

fact sheet

employment standards act

WHAT YOUNG WORKERS SHOULD KNOW

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

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

What work is not covered by the ESA?

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

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the Ontario Works Act, 1997
- Police officers (except for the Lie Detectors part of the ESA, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

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

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

Does the ESA cover young workers?

Yes, it does. Young workers have the same rights as other employees in Ontario workplaces under the ESA (although there are different minimum wage rules that apply to “students”—see page 2.)

However, certain types of employment are exempt from (i.e., not covered by) some parts of the ESA. **In particular, there are special rules and exemptions that apply to students.** For details, consult the “How Are You Covered by the ESA?” fact sheet.

Are young workers who are part-time employees covered by the ESA?

Yes. Examples of part-time positions young workers frequently hold that are covered by the ESA include jobs in retail stores, restaurants and hotels, construction, farming and domestic services.

What is “minimum wage”?

Minimum wage is the lowest hourly wage an employer can pay employees, whether they are full-time or part-time.

Employers must pay most employees, including young workers, at least the minimum wage no matter how they are paid (i.e. hourly, salary, commission, flat rate, piece rate). Tips or gratuities are not considered wages and will not be considered in determining whether an employee is receiving at least minimum wage.

There are several minimum wage rates in Ontario including a **general minimum wage** rate that applies to most employees and a **student minimum wage** rate that applies to many students under the age of 18.

Unless employed in an industry or job category that is exempt from the minimum wage entitlements or subject to a special minimum wage rate, most students under the age of 18:

- who work no more than 28 hours a week when school is in session, or
- who work during a school holiday (for example, March break, Christmas break, summer holidays)

are entitled to the **student minimum wage**. Students who work **more** than 28 hours a week when school is in session are entitled to the general minimum wage.

The minimum wage rates and scheduled increases are set out below:

Minimum Wage Rate	January 1995	February 1, 2004	February 1, 2005	February 1, 2006	February 1, 2007
General Minimum Wage	\$6.85 per hour	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour
Students under 18 and working not more than 28 hours per week or working on a school holiday	\$6.40 per hour	\$6.70 per hour	\$6.95 per hour	\$7.25 per hour	\$7.50 per hour
Liquor servers	\$5.95 per hour	\$6.20 per hour	\$6.50 per hour	\$6.75 per hour	\$6.95 per hour
Hunting and Fishing guides	\$34.25: paid this minimum rate for less than five consecutive hours in a day; \$68.50: for five or more hours in a day whether or not the hours are consecutive	\$35.75 \$71.50	\$37.25 \$74.50	\$38.75 \$77.50	\$40.00 \$80.00
Homeworkers * doing paid work in their home for an employer (e.g. word processing, telephone soliciting, sewing, online research)	\$7.54 per hour (110 per cent of the general minimum wage)	\$7.87 per hour (110 per cent of the general minimum wage)	\$8.20 per hour (110 per cent of the general minimum wage)	\$8.53 per hour (110 per cent of the general minimum wage)	\$8.80 per hour (110 per cent of the general minimum wage)

(* Note that students of *any* age (including students under the age of 18 years) who are employed as homeworkers **must** be paid the homeworke’s minimum wage.)

Not all young workers are covered by the minimum wage provisions in the *Act*. There are exemptions to minimum wage entitlements in the *ESA 2000* that apply to students of any age. For example:

- students in training for certain occupations such as architecture, law, professional engineering, medicine, optometry
- secondary school students performing work under a work experience program authorized by the school board that operates that student’s school,
- persons performing work under a program approved by a college of applied arts and technology or university, and

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- persons employed as a student to instruct or supervise children and a person employed as a student at a camp for children

are **not** entitled to a minimum wage under the Act.

See the “How are you Covered by the ESA” fact sheet for details regarding exemptions for employees and students in training in specific industries or job categories.

Are young workers entitled to a lunch break or coffee break?

Most employees, including young workers, may not work longer than five hours in a row without getting a 30-minute eating period. If the employer and employee agree, the 30-minute eating period may be taken as two breaks within each five-consecutive-hour work period. Meal breaks are *unpaid* unless the employee’s employment contract requires payment.

Employers do not have to give employees “coffee” breaks or any other kind of break other than the eating period.

Do young workers get paid a minimum amount when they are called in to work?

In most cases, when an employee who regularly works more than three hours a day is called in to work, the employer must pay for a minimum of three hours at minimum wage, even if the employee does not work that much time.

However, this rule does not apply to students, including students over 18 years of age, who are called in to work. Those employees are entitled to be paid only for the amount of time they actually work.

When are young workers eligible for overtime?

The ESA requires employers to pay most employees, including young workers, overtime of at least one and a half times their regular rate of pay for each hour of work over 44 hours a week. If an employee and employer agree in writing, the employee can take one and a half hours of paid time off work for each hour of overtime worked. The paid time off must be taken within three months of the work week in which the overtime was earned or, with the employee’s written agreement, within 12 months of that work week.

There are individuals and jobs that are not eligible for overtime, including:

- the installation and maintenance of swimming pools
- landscape gardeners
- growing, transporting and laying sod
- person employed as a student to instruct or supervise children
- person employed as a student at a camp for children.

Are young workers entitled to be paid for public holidays?

Most employees, including full-time and part-time young workers, are entitled to take the following eight public holidays off with public holiday pay:

- New Year's Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- December 26 (Boxing Day)

Public holiday pay is the total of the employee's regular wages earned and vacation pay payable in the four work weeks before the week in which the public holiday falls, divided by 20.

Employees who work in a hotel, motel, tourist resort, restaurant, tavern, hospital or continuous operation (operations or parts of operations that do not shut down or close down more than once a week, such as oil refineries or alarm monitoring companies) may be required to work on a public holiday. This is the case *only* when the public holiday falls on a day that they would ordinarily work, and they are not on vacation.

There are special rules about substitute days off and pay for work performed on a public holiday where an employee is required to work or agrees to work on the public holiday.

Employees do not have the right to a paid public holiday or a substitute day off if they:

- fail to work all of their last regularly scheduled shift before or first regularly scheduled shift after the public holiday without reasonable cause*
- or**
- they fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.

Most employees in these circumstances are entitled to be paid premium pay (time and a half) for every hour they work on the holiday.

(* Employees are generally considered to have "reasonable cause" for missing work when something beyond their control prevents them from working. Examples include, but are not limited to: absences related to personal emergency leave (i.e. personal illness, injury or medical emergency and the death, illness, injury, medical emergency or urgent matter relating to certain family members and dependent relatives) as well as absences for family medical leave and declared emergency leave. Employees are responsible for showing that they had a reasonable cause for staying away from work. If they can do so, they still qualify for public holiday entitlements

There are individuals and jobs that *are not* entitled to take a public holiday off or to be paid public holiday pay, including:

- the installation and maintenance of swimming pools
- landscape gardeners
- growing, transporting and laying sod
- person employed as a student to instruct or supervise children
- person employed as a student at a camp for children.

For more information, refer to the “Public Holidays” Fact sheet.

What if an employee agrees to work on a public holiday?

If employees who have the right to a day off with public holiday pay agree in writing to work on the holiday, they are entitled to:

- wages at their regular rate for the hours worked on the public holiday plus a substitute day off with public holiday pay.

However, if the employer and employee agree in writing:

- the employee is entitled to public holiday pay for the day, plus premium pay at time and a half for each hour worked on the holiday. In this case the employee is not entitled to a substitute day off.

Can an employer deduct the cost of a uniform, or other items, from an employee’s pay?

Some employers require employees to pay for personal uniforms or other items as a condition of having a job. However, deductions from an employee’s wages may only be made if the employee *agrees in writing* to have a specified amount deducted. Employees should ask the employer about any special requirements before accepting a job.

Even if an employee agrees in writing, there are certain situations where the deduction may not be made. For example, an employer cannot make deductions for a cash shortage when more than one individual has access to a cash register—even with a written agreement. Also, an employer is prohibited from deducting an amount due to faulty work.

How can a young worker tell whether he or she is being paid correctly?

Employers must keep detailed records of hours worked, wages and deductions. They must give all employees a “pay stub” or “pay slip” with each pay that shows the full details of the pay period, including rate of pay, gross and net amount of wages, deductions and the reasons for any deductions. An employer must establish a recurring pay period and a recurring pay day.

When are young workers entitled to vacation pay?

Most employees, including young workers, are entitled to a minimum of two weeks of vacation with pay after each 12 months of employment, starting from the date they are hired.

If the employer establishes a 12-month vacation entitlement year that does not start on the anniversary date of the employee's hire, the employee is also entitled to a pro-rated amount of vacation with pay for the period (stub period) before the 12-month vacation entitlement year begins.

Vacation pay must be at least four per cent of the employee's "gross" wages (excluding vacation pay) earned in the period for which the vacation is being given.

Employees who do not complete either the stub period (if any) or 12-month vacation entitlement year do not qualify for vacation time. However, employees earn vacation pay as they earn wages, so they will be entitled to at least four per cent of the wages they have earned as vacation pay.

Employees must receive their vacation pay, and any wages due, no later than seven days after employment ends, or on what would have been their next regular pay day, whichever is later.

For further details, including when and how vacation may be taken, see the "Vacation" fact sheet.

Are young workers who are employed in retail required to work on public holidays and on Sundays?

The ESA contains rights that apply specifically to employees who work in retail businesses. (A retail business sells goods or services to the public.) These rights apply to both sales employees and non-sales employees, such as managers. These rights also apply to employees who work in a retail business even if their employer is not a retail business. For example, these rights apply to cleaners and security guards who work for a cleaning or security company but who are assigned to work in a shopping mall.

Retail workers generally have the right under the ESA to refuse to work on public holidays, even if they do not qualify for public holiday pay.

Retail workers hired before September 4, 2001 have the right to refuse to work on Sundays. Retail workers who agreed in writing at the time of being hired on or after September 4, 2001 that they would work on Sundays, cannot refuse to work on Sundays except in certain circumstances for reasons of religious belief or observance. Please see the "Retail Workers" fact sheet for details.

Are there times when retail employees cannot refuse to work on public holidays or Sundays?

The rules that allow certain retail employees to refuse to work public holidays and Sundays do not apply if the main business is:

- selling prepared meals (i.e., restaurants, cafeterias, cafés)
- renting living accommodations (i.e., hotels, tourist resorts, camps, inns)

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- providing educational, recreational or amusement services to the public (i.e., museums, art galleries, sports stadiums)
 - selling goods and services that are secondary to the *businesses* described above and are located on the same premises (i.e., museum gift shops, souvenir shops in sports stadiums).

For employees working in these kinds of businesses, there is no general right to refuse Sunday work except for reasons of religious belief, practice or observance and the regular rules about public holidays apply. In some cases, these employees *will* have the right to refuse to work public holidays under those regular rules. Please refer to *Are young workers entitled to be paid on public holidays?* (above) or see the “Public Holidays” fact sheet for more information.

Do employers have to tell young workers in advance if they are going to end their employment?

After working for an employer continuously for three months, most employees must receive advance notice in writing and/or termination pay when their employer ends their employment.

The amount of notice depends on how long they have worked for the same employer:

- three months or more but less than one year, one week’s notice must be given
- one year or more but less than three years, two weeks’ notice must be given
- after three years, one weeks’ notice must be given for each year worked, to a maximum of eight weeks.

An employee is not terminated if he or she is only “temporarily laid off.” Please see the “Termination of Employment & Severance Pay” fact sheet.

If an employee has been with an employer for at least five years, he or she may also be entitled to receive severance pay upon termination of employment.

How can a young worker get wages owed by an employer?

If an employee is unable to recover wages from an employer, he or she may contact the Ministry of Labour to file a complaint.

It is important to file claims promptly because, in most cases, there is a six-month time limit* from the date wages became due for an employee to file a written claim for recovery of wages.

For example, if a claim is filed to recover lost wages on July 15, the ministry is only able to recover unpaid wages that were owed to the employee between January 15 and July 15, no matter when the employee left the job. To ensure the greatest amount of work time is covered (up to six months), the employee must file a claim at the earliest opportunity. An exception to this rule applies to vacation pay. Unpaid vacation pay may be recovered if the claim is filed within 12 months of the date the vacation pay came due.

In addition, the recovery period for wages (other than vacation pay) may be extended to 12 months where there was a repeated violation (i.e. where the employer violated the same section of the ESA more than once with respect to the employee *and* at least one of the violations

occurred in the six-month period before the claim was filed). For details about this and other situations concerning the recovery of wages, please see the “How to File a Claim” fact sheet.

Employees cannot be penalized in any way for:

- asking the employer to comply with the ESA
- asking questions about rights under the ESA
- filing a complaint under the ESA
- exercising or trying to exercise a right under the ESA
- giving information to an employment standards officer
- taking, planning on taking, being eligible or being in a position to become eligible to take a personal emergency leave, declared emergency leave, family medical leave, parental leave, or pregnancy leave
- being subject to a garnishment order (i.e., a court order to have a certain amount deducted directly from wages to satisfy a debt)
- participating in a proceeding under the ESA or section 4 of the Retail Business Holidays Act
- refusing to take a lie detector test.

If an employee believes he or she has been penalized, or the employer has threatened to penalize the employee for any of the above reasons, the employee may file a claim with the Ministry. A two-year time limit* applies to such claims.

(*The six-month/one year and two year time limits described above are set out in the legislation and are generally mandatory. However, in some limited circumstances it may be possible to make a claim that would otherwise be outside the applicable time limit. See the “How to File a Claim” fact sheet for more information.)

What if the employer does not follow the ESA?

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

This fact sheet provides general information for young workers about employment rules as set out in the Employment Standards Act, 2000 (ESA) and its regulations. For complete information please refer to the ESA and the regulations.

For More Information

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

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

ESA fact sheets are available on the following subjects:

Agricultural Workers	Personal Emergency Leave
Domestic Workers	Pregnancy Leave & Parental Leave
Family Medical Leave	Public Holidays
Frequently Asked Questions	Retail Workers
Homeworkers	Role of the Ministry of Labour
Hours of Work & Overtime	Termination of Employment & Severance Pay
How Are You Covered by the ESA?	Vacation
How to File a Claim	What Young Workers Should Know
Minimum Wage	

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

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

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

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

