December 27. He is entitled to public holiday pay for Christmas Day and Boxing Day as long as he:

- worked his last regularly scheduled day before the layoff; and
- his first regularly scheduled day after the layoff, or
- had reasonable cause for failing to do so.

Calculating his public holiday pay:

Because Eugene did not earn any wages or have any vacation pay payable in the four work weeks before those two public holidays, he is entitled to \$0 in public holiday pay.

How to Calculate Public Holiday Pay Plus Premium Pay

A public holiday falls on one of Heather's normal working days. She and her employer have agreed in writing that she will work on the public holiday and that, instead of getting a substitute holiday, she will be paid public holiday pay plus premium pay for all the hours she works on the holiday. (Note: Generally speaking, if a public holiday falls on a day that is ordinarily a working day for an employee, the employee is entitled to the day off with public holiday pay; if instead the employee agrees in writing to work on the day, the employee is entitled to be paid at his or her regular rate for the hours worked and to a substitute day off work with public holiday pay, or, if the employee and employer agree in writing, to public holiday plus premium pay for the hours worked. In certain industries and types of operations, the employer may require the employee work on a public holiday that falls on a day that is ordinarily a working day; in that case, the employer may—at the employer's option—either pay the employee at his or her regular rate for the hours worked and give the employee a substitute day off work with public holiday pay or give the employee public holiday pay plus premium pay for the hours worked. For more information on public holidays and substitute holidays, see the "Public Holidays" chapter in [*Your Guide to the Employment Standards Act, 2000*](#) available at: Ontario.ca/ESAguide.)

Heather regularly works eight hours a day, five days a week. Her regular hourly pay rate is \$12. She has worked on all her scheduled work days in the four work weeks before the public holiday. She receives her vacation pay before she takes vacation and was not on vacation during the four work weeks before the public holiday. She works eight hours on the public holiday.

Example Public Holiday Pay Calculation

1. Her regular wages in the four work weeks before the public holiday are calculated:
 - 8 hours per day × \$12 per hour = \$96 per day
 - \$96 per day × 5 days = \$480 per week
 - \$480 × 4 work weeks = \$1,920
 - Heather earned \$1,920 in the four work weeks before the public holiday.
2. Amount of vacation pay payable with respect to the four work week period is calculated:
 - She had no vacation payable during this period because Heather gets paid her vacation pay before she takes vacation, and she was not on vacation during the four work week period.
3. Her total regular wages earned plus vacation pay payable is then divided by 20:
 - $(\$1,920 + \$0) \div 20 = \$96$

Therefore, Heather is entitled to \$96 in public holiday pay.

Example Premium Pay Calculation

4. Finally, the premium pay owing to Heather for her work on the public holiday is calculated:

- \$12 per hour \times 1½ = \$18
- \$18 per hour \times 8 hours worked = \$144

Therefore, Heather is also entitled to \$144 in premium pay. Her total entitlement in respect of the public holiday will be \$240 (\$96 + \$144).

Public Holidays on Working Days and Non-Working Days

The rules regarding public holidays vary depending on whether a public holiday falls on:

- a day that is ordinarily a working day for the employee;
- a day that is not ordinarily a working day for the employee or that is a day on which the employee is on vacation.

Public Holiday on a Working Day

If the holiday falls on a day that would ordinarily be a working day for the employee, he or she is entitled to have the day off with public holiday pay (subject to the “last and first rule”).

The employer and employee may agree in writing that the employee will instead work on the public holiday. In that case, the employee is entitled to his or her regular wages for the hours he or she worked on the day, plus a substitute day off with public holiday pay. However, the employer and employee can instead agree in writing to a pay plus premium pay arrangement. This means that the employee will be entitled to public holiday pay plus premium pay for each hour worked on the holiday.

IMPORTANT NOTE: Premium pay is 1½ the employee’s regular rate of pay for an hour of work. (Note that any hours worked on a public holiday for which an employee receives premium pay are not counted for overtime pay purposes.)

Substitute Days

Where a day is substituted for a public holiday, the substitute day is treated as if it were the public holiday. Generally speaking, the day that is substituted must be no more than three months after the holiday. However, the employer and employee can agree in writing to a later day, provided that it is no more than 12 months after the public holiday. If employment ends before the substitute day, the employer must pay the employee public holiday pay for the day within seven days after employment ends or the day that would have been the employee’s next pay day, whichever is later.

Public Holiday on Non-Working Day

If the holiday falls on a day that would not ordinarily be a working day for the employee or a day when the employee is on vacation, he or she is entitled to a substitute day off with public holiday pay, provided that the employee is not on pregnancy or parental leave, or on a temporary layoff. However, the employer and employee may agree **in writing** that the employee will instead be paid public holiday pay for the day (in which case there is no substitute day off). In either case, the “last and first rule” will apply.

If the holiday falls on a day that would not ordinarily be a working day for the employee and the employee is on pregnancy or parental leave, or on temporary layoff, the employee’s only entitlement is to public holiday pay for the day. Note that the “last and first rule” will apply.

The employer and employee may agree **in writing** that the employee will work on the public holiday even though it is not ordinarily a working day or the employee is on vacation on that day. In that case, the employee is entitled to his or her regular wages for the hours worked on the day, plus a substitute day off with public holiday pay. However, the employer and employee can instead agree in writing to a pay plus premium pay arrangement under which the employee will be entitled to public holiday pay plus premium pay for each hour worked on the holiday. If there is an agreement to work on the holiday and the employee failed to work some or all of the holiday, the “failure to work” without reasonable cause rules discussed below will apply.

Special Rule: Hospitals; Hospitality Industry; Continuous Operations

Some employees can be required to work on a public holiday that falls on a working day, even if they are not exempted from the ESA’s public holiday provisions, provided they are not on vacation. This will be the case if the employee works in a hospital, hotel, motel, tourist resort, restaurant, tavern or a continuous operation (A “continuous operation” is one that operates 24 hours a day and either never shuts down or shuts down only once a week.)

IMPORTANT NOTE: The right of a hospital, hotel, motel, tourist resort, restaurant, tavern or continuous operation employer to require employees to work on a public holiday is subject to the employee's rights under the [Human Rights Code](http://www.ontario.ca/laws/statute/90h19) (<http://www.ontario.ca/laws/statute/90h19>). It is also subject to any rights he or she may have under the employment contract. Some retail employees have the right to refuse to work on a public holiday, even if they are employed in a continuous operation (e.g., a 24-hour convenience store). See [Your Guide to the Employment Standards Act, 2000](#) for more information, available at: Ontario.ca/ESAguide

If an employee of a hospital, hotel, motel, tourist resort, restaurant, tavern or continuous operation is required to work on a holiday, he or she will be entitled either to:

- his or her regular wages for the hours worked that day, plus a substitute day off with public holiday pay, OR
- public holiday pay plus premium pay for each hour worked on the holiday.

The choice is the employer’s.

Where a hospital, hotel, motel, tourist resort, restaurant, tavern or continuous operation employer requires an employee to work on a holiday, but he or she fails to work some or all of that holiday, the “failure to work” without reasonable cause rules discussed in the next section will apply.

“Failure to Work” Rules (Employee Fails to Work Some or All of a Public Holiday Shift)

There are special rules that apply if the employee agreed to work on a public holiday (or in the case of a hospital, hotel, motel, tourist resort, restaurant, tavern or continuous operation, if the employee was required to work on the public holiday) and then failed to work some or all of the holiday:

- If the employee failed to do any work on the holiday and did not have reasonable cause, the employee has no entitlement.
- If the employee failed to do any work on the holiday but did have reasonable cause, the employee is entitled to a substitute day off with public holiday pay or, if there was a “pay plus premium pay” agreement, the employee will be entitled to public holiday pay for the day. Note that the “last and first” rule still applies. This means that the employee will have no entitlement if he or she fails without reasonable cause to work the last regularly scheduled day of work before – or first regularly scheduled day of work after – the holiday.
- If the employee performed some, but not all, of the work that he or she was to have performed on the holiday and did not have reasonable cause for failing to perform all of the work, the employee is entitled to premium pay for the time worked on the holiday – but nothing more.
- If the employee performed some but not all of the work that he or she was to have performed on the holiday but did have reasonable cause for failing to perform all of the work, the employee is entitled to be paid at his or her regular rate for the time worked and a substitute day off with public holiday pay. If there was a “pay plus premium pay” arrangement, the employee is entitled to public holiday pay for the day plus premium pay for the time worked. Note that the “last and first” rule applies. This means that if the employee fails without reasonable cause to work the entire last regularly scheduled day of work before – or the first regularly scheduled day of work after – the holiday, the employee is entitled to premium pay for the time worked on the holiday, but nothing more.
- If the employee performed all of the work that he or she was to have performed on the holiday, but fails without reasonable cause to work all of the last regularly scheduled day of work before or first regularly scheduled day of work after the holiday, he or she is entitled to premium pay for the time worked on the holiday – but nothing more.

Employees Who Perform both Covered and Exempt Work

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

If an employee performs both kinds of work, he or she is eligible for the public holiday entitlement if at least half of the work performed in the work week of the public holiday is work that is covered.

Example

Kris works for a taxi company as both a taxi driver and as a dispatcher. Cab driving is exempt from the public holiday part of the ESA, while dispatching is covered. In the work week that Canada Day fell, at least half of the work Kris did was as a dispatcher. She is therefore entitled to public holiday entitlements for Canada Day.

11. VACATION WITH PAY

Under the Employment Standards Act (ESA), most employees are entitled to receive two weeks of vacation for each 12 months of employment, whether or not active. Most employees are also entitled to vacation pay equal to at least four per cent of the wages earned during that year. However, some employees work in jobs that are not covered by the ESA's vacation with pay provisions. To see if this exemption applies to you, please see the [Special Rule Tool](#) (available at Ontario.ca/ESAtools).

Vacation Time and Vacation Pay

This employment standard has two parts: vacation time and vacation pay. Employees are entitled to two weeks of vacation time after each 12-month vacation entitlement year. Ordinarily, a vacation entitlement year is a recurring 12-month period beginning on the date of hire.

If the employer has established an alternative vacation entitlement year that begins on a date other than the date of hire, the employee is also entitled to a pro-rated amount of vacation time for the period (called a "stub period") that precedes the alternative vacation entitlement year.

Vacation pay must be at least four per cent of the wages (excluding any vacation pay) earned in the 12-month vacation entitlement year or stub period (where that applies).

Key Definitions

- **Vacation Entitlement Year:** The 12-month period over which employees earn vacation.
- **Standard Vacation Entitlement Year:** A recurring 12-month period beginning on the date of the employee's hire.
- **Alternative Vacation Entitlement Year:** A recurring 12-month period chosen by the employer to begin on a date other than the employee's date of hire (e.g., employee hired June 1, but employer selects alternative vacation entitlement year commencing January 1).
- **Stub Period:** Period between:
 - Date of hire and beginning of the first alternative vacation entitlement year; or
 - End of a standard vacation entitlement year and the beginning of an alternative vacation entitlement year where the employer switches from the former to the latter.
 - Example: if an employer has chosen an alternative vacation entitlement year that runs January 1 to December 31, and the employee was hired on September 1, the stub period will be September 1 to December 31.

IMPORTANT NOTE: An employee's vacation entitlement year and stub period includes time the employee spends away from work because of layoff, sickness or injury, leaves of absence (e.g., pregnancy, parental, family medical, etc.), or any other approved leaves where there is no break in the employment relationship.

Vacation Time

Employees earn a minimum of two weeks' vacation time upon completion of every 12-month vacation entitlement year. The Employment Standards Act (ESA) does not provide for any increases to the two-week vacation time entitlement, although an employee's contract of employment or collective agreement may do so.

If the vacation entitlement year is a standard vacation entitlement year, the employee will be entitled to a minimum of two weeks of vacation time after the 12 month-period that started with his or her date of hire, and after each future 12-month period.

If an employer establishes an alternative vacation entitlement year, the employee will be entitled to a minimum of two weeks of vacation time after each alternative vacation entitlement year. The employee will also be entitled to a pro-rated amount of vacation time for the stub period preceding the start of the first alternative vacation entitlement year.

An employee's contract of employment or collective agreement may provide a greater right or benefit with respect to vacation time or pay. An employee who does not complete either the full vacation entitlement year or the stub period (if any) does not qualify for vacation time under the ESA. However, employees earn vacation pay as they earn wages. So if an employee who is paid by the hour works even just one hour, he or she is still entitled to four per cent of the hour's wage as vacation pay.

How to Calculate Stub Period Vacation Entitlements

Example 1: When the employee has a regular work week

The vacation time entitlement for a stub period is calculated as two weeks multiplied by the ratio (R) of the length of the stub period to 12 months.

- Employee has a regular work week.
- Employee hired September 1 and alternative vacation entitlement year begins January 1.
- Stub period is September 1 to December 31 (four months).

Calculating Entitlement

- $R = 4 \text{ months} / 12 \text{ months}$
- $2 \text{ weeks} \times 4/12 = 2/3 \text{ of a week.}$

Therefore, the employee is entitled to 0.67 of a week off in vacation for the stub period.

Example 2: When the employee does not have a regular work week

The vacation entitlement for a stub period is calculated as two weeks multiplied by the average number of days worked per work week during the stub period (A) multiplied by the ratio of the length of the stub period to 12 months (R).

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

Calculating Entitlement

- $A = 51 \text{ days} / 17 \text{ work weeks}$
- $R = 4 \text{ months} / 12 \text{ months}$
- $2 \text{ weeks} \times [(51/17) \times (4/12)] = 2 \text{ days}$

Deadlines for Giving Vacation

The **vacation time** earned with respect to a completed vacation entitlement year or a stub period **must be given within 10 months following the completion of the vacation entitlement year or stub period**. An employer has the right to schedule when employees take vacation, subject to their obligation to ensure the vacation time taken before the end of that 10-month period.

Example

Riley was hired on February 24, 2005. His employer established an alternative vacation entitlement year of July 1 to June 30. The pro-rated amount of vacation time that Riley earned for the stub period of February 24, 2005 to June 30, 2005 must be taken within 10 months of the end of the stub period (that is, within 10 months of June 30, 2005). The vacation time Riley earned for the entitlement year July 1, 2005 to June 30, 2006, would have to be taken within 10 months of the end of that vacation entitlement year (i.e., within 10 months of June 30, 2006).

If the deadline for giving a vacation comes up when an employee is on leave (e.g. pregnancy, parental, family medical, etc.), the vacation must be taken when the leave ends or, if the employer and the employee agree in writing, at a later date.

Likewise, if an employee's contract requires that his or her vacation must be taken within a specified period or be lost, and that period ends while the employee is still on leave, the employee may, despite the contract, postpone the vacation until the leave ends or, if the employer and employee agree in writing, until an even later date.

Foregoing Vacation

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

Scheduling Vacation Time Earned from a Vacation Entitlement Year

IMPORTANT NOTE: Generally, employers are required to schedule the vacation time earned in each vacation entitlement year in a block of two weeks or in two one-week blocks. However, if the employee makes a written request and the employer agrees in writing, he or she can schedule the vacation in shorter periods. In that case, it is necessary to calculate the number of single vacation days the employee is entitled to.

Example 1: When the employee has a regular work week

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

Calculating the entitlement to single vacation days earned:

- The employee regularly worked Monday, Wednesday and Friday, or three days a week in the preceding vacation entitlement year.
- The employee is therefore entitled to six single vacation days in respect of that vacation entitlement year (i.e., 3 days x 2 = 6 days).

Example 2: When the employee does not have a regular work week

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

Calculating the entitlement to single vacation days earned:

- The employee worked a total of 149 days in the preceding vacation entitlement year.
- There are 52.18 weeks per year.
- The average number of days worked per week in the year would be:
 $149 \text{ days} \div 52.18 \text{ weeks per year} = 2.86 \text{ days}$
- The single vacation days the employee would be entitled to for that year would be:
 $2 \times 2.86 \text{ days or } 5.72 \text{ days of vacation}$

How to Schedule Vacation Time Earned with Respect to a Stub Period

The vacation time earned with respect to a stub period is calculated as single days based on the formulas set out under the heading Calculating Stub Period Vacation Entitlements in the chapter on “Vacation” in [Your Guide to the Employment Standards Act, 2000](#) (available at Ontario.ca/ESAGuide).

If the amount of vacation time earned is between two and five days, the vacation days must be taken consecutively, unless the employee requests in writing that they not be taken consecutively and the employer agrees in writing.

If the amount of vacation time earned with respect to the stub period is more than five days, the first five days must be taken consecutively. Any additional days must be taken either together with the first five or in a separate period of consecutive days, unless:

- the employee requests in writing that the vacation days not be taken in shorter periods; and
- the employer agrees in writing.

Vacation Pay

For vacation pay, employees must receive a minimum of four per cent of the wages they earned in the 12-month vacation entitlement year or stub period for which the vacation is being given.

Example

Suppose Janice earned gross wages of \$16,000 in her vacation entitlement year. She is entitled to four per cent of \$16,000 as vacation pay, or \$640.

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

The wages on which vacation pay is calculated include, but are not limited to:

- Regular earnings, including commissions;
- Bonuses and gifts that are non-discretionary or are related to hours of work, production or efficiency;
- Overtime pay;
- Public holiday pay;
- Termination pay;
- Allowances for room and board

They do not include vacation pay or severance pay (even though these are considered “wages” under the ESA). Note also that the following amounts, which are not considered “wages” under the ESA, are not included in the calculation of vacation pay:

- Tips and gratuities
- Discretionary bonuses and gifts that are not related to hours of work, production or efficiency (e.g., a Christmas bonus unrelated to performance)
- Expenses and traveling allowances
- Living allowances
- Contributions made by an employer to a benefit plan and payments from a benefit plan (e.g., sick pay) that an employee is entitled to
- Federal employment insurance benefits

When to Pay Vacation Pay

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

1. When the vacation time is taken in periods of less than one week. In this case, the employee must be paid vacation pay on or before the payday for the period in which the vacation falls.
 - For example, Alvaro is taking vacation from January 1 to January 3, and the normal payday that covers this period is January 30. Alvaro must be given his vacation pay on or before January 30.
2. When the employee has agreed **in writing** that his or her vacation pay will be paid on each pay cheque as it accumulates. In this case, the employee's wage statement must show clearly the amount of the vacation pay being paid. This amount must also be shown separately from any other amounts paid.
 - Alternatively, the employer can provide a separate wage statement for the vacation pay being paid.
3. If the employee agrees **in writing**, the employer can pay the vacation pay at any time agreed to by the employee.
4. If the employer pays the employee his or her wages by direct deposit into an account at a financial institution.
 - In this case, the employee must be paid vacation pay on or before the payday for the period in which the vacation falls.

When Employment Ends

When employment ends (e.g., when an employee quits, or his or her employment is terminated), an employee is entitled to vacation pay that he or she has earned and has not yet been paid out. In some cases, this would include vacation pay earned during a previous vacation entitlement year or stub period, as well as the vacation pay earned during the current vacation entitlement year or stub period. Remember that vacation pay is payable on termination pay, but not on severance pay.

IMPORTANT NOTE: The unpaid vacation pay must be paid not later than the seventh day after the employment ended or the day that would have been the employee's next pay day, whichever of those days is later.

Paying Vacation Pay Owing When Employment Ends

Example

Jenna was hired on April 1, 2012, and had a standard vacation entitlement year. She was paid biweekly. As of March 31, 2013, she had earned two weeks of vacation time and four per cent of the wages earned in the vacation entitlement year as vacation pay. Her employer scheduled her vacation for the two-week period beginning June 1, 2013, and her vacation pay was to be paid prior to the start of that vacation. However, Jenna quit her employment on May 15, 2013. When she quit, her employer was required to pay her the vacation pay earned in the vacation entitlement year April 1, 2012, to March 31, 2013, plus the vacation pay earned in her last (incomplete) vacation entitlement year (being four per cent of the wages she earned between April 1, 2013, and May 15, 2013). May 17, 2013 would have been Jenna's next pay day, while May 22 is the seventh day after her employment ended. Since May 22 is later than May 17, Jenna's vacation pay must be paid by no later than May 22, 2013.

Vacation and Leaves of Absence

Because the employment relationship continues during a leave of absence (e.g., pregnancy, parental, family medical, etc.), **the time on leave counts toward the completion of a vacation entitlement year or stub period.** For example, an employee on leave for some or even all of a vacation entitlement year would still have earned a full two weeks of vacation time by the end of that year. The vacation pay earned during that vacation entitlement year would be a minimum of four per cent of any wages actually earned during the year (which would be nil if the employee was on leave for the entire year and the leave was unpaid).

A contract between an employer and employee may stipulate that paid vacation is earned through active service (e.g., 1.5 paid vacation days for each month of service or three weeks paid vacation for each year of service). Such a contract may not allow an employee to earn vacation time or pay while on leave. However, because an employer and employee are not permitted to contract out of a minimum employment standard, the employer must ensure the employee receives the greater of:

- the vacation time and pay that was earned under the contract; or
- the minimum vacation time and vacation pay he or she would have earned under the ESA.

Contract of Employment Provides Greater Right to Vacation Based on Active Service

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

At the end of her vacation entitlement year, she has earned 12 paid vacation days under her employment contract. Because she regularly works five days a week, she has earned enough vacation time under her contract to exceed the two-week minimum required under the ESA (which would have amounted to only 10 vacation days). In addition, **the wages paid as a result of having 12 days of paid vacation exceeds four per cent of the wages she had actually earned during the vacation entitlement year. (Since Ingrid's leave was unpaid, she earned wages during only six months of the year; 4% of those wages would be roughly equal to 5 days' wages.)**

Employees Must Receive at Least Two Weeks of Vacation Time (and Four-Per Cent in Vacation Pay)

Tony earns three weeks of paid vacation for every year of active service. He is on a parental leave for eight months of his vacation entitlement year. Under his contract of employment, Tony earned one-third of the three weeks' paid vacation he would otherwise earn in a year. In other words, he earned one week of paid vacation for the vacation entitlement year. However, his employer must ensure that Tony receives at least the minimum ESA vacation entitlements of two weeks' of vacation time and four per cent vacation pay. **The employer will, therefore, have to provide Tony with another week of vacation time and ensure the week of vacation pay earned under the contract is not less than four per cent of the wages he had actually earned in the vacation entitlement year.** (In this case, it is unlikely that any more vacation pay is due, as 4% of the wages earned in a four-month period will generally be less than one week's pay.)

Vacation Records

Employers are required to keep records for each employee of:

- the vacation time earned since the date of hire, but not taken before the start of the vacation entitlement year;

- the vacation time earned during the vacation entitlement year; the vacation time taken (if any), during the vacation entitlement year;
- the balance of vacation time remaining at the end of the vacation entitlement year;
- the vacation pay paid during the vacation entitlement year;
- the amount of wages on which the vacation pay was calculated and the period of time to which those wages relate.

Where there was a “stub period” (see above), the employer is also required to keep records for each employee of:

- the vacation time earned during the stub period;
- the vacation time (if any) taken during the stub period;
- the vacation time (if any) earned but not taken during the stub period;
- the vacation pay paid during the stub period;
- the amount of wages on which the vacation pay was calculated and the period of time to which those wages relate.

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

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

- seven days after the request; or
- the first pay day after the employee makes the request subject to the following:

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

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

IMPORTANT NOTE: The employer is required to provide the information with respect to a vacation entitlement year or stub period only once.

If the employee has agreed in writing that vacation pay that accrues during a pay period will be paid on the pay day for that pay period, the employer does not have to:

- make or keep records of the amount of vacation pay paid during a vacation entitlement year or stub period, or the amount of wages on which that vacation pay was based; or
- provide a statement setting out vacation pay and vacation time information contained in the employer's records, as discussed above.

Reminder: In this situation, **the employer needs to:**

- report the vacation pay that is being paid separately from the amount of other wages on the regular wage statement; or
- provide a separate statement setting out the vacation pay that is being paid.

The employer must also keep a record of the vacation pay information set out in the wage statement or in a separate statement, as the case may be.

Vacation Pay Checklist

Employers, please verify that:

- Employees receive a minimum of two weeks of vacation time per entitlement year, **plus** any applicable stub period vacation time.
- Employees receive vacation pay in the amount of at least four per cent of all gross wages (less vacation pay and severance pay paid) earned during the 12-month entitlement period and/or stub period (if applicable).
- Active and inactive employment is included when calculating the vacation entitlement year and stub period.
- The minimum two weeks of vacation time earned during an entitlement year is given to the employee within 10 months of the end of the entitlement year.
- Vacation time earned during a stub period is given to the employee within 10 months of the end of the stub period.
- The vacation is taken in full weeks unless shorter periods of vacation time are requested in writing by the employee and agreed to in writing by the employer.

- Vacation pay is paid:
 - In a lump sum before the vacation begins or if taking the vacation in less than complete weeks, on or before the pay day for which the vacation falls.
 - On each pay day, if agreed to in writing by the employee.
 - On or before the pay day for which the vacation falls (if paying by direct deposit).
 - At some other time agreed to in writing by the employee.
- When paying vacation pay, the employee receives a wage statement setting out vacation pay separately or receives a separate wage statement with that information.
- Any unpaid vacation pay is paid to the employee within seven days of his or her employment ending, or on the date that would have been the employee's next regular pay day, whichever is later.
- Records of vacation time and vacation pay are made within seven days of the end of the employee's vacation entitlement year.
- Records of vacation time and vacation pay are kept for three years after they are made.

12. TERMINATION AND SEVERANCE

An employee is entitled to notice of termination (or termination pay instead of notice) if he or she has been continuously employed for at least three months. A person is considered “employed” not only while he or she is actively working, but also during any time in which he or she is not working but the employment relationship still exists (for example, time in which the employee is off sick or on leave or on lay-off).

The amount of notice to which an employee is entitled depends on his or her “period of employment”. An employee’s period of employment includes not only all time while the employee is actively working but also any time that he or she is not working but the employment relationship still exists, *with the following exceptions*:

- if a lay-off goes on longer than a temporary lay-off, the employee’s employment is deemed to have been terminated on the first day of the lay-off—any time after that does not count as part of the employee’s period of employment, even though the employee might still be employed for purposes of the “continuously employed for three months” qualification;
- if two separate periods of employment are separated by more than 13 weeks, only the most recent period counts for purposes of notice of termination.

It is possible, in some circumstances, for a person to have been “continuously employed” for three months or more and yet have a period of employment of less than three months. In such circumstances, the employee would be entitled to notice because an employee who has been continuously employed for at least three months is entitled to notice, and the minimum notice entitlement of one week applies to an employee with a period of employment of any length less than one year.

The following chart specifies the amount of notice required:

Period of Employment	Notice Required
Less than one year	One week
One year or more but less than three years	Two weeks
Three years or more but less than four years	Three weeks
Four years or more but less than five years	Four weeks
Five years or more but less than six years	Five weeks
Six years or more but less than seven years	Six weeks
Seven years or more but less than eight years	Seven weeks
Eight years or more	Eight weeks

Note: Special rules determine the amount of notice required in the case of mass terminations – where 50 or more employees' employment is terminated at an employer's establishment within a four-week period. For more information see the chapter on "Termination of Employment" in [Your Guide to the Employment Standards Act, 2000](#) (available at [Ontario.ca/ESAguide](#)).

Defining Termination of Employment

There are a number of expressions that describe ending employment. A few of them are "let go," "discharged," "dismissed," "fired" and "permanently laid off."

In most cases, when an employer ends the employment of an employee who has been continuously employed for at least three months, the employer must provide the employee with written notice of termination. Alternatively, the employer could provide termination pay instead of notice, or a combination of notice and termination pay (please see IMPORTANT NOTE below).

Under the ESA, a person's employment is terminated if the employer:

1. Dismisses or stops employing an employee, including when an employee is no longer employed due to employer bankruptcy or insolvency
2. Constructively dismisses* an employee and the employee resigns, in response, within a reasonable time; and/or
3. Lays an employee off for a period that is longer than a temporary lay-off.

*For more information on constructive dismissals, see the chapter on "Termination of Employment" in [Your Guide to the Employment Standards Act, 2000](#) (available at [Ontario.ca/ESAguide](#)).

IMPORTANT NOTE: If termination pay instead of notice or a combination of notice and termination pay is given, the total amount of pay received must be equal to the total amount that the employee would have received had full notice been given. The [Termination Tool](#) (available at [Ontario.ca/ESAtools](#)), can help you determine the amount of termination pay that may be owed.

If an employee has not been continuously employed for at least three months, there is no obligation to provide either notice of termination or termination pay. An employer is not required to give an employee a reason why his or her employment is being terminated. There are, however, some situations where an employer is prohibited from terminating an employee's employment even if the employer is prepared to give proper written notice or termination pay.

Example

An employer cannot end someone's employment (or penalize him or her in any other way) if any part of the reason for the termination is based on the employee asking questions about, or exercising a right under, the ESA, such as:

- refusing to work in excess of the daily or weekly hours of work maximums; or
- taking a leave of absence to which he or she is entitled.

This is called reprisal. A reprisal is a serious violation of the Act and can be costly for an employer.

An employment standards officer could issue an order requiring reinstatement or compensation for any loss that the employee suffers, or both. Please see the chapter on “Reprisals” in [Your Guide to the Employment Standards Act, 2000](#) (available at Ontario.ca/ESAGuide).

Requirements During the Statutory Notice Period: Termination

During the statutory notice period, an employer:

- must not reduce the employee's wage rate or alter any other term or condition of employment;
- must continue to make required contributions to the employee's benefit plans; and
- must, for each week, pay the employee the wages he or she is entitled to (if in any week the employee earns less than the amount of his or her regular wages for a regular work week, he or she must still be paid the amount of his or her regular wages for a regular work week.)

Regular Wages

These are wages other than overtime pay, vacation pay, public holiday pay, premium pay, termination pay, severance pay and certain contractual entitlements.

IMPORTANT NOTE: For more information, see [Employment Standards Act, s.5 \(2\): Ontario.ca/laws/statute/00e41#BK7](#)

Regular Work Week

For an employee who usually works the same number of hours every week, a regular work week is a week of that many hours, **not including overtime**.

Some employees do not work the same number of hours every week or are paid on a basis other than time. For them, regular wages for a regular work week is the average amount of regular wages earned in the 12 weeks in which the employee worked preceding the date of notice or, if no notice was given, the termination date.

An employer is not allowed to require an employee to take vacation during the statutory notice period unless the employee, **after receiving written notice of termination**, agrees in writing to take his or her vacation time during the notice period.

How to Provide Notice

In most cases, notice of termination of employment must:

- be in writing;
- addressed to the employee; and
- provided to him or her:
 - in person;
 - by mail (if the method of mail delivery permits delivery to be verified);
 - by fax or email (if the employee is equipped to receive fax or email);
 - by courier; or
 - in a sealed envelope at the employee's residence with a person who appears to be at least 16 years old.

There are special rules for providing notice of termination to employees whose employment contract or collective agreement provides seniority rights, allowing an employee who is to be laid off or terminated to displace ("bump") another employee.

In that case, the employer may post a notice in a conspicuous part of the workplace, where it will be seen by the employees, setting out the name(s), seniority, job classification and proposed lay-off or termination date of the employee(s). The notice is considered to be notice of termination, as of the date of the posting, to any employee who is bumped by the employee(s) named in the notice.

IMPORTANT NOTE: This notice of termination must still meet the length of notice requirements set out in the ESA.

Mass Termination

Special rules for notice of termination apply when the employment of 50 or more employees is terminated at an employer's establishment within a four-week period. This is often referred to as mass termination

Note that an establishment, with respect to an employer, means a location where the employer carries on business. When the employer carries on business at more than one location, separate locations are considered one establishment when:

- the separate locations are located within the same municipality, or
- one or more employees at a location have seniority rights that extend to the other location under a written employment contract whereby the employee or employees may displace ("bump") another employee of the same employer.

If a mass termination occurs, the employer must complete and submit a *Form 1* (Notice of Termination of Employment, available at: Ontario.ca/ESAforms) to the Ministry of Labour's Director of Employment Standards. **Notice of mass termination is not effective until the Director of Employment Standards has received the employer's completed Form 1.** A letter of acknowledgement is sent out to the employer when the completed *Form 1* has been received by the Director of Employment Standards.

In addition to providing employees with individual notices of termination (or a posted notice where bumping is possible, as discussed above), the employer must post a copy of the *Form 1* that was provided to the Director of Employment Standards in the workplace where it will come to the attention of the employees, on the first day of the notice period.

The amount of notice employees must receive in a mass termination is not based on the employees' length of employment, but on the number of employees whose employment is being terminated in the same four-week period. **An employer must give:**

- **8 weeks' notice** if the employment of **50 to 199 employees** is to be terminated.
- **12 weeks' notice** if the employment of **200 to 499 employees** is to be terminated.
- **16 weeks' notice** if the employment of **500 or more employees** is to be terminated.

For more information on mass termination, see the chapter on "Termination of Employment" in [Your Guide to the Employment Standards Act, 2000](#) (available at Ontario.ca/ESAguide).

Exceptions to the Mass-Termination Rules

The mass termination rules do not apply if:

1. the number of employees whose employment is being terminated represents not more than 10 per cent of the employees who have been employed for at least three months at the establishment; and
2. none of the terminations are caused by the permanent discontinuance of all or part of the employer's business at the establishment.

Helpful Tips

- To see a more detailed discussion about notice of termination and termination pay, see the chapter on "Termination of Employment" in [Your Guide to the Employment Standards Act, 2000](#) (available at Ontario.ca/ESAguide).
- To determine whether you have an obligation to pay termination pay and the amount owing, please see the [Termination Tool](#) (available at Ontario.ca/ESAtools).

Severance Pay

Severance pay is not the same as termination pay, which is given in place of the required notice of termination of employment. Severance pay is compensation that is paid by an

employer to a qualified employee who has his or her employment severed. It compensates an employee for loss of seniority and the value of firm-specific skills, and recognizes his or her long service.

To calculate the amount of severance pay an employee is entitled to receive, multiply the employee's regular wages for a regular work week by the sum of:

- the number of completed years of employment; and
- the number of completed months of employment divided by 12 for a year that is not completed.

The maximum amount of severance pay required to be paid under the ESA is 26 weeks.

When Severance Occurs

A person's employment is "severed" when his or her employer:

- Dismisses or stops employing the employee, including when an employee is no longer employed due to the bankruptcy or insolvency of his or her employer;
- Constructively dismisses* the employee, who resigns in response within a reasonable time;
- Lays the employee off for 35 or more weeks in a period of 52 consecutive weeks;
- Lays the employee off because the employer permanently discontinues all of the business at an establishment (remember that an establishment can, in some circumstances, include more than one location); or
- Gives the employee written notice of termination and the employee resigns after giving the employer two weeks' written notice, and the resignation takes effect during the statutory notice period.

*For more information on constructive dismissals, see the chapter on "Termination of Employment" in [*Your Guide to the Employment Standards Act, 2000*](#) (available at Ontario.ca/ESAguide).

Wrongful Dismissal

The rules under the Employment Standards Act (ESA) about termination and severance of employment are minimum requirements. An employee may have greater entitlements under common law, which he or she might choose to enforce by suing the employer in court for wrongful dismissal. The ESA prohibits an employee from both suing an employer in court for wrongful dismissal and pursuing a claim for termination pay and/or severance pay with the ministry, if the lawsuit and the claim relate to the same termination or severance of employment (although the ESA does provide that an employee who files a claim can still sue if he or she withdraws the claim within two weeks of filing it). **Note that the fact that the employer has provided notice of termination or termination pay, or severance pay, in accordance with the ESA does not mean that the employee cannot sue for wrongful**

dismissal. Employees and employers may wish to obtain legal advice concerning their rights and obligations.

Helpful Tips

- To see a more detailed discussion on when an employee's employment is considered severed, the chapter on "Severance Pay" in [*Your Guide to the Employment Standards Act, 2000*](#) (available at Ontario.ca/ESAguide).
- To determine whether you have an obligation to pay severance pay and the amount owing, please see the [Severance Tool](#) at Ontario.ca/ESAtools.

13. EMPLOYMENT STANDARDS LAWS CAN CHANGE

Historically, employment standards laws have been frequently reviewed and updated to address changes in the Ontario workplace.

Information, resources and tools on these important changes can be found on our website: Ontario.ca/EmploymentStandards. On this website, you will also find a number of interactive tools that address many topics in this Workbook.

For additional questions, please call our Employment Standards Information Centre at 1-800-531-5551. Information is available in multiple languages.

Understanding and following the ESA requires that those affected by changes make the time to read about them and ask questions if something is unclear. The employment standards resources available online are regularly updated to include new information as required.