

EMPLOYMENT RULES:

Employment Standards Tool Kit for Ontario Franchised Businesses



Published by



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EMPLOYMENT RULES

What is the purpose of this Tool Kit?

In the wake of *Bill 148: Fair Workplaces, Better Jobs Act*, 2017 receiving Royal Assent in late 2017, the Ontario Ministry of Labour launched a new grants program that provides funding to eligible organizations for initiatives designed to help educate employees and employers on their rights and obligations under the *Employment Standards Act, 2000* (ESA).

The key objective of the Employment Standards Training and Employment Program (ESTEP) grant is to expand the scope of the Ministry of Labour's existing education and outreach efforts by funding external organizations to develop programs aimed at educating employees and employers on both their rights and obligations under Ontario's new

labour and employment laws. Given that many of our members were affected by the recent changes, the CFA understands the difficulties businesses are facing in this climate, and believe we are well positioned to help you navigate the new employment landscape.

CFA launched their **Employment Standards and Education Program for Ontario Franchised Businesses** program shortly after our 2018 National Convention, and including this Tool Kit, CFA is offering articles, webinars, presentations and other materials to help make the employment standards and labour laws of Ontario more accessible and easier to understand and navigate for our members, their employees, and the greater public.

Background

The *Employment Standards Act, 2000* provides the minimum standards for most employees working in Ontario. It sets out the rights and responsibilities of employees and employers in most Ontario workplaces.

This Tool Kit is a source of information about key sections of the ESA that affect our members the most. It is meant to assist you, but is not as detailed as the ESA legislation. If you have questions or concerns regarding the rights and/or obligations of an employee or employer, please consult with a labour lawyer.



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For more information on the CFA's Employment Rules resources, visit www.cfa.ca/employment-rules or call Samantha Sheppard, Government Relations Specialist, at 1-800-665-4232 x 230.



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Did you know you can watch video of these modules online? View them now at www.cfa.ca/employment-rules.



MODULE 1

Overview of the Employment Standards Act (Ontario)



DEFINITIONS

Employee: *Someone who...*

1. Works for an employer for wages;
2. Supplies services to an employer for wages;
3. Is trained by the employer in their trade; or
4. A homeworker.

Employer: *Someone who is...*

1. An owner OR manager;
2. Of a business OR undertaking;
3. Who does the following:
 - a. Has **CONTROL** or **DIRECTION** of the employment of a person; or
 - b. Is directly or indirectly **RESPONSIBLE** for the employment of a person.

Establishment: *Where an employer carries on business. Multiple establishments can be found to be one establishment when:*

1. They are within the same municipality, or
2. Seniority rights carry over between each.

Wages:

1. Money payable under an employment contract;
2. A payment required under the ESA; and/or
3. Room and board.

Wages are NOT:

1. Tips or gratuity;
2. Discretionary bonus;
3. Expense and travelling allowances; or
4. Benefit contributions.

Tip or Gratuity: *A tip is a payment...*

1. Voluntarily left to an employee by a customer;
2. Voluntarily made to an employer to be given to an employee; or
3. A charge imposed on a customer to be given to an employee(s).

NOTE: A tip is NOT a charge related to the method of payment used.



MODULE 1

Overview of the Employment Standards Act

REQUIRED POSTINGS

The Employment Standards Branch of the Ministry of Labour has produced a poster outlining a number of important details under the ESA. This poster is accompanied by a number of obligations on the part of the employer.

This poster is freely available on the Ministry of Labour website in various languages: <https://www.labour.gov.on.ca/english/es/pubs/poster.php>.

EMPLOYER MUST:

1. An employer **MUST** ensure each employee is provided with a copy of this poster within 30 DAYS of the employee's first day of work. (i.e., pdf, hardcopy, link to Ministry's website)

HOW THE ESA APPLIES

The ESA is **REMEDIAL** legislation. Its purpose is to guarantee basic rights for every employee working in Ontario.

Where non-exempt work is performed by a non-exempt employee in Ontario, the employee is covered by the ESA.

Related/Same Employer

Separate parties may be treated as one employer for the purposes of ESA.

The practical implication of this is that each party may be held jointly liable for violating the ESA, even if an individual party can be totally or partially responsible to face a penalty or fine under the ESA.

It can also mean that each party is liable to an employee for outstanding wages.

No Contracting Out!

An employer and employee cannot agree to waive the minimum standards under the ESA in a separate contract – even if an employee signs a contract agreeing to it – it will not be valid.

An employee can only contract out of the ESA where it provides the employee with a greater right or benefit than the basics of the ESA.

Employment Standards in Ontario

The Employment Standards Act, 2000 (ESA) protects employees and sets minimum standards for most workplaces in Ontario.

Employers are prohibited from penalizing employees in any way for exercising their ESA rights.

What you need to know

Minimum wage

Most employees are entitled to be paid at least the minimum wage. For current rates visit: [Ontario.ca/minimumwage](https://www.labour.gov.on.ca/english/es/pubs/poster.php).

Hours of work and overtime

There are daily and weekly limits on hours of work, and rules around meal breaks, rest periods and overtime. For more information visit: [Ontario.ca/hoursofwork](https://www.labour.gov.on.ca/english/es/pubs/poster.php) and [Ontario.ca/overtime](https://www.labour.gov.on.ca/english/es/pubs/poster.php).

Public holidays

Ontario has a number of public holidays each year. Most employees are entitled to take these days off work and be paid public holiday pay. For more information visit: [Ontario.ca/publicholidays](https://www.labour.gov.on.ca/english/es/pubs/poster.php).

Vacation time and pay

Most employees earn vacation time after every 12 months of work. There are rules around the amount of vacation pay an employee earns. For more information visit: [Ontario.ca/vacation](https://www.labour.gov.on.ca/english/es/pubs/poster.php).

Leaves of absence

There are a number of job-protected leaves of absence in Ontario. Examples include pregnancy, parental and family caregiver leave. For more information visit: [Ontario.ca/ESAguide](https://www.labour.gov.on.ca/english/es/pubs/poster.php).

Termination notice and pay

In most cases, employers must give advance written notice when terminating employment and/or termination pay instead of notice. For more information visit: [Ontario.ca/terminationofemployment](https://www.labour.gov.on.ca/english/es/pubs/poster.php).

Learn more about your rights at:

[Ontario.ca/employmentstandards](https://www.labour.gov.on.ca/english/es/pubs/poster.php)
1-800-531-5551 or TTY 1-866-567-8893

Twitter: @ONlabour Facebook: OntarioMinistryofLabour

Other employment rights, exemptions and special rules

There are other rights, exemptions and special rules not listed on this poster including rights to severance pay and special rules for assignment employees of temporary help agencies.



Subscribe to stay up-to-date on the latest news that can affect you and your workplace: [Ontario.ca/labournews](https://www.labour.gov.on.ca/english/es/pubs/poster.php)

However, there are some exceptions. You may not be covered under the ESA if you are a:

- Co-op college or high school student;
- Ontario works participant;
- Correctional inmate;
- Corporate director;
- Office holder;
- Police officer; and/or
- A member of a quasi-judicial tribunal. ***NOTE: For a complete listing of other individuals not governed by the ESA, please check the ESA and its regulations.***

Independent Contractor

Is an individual performing work for a business.

The benefits for a business to use an independent contractor in place of an employee:

1. ESA does **NOT** apply;
2. Tax advantages for **BOTH** parties; and
3. Administrative savings.

It is the businesses' responsibility to prove that the individual is appropriately characterized as an independent contractor. If not, they can be liable for misclassification.

Implications of Misclassification:

- Order to comply (at minimum)
- Notice of contravention
- Prosecution

If there are other violations in relation to the employee:

- Order to pay any monetary entitlements the employer has withheld or denied by the employer
- Order to comply

COMPLAINTS AND ENFORCEMENTS

When an employee feels that the ESA has been breached, they have the right to file a complaint with the Ministry of Labour.

There is no cost to file a complaint.

The employer may **NOT** penalize an employee for filing a complaint.

There is a limitation period of **2 YEARS**. The Ministry will not initiate a prosecution under the ESA more than two years after the alleged offence has been committed.

Exceptions

Not every employee can file a complaint. An employee may not file a complaint if:

1. They are represented by a union; and/or
2. When an employee has privately sued for the same matter.

Limitation Period for Unpaid Wages

There are different time limits relevant to enforce the recovery of unpaid wages.

Where the unpaid wages came due **BEFORE** February 20, 2015

The Ministry can only issue an order for unpaid wages that were due prior to Feb. 20, 2015, if the claim was filed within **6 MONTHS** of the date of due wages.

Exceptions:

Vacation Pay: Unpaid vacation pay may be recovered if the claim is filed within **12 MONTHS** of the date of due vacation pay.

Multiple Violations: If an employer has violated the same sections of the ESA more than once with respect to the employee – and if at least one of the violations occurred in the six-month period before the claim was filed, the employee is entitled to recover the wages due for all violations that occurred within a **12 MONTH** period before the claim was filed.



MODULE 1

Overview of the Employment Standards Act

Where the unpaid wages came due **ON** or **AFTER** February 20, 2015

The Ministry can issue an order for unpaid wages (including vacation pay) if the employee has filed a claim within **TWO YEARS** of the date of due wages.

NOTE: An employee may make a claim outside the time limit if the employer told the employee they did not have an ESA entitlement, when the employer knew they did, or should have known, and that caused the employee to delay filing a claim.

Outcome of Complaint

As a result of a complaint, the Ministry may issue one or more of the following to an employer:

- An order to pay wages;
- An order for compensation or reinstatement;
- A compliance order; and/or
- A notice of contravention.

NOTE: For a complete list of Complaint Outcomes, please refer to the ESA.

MOL Powers of Investigation

The Ministry of Labour has a wide range of powers available to it under the ESA. An investigation Employment Standards Officer (ESO) may enter any workplace during business hours, or daylight.

Where the workplace is someone's house, the ESO must obtain a warrant to enter if not allowed by the owner. Of the powers of an ESO, they may:

- Examine any record or thing;
- Require production of any record or thing;
- Remove and copy any record or thing;
- Use the employer's IT; or
- Question any person.

The ESO may request a meeting and compel attendance within **fifteen days**, if one of the following situations applies:

- The ESO is investigating a complaint against an employer;
- The ESO is investigating a place and has reasonable grounds to believe an employer has contravened the ESA;
- The ESO has information suggesting the employer has contravened the ESA regarding an employee; or
- The ESO wishes to determine whether the employer of an employee who lives in the employer's residence is obeying the ESA.

The ESO may also order any or all of the employee, the employer, and a corporate director or employee to the meeting, as well as what materials they are to bring with them or make available to the ESO.

Order to Pay Wages

If an ESO finds an employer owes wages to an employee, the ESO may arrange with the employer to directly pay wages to the employee, order the employer to pay wages to the employee, or order the employer to pay wages to the Director of Employment Standards.

The order must contain information setting out the amount found to be owing to the employee. The **MAXIMUM** amount of wages an employer can be ordered to pay:

BEFORE Feb. 20, 2015 = \$10,000 AFTER

Feb. 20, 2015 = No Cap



Order for Compensation or Reinstatement

Some breaches of the ESA may be remedied by compensation for the loss OR compensation AND reinstatement.

Areas of the ESA where a violation results in the employee being ordered reinstatement are:

- Leave of absence;
- Violations of specific provisions of the retail business establishment section of the ESA;
- Violations of the rules in the ESA regarding lie detectors; and
- Reprisal for the employee claiming his or her rights under the ESA.

This is a unique area of the ESA. Outside of the union context, it is almost impossible to have an employee reinstated to his or her previous role. It is reserved for the most serious violations under the ESA.

Compliance Order

An ESO may order:

- The party to stop breaching the ESA;
- What the party must do or not do to comply with the ESA; and
- Specify a date by which the party must do so.

A compliance order is not the ONLY remedy available to an ESO. In some cases, The ESO may make additional orders under different sections of the ESA.

Refusal to Issue Order

Where the ESO refuses to issue an order, it must provide notice in writing to the complainant OR, if no order is issued within 2 years, the ESO will be deemed to have refused to issue the order.

Notice of Contravention

An ESO may issue a notice that sets out the breach has occurred and the specified penalty for the breach. The notice issued must include the nature of the contravention and must be served to the party who allegedly breached the ESA.

A notice of contravention being issued does not necessarily mean the party receiving the notice has contravened the ESA.

Instead, the party receiving the notice has up to **30 days** to apply to the Ontario Labour Relations Board (OLRB) for review of the notice. The OLRB will decide whether or not to uphold the order.

If the party receiving the notice does not apply to the OLRB for review within the 30-day window, the party will be deemed to have contravened the ESA.

If the party is found to have breached the ESA, the party must pay the fee set by the ESO, and the following may be publicized:

1. The name of contravening party;
2. Description of contravention;
3. Date of contravention; and/or
4. Penalty for contravention.



MODULE 1

Overview of the Employment Standards Act

Review of an ESO Decision

Parties have the option of requesting a formal review of an ESO decision, this is effectively a review that is heard by the OLRB. The request must be submitted in writing within **30 days** of receipt of the Order.

An employer may apply for review of:

- An order to pay wages
- An order to pay fees
- A compliance order
- A notice of contravention of the ESA
- An order to pay compensation
- An order to reinstate an employee

When a request for a review is received, the OLRB may schedule a mediation with the parties. However, no mediation will be scheduled where a notice of contravention has been issued. Where no mediation is scheduled, or is unsuccessful at reaching a settlement, the OLRB will schedule a hearing.

If the ESO issued an order, the OLRB may amend, overturn or uphold the order, or issue a new order.

If the ESO **DID NOT** issue an order, the OLRB may issue its own order, or uphold the ESO refusal to issue an order.

The OLRB's decision is final and binding. Should a party not be satisfied, they may apply for judicial review of the OLRB's decision.

Settlement

The ESO assigned to investigate can attempt to reach a settlement between the employer and employee. If a settlement is reached, the settlement is binding, the complaint is deemed withdrawn, and the investigation is terminated.

Where one party to a settlement disagrees, believes the settlement to be unfair, or that it was reached through fraud or coercion, it may apply to the OLRB to set the settlement aside.

The OLRB may set aside the settlement, and as a result reinstate the complaint and resume the investigation.

COLLECTIONS

The Director of Employment Standards may authorize a "collector" to collect amounts owing under the ESA. A collector may also collect a "reasonable" fee from each party associated with the costs of the collection.

OFFENCES AND PROSECUTIONS

Record-Related Offence

It is an offence to keep a false record or records, and to provide false or misleading information under the ESA.

Breaching the ESA

It is an offence to breach or fail to comply with an order, direction or other requirement under the ESA



Liability of Individuals, Corporate Officers, Directors or Agents

Individual

- Maximum fine of \$50,000;
- 12 months imprisonment; OR
- Both

Corporation

- 1st offence = \$100,000 max. fine
- 2nd offence = \$250,000 max. fine
- 3rd offence = \$500,000 max. fine

Liability of Corporate Director

- A corporate officer, director or agent may be liable for an offence under the ESA for failure to comply with an ESO order
 - Maximum fine of \$50,000
 - Only a director of a corporation may be responsible for this offence
- A corporate officer, director or agent permitting the corporation to commit an offence ◦ Fine or imprisonment
 - An officer, director, or agent of a corporation may be held liable for this offence

AGREEMENTS

An employer can obtain an agreement with an employee regarding the threshold for:

- Hours in excess of the daily limit;
- Hours in excess of the weekly limit; and/or
- Averaging hours of work for overtime pay.

Hours in Excess of the Daily Limit

Daily limit on hours of work is **8 hours**. In some cases, it may be greater where an employer has established a regular work day for the employee that exceeds 8 hours (*e.g.*, the employee's regular schedule is four 10 hour days per week). An employee may exceed the limit pursuant to an agreement with the employer. An employee may not exceed this agreement.

Hours in Excess of the Weekly Limit

Weekly limit on hours of work is **48 hours**. An employee may exceed the limit pursuant to an agreement with the employer. An employee may not exceed this agreement.

Two requirements must be met before an employee may work excess daily or weekly hours:

1. The employer and employee agree in writing the maximum number of additional hours the employee will work; and
2. The employee must receive, and acknowledge receipt in writing, the most recent document published by the Director of Employment Standards describing the rights of employees and obligations of employers related to hours of work under the ESA.

The employee may retract approval at any time.



MODULE 1

Overview of the Employment Standards Act

Averaging Hours of Work for Calculating Overtime Pay

The statutory overtime rate = 1.5x

The standard overtime threshold = 44 hours/week

An employee's hours of work may be averaged over more than **two or more consecutive weeks**.

An employer can average hours of work if two requirements are met:

1. The employee and employer agree in writing the employee's hours of work will be averaged over a specified number of weeks; and
2. The averaging period does not exceed four weeks or the number of hours specified in the agreement, whichever is lower.

The employee may retract approval at any time.

Approval to Forego Vacation

An employee can forego taking a vacation if the Director of Employment Standards and the employer approve. However an employee **cannot** agree to forego receiving vacation pay.



MODULE 2

Monetary



MODULE 2

Monetary

PAYMENT OF WAGES

An employer must establish a regular pay period and a regular payday for its employees. An employer has to pay all the wages earned in each pay period, other than vacation pay, no later than the employee's regular pay day for the period.

Commissions or "Bonuses"

An employment contract or the practice of the employer often provide that the commission or bonus is not "due and owing" or "earned" until some future event has occurred.

A "bonus" is not earned in the pay period in which the sales are actually made. Instead, in accordance with an agreement, it is earned and paid at a later date.

Wages

An employer may pay wages by:

- Cash;
- Cheque; or
- Direct Deposit.

A wage statement must include:

- | | |
|------------------------------------|--|
| • Pay period; | • Amount and purpose of deductions; |
| • Wage rate; | • Amount paid for room or board (if applicable); and |
| • Gross amount of wages; | • Net amount of wages. |
| • How gross wages were calculated; | |

When employment ends, payment (including vacation pay) must be paid **7 DAYS** after the employment ends, or on the employee's next regular pay day.

Vacation Pay

If requested, the employer must provide information regarding vacation pay the first pay day following the request, or seven days after the request.

If the employer pays vacation pay on each pay cheque, the employer does not need to keep records or provide statements for information regarding vacation pay.

Permissible Wage Deductions

Statutory Deductions

- Income Taxes
- Employment Insurance premiums
- Canada Pension Plan contributions

Court Orders

A court order may indicate that an employee owes money and may direct an employer to make a deduction from an employee's wages and send the money to a court clerk. The employer is not allowed to make this deduction if the money is not sent to the court clerk or other official.



Written Authorization

An employer may also deduct money from an employee's wages if the employee has signed a written statement authorizing the deduction.

It must include confirmation that the employer may make a deduction from the employee's wages, and how.

Neither an oral authorization nor a general "blanket" statement is acceptable authorization.

An authorization **CANNOT** authorize deductions to cover a loss due to faulty work, cash shortage, or lost/stolen property.

MINIMUM WAGES

Minimum wage is the lowest wage rate an employer can pay an employee. Compliance with the minimum wage requirements is determined on a pay period basis.

Minimum wage rate	Rates from October 1, 2016 to September 30, 2017	Rates from October 1, 2017 to December 31, 2017	Rates from January 1, 2018 to October 1, 2020
General minimum wage	\$11.40 per hour	\$11.60 per hour	\$14.00 per hour
Student minimum wage	\$10.70 per hour	\$10.90 per hour	\$13.15 per hour
Liquor servers minimum wage	\$9.90 per hour	\$10.10 per hour	\$12.20 per hour
Hunting and fishing guides minimum wage	\$56.95 Rate for working less than five consecutive hours in a day \$113.95 Rate for working five or more hours in a day whether or not the hours are consecutive	\$58.00 Rate for working less than five consecutive hours in a day \$116.00 Rate for working five or more hours in a day whether or not the hours are consecutive	\$70.00 Rate for working less than five consecutive hours in a day \$140.00 Rate for working five or more hours in a day whether or not the hours are consecutive
Homeworkers wage	\$12.55 per hour	\$12.80 per hour	\$15.40 per hour



MODULE 2

Monetary

There are a few different types of minimum wage:

- General Minimum wage;
- Student minimum wage;
- Liquor servers minimum wage;
- Homeworkers minimum wage; and
- Hunting and fishing guides minimum wage.

General Minimum Wage

This minimum wage is the lowest wage rate an employer can pay an employee unless they fall under a different type of minimum wage.

Example: One week, Janice works 37.5 hours. She is paid on a weekly basis. The minimum wage is \$14.00. Since compliance with minimum wage requirements is based on pay periods, Janice must be paid at least \$525.00

$$37.5 \text{ hours} \times \$14.00/\text{hour} = \$525.00$$

Student Minimum Wage

This minimum wage is applied to individuals under the age of 18 who work 28 hours a week or less when school is in session, or work during a school break or summer holiday.

Liquor Servers Minimum Wage

This hourly rate is applied to employees who serve liquor directly to customers, guests, members or patrons in licensed premises and who regularly receive tips or other gratuities as part of their work.

Homeworkers Minimum Wage

Homeworkers are 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 tech company.

NOTE: Students who work as homeworkers must be paid the homemaker's minimum wage.

Hunting and Fishing Guides Minimum Wage

The minimum wage for hunting and fishing guides is based on blocks of time instead of by the hour. They get a minimum amount for working less than five consecutive hours in a day, and a different amount for working five hours or more in a day.

The hours do NOT have to be consecutive.

Commissions

If an employee's pay is based completely or partly on commission, their pay must amount to at least the minimum wage for each hour the employee has worked.

Example: Lee works on commission and has a weekly pay period. One week, she was paid \$150.00 in commission and worked 25 hours. The minimum wage X number of hours worked is \$350.00. Lee is owed the difference between her commission pay and the required minimum wage.

$$\$350.00 - \$150.00 = \$200.00$$

Therefore, Lee's employer owes her \$200.00 for her week of work, apart from her commission.



Room and Board & Minimum Wage

An employer can deduct room and board from an employee's wages. The employee must have received the meals and occupied the room for it to be deemed as wages paid.

Maximum Amounts

Room

Private - \$31.70
Non-private - \$15.85
Non-private (domestic workers only) \$0.00

Meals

Each meal - \$2.55
Weekly maximum - \$53.55

Rooms and Meals (weekly)

Private Room - \$85.25
Non-private - \$69.40
Non-private (domestic workers only) - \$53.55

Harvest Workers Weekly Housing

Serviced housing - \$99.35
Unserviced housing - \$73.30

Three Hour Rule

When an employee who regularly works more than 3 hours a day is required to report to work but works less than 3 hours, the employee is entitled to:

1. The amount the employee earned for the time worked + regular rate for the remainder of the time; OR
2. Wages equal to the employee's regular rate for three hours of work

Example: If an employee who is a liquor server is paid \$14.00 an hour and works only 2 hours, he is entitled to 3 hours at his regular rate.

$$\$14.00 \times 3/\text{hr} = \$42.00$$

$$\$14.00 \times 2/\text{hr} = \$28.00$$

Though he/she only worked 2 hours, they are entitled to **\$42.00** from their employer.

Exceptions:

- The employee is a student;
- The employee regularly works shifts that are 3 hours or less; and/or
- Work being less than 3 hours is outside the employer's control (i.e., result of circumstance – fire, weather, power failure etc.)

Change in Minimum Wage

On October 1 of every year starting in 2020, the minimum wage may increase annually to adjust for any increase to the Consumer Price Index. The new rates come into **effect October 1** and will be **published on or before April 1** of every year.

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



EMPLOYEE TIPS & OTHER GRATUITIES

A tip or other gratuity is a voluntary payment made or left by a customer to an employee, or to the employer for the employee. It can also be payment of a service or similar charge imposed by the employer.

Examples:

- Money left on a table for a server
- Tip added to a credit or debit card payment for an employee
- Gratuity or service charges imposed by a banquet hall or similar establishment

An employer may decide if tipping is allowed in their business, but should make this clear to the clientele.

NOTE: There is no requirement under the ESA for employers to establish a regular period for distributing tips and other gratuities to employees. However, the failure of an employer to distribute tips within a reasonable time frame may constitute the withholding of those tips.

Employer's Restrictions

As of June 20, 2016 an employer cannot:

- Withhold;
- Make deductions from; or
- Make an employee return their tips and other gratuities. Except as

permitted by the ESA.

Employee's Restrictions

An employee may not agree to:

- Give his or her employer all tips in exchange for a higher rate of pay;
- Waive the right to a minimum wage in exchange for keeping all or a higher percentage of tips;
- Give the employer a percentage of their tips for reasons other than a tip pool.

Violations

If an employer violates rules regarding tips the amount wrongfully kept by the employer is considered debt owed to the employee. This debt is enforceable under the ESA as if it were wages owed. The employee may not waive his or her right to receive a tip or other gratuity.

When an Employer May Deduct from a Tip or Other Gratuity

An Employer may deduct from a tip or other gratuity in the case of:

- A statutory deduction;
- Pursuant to a court order; and/or
- Pursuant to an agreement to pool tips and other gratuities. Statutory

Deductions

Can include income tax, employment insurance premiums and Canada Pension Plan contributions. Court Order

A court order may indicate that an employee owes money to the employer or to someone else. Court order may direct an employer to make a deduction from an employee's tips and send the money to a court clerk to be paid in turn to a third party.



Pooling of Tips and Other Gratuities

An employer may withhold tips, make a deduction from an employee's tips or require an employee to give tips to another employee if the amount collected will be redistributed among some, or all, of the employer's employees.

Example: An employer can require a server to "tip out" a busser or kitchen staff, one per cent of tips the server received.

NOTE: A Manager and Employer are both allowed to keep the tips they receive themselves. However, only a manager may participate in tip pooling arrangements. An Employer may not, unless they perform the same work as employees and they are the sole proprietor.

RECORDS

An Ontario employer is required to keep written records about each person they hire. These records **MUST** be kept by the employer, or by someone else on behalf of the employer, for a certain period of time. They must also ensure the records are readily available for inspection.

An employer record must include the following details:

- Name, address and start date- for three years
- Date of birth, if the employee is a student and under 18 years of age- for three years from date employee turns 18 or ceased working, whichever is earlier
- Dates and times the employee worked- for three years
- Hours worked each day and week (unless salaried, in which case special rules apply)- three years
- If the employee has two or more regular rates for work performed, the dates and times overtime was worked at each rate of pay- for three years
- Written agreements to work excess hours or average overtime pay- for three years
- Where the employee has substituted a day off for public holiday- for three years
- Information contained in an employee's wage statement – for three years
- Information contained in an employee's wage statement on termination- for three years
- Information related to leaves – for three years
- Homework register – for three years

An employer must also keep vacation records for five years that include the following details:

- The amount of vacation time an employee earned since the start of employment but had not taken before the start of the vacation entitlement year.
- The amount of vacation time the employee earned during the vacation entitlement year.
- The amount of vacation time the employee took during the vacation entitlement year.
- The amount of vacation time (if any) the employee earned since the start of employment but had not taken as of the end of the vacation entitlement year.
- The amount of vacation pay the employee earned during the vacation entitlement year and how that amount was calculated.
- The amount of vacation pay paid to the employee during the vacation entitlement year.
- The amount of wages on which the employee's vacation pay in the vacation entitlement year was calculated and the period of time to which those wages relate.
- If the employer uses an alternate vacation year, the employer shall keep records of:
 - The amount of vacation time the employee earned during the stub period.
 - The amount of vacation time the employee took during the stub period.
 - The amount of vacation time (if any) the employee earned but had not taken during the stub period.
 - The amount of vacation pay the employee earned during the stub period and how that amount was calculated.
 - The amount of vacation pay paid to the employee during the stub period.
 - The amount of wages on which the employee's vacation pay in the stub year was calculated and the period of time to which those wages relate.



MODULE 2

Monetary

EQUAL PAY FOR EQUAL WORK

An employer may not pay an employee at a rate of pay less than another employee on the basis of **sex**.

Where the two employees' perform substantially the **same kind of work** at the **same establishment**, which requires the **same skills, effort and responsibility**, under **similar working conditions** – they should receive equal pay.

Employers cannot lower employees' rates of pay to create equal pay for equal work.

Substantially the Same Kind of Work

Substantially the same does not mean EXACTLY the same. Actual work performed is what matters, not the stated conditions of the job offer or the job description.

Example: A party reviewing a complaint under this section will consider the duties actually undertaken and performed by two employees. Not what was based on the job description or job offer.



MODULE 2

Monetary

Same Establishment

An establishment is a location where an employer carries on business. Two or more locations are considered a single establishment if:

- They are in the same municipality; or
- Employee seniority carries over between them.

Substantially the Same Skill, Effort and Responsibility

Skill refers to the amount of knowledge, physical skills or motor skills needed to perform a job. This includes:

- Education (diploma, degree);
- Training (apprenticeships);
- Experience (# of years required to master a skill); or
- Manual dexterity (hand-eye coordination).

Effort refers to what is regularly needed to perform a job, such as:

- Physical effort; and
- Mental effort.

Responsibility refers to:

- Number and nature of an employee's job responsibilities;
- Accountability;
- Authority the employee has for those responsibilities;
- Ability to make decisions and take action;
- Responsibility for the safety of others;
- Supervising other employees;
- Handling cash; and
- Amount of supervision over the employee.

Similar Working Conditions

Working conditions to consider include:

- Working environment;
- Exposure to the weather; and
- Health and Safety hazards.

Difference in Rates of Pay

What constitutes a difference in rate of pay:

- Hourly pay rate;
- Salary;
- Piece work rates;
- Overtime pay rate; and
- Commission rate.

This does **NOT** include a difference in benefit plans, vacation pay rates, tips or other gratuities, including tip pool percentages and expenses/travel allowance.



Equal Pay for Equal Work on the Basis of Sex

The ESA generally requires that employers pay men and women equally for equal work. Ontario's *Pay Equity Act* requires employers to pay women and men equal pay for work of equal value.

Men and women must receive equal pay for performing jobs that may be very different but are of equal or comparable value.

Exceptions

Employees can be paid different rates of pay if the difference is due to:

- Seniority;
- Merit; and/or
- Production quantity or quality.

Systems for determining pay differences cannot be based in any way on sex.

Employer Best Practices

In order to avoid issues, employers are encouraged to:

- Document the systems;
- Advise all employees of how the systems apply;
- Review their pay structures to ensure compliance with ESA;
- Develop a salary or wage rate grid;
- Post wage rates or scales for advertised job vacancies; and
- Avoid asking job applicants about prior compensation and benefits.



MODULE 2

Monetary

PUBLIC HOLIDAYS

Most employees who qualify are entitled to take these days off work and be paid public holiday pay. Alternatively, the employee can agree electronically or in writing to work on the holiday and be paid:

- Public holiday pay plus premium pay for all hours worked, and not receive another day off; or
- Be paid their regular wages for all hours worked on the public holiday and receive another substitute holiday for which they must be paid public holiday pay.

Ontario's Nine Public Holidays:

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

NOTE: Easter Monday and Remembrance Day are not public holidays under the ESA. It is up to the employer's discretion to provide them as paid holidays.

The amount of public holiday pay to which an employee is entitled is all of the regular wages earned by the employee and vacation pay payable in the four work weeks before the work week in which the public holiday falls, divided by 20.

Regular wages does not include any overtime pay, vacation pay, public holiday pay, premium pay, , domestic or sexual violence leave pay, termination pay, severance pay or termination of assignment pay payable to an employee.

Performing 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 from public holiday coverage.

Example: Rupert works for a taxi company as both a cab driver (work that is exempt from public holiday coverage) and a dispatcher (work that is covered by the public holiday part of the ESA). In the work week that Canada Day fell, at least half of Rupert's work was as a dispatcher. Because this work is covered by the public holiday part of the ESA, he is eligible for the public holiday entitlement for Canada Day.

Qualifying for Public Holiday Entitlements

Employees qualify unless:

- "Last and First Rule" – An employee fails **without reasonable cause** to work the entire last regularly scheduled day of work before the public holiday or all of their first regularly scheduled day of work after the public holiday; or
 - **Example:** Rosie's regular work week runs from Monday to Thursday. A public holiday falls on a Monday, and Rosie's workplace closes down that day. If Rosie works the entire shift on the Thursday before and the Tuesday after the holiday, or has reasonable cause for failing to attend work either of those days, she qualifies to be paid for the holiday.
- An employee fails **without reasonable cause** to work their entire shift on the public holiday that they either agreed or were required to work.

NOTE: Most employees who fail to qualify for the public holiday entitlement are still entitled to be paid premium pay for every hour they work on the holiday.



What is Reasonable Cause?

When an employee misses work when something **beyond their control** prevented the employee from working.

An employee is responsible for showing they have reasonable cause for not attending work. If he or she can do so, they will qualify for public holiday entitlements.

Premium Pay

Premium pay is 1½ times an employee's regular rate of pay. If an employee is entitled to receive premium pay for work on a public holiday, they must be paid 1½ times their regular rate of pay for each hour worked.

Example: Nathan's regular rate of pay is \$17.00/hour. This means that his premium pay will be **\$25.50** an hour. (\$17.00 x 1½).

Substitute Holiday

This is a day off work to replace a public holiday where the employee worked on the public holiday. The substitute day must be scheduled no later than **three months** after the public holiday for which it was earned.

If the employee has agreed electronically or in writing, the substitute day off can be scheduled up to **12 months** after the public holiday. The employer must provide the employee with a written statement confirming this.

Public Holiday & Employee's Non-Working Day

Where the public holiday falls on a day the employee is not scheduled to work the employee is entitled to either:

- A substitute holiday off with public holiday pay; or
- Public holiday pay for the public holiday, if the employee agrees to this (electronically or in writing) the employee will not be given a substitute day off

Employee Agrees to Work on the Public Holiday

An agreement must be electronic or written. Employee has two options:

1. Receive regular wages for all hours worked, plus a substitute day off work with public holiday pay; or
2. Receive public holiday pay for the public holiday plus premium pay for all hours worked on the public holiday
 - Where this happens, the employee will not be given a substitute day off



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NOTE: If an employee agrees to work the public holiday but fails to, they have no right to public holiday pay or to a substitute day off with pay.

However, if the employee has a reasonable cause for not working the public holiday, then entitlements will depend on:

- If the employee has agreed to work on the public holiday for regular wages plus a substitute day off with public holiday pay, the employee is entitled to a substitute day off with public holiday pay; or
- If the employee has agreed to work on the public holiday for holiday pay plus premium pay for each hour worked, they are entitled to be paid public holiday pay for the holiday. The employee is not entitled to receive any premium pay because they did not actually work.

Employee Works Only Some of the Hours

If the employee works only some of the hours they agreed to work, and does not have reasonable cause, the employee is only entitled to premium pay for each hour worked on the holiday. The employee has no right to public holiday pay or a substitute day off work.

Example: Trudi had agreed in writing that she would work an 8 hour shift on Canada Day, but she only worked 4 hours and did not have reasonable cause for failing to work the remainder of her shift. She is not entitled to public holiday pay or to a substitute day off work. Only premium pay for the 4 hours she worked.

However, if she had a reasonable cause for only working some of the hours, then she is entitled to her regular rate for all the hours worked plus a substitute day off work with public holiday pay, or she is entitled to be paid public holiday pay plus premium pay for every hour worked on the holiday. This depends entirely on what was decided in writing beforehand.

If Employment Ends

If employment ends before the employee can take the substitute day off for the foregone public holiday, the employer must pay the employee's public holiday pay at the same time it pays the employee's final wages. Regardless of the reason the job came to an end.

VACATION WITH PAY

Employees must receive a minimum of either 4% or 6% of the gross wages (excluding vacation pay) they earned for the 12-month vacation entitlement year or stub period.

0 – 5 years' service: 4%

5 or more years' service: 6%

Example 1: An employee has less than five years' employment on completion of a vacation entitlement year

Janice works part-time and earned gross wages of \$16,000.00 in her vacation entitlement year. She is entitled to four per cent of \$16,000.00 as vacation pay, i.e. **\$640.00**.

Example 2: An employee has less than five years' employment on completion of a stub period

Jocelyn was hired on September 1 and her employer has established an alternative vacation entitlement year that runs from January 1 to December 31. That means that Jocelyn's stub period is from September 1 to December 31. She earned \$13,050.00 in the stub period. She is entitled to four per cent of \$13,050.00 as vacation pay, i.e. **\$522.00**.

NOTE: Her first vacation entitlement year is January 1 to December 31. When she completes that vacation entitlement year, she will have earned four per cent vacation pay on the wages earned in that vacation entitlement year because she has been employed for less than 5 years.



Example 3: An employee has more than five years' employment on completion of a vacation entitlement year

Quinn, a part-time worker who has been employed for seven years with his employer, earned gross wages of \$16,000.00 in his vacation entitlement year. He is entitled to six per cent of \$16,000.00 as vacation pay, i.e. **\$960.00**.

Example 4: An employee reaches five-year employment threshold partway through a vacation entitlement year

Andrew has been employed for four years at the start of his current vacation entitlement year but reaches the five-year employment threshold partway through that year. He earned gross wages of \$16,000.00 in this vacation entitlement year. He is entitled to six per cent of \$16,000.00 as vacation pay, i.e. **\$960.00**.

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 their gross earnings for vacation pay. For example, an employee might be entitled under their contract to four weeks' vacation, with eight per cent of gross earnings for vacation pay.

When to Pay Vacation Pay

In most cases, vacation pay earned during a completed vacation entitlement year or stub period must be paid to an employee in a lump sum before they take the vacation time earned.

Exceptions

1. When the vacation is taken in sub-1 week periods;
2. When the employee has agreed electronically or in writing that their vacation pay will be paid on each pay cheque as it accrues;
3. If the employee agrees electronically or in writing, the employer can pay the vacation pay at any time agreed to by the employee; and
4. If the employer pays the employee their wages by direct deposit into an account at a financial institution.
 - a. In this case, the employee must be paid vacation pay on or before the payday for the period in which the vacation falls

Vacation Pay for Sub-1 Week Vacation

The employee must be paid vacation pay on or before the pay day for the period in which the vacation falls.

Example: Alvaro is taking vacation from January 2 to January 8 inclusive, and the normal pay day that covers this period is January 30. He must be given his vacation pay on or before January 30.

Vacation Time Paid as Accrued

Wage statements may show clearly the amount of the vacation pay being paid, and must be shown separately from other amounts paid. Or the employer must issue a separate statement for the vacation pay being paid.

Example: Fraser's vacation entitlement year is January 1 to December 31, but he reached his five-year employment threshold on July 1. He was paid four per cent vacation pay between January 1 and June 30. On July 1, when Fraser reached his five-year employment threshold, his vacation pay for that vacation entitlement year increased from four to six per cent of all the wages earned in that vacation year. The additional two per cent vacation pay is due on the pay day for the pay period in which July 1 falls and will continue on pay periods from July 1 to December 31.



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Paid when Employer and Employee Agree

If the employee agrees electronically or in writing, the employer can pay the vacation pay at any time agreed to by the employee.

Employee Paid by Direct Deposit

If the employer pays the employee their wages by direct deposit into an account at a financial institution, the employee must be paid vacation pay on or before the payday for the period in which the vacation falls.

When Employment Ends

The employee must be paid any outstanding vacation pay when their employment ends for **any reason**.

The unpaid vacation must be paid within seven days of the employment ending or on what would have been the employee's next pay day, whichever is later.

Example 1 – The employee's period of employment is less than five years on termination of employment

Jenna was hired on April 1, 2017, and had a standard vacation entitlement year. On March 31, 2018, 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, 2018, and her vacation pay was to be paid prior to the commencement of that vacation. However, Jenna quit her employment on May 15, 2018. When she quit, her employer was required to pay her the vacation pay earned in the vacation entitlement year April 1, 2017, to March 31, 2018, plus the vacation pay earned in her last (incomplete) vacation entitlement year (being four per cent of the wages she earned between April 1, 2018, and May 15, 2018).

NOTE: The vacation pay must be paid within seven days of the date Jenna quit or by what would have been Jenna's next pay day, whichever is later.

Example 2 – The employee's period of employment is five years or more on termination of employment

Dini was hired on June 1, 2013, and had an alternative vacation entitlement year that ran from January 1 to December 31 each year. He reached his five-year employment threshold on May 31, 2018. His employment was terminated on August 1, 2018. He had no vacation pay outstanding for any previously completed vacation entitlement years. Dini's vacation pay for his last partially completed vacation entitlement year is six per cent of the wages earned between January 1, 2018 and August 1, 2018, because he had reached the five-year employment threshold prior to the termination.

NOTE: The vacation pay must be paid within seven days of the date Dini's employment was terminated or by what would have been Dini's next pay day, whichever is later.



OVERTIME PAY

For most employees overtime begins after the employee worked 44 hours in a work week. Hours worked after 44 must be paid at the overtime pay rate.

NOTE: You cannot contract out of paying an employee overtime after 44 hours, unless there is an averaging agreement in place between the employer and employee.

Over time pay is 1½ times the employee's regular rate of pay, often referred to as "time and a half".

Example: An employee who has a regular rate of \$17.00/hour will have an overtime rate of \$25.50/hour ($17 \times 1.5 = 25.50$). The employee must therefore be paid at a rate of **\$25.50** an hour for every hour worked in excess of 44 hours in a week.

No Overtime on a Daily Basis

Overtime pay is not calculated on the basis of the hours an employee worked in a day. It can only be calculated on a weekly basis or over a longer period under an averaging agreement.

Paying Overtime is Mandatory

Employers may not contract out paying overtime or lower pay during overtime hours. However, they may establish averaging agreements or request time in lieu instead of pay.

NOTE: Managers and supervisors do not qualify for overtime if the majority of the work they do is managerial or supervisory. Other exceptions include firefighters, fishing or hunting guides, landscape gardeners, etc. For a complete listing of exceptions, please refer to the ESA regulations.



MODULE 3

Non-Monetary



HOURS OF WORK

Maximum Daily Limit

The maximum number of hours an employee may work in a day for one employer is:

- 8 hours (or if the employer has established a regular work day of more than eight hours for the employee, the number of hours in the regular work day); or
- 8+ hours, subject to electronic/written agreements
 - Agreement must exactly state how many hours over 8 in a day the employee will be permitted to work, and the employee may not exceed these hours.

Maximum Weekly Limit

The maximum number of hours an employee may work in a week for one employer is:

- 48 hours; or
- 48+ hours, subject to electronic/written agreements
 - Agreement must exactly state how many hours over 48 in a week the employee will be permitted to work, and the employee may not exceed these hours.

NOTE: Overtime still must be paid.

Electronic/Written Agreements

Requirements for a valid agreement:

1. Employer provides an information sheet and
2. Agreement must include a sentence stating that the employee has reviewed the information sheet

information sheet can be found here:

<https://www.labour.gov.on.ca/english/es/pubs/hours/infosheet.php>

Cancelling the Agreement

The employee may cancel the agreement by providing the employer with 2 weeks' notice in writing/electronically. The employer may cancel the agreement by providing reasonable notice. Once cancelled, no working excess daily/weekly hours is permitted.

NOTE: Once the agreement is cancelled the employee cannot work the excess hours.



MODULE 3

Non-Monetary

What Counts as “Work Time”?

When an employee is doing his or her job, and they are required to be at the workplace. This may or may not include travel time.

What Does Not Count as “Work Time”?

- Eating periods (i.e., lunch);
- Scheduled sleeping periods (i.e., if an employer is required to provide a place to sleep, this does not count as work time); and
- Private affairs or pursuits (personal phone calls, checking personal e-mails, texting, etc.)

Travel Time vs Commute Time

“Commute time” is not work time.

“Travel time” can be work time:

- Driving employer’s vehicle to work;
- Transporting supplies/employees; or
- Changing work locations.

Training/Orientation

If you require an employee to take training before working, or the law says the employee must have mandatory training, the time spent training does count as work time. Meaning, this time must be paid.

If an employee wants a promotion and must take special training to qualify for the promotion, this time does not count as work time and can be unpaid.

HOURS FREE FROM WORK

Daily Hours off Work

An employer must provide the employee with at least 11 consecutive hours “off work”. An employer cannot contract this out.

NOTE: This is not applicable to “on call” employees.

Between Shifts

An employer and employee can make an agreement, electronically or in writing, for less than 8 hours off work between shifts. This limitation does not apply if the total time an employee works on both shifts is 13 hours or less.

Example: Natalie works in a restaurant. She is on split shifts, working from 6 a.m. (before noon) to 11 a.m. (before midday) and then from 2 p.m. (after midday) to 7 p.m. (after midday) The total time of her two shifts is 10 hours.

Natalie does not need eight hours off between the split shifts, because the hours she worked do not exceed 13 hours.

Weekly/Bi-weekly

An employee 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

When the employer is experiencing “exceptional circumstances” it can compel an employee to work in excess of:

- 8 hours+ day;
- 48 hours+ week; or
- During required “free from work” period.

What are “Exceptional Circumstances?”

1. Deal with an emergency (natural disaster, fire/flood, accident etc.);
2. Perform urgent repair work to plan/equipment;
3. To address an unexpected interruption and in doing so ensure continuous processes or seasonal operations continue; or
4. Ensure continued delivery of public services.

What are *NOT* “Exceptional Circumstances?”

1. Rush orders need to be filled;
2. Inventory taking;
3. Another employee is absent and the employer must fill their vacancy or be inconvenienced;
4. Poor weather slows shipping/receiving;
5. Seasonal busy periods; or
6. Routine/scheduled maintenance.

EATING PERIODS AND BREAKS

The employer must provide the employee with an eating period after 5 hours of consecutive work. An eating period may be:

- 30 minutes; or
- An agreement with the employee, 2 eating periods within 5 hours (can be oral or written).

Meal breaks are unpaid unless an employer agrees to pay for meal breaks. If a meal break is paid, an employee must not work during this time or it will not count as a meal break.

Example: Geoff works from 9 a.m. to 5 p.m. He and his employer agree to two eating periods of: 1st break: 10:00 –

10:15 a.m.

2nd break: 12:30 – 12:45 p.m.

He has a total of 30 minutes for an eating period within a five-hour window.

Coffee Breaks & Rest Periods

Coffee breaks are optional. If an employee must stay at work during a coffee break, he or she must be paid at least minimum wage for that time.

Example 1: Susie’s boss lets employees take coffee breaks. Susie is expected to be at work during the coffee break. She is paid minimum wage during her coffee break.

Example 2: James’ boss lets employees take coffee breaks. James is allowed to leave the workplace during his coffee break. The employer does not have to pay for that time.

Night Shifts

No restrictions on timing for an employee’s shift. An employer does not have to provide transportation to/from work if an employee works late.



MODULE 4

Leaves of Absence



SICK LEAVE

An employee who has been employed by an employer **for at least two consecutive weeks** is entitled to a leave of absence without pay because of a personal illness, injury or medical emergency.

Length of Leave

An employee's entitlement to sick leave is limited to a total of three days in each calendar year.

Use of Leave Days

If an employee takes any part of a day as a sick leave, the employer may deem the employee to have taken one full day of leave on that day.

Notice Requirements

An employee who wishes to take sick leave must advise their employer that he or she will be doing so. If an employee must begin sick leave before advising their employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Acceptable Evidence

An employer may require an employee who takes sick leave to provide evidence reasonable in the circumstances that the employee is entitled to sick leave.

Sick leave taken under employment contract

If an employee takes paid or unpaid leave of absence under an employment contract in circumstances which he or she would have also been entitled to take sick leave, the employee is deemed to have taken sick leave. This can also be the case where the employee only uses part of the day as an absence under their contract of employment. It can also be counted as a full sick leave day. *Leaves of Absence and EI Benefits*

Employees taking leaves of absence under some of the leaves outlined in this section may be eligible to receive EI benefits during the period of their leave. An employee eligible for these benefits will need to have his or her Record of Employment issued to them promptly in order to apply for these benefits.

Employee eligibility for EI benefits:

Pregnancy/Parental Benefits;

Family Caregiver Benefits (adult/child); and

Compassionate Care Benefits.

PREGNANCY LEAVE

Pregnant employees have the right to take pregnancy leave up to 17 weeks unpaid time off work.

Who Qualifies?

Any full-time, part-time, permanent or term contract employee:

- Who is pregnant;
- Whose employer is covered by the ESA; and
- Who started her employment at least 13 weeks before the **expected** due date.

Example: Fatima began her employment 15 weeks before her due date. Soon after starting her new job, she was off sick for five weeks. Fatima is eligible for pregnancy leave because there are at least 13 weeks between the date her employment began and her due date. The fact that she did not actually work 13 weeks is irrelevant.



NOTE: When an employee is hired on a fixed-term contract and the term expires during her leave, the employment relationship generally comes to its natural conclusion with the expiry of the term. In such cases, the employer has no obligation to reinstate the employment after the leave.

Start Date – Pregnancy Leave

Earliest: 17 weeks before the employee's due date.

Exception: when an employee has a live birth more than 17 weeks before the due date, she will be able to begin pregnancy leave on the date of the birth.

Latest: Baby's due date.

Length of Pregnancy Leave

The maximum is usually 17 weeks. However, there is an exception if an employee has taken 17 weeks, but is still pregnant. Once the leave has started, it must be taken all at once.

An employee may decide to take a shorter leave if she wishes. If an employee returns to work for the employer from whom she took the leave, even if it is only part-time, under the ESA she gives up the right to take the rest of her leave.

Premature End to Pregnancy Leave

For miscarriages and stillbirths:

- If this occurs **more than** 17 weeks before her due date, the employee is **NOT** entitled to pregnancy leave
- If this occurs **within** 17 weeks of the due date, the employee is eligible for pregnancy leave, the latest date is date of miscarriage or stillbirth.
- Leave ends on the date that is the later of:
 - 17 weeks after the leave began; or
 - 12 weeks after the stillbirth or miscarriage.

Stillbirth example: Wai began her pregnancy leave 15 weeks before her baby was due. On her due date she had a stillbirth.

The ESA provides that the pregnancy leave ends on the date that is the later of 17 weeks after the leave began or 12 weeks after the stillbirth. In this case, the later date is 12 weeks after the stillbirth. Wai can stay off work for up to 12 more weeks after the stillbirth, for a total of 27 weeks of pregnancy leave.

Miscarriage example: Hélène began her pregnancy leave 15 weeks before her baby was due. One week later (one week into her pregnancy leave) she had a miscarriage. The law indicates that her pregnancy leave ends on the date that is the later of either 17 weeks after the leave began or 12 weeks after the miscarriage. In Hélène's case, the later date is 17 weeks after the leave began. She will get a total of 17 weeks of pregnancy leave.

Notice Requirements

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

If the employer requests it, she must provide a certificate from a medical practitioner stating the baby's due date.

Retroactive Notice

Sometimes an employee has to stop working earlier than expected, for example because of complications caused by the pregnancy. In cases such as these, the employee has 2 weeks after she stops working to give the employer written notice of the day the pregnancy leave began or will begin.

An employee does not have to start her pregnancy leave at the time she stops working if she has stopped work due to illness or a complication caused by the pregnancy. She may choose instead to treat the time off as sick time and plan to commence the pregnancy leave later (but no later than the earlier of the birth date or due date). If requested, an employee has to provide a medical certificate issued by a doctor, midwife or nurse stating the baby's due date and stating that she was unable to perform the duties of her position because of the complication.

If an employee stops working earlier than expected because of a birth, stillbirth or miscarriage, she has two weeks after she stops working to give the employer **written notice** of the day the leave began. The pregnancy leave begins no later than the date of the birth, stillbirth or miscarriage. If the employer requests it, the employee has to provide a medical certificate issued by a medical doctor, a midwife or a nurse practitioner stating the due date and the date of birth, stillbirth or miscarriage.



Changing Start Date of Leave

If an employee begins their pregnancy leave **earlier** than the original date, then they must provide the employer with two weeks' written notice before the new, earlier date.

If an employee begins their pregnancy leave **later** than the original date, then they must provide the employer with two weeks' written notice before the original date.

Example: Changing the start of a pregnancy leave to an earlier date

Barbara gave her employer written notice that she would begin her pregnancy leave on September 10. Now Barbara wants to start her leave on August 27. She must give her employer new written notice by August 13 (two weeks before August 27).

An employee can also change the date she will begin her leave to a later date than she originally told her employer. To do this, she must give her employer new written notice at least two weeks before the original date she said she would begin her leave.

Example: Changing the start of a pregnancy leave to a later date

Mairead gave her employer written notice that she would start her pregnancy leave on September 10. Now Mairead wants to start her leave on September 15. She must give her employer new written notice by August 27 (two weeks before September 10).

Ending Pregnancy Leave

An employee is not required to provide a return date, but may choose to do so. The employer may not require an employee on pregnancy leave to return from the leave early. If no date of return is provided, the employer is to assume that she will take her full 17 weeks of leave. In cases of a still-birth or miscarriage an employee's pregnancy leave ends 12 weeks after the miscarriage or still-birth.

Changing End Date of Leave

If an employee is returning **earlier** than the original date, they must provide the employer with four weeks' written notice before the new, earlier date.

If an employee is returning **later** than the original date, they must provide the employer with four weeks' written notice before the original date.

Resignation on Pregnancy Leave

When an employee decides not to return to work while on pregnancy leave, they must give the employer **four weeks'** notice of resignation.

PARENTAL LEAVE

Any full-time, part-time, permanent or term contract employee who has recently become a parent, and is covered by the ESA, and who started employment at least 13 weeks prior is entitled to unpaid parental leave.

Who is a Parent?

A parent is either a birth parent, adoptive parent, or person in a relationship of some permanence with a parent of the child who intends to treat the child as their own.



Start Date – Parental Leave

Parental leave starts at the end of pregnancy leave, if taken. If no pregnancy leave is taken, a parent must begin parental leave no later than 78 weeks after:

- The date his or her baby is born; or
- The date his or her child first came into his or her care, custody and control.

Length of Parental Leave

Birth mothers who take pregnancy leave are entitled to receive **61 unpaid weeks'** leave. For any other parent who did not take pregnancy leave, are entitled to **63 unpaid weeks'** leave.

Parental leave must be taken all at once, but may decide to take a shorter leave if they wish.

NOTE: For miscarriages and stillbirths, spouses are not entitled to take parental leave.

Notice Requirements

An employee taking parental leave must provide his or her employer **two weeks'** written notice.

Retroactive Notice

If an employee has to go on parental leave before the scheduled start date, the employee must give his or her employer notice of the start date of his or her parental leave.

- Must be provided to the employer within **two weeks** of the employee's departure

Changing Start Date of Leave

If an employee changes the date of a parental leave to begin **earlier** than an original date, they must provide the employer with **two weeks'** written notice before the new, earlier date.

If an employee changes the date of parental leave to begin **later** than the original date, they must provide the employer with **two weeks'** written notice before the original date.

NOTE: If an employee wishes to take a shorter parental leave than 61 or 63 weeks, then the employee must either notify the employer what the return date will be before they start the leave, OR, the employee must give four weeks' written notice to the employer before the planned return date. Otherwise, the employer will assume the employee is taking the maximum period of leave, and is not under any obligation to immediately reinstate the employee.

Ending Parental Leave

The employee is not required to give an end date to his or her parental leave. The employer may not require an employee to return from her or his leave early. However, the employee may choose to give notice of return.

Changing End Date of Leave

If an employee changes the date of return **earlier** than the original date, they must provide the employer with **four weeks'** written notice before the new, earlier date.

If an employee changes the date of return **later** than the original date, they must provide the employer with **four weeks'** written notice before the original date.

Resigning on Parental Leave

When an employee decides not to return, they must provide the employer with **four weeks'** notice of resignation. This does not apply in the case of constructive dismissal.



FAMILY CAREGIVER LEAVE

Any employee, regardless of length of service is eligible for this leave. The purpose of which is to provide care or support to a family member for whom a health practitioner has issued a certificate stating that the family member has a serious medical condition.

Specified Family Members

1. Spouse (including same-sex spouse);
2. Parent, step-parent or foster parent of the employee or his/her spouse;
3. Child, step-child or foster child of the employee or his/her spouse;
4. Grandparent or step-grandparent of the employee or his/her spouse;
5. A grandchild or step-grandchild of the employee or his/her spouse;
6. A spouse or a child of the employee;
7. A brother or sister of the employee; or
8. A relative of the employee who is dependent on them for care or assistance.

NOTE: The employer may request that the employee provide a copy of the document provided to an agency or department of the Government of Canada for the purpose of claiming benefits under the Employment Insurance Act in which it is stated that the employee is considered to be a family member.

Length of Leave

Up to **8 weeks** in a calendar year may be taken. They can be taken consecutively or separately. However, a period of less than one week will be considered as a full week.

The employer cannot require the employee to take an entire week of leave if the employee only wants to take the leave for a single day, and cannot prevent the employee from working prior or after returning from taking a single day of leave during a work week.

Notice Requirements

The employee must give his or her employer written notice of his or her intention to take this leave as soon as possible, but does not have to be provided before starting the leave.

Notice is required before every leave if they are non-consecutive.

FAMILY RESPONSIBILITY LEAVE

An employee, who has been employed for **at least two consecutive weeks**, is entitled to a leave of absence without pay because of the illness, injury or medical emergency, or “urgent matter” concerning a specified family member.

Specified Family Members

1. Spouse (including same-sex spouse);
2. Parent, step-parent or foster parent of the employee or his/her spouse;
3. Child, step-child or foster child of the employee or his/her spouse;
4. Grandparent or step-grandparent, grandchild or step-grandchild of the employee or his/her spouse;
5. A spouse of a child of the employee;
6. A brother or sister of the employee; or
7. A relative of the employee who is dependent on them for care or assistance.

NOTE: The employer may request that the employee provide a copy of the document provided to an agency or department of the Government of Canada for the purpose of claiming benefits under the Employment Insurance Act in which it is stated that the employee is considered to be a family member.

Length of Leave

An employee is entitled to a total of three calendar days in a year under this leave. If an employee takes part of the day under this leave, the employer may deem the employee to have taken one full day of leave on that day.

Notice Requirements

An employee who takes this leave shall advise his or her employer that he or she will be doing so. If the employee must begin leave before



advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Acceptable Evidence

An employer may require an employee who takes family responsibility leave to provide evidence reasonable in the circumstances that the employee is entitled to sick leave.

Family Responsibility Leave taken under employment contract

If an employee takes paid or unpaid leave of absence under an employment contract in circumstances which he or she would have also been entitled to take family responsibility leave, the employee is deemed to have taken family responsibility leave. This can also be the case where the employee only uses part of the day as an absence under their contract of employment. It can also be counted as a full sick leave day.

FAMILY MEDICAL LEAVE

Is unpaid, job-protected leave of up to 28 weeks in a 52-week period.

Family medical leave may be taken to provide care or support to certain family members and people who consider the employee to be like a family member in the case where a health practitioner has issued a certificate indicating that they have a serious medical condition with a significant risk of death occurring within a period of 26 weeks.

NOTE: Any employee is eligible, regardless of length of service



Specified Family Members

1. The employee's spouse (including same-sex spouse);
2. A parent, step-parent or foster-parent of the employee or the employee's spouse;
3. A child, step-child or foster-child of the employee or the employee's spouse;
4. A brother, step-brother, sister, or step-sister of the employee;
5. A grandparent or step-grandparent of the employee or of the employee's spouse;
6. A grandchild or step-grandchild of the employee or of the employee's spouse;
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee;
8. A son-in-law or daughter-in-law of the employee or of the employee's spouse;
9. An uncle or aunt of the employee or of the employee's spouse;
10. A nephew or niece of the employee or of the employee's spouse; or
11. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.

NOTE: Family medical leave may also be taken for a person who consider the employee to be like a family member. People in this situation must provide their employer, if requested, with a completed copy of the compassionate care benefits attestation form, available from Employment and Social Development Canada, whether or not they are making an application for EI Compassionate Care Benefits or are required to complete the form to obtain such benefits.

Length of Leave

Up to 28 weeks within a 52 week period, the 52 week period starts on the first day of the week in which the 26-week period specified in the medical certificate begins.

Leave does not have to be taken consecutively, however, if an employee only takes part of a week off, it is counted as a full week of leave.

Leave Taken in Partial Weeks

Where an employee provides care or support for only part of a week:

- The employee's right to leave only begins on the first day he or she is providing care or support;
- The employee is entitled to leave for the rest of that week; and
- The employee may return to work only if the employer agrees.

Example: Felicia works weekdays. She provides care or support to her dying mother on Wednesday and takes family medical leave to do it. The first day of the week that she is entitled to be on family medical leave is Wednesday. She is also entitled to be on family medical leave on Thursday and Friday even though she is not providing care or support on those days. She is able to return to work on Thursday and Friday only if she wants to and her employer agrees to let her. Felicia is considered to have used up one of her 28 weeks of family medical leave even though she was on leave for only part of the week.

Sharing Family Medical Leave

The 28 weeks must be shared by any employee of the same employer who each take a leave to care for the same family member.

Example: If one spouse takes 18 weeks, the other spouse is only entitled to 10 weeks, the employees could take leave at the same time, or at different times.



Extending Family Medical Leave

If the family member lives longer than the projected 26 week period, the employee can remain on leave for up to **28 weeks** without a new certificate.

If the family member lives longer than 52 weeks and a new certificate is issued, the employee is entitled to another **28 weeks** of family medical leave.

***Example:** On Sunday, January 1, a qualified health practitioner issues a certificate stating that Jean's mother has a serious medical condition with a significant risk of death within a period of 26 weeks. Jean takes 26 weeks of leave (ending July 1). Jean's mother is still alive on July 1: Jean can take a further two weeks of leave before December 31 and will not have to get a second medical certificate to be entitled to take the full 28 weeks of leave.*

If an employee has taken a family medical leave to care for a family member who has not passed away within the 52-week period starting on the first day of the week in the 26-week period specified in the medical certificate, and a health practitioner issues another certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks, the employee would be entitled to an additional 28-weeks of family medical leave.

Additional Family Members

If an employee has more than one family member eligible for family medical leave, the employee is entitled to take up to **28 weeks** of family medical leave for each family member.

Start Date – Family Medical Leave

Earliest start date is the first day of the week in which the 26-week period begins.

NOTE: “Week” is defined for the purposes of family medical leave as a period of seven consecutive days, beginning on a Sunday and ending on a Saturday. If the date indicated on the surgery is a day other than Sunday, the 26 week period will begin on the preceding Sunday.

Example: On Wednesday, June 13, a qualified health practitioner issues a certificate stating that Mohammed's spouse has a serious medical condition with a significant risk of death within a period of 26 weeks. Because a week is defined as a period of 7 consecutive days beginning on Sunday and ending on Saturday under the family medical leave provisions, the 26-week period is considered to begin Sunday June 10. Assuming Mohammed wished to commence the leave on the day the certificate was issued, the first week of the leave would be considered to have begun on Sunday June 10.

End Date – Family Medical Leave

The latest day an employee can remain on leave is:

- The last day of the week in which the family member dies;
- The last day of the week in which the 52 week period expires; or
- The last day of the 28 weeks of family medical leave. Whichever

of the above is **earliest** will prevail.

Based on the definition of “week” for family medical leave, the last day an employee can be on leave will always be a Saturday.

Medical Certificate

The medical certificate supporting this leave:

- Must be issued by a qualified health practitioner (doctor or nurse practitioner);
- Does not have to be produced before leave starts;
- Employer is entitled to ask for a copy;
- Does not need to specify condition; and
- Employee is responsible for costs, if any.



Notice Requirements

The employee must give his or her employer written notice of his or her intention to take this leave as soon as possible.

NOTE: If the leave is not taken consecutively, the employee must provide notice before beginning each part of the leave

Example: Boris is going to take 14 weeks of leave from January 30 to May 6, and another 14 weeks from August 28 to December 2. Boris is required to provide written notice to his employer of both periods of leave. He can do this by providing a single written notice that sets out the start dates of both periods of leave, or he can provide two separate notices, at the same or different times.

An employee who does not give notice does not lose their right to a family medical leave.

While an employee is required to tell the employer in advance that they are taking a leave (or, if this is not possible, as soon as possible after starting the leave), the employee will not lose the right to take family medical leave if the employee fails to do so. An employer may discipline an employee who does not properly inform the employer, but only if the reason for the discipline is the failure to properly notify the employer and not in any way because the employee took the leave.

CRITICAL ILLNESS LEAVE

Is unpaid, job-protected leave for up to **37 weeks** for a minor, or **17 weeks** for an adult. The purpose of this leave is to provide care and support to an individual who is a specified family member.

Critical Illness leave is provided to any employee employed for at least **6 consecutive months**. A qualified health practitioner must issue a certificate stating:

- The family member is critically ill;
- The family member requires care or support of family; and
- The period they require this care or support.

Definitions for Critical Illness Leave

Minor: child, step-child, foster-child, or child under legal guardianship and under 18 years of age.

Adult: 18 years of age or older.

Critically Ill: the person's baseline state of health has significantly changed and their life is at risk as a result of an illness or injury. (Not including chronic conditions if the chronic condition is the person's normal state of health.)

Specified Family Members

1. The employee's spouse (including same-sex spouse);
2. A parent, step-parent or foster-parent of the employee or the employee's spouse;
3. A child, step-child or foster-child of the employee or the employee's spouse;
4. A brother, step-brother, sister, or step-sister of the employee;
5. A grandparent or step-grandparent of the employee or of the employee's spouse;
6. A grandchild or step-grandchild of the employee or of the employee's spouse;
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee;
8. A son-in-law or daughter-in-law of the employee or of the employee's spouse;
9. An uncle or aunt of the employee or of the employee's spouse;
10. A nephew or niece of the employee or of the employee's spouse; or
11. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.



Medical Certificate

The employee does not have to have the medical certificate before they can start the leave, but must be obtained eventually.

An employer is entitled to ask for a copy of the certificate, and the employee must comply as soon as possible.

The medical certificate must:

- Name the minor child or adult;
- State that the minor child or adult is critically ill or has been critically injured;
- State that the minor child or adult requires the care or support of at least one family member; and
- Set out the period during which the minor child or adult requires the care or support.

Length of Leave

A critical illness leave taken to care for:

- **Minor:** up to 37 weeks in 52 week period
- **Adults:** up to 17 weeks in a 52 week period

The medical certificate issued will set out a period during which the person requires care or support, and the employee is only entitled to take a leave for the period set out in the certificate.

Weeks of leave do not need to be taken consecutively, they can also be taken separately and shared between employees if they are both family members of the person in need of care.

A “week” is defined as running from Sunday to Saturday.

Extending Critical Illness Leave

If the certificate specifies a leave of less than 37 or 17 weeks, the leave may be extended to a maximum of 37 or 17 weeks if another certificate is issued. A total leave cannot exceed the 17 or 37 set weeks in a 52 week period.

Example: Mark’s minor child Jason became critically ill on January 1. The certificate issued on January 1 stated that Jason requires the care or support of a family member for four weeks (until January 28).

Jason is still critically ill on January 28. Another certificate is issued on January 29, stating that Jason will require care or support of a family member for another three weeks (until February 18). Mark is entitled to four weeks of leave during the period January 1 to January 28 and to a “further” leave of three weeks during the period January 29 to February 1, for a total of seven weeks of leave.

NOTE: The original leave and the extension(s) cannot be longer than 37 weeks in a 52-week period.

Example: Gail’s minor child Maggie became critically ill on January 1. The certificate issued on January 1 stated that Maggie requires the care or support of a family member for 30 weeks (until July 29). Maggie was still critically ill on July 29. Another certificate was issued on July 30 stating that Maggie will require care or support for another ten weeks (until October 6).

Although Gail was entitled to take leave during the 30-week period from January 1 to July 29, and to take a “further” leave during the 10-week period from July 10 to October 6, the total amount of leave she is entitled to is 37 weeks during the 52-week period that began on January 1.

Example: Deljeet’s adult brother Balbir became critically ill on January 1. The certificate issued on January 1 stated that Balbir requires the care or support of a family member for 10 weeks (until March 11). Balbir is still critically ill on March 11.

Another certificate was issued on March 12 stating that Balbir will require care or support for another 10 weeks (until May 20). Deljeet can take a further leave during the 10-week period between March 12 and May 20, but she can take no more than seven further weeks and her leave will end on April 29. The total amount of leave Deljeet is entitled to is 17 weeks within the 52-week



period running from January 1, the date of the first certificate. She may be eligible for an additional leave after that period is over: see “additional leaves”, below.

Additional leaves: If a minor child or adult remains critically ill after the 52-week period has expired, the employee is entitled to take another leave if the requirements for eligibility are met.

Example: A qualified health practitioner issued a certificate on January 1 2017, stating that Frank’s minor child Rooney is critically ill and requires the care or support of a family member for 52 weeks. Frank is entitled to up to 37 weeks of critical illness leave during that 52-week period. Rooney remains critically ill on December 31. Another certificate is issued on January 1 2018, stating that Rooney remains critically ill and requires the care or support of a family member for another 40 weeks. Frank is entitled to a new, “additional” leave of 37 weeks in the 52-week period starting January 1, 2018.

Notice Requirements

The employee must give his or her employer written notice of his or her intention to take this leave as soon as possible. Notice does not need to be provided before beginning the leave.

Change in Planned Leave

The employee may take this leave at a time other than indicated in the original plan where:

- The employer grants permission in writing; or
- The employee gives the employer reasonable advance of the change in writing. There is no limit

on the number of times the employee may change a planned leave.

ORGAN DONOR LEAVE

Is an unpaid, job-protected leave for up to 13 weeks. The purpose is to take time off to donate an organ.

The employee must be:

- Employed for at least 13 weeks; and
- Scheduled to undergo surgery to donate all or part of one or more of the following organs:
 - Kidney
 - Lung
 - Small bowel
 - Liver
 - Pancreas

Start Date – Organ Donor Leave

This leave may begin on the date of the surgery to remove the donor organ. It may also begin earlier where specified in a certificate issued by a qualified medical practitioner.

Length of Organ Donor Leave

An employee may take up to 13 weeks. It may be extended **once** if it’s stated as necessary in the medical certificate. The certificate must also specify a period of time and the extension cannot exceed 13 weeks.

NOTE: The maximum is 26 weeks total, with an extension.

Example: Gabriel began an organ donor leave on September 1, the day that he had surgery to donate part of his liver to his daughter. Upon the employer’s request, he provided a medical certificate from his doctor in advance of the surgery. After 13 weeks of organ donor leave, Gabriel was planning to return to work, but he had complications from the surgery that has hampered his recovery. His doctor recommended extending Gabriel’s organ donor leave for another six weeks. Gabriel provided his employer with a medical certificate from his doctor stating this and extended his leave for an additional period of six weeks.



Notice Requirements

The employee must give his or her employer written notice of his or her intention to take this leave. Where possible, the employee should give their employer **two weeks'** written notice before beginning or extending the leave. If that is not possible, written notice must be provided as soon as possible after beginning or extending the leave.

Medical Certificate

The employer may request a copy of the medical certificate, which must:

- Confirm the employee has undergone or will undergo surgery; and
- Identify when the employee is to begin the leave, if requested before the surgery, and/or to extend a leave for a period of time

RESERVIST LEAVE

Is an unpaid, job-protected leave of absence. The purpose is to serve while deployed in a Canadian Forces operation.

The employee must be a reservist in the Canadian Forces, who is either:

- Deployed to international or domestic operation; or
- Providing assistance in an emergency or its aftermath.

In order to be eligible for this leave, the employee must have been employed for **6 months**.

Generally, reservists must provide their employer with a reasonable written notice of the day on which they will begin and end the leave.

Employees on a reservist leave are entitled to be reinstated to the same position if it still exists or to a comparable position if it does not. Seniority and length of service credits continue to accumulate during the leave.

Unlike the case with other types of leave, an employer is entitled to postpone the employee's reinstatement for two weeks after the day on which the leave ends or one pay period, whichever is later. Also, the employer is not required to continue any benefit plans during the employee's leave. However, if the employer postpones the employee's reinstatement, the employer is required to pay the employer's share of premiums for certain benefit plans related to their employment and allow the employee to participate in such plans for the period the return date is postponed

CHILD DEATH LEAVE

The employee must have been employed for **6 consecutive months**, and be the parent of a child that has died.

Exceptions:

- Employee is charged with a crime related to the death; and/or
- The child was party to a crime in relation to death.



Length of Leave

A leave for the death of a child must be taken within the 105-week period that begins the week the child has died. The leave must be taken in a single period.

The total amount of child death leave that can be taken is 104 weeks. Leave can be shared between employees affected, and can be taken at the same time or different times, whether or not the employees work for the same employer.

Notice Requirements

The employee must give his or her employer written notice of his or her intention to take this leave. This notice must:

- Include a written plan, and
- Be provided to the employer as soon as possible.

NOTE: An employee who does not give notice does not lose their right to the leave.

Change in Planned Leave

If the employee changes the period of leave set out in his or her written plan:

- The employer must grant permission in writing, or
- The employee must provide **four weeks'** written notice of the change to the plan.

CRIME RELATED CHILD DISAPPEARANCE LEAVE

To be eligible for this leave, the employee must:

- Have been employed for **6 consecutive months**;
- Be the parent of a child that has disappeared; and
- It is probable that the employee's child disappeared as a result of a crime.

Exceptions:

- Employee is charged with the crime; and/or
- Child was a party to the crime.

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

An employer may require the employee to provide reasonable evidence of the employee's entitlement to the leave.

Timing and Length of Leave

A leave must be taken within the 105-week period that begins the week the child disappeared. It also must be taken in a single period.

Leave can be shared, and two employees can be on leave at the same time or at different times. This applies whether or not the employees work for the same employer.

Notice Requirements

The employee must give his or her employer written notice of his or her intention to take this leave. This notice must:

- Include a written plan; and
- Be provided to the employer as soon as possible.

NOTE: An employee who does not give notice does not lose their right to the leave.



Change in Planned Leave

If the employee changes the period of leave set out in his or her written plan, the employer must grant permission in writing, or, the employee must provide **four weeks'** written notice of the change to the plan.

Change in Circumstances

If there is a change in circumstance, there may be a change in the employee's entitlement to leave. If the crime is no longer probable:

- Leave ends on day it is no longer probable.

If the child is found alive:

- 14 days of leave remains after the day the child is found.

If the child is found dead:

- The employee can remain on leave until the end of the week; and
- Employee becomes entitled to Child Death Leave.

BEREAVEMENT LEAVE

An employee employed by the employer for **at least two consecutive weeks** is entitled to an unpaid leave of absence following the death of specified family member.

Specified Family Members

1. The employee's spouse (including same-sex spouse);
2. A parent, step-parent or foster-parent of the employee or the employee's spouse;
3. A child, step-child or foster-child of the employee or the employee's spouse;
4. A brother or sister of the employee;
5. A grandparent or step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse;
6. The spouse of a child of the employee;
7. A relative of the employee who is dependent on the employee for care or assistance.



Length of Leave

An employee is entitled to leave under this section to a limit of two days in a calendar year.

Notice Requirements

An employee who wishes to take this leave must advise his or her employer that he or she will be doing so. If an employee must begin the leave without advising the employer, the employee shall advise the employer as soon as possible.

Evidence

An employer may require the employee to provide evidence that is reasonable in the circumstances that the employee is entitled to bereavement leave.

Bereavement Leave taken under employment contract

If an employee takes an absence under an employment contract for which he or she would also be entitled to bereavement leave, the employee is deemed to have taken the leave under this section.

DOMESTIC OR SEXUAL VIOLENCE LEAVE

To be eligible for this leave, the employee must have been employed for **13 consecutive weeks** and the employee or their child must have experienced or been threatened with domestic or sexual violence.

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

NOTE: The ESA does not include a definition of what domestic or sexual violence is for purposes of the ESA.

Purposes of Leave

An employee may take this leave for a variety of reasons:

- To seek medical attention for physical or psychological injury or disability;
- To access services from a victim services organization;
- To have psychological or other professional counselling;
- To move temporarily or permanently; and/or
- To seek legal or law enforcement assistance.

Length of Leave

An employee is entitled to up to **10 days** of domestic or sexual violence leave every calendar year, whether they are employed on a full-time or part-time basis.

There is no pro-rating of the 10-day leave. An employee who begins work partway through a calendar year is still entitled to 10 days.

Employees cannot carry over unused domestic or sexual violence leave.

The 10 days of leave do not have to be taken consecutively. They can take leave in part days, full days, or in periods of more than one day. If an employee takes only part of a day, the employer can count it as a full day of leave.

Employees are also entitled to **15 weeks** of domestic or sexual violence leave within a calendar year. They can be taken consecutively or separately.



The employee may take leave for periods less than a full week, but if they do, they are considered to have used up one week of their 15-week entitlement. If the employee is on leave for two or more periods within the same week (for example, on leave on Monday and Thursday of the same week), only one week of the 15-week entitlement is used up.

The employer cannot require the employee to take an entire week of leave if the employee only wants to take leave for a single day, and cannot prevent the employee from working prior to taking a single day of leave during a week, nor can they prevent the employee from returning to work after a single day of leave during the week.

NOTE: The first five days of domestic or sexual violence leave taken in a calendar year must be paid.

The rest are unpaid. The first five days are to be paid whether the employee takes leave from the 15- week entitlement, or the 10-day entitlement.

If an employee takes part of a day (for example, to attend a counselling session) it will count as an entire day, and if an employee takes part of a week (for example, to move into a shelter) this will count as entire week of leave under this section.

Calculating Pay

If an employee is a performance related wage earner and takes the first five days or this leave, the employee is paid the greater of:

- Their normal hourly rate; or
- Minimum wage.

The employee is not entitled to overtime, shift premium, or public holiday premium rates.

Employees who are paid by hourly rate

Domestic or sexual violence pay is calculated by the hourly rate multiplied by the number of hours the employee did not work because they took the leave.

Example 1: Naila is paid \$16.00/hour and missed a full day of work to take domestic or sexual violence leave. She was scheduled to work nine hours. Domestic or sexual violence leave pay: **\$16.00 x 9 = \$144.00**

Employees who are paid a salary

For an employee paid by salary, paying personal emergency leave pay is generally equal to salary continuance.

If the employee took leave for a full day: $\text{salary} \div \text{number of days in pay period}$

Example: Theresa is paid \$1500.00 per bi-weekly pay period and works a five day week. Domestic or sexual violence leave pay for one day = **\$1500.00 ÷ 10 = \$150.00.**

If the employee took leave for part of the day: $\text{hourly rate (salary} \div \text{number of hours the employee normally works in a pay period)} \times \text{number of hours taken as domestic or sexual violence leave.}$

Performance related wages

Domestic or sexual violence leave pay for an employee paid fully or partly based on their performance is the greater of the employee's "hourly rate, if any" and minimum wage for the time the employee took for paid domestic or sexual violence leave. "Performance-related wages" can include commission, commission plus an hourly wage, piece work, or a flat-rate.

Example 1: Employee earns an hourly rate + commission

Raquel earns \$16.00/hour plus two per cent commission on sales, Raquel takes 6.5 hours of domestic or sexual violence leave. Domestic or sexual violence leave pay: **\$16.00 x 6.5 = \$104.00 (plus hourly wage for any hours worked + commission earned while the employee worked, if any)**



Example 2: Employee paid entirely by commission

Francesca earns 10 per cent commission on all sales, plus expenses and a car allowance. Francesca is scheduled to work eight hours, makes sales of \$5000 and takes three hours of domestic or sexual violence leave. Domestic or sexual violence leave pay: applicable minimum wage rate x 3 (in addition to \$500.00 commission earned while the employee worked, if any)

Example 3: Employee is a homemaker paid by piece work

Paula earns \$3.50 per phone call answered. Paula is scheduled to work 8.5 hours, works two hours, answers nine phone calls, and takes 6.5 hours of domestic or sexual violence leave. Domestic or sexual violence leave pay: applicable minimum wage x 6.5 (in addition to regular wages earned on the day - \$3.50 x 9)

Employees who are scheduled to work overtime hours

If an employee is scheduled to work a shift which will include overtime hours, and they miss all or part of the shift to take paid domestic or sexual violence leave, the employee will be entitled to the regular hourly rate only, not the overtime rate.

Example: Pat is paid \$15.00/hour and was scheduled to work a Saturday shift of eight hours. She had already worked 44 hours in the same week. She missed her entire shift to take paid domestic or sexual violence leave.

Domestic or sexual violence leave pay: **\$15.00 x 8 = \$120.00**

Employees who are scheduled to work hours when a shift premium is paid

If an employee is scheduled to work a shift which will normally be paid at a higher rate due to a shift premium, and the employee misses all or part of the shift to take paid domestic or sexual violence leave, the employee will be entitled to the regular hourly rate only, not the regular hourly rate plus the shift premium.

Example: Minh is paid \$16.00/hour and is paid an additional \$2.50/hour for working weekend shifts. She is scheduled to work a Saturday shift of nine hours and leaves after working two hours to take paid domestic or sexual violence leave.

Domestic or sexual violence leave pay: **\$16.00 x 7 = \$112.00 (plus regular wages of \$16.00+\$2.50 x 2 for the hours that she worked).**

If an employee qualifies to take domestic or sexual violence leave, this will also generally constitute “reasonable cause” for the purposes of public holiday entitlements. See the public holiday chapter for more information.

If an employee agrees to work (or is required to work) on a public holiday and misses some or all of the shift to take paid domestic or sexual violence leave, domestic or sexual violence leave pay will not include “premium pay” if the employee would have earned it had they worked instead of taking the leave.

Example: Celina works in a restaurant and is required to work on Victoria Day. She is paid the liquor server’s minimum wage. She is scheduled to work 10 hours on the public holiday, and the employer has decided to give her premium pay for all hours worked on that day, plus public holiday pay (but no substitute day off in the future).

Celina works 6 hours of the shift and takes the rest off as paid domestic or sexual violence leave. Entitlements

Public holiday pay + premium pay for hours worked (liquor server’s minimum wage x 1.5 x 6 hours)

Domestic or sexual violence leave pay: **\$0 because she is already receiving a full day’s pay (6 hours at 1.5 = 9 hours).**



Notice Requirements

10-day Periods

The employee must give his or her employer notice of his or her intention to take this leave in advance of going on leave or as soon as possible after beginning it.

15- week Period

The employee must give his or her employer written notice of his or her intention to take this leave in advance of going on leave or as soon as possible after beginning it.

NOTE: If leave is taken in non-consecutive days or weeks, employee must give the employer written notice each time.

Evidence

An employer may require an employee to provide evidence reasonable in the circumstance.

“Reasonable in the circumstances” depends on the situation, such as:

- The length of leave taken;
- Whether there is a pattern of absences;
- Whether any evidence is available; and/or
- The cost of any evidence.

DECLARED EMERGENCIES LEAVE

An employee is entitled to a leave of absence **without pay** under this section where the employee will not be performing the duties of his or her position because of an officially-declared emergency under the Emergency Management & Civil Protection Act. For more details regarding this leave, please refer to the ESA and its regulations.

REPRISALS

An employer **cannot** penalize or threaten to penalize an employee in any way for:

- Asking the employer to comply with the ESA and the regulations;
- Asking questions about rights under the ESA;
- Filing a complaint under the ESA;
- Exercising or trying to exercise a right under the ESA; and/or
- Giving information to an employment standards officer.

An employer **cannot** penalize or threaten to penalize any employee in any way for:

- Asking about the rate of pay paid to another employee to determine if an employer is providing equal pay for equal work; and/or
- Disclosing their rate of pay to another employee to determine if an employer is providing equal pay for equal work.

An employer **cannot** penalize or threaten to penalize an employee in any way for:

- Taking, planning on taking, being eligible or becoming eligible for any leave in the ESA; and/or
- Being subject to a garnishment order.



An employer **cannot** penalize or threaten to penalize an employee in any way for:

- Participating in a proceeding under the ESA; and/or
- Participating in a proceeding under section 4 of the Retail Business Holidays Act

If any employer penalizes an employee for those reasons, an Employment Standards Officer may order:

- Reinstatement of the employee; and/or
- Compensation of the employee for losses



MODULE 5

Other



CONTINUITY OF EMPLOYMENT

There are two ways to consider continuity of employment.

1. Transfer of business from one employer to another;
2. Transfer of building from one building services provider to another

Continuity Provisions

The continuity provisions allow for an employee's entitlements to "flow through" uninterrupted to the new employment agreement. An employee is not a "new employee" after transfer of business/ building.

This preserves the employee's entitlements such as:

- Seniority
- Performance records
- Leaves of absence & vacations
- Termination/severance pay

Example 1: Business is Sold

Jodi's employment does not end with the transfer of the business. The length of time she worked for Michael must be recognized for any rights she has that are based on her length of employment.

For example, since Jodi has five or more years of employment, she earns three weeks of vacation time after completion of each vacation entitlement year. She also earns six per cent vacation pay. If the new company terminates Jodi's employment one year after the transfer, Jodi will be entitled to eight weeks' notice rather than just one week, because her time with Michael is treated as if it was employment with the new company.

Example 2: Part of Business is Sold

Farrah works for a manufacturing company that produces cars and airplanes. The company sells the car division so it can concentrate on plane production.

The buyer of the car division offers to continue to employ Farrah, and she agrees to work for the new owner.

Farrah's employment does not end with the sale. The total time Farrah was employed by the business must be taken into account when determining her rights while working for the new employer.

BUILDING SERVICE PROVIDERS

Is a person or company that provides services related to a premises/building, its occupants and visitors. This can include a building's owner or manager if he/she is providing these services. Services include:

- Cleaning
- Food services
- Parking garage/parking lot
- Security
- Property management
- Concession stands



Information Request

When a building services provider (BSP) shops for new contracts, it can ask the building owner/ manager for information, including:

- Employee job classifications/descriptions;
- Employee wage and benefit information;
- Previously existing continuity periods; and
- Hours worked.

This information can help the potential new provider decide whether, and on what terms, to make a bid to take over the provision of the services, and the number of employees, if any, it will retain if it wins the contract.

If a company becomes the new provider of the services at a building, it has the right to ask for the name, residential address, and telephone number of each employee.

If a building owner or manager receives a request for information from a new or potential new services provider, it has the right to get the necessary information from the current or former services provider.

Anyone who receives information about employees under this provision must use it only for the purposes of complying with the building services providers provisions of the ESA and determining their obligations or potential obligations under those provisions and shall not disclose the information except as required by those provisions.

Example 3: Building Services Provider is Replaced

Daniel worked as a security guard for 2 years at ABC Security. His employer has a contract with a building owner to provide security services in the owner's building. The contract is for a specific period of time, and when it expires the owner contracts with a new company, XYZ Security. Daniel is hired by XYZ Security and continues to work in this building.

Example 4: Service is Contracted to Building Services Provider

Zack has worked for DEF Insurance for 6 years as a cleaner. His job is to keep DEF's office building clean. DEF decides to contract this service to a cleaning company, Busy Bee Cleaning.

Busy Bee Cleaning chooses to hire Zack, and he continues working in the building. Zack's length of employment with DEF must be included when determining his length of employment with Busy Bee Cleaning.

Continuity of Employment: Vacation Time & Pay

If an employee works for one year and less than 5, the employee qualifies for **2 weeks'** vacation pay, and **4%** of gross wages accrue as vacation pay.

If an employee works for 5 years or more, the employee qualifies for **3 weeks'** vacation pay, and **6%** of gross wages accrue as vacation pay.

Example 1: Sale of Business

Arash has worked for a business for 16 months when the business is sold. He has not taken any vacation at the time of the sale. Arash continues to work for the new owner, and his previous employment with the seller must be recognized by the new owner.

The new owner must give Arash the vacation he earned in his first 12 months of employment with the seller within 6 months of hiring.

The new owner must also pay Arash the vacation pay accrued in respect of that vacation entitlement year (if it has not yet been paid).



Example 2: Replacing Provider

Connie has worked as a cleaner with a company for 38 months when the company loses its cleaning contract. She is immediately hired by the company that won the contract. Connie has already taken two weeks of vacation for each of her first two vacation entitlement years with her former employer.

The new provider must recognize Connie's employment with her former employer. Her new employer must therefore give her the two weeks of vacation earned in respect of her third vacation entitlement year (and the years that follow, so long as Connie stays with the new employer).

The vacation must be taken within 10 months of the completion of the third vacation entitlement year (8 months after she was hired by the new building services provider).

Example 3: Sale of Business

Alyssa has worked for an accounting firm for three years. The firm is sold and Alyssa starts working for the new owner. The sale occurred four weeks before Alyssa's due date, and she will have started her employment with the new owner only four weeks before her baby is due.

She is considered to have started her employment three years and four weeks before her baby is due, and so she qualifies for pregnancy leave.

Example 4: Replacing Provider

Olga has worked for five years in a hospital cafeteria for ABC Foods. Olga is eight months pregnant, and she intends to begin her pregnancy leave in one month's time on the date her baby is due. However, ABC Foods is replaced by a new services provider, XYZ Foods, which hires Olga.

Because ABC Foods must recognize Olga's years of employment with the previous provider, she is considered to have started her employment five years and one month before her due date, and is therefore entitled to pregnancy leave.

Example 5: Sale of Business

Stacy, Julie's same-sex partner, has worked for a printing company for 13 years. Julie gave birth six months ago. The printing company was sold when the baby was five months old and Stacy continues to work for the new owner. Stacy plans to take a parental leave when the baby is seven months old.

Her total length of employment with the business is attributed to the new owner, and therefore her total length of employment is more than 13 weeks, so she qualifies for parental leave.

Continuity of Employment: Termination & Severance

In most cases, when a person's employment is ended by an employer, the employee is usually entitled to receive either written notice of termination, termination pay, or a combination of both.

Some employees are also entitled to severance pay – the length of the notice or the amount of termination pay or severance pay depends on how long the person has been employed.

Example: Boris has worked for ABC Foods for 10 years as a cook in a cafeteria. The company has a contract to provide food services in an office building. When the contract expires, ABC ends their employment relationship with Boris. DEF Foods is contracted to provide the food services, but because DEF Foods has its own staff it does not hire Boris.

DEF Foods is responsible for paying Boris **termination pay and severance pay** if applicable, even though he was never employed by DEF Foods. Boris is entitled to 8 weeks' pay in lieu of notice, and if he is entitled to severance pay, 10 weeks of severance pay.

NOTE: The entitlement to severance depends on DEF's payroll, not ABC's.



Exception “13-Week Gap” (Sale of Business)

An employee’s history does not transfer between the old and new employees when:

- 13 weeks pass between the date of hire and (the earlier of):
 - Employee’s last date of employment; or
 - The date of the sale of the business

Example: Joshua works for 123 Taxis which is having financial difficulties. His employment is ended by the owners and, 10 weeks later, the business is sold to a new owner, 456 Taxis. 456 Taxis does not immediately offer to hire Joshua. After eight weeks, the new owner realizes he needs more staff. He calls Joshua and asks him to return to his old job. He agrees to return to his old job.

Jacob’s employment with the previous owner is not attributed to 456 Taxis because he was hired more than 13 weeks after his last day of employment with the previous owner.

Exception “13-Week Gap” (Change in Provider)

An employee’s history does not transfer between the old and new providers when:

- 13 weeks pass between date of hire, and (the earlier of):
 - Employee’s last day of employment; or
 - The date the new service provider begins providing service

Example: Donald has worked for four years as a parking garage attendant for BSP, a building services provider. BSP cuts back on its staff and terminates Donald’s employment. Three weeks after his termination, a new building services provider takes over the operation of the parking garage.

Three months later, the new provider hires Donald to work as an attendant at the same parking garage.

Donald’s employment with BDP is not deemed to have been employment with the new service provider because there was a gap of more than 13 weeks.

Special Circumstances

1. A business has been taken over by a landlord due to non-payment of rent;
2. A business has been taken over by a trustee or receiver due to a bankruptcy or receivership; and/or
3. **A business is a franchise operation.**

Franchises

There are 3 circumstances in which the transfer of a franchise can affect continuity:

1. Where the previous owner transfers the franchise directly to the new owner, continuity will apply;
2. Where the previous owner must transfer the franchise back to Corporate prior to transferring the franchise to the new owner, continuity will NOT apply;
3. Where the previous owner transfers the franchise back to Corporate prior to transferring the business to the new owner and Corporate is involved in hiring and operating the business, continuity will apply.



TERMINATION AND SEVERANCE

A number of expressions are commonly used to describe situations where employment is terminated. These include “let go”, “discharged”, “dismissed”, “fired”, and “permanently laid off.”

Irrespective of the term used, they all mean the employer no longer wishes to employ the individual and has advised the individual of its wishes.

Termination happens if the employer:

- Dismisses or stops employing an employee;
- “Constructively” dismisses an employee and employee resigns within reasonable time; or
- Lays an employee off for a period longer than “temporary layoff”.

Employer’s Obligations

Where the employee has been continuously employed for 3+ months, the employer must provide the employee with:

- Written notice of termination;
- Termination pay; or
- A combination of both.

NOTE: the employer does not need to have or provide the employee a reason for terminating the employment.

However, there are some situations where an employer cannot terminate an employee’s employment even if they are prepared to give proper written notice or termination pay.

Example: An employer cannot end someone’s employment, or penalize them in any other way, if any part of the reason for the termination of employment is based on the employee asking questions about the ESA 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 specified in the ESA. **This is considered a reprisal under the ESA.** An employer who is found to have dismissed or otherwise punished an employee for claiming his or her rights under the ESA may be found to have committed a reprisal. The penalties for this include an order to compensate the employee for the losses they suffered as a result of the employer’s reprisal, up to and including ordering the employee reinstated in their pre-dismissal position.

Termination vs. Severance Pay

Termination pay: given in place of required notice under the ESA.

- Maximum of 8 weeks is provided

Severance pay: compensates long-term employees for losses when dismissed.

- Maximum of 26 weeks is provided

Qualifying for Severance Pay – Employee

An employee qualifies for severance pay where:

- The employee’s employment with the employer is severed; and
- The employee has 5+ years of employment with the employer.

Qualifying for Severance Pay – Employer Criteria

Where the employee meets the criteria above, and the employer meets one of the following two criteria, the employee will be entitled to severance pay:

1. Employer has a payroll in Ontario of at least \$2.5 million; or
2. Severed employment of 50+ employees in a 6 month period due to complete/partial business closure.



When Severance Occurs

Employment is “severed” when the employer:

- Dismisses or stops employing the employee (includes insolvency or bankruptcy of employer)
- “Constructively” dismisses the employee and the employee resigns within reasonable time.

Employment is “severed” when the employer:

- Lays the employee off for 35+ weeks in 52 week period;
- Lays the employee off due to permanent business closure; or
- Gives the employee written notice of termination and the employee resigns after giving two weeks’ notice and resignation takes effect during the statutory notice period.

Example: Jacquelyn has worked for seven years, and is entitled to seven weeks’ notice of termination under the ESA. Jacquelyn’s employer gives her 10 weeks’ notice. Jacquelyn must give her employer at least two weeks’ written notice of her resignation.

As long as Jacquelyn’s resignation takes effect during the statutory notice period, in this case the last seven weeks of the 10-week notice period, she continues to be entitled to severance pay.

Calculating Severance Pay

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:

of completed years of employment X # of completed months of employment (divided by 12 for a year that has not completed)

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

Example 1: Theresa regularly works 40 hours a week and is paid \$17.00 an hour. Her employer has a payroll of more than \$2.5 million. Her employer gives Theresa seven weeks’ notice of termination, and Theresa works for the notice period. At the end of the notice period, Theresa’s employment is severed. On that date, Theresa has been employed for seven years, nine months and two weeks.

1. To calculate Theresa’s regular wages for a regular work week. Theresa usually works 40 hours a week
 $\$17.00 \times 40 = \680.00
2. # of Theresa’s completed years
7 years
3. Divide the # of completed months Theresa was employed in the incomplete year by 12.
 $9 \text{ complete month's} \div 12 = 0.75$
4. Add the # arrived at in Step 2 (7) to the number arrived at in Step 3 (0.75),
7.75
5. Multiple Theresa’s regular wages for a regular work week (\$680.00) by the number arrived at in Step 4 (7.75)
 $\$680.00 \times 7.75 = \5270.00

Therefore Theresa is entitled to \$5270.00 in severance pay.

Example 2: Commission/Other pay

Charlie works as a commission salesperson at his employer’s high-tech retail store. He is paid commissions on sales made and not on the basis of time worked. Charlie’s employer decides to downsize and Charlie is given eight weeks’ written notice of termination of employment. He works the notice period and his employment is severed. On the date his employment is severed, he has been employed for nine years, six months and three weeks.



MODULE 5

Other

Charlie's employer has a payroll of more than \$2.5 million. In the last 12 weeks of his employment, Charlie has received \$7,723.00.

1. Calculate Charlie's "regular wages for a regular work week" – the average of the regular wages he received in the weeks he worked during his last 12 weeks of employment

$$\text{\$7,723.00} \div 12 = \text{\$643.58}$$

2. Number of completed years

$$\text{9 years}$$

3. Divide the number of completed months Charlie was employed in the incomplete year by 12

$$\text{6 months} \div 12 = \text{0.5}$$

4. Add the number arrived at in Step 2 and the number arrived at in Step 3

$$\text{(0.5) 9} + \text{0.5} = \text{9.5}$$

5. Multiply Charlie's regular wages for a regular work week by the number arrived at in Step 4

$$\text{\$643.58} \times \text{9.5} = \text{\$6,114.01.}$$

Therefore, Charlie is entitled to \$6114.01 in severance pay.

When to Pay Severance Pay

The employer must pay the employee's severance pay by the later of:

- 7 days after employment is severed; or
- The employee's next regular pay day.

Severance Pay – Installment Plan

An employer may pay severance in installments where:

- The employee has agreed electronically or in writing to receive payment in installments; or
- With approval from Director of Employment Standards

Installment Plan:

- Cannot be more than 3 years; and
- If payment is not made, full sum is due immediately.

No Entitlement to Severance Pay

An employee will not be entitled to severance pay where the employee:

- Refused a reasonable alternative employment offer;
- Refused a reasonable alternative employment offer through a seniority system;
- Retires on full pension after employment is severed;
- Has employment severed because of permanent closure due to strike;
- Is employed in construction;
- Is employed in on-site maintenance;
- Is guilty of willful misconduct, disobedience, or willful neglect of duty that is not trivial/ condoned; or
- Lost his or her employment because the contract is impossible to perform due to unforeseen circumstances.

Unforeseen circumstances do **NOT** include bankruptcy or insolvency, or when the contract is frustrated or impossible to perform as the result of an injury or illness suffered by an employee.



Recall Rights

Recall right is the right of an employee on layoff to be called back to work by the employer under terms/conditions of employment. This is commonly found in collective agreements.

An employee with recall rights who is laid off for 35 or more weeks may:

- Keep their recall rights and not be paid termination or severance pay; or
- Give up their recall rights and receive termination and/or severance pay.

The employee must make the same decision for termination and severance pay, where entitled to both.

Wrongful Dismissal

The ESA provides the **minimum** employer payment obligations. Some employees could have rights under common law which give them **greater** rights than notice of termination (or pay) and severance pay under the ESA.

Under the ESA and the common law, the employee has a right to reasonable notice of their employer's intention to sever their employment contract.

When the employer does not provide this, it will have wrongfully dismissed the employee.

Qualifying for Notice of Termination of Pay in Lieu

Some employees are not entitled to notice of termination/termination pay under the ESA, including:

- An employee who is guilty of willful misconduct, disobedience or willful neglect of duty;
- A construction employee;
- An employee on a temporary layoff;
- An employee with less than three months employment; or
- An employee who refuses an offer of reasonable alternative employment.

Constructive Dismissal

A constructive dismissal may occur when an employer makes a significant change to fundamental term(s)/condition(s) in employment imposed by the employer without the employee's consent. This can include:

- A significant negative change; (work location, authority, position etc.)
- An employer harassing or abusing the employee into resigning; and/or
- An employer giving the employee an ultimatum such as "quit or be fired".

The employee would have to resign in response to the change within a reasonable period of time in order for the employer's actions to be considered a termination of employment for purposes of the ESA.

Temporary Layoff

Temporary layoff is when an employer is cutting back or stopping an employee's work without ending employment. If a recall date has not been provided, layoff can still be temporary.

A layoff may result in a constructive dismissal if it is not allowed by the employment contract.



MODULE 5

Other

Week of Layoff

Is a week in which the employee earned less than half of what they would ordinarily earn in a week.

A week of layoff **does not** include any week where the employee did not work for one or more days because he/she was:

- Not available to work;
- Subject to disciplinary suspension; or
- Affected by strike/lockout.

Length of Temporary Layoff

The maximum length of a temporary layoff under the ESA is either:

- Not more than 13 weeks in any period of 20 consecutive weeks; or
- More than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks of layoff in any period of 52 consecutive weeks, where:
 - The employee continues to receive substantial payments from the employer
 - Insurance/benefit coverage continues;
 - The employee receives supplementary unemployment benefits;
 - The employee would be entitled to receive supplementary unemployment benefits but isn't receiving them because they are employed elsewhere;
 - The employer recalls the employee to work within the time frame approved by the Director of Employment Standards; or
 - The employer recalls the employee within the time frame set out in an agreement with an employee who is not represented by a trade union.

Where Notice of Termination or Termination Pay Required

Under the ESA, an employer may terminate the employment of an employee of 3 months or more if the employer provides:

1. Written notice of termination and the notice period has expired; or
2. Without written notice/less notice than required and termination pay in lieu of notice.

Written Notice of Termination Pay in Lieu of Notice

An employee is entitled to written notice of termination or pay in lieu of notice where the employee has been continuously employed for the same employer for a **minimum 3 months**.

The amount of notice an employee is entitled to depends on the employee's "period of employment".

Period of Employment

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. (Ex. Sick leave, or on layoff).

The following are exceptions:

- Layoff is extended longer than a temporary layoff;
- If 2 separate periods of employment are separated by more than 12 weeks, only the most recent period counts for purposes of notice of termination.



Required notice (3 months +)

Amount of notice required if an employee has been continuously employed for at least three months	
Period of employment	Notice required
Less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks
4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years or more	8 weeks

NOTE: Special rules determine the amount of notice required in the case of mass terminations – where the employment of 50 or more employees is terminated at an employer’s establishment within a four-week period.

Employer Requirements during the Statutory Notice Period

The employer must:

1. **Not** reduce employee’s wage rate/alter any employment terms/conditions;
2. **Not** schedule employee’s vacation without agreement;
3. Continue to make benefit contributions; **and**
4. Pay the employee’s wages they are entitled to
 - This may not be less than the employee’s regular wages for a regular work week.

Regular Wages

Are wages **other than** overtime pay, vacation pay, public holiday pay, premium pay, domestic or sexual violence leave pay, domestic or sexual violence leave pay, termination of assignment pay, termination pay/severance pay, and certain contractual entitlements.

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 hours.

For these employees, the “regular wages” for a “regular work week” is the average amount of the regular wages earned by the employee in the weeks in which the employee worked during the period of 12 weeks immediately preceding the date the notice was given.



MODULE 5

Other

Where Employer Provides Notice beyond Statutory Minimum

An employer may provide notice of termination or pay in lieu longer than the statutory minimum.

The statutory part of the notice period is the last part of the period that ends on the date of termination.

Delivery of Notice of Termination

In most cases, written notice of termination of employment must be addressed to the employee. It can be provided in the following ways as long as delivery can be verified:

- In person
- By mail
- By fax
- By email

There are special rules for providing notice of termination if an employee has a contract of employment or a collective agreement that provides seniority rights that allow an employee who is to be laid off or whose employment is to be terminated to displace (bump) other employees.

In that case, the employer must post a notice in the workplace (where it will be seen by the employees) setting out the names, seniority and job classification of those employees the employer intends to terminate and the date of the proposed termination.

Termination Pay

Termination pay may replace a written notice, and is a lump sum payment of regular wages for regular work weeks an employee would have received during the notice period.

The employer **must** also:

- Pay vacation pay that would be earned during the notice period; and
- Continue to make benefit contributions.

Example 1: Regular Work Week

Fatimah has worked for three and a half years. Now her job has been eliminated and her employment has been terminated. Fatimah was not given any written notice of termination.

Fatimah worked 40 hours a week every week and was paid \$17.00 an hour. She also received four per cent vacation pay. Because she worked for more than three years but less than four years, she is entitled to three weeks' pay in lieu of notice.

Fatimah's regular wages for a regular work week are calculated:

\$17.00 an hour X 40 hours a week = \$680.00 a week

Her termination pay is calculated:

\$680.00 X 3 weeks = \$2040.00

Then her vacation pay on her termination pay is calculated

4% of \$2040.00 = \$81.60

Finally, her vacation pay is added to her termination pay:

\$2040.00 + \$81.60 = \$2121.60

Fatimah is entitled to **\$2121.60**. The employer must also ensure continued coverage for any benefit or pension plans that applied to her for three weeks.



Example 2: No regular work week

Harris has worked at a nursing home for four years. He works every week, but his hours vary from week to week. His rate of pay is \$17.00 an hour, and he is paid 6 per cent vacation pay.

Harris' employer eliminated his position and did not give Harris any written notice of termination. Harris was ill and off work for two of the 12 weeks immediately preceding the day his employment was terminated. Harris earned \$1,800.00 in the 12 weeks before the day on which his employment ended.

Harris is entitled to four weeks of termination pay.

Harris' average earnings per week are calculated:

\$1,800.00 for 12 weeks / 10 weeks (Harris was off sick for two weeks therefore these weeks are not included in the calculation of average earnings) = \$180.00 a week

His termination pay is calculated:

\$180.00 × 4 weeks = \$720.00

Then his vacation pay on his termination pay is calculated:

6% of \$720.00 = \$43.20

Finally, his vacation pay is added to his termination pay:

\$720.00 + \$43.20 = \$763.20

Harris is entitled to **\$763.20**. The employer must also ensure continued coverage for any benefit or pension plans that applied to him for four weeks.

When to Pay Termination Pay

The employee must receive termination pay on the later of:

- 7 days after employment is terminated; or
- On the employee's next regular pay day.

Mass Termination

A mass termination is where:

- 50+ employees are dismissed within a 4 week period;
- At an employer's establishment (this may refer to multiple locations)

In cases such as these, the employer is obligated to:


- Submit Form 1 to Director of Employment Standards
 - Notice of termination is not effective until Director receives Form 1
- Copy of Form 1 must be posted in the workplace for the attention of the affected employees on first day of the notice period.



MODULE 5

Other

Form 1 Sample



Form 1 – Notice of Termination of Employment
 Under Subsection 58(2) of the *Employment Standards Act, 2000*

This form, when completed, should be sent to the Director of Employment Standards, Ministry of Labour, 6th floor, 400 University Avenue, Toronto ON M7A 1T7. Fax 416 326-7001, Monday to Friday, between the hours of 9:00 a.m. and 5:00 p.m.

Please note that the completed Form 1 must be received at the above address before the notice of termination to employees can commence. A copy of this Form 1 must be posted in the workplace

Where the employer decides to pay termination pay rather than providing written notice of termination, the employer is still required to provide the Director of Employment Standards with the completed Form 1.

The Ministry may, after filing by the employer, request supplementary information relating to the questions in the Form and/or to the responses given to the questions in the Form.

The Ministry of Labour will supply the Ministry of Training, Colleges and Universities with information from the Form 1 for the purposes of providing a range of programs and services to help workers make a rapid and effective transition to new employment.

Termination Information				
Employer Business / Trade Name			Legal Name	
Employer's Mailing Address				
Unit Number	Street Number	Street Name	PO Box	
City/Town			Province	Postal Code
Location(s) where employees whose employment is being terminated work				
Number of employees at each location who are paid		Number of employees at each location whose employment will be terminated and anticipated dates		
Hourly		Hourly		Date Terminations Effective (yyyy/mm/dd)
Salaried		Salaried		
Other		Other		
Name(s) of the trade union local, if any, representing employees whose employment is being terminated.				
What are the economic circumstances surrounding the terminations?				
Has the employer implemented or discussed with employees (or their agent) any alternatives to termination? Please describe alternatives to termination implemented or discussed.				
Alternatives Implemented				
Alternatives Discussed				

Mass Terminations: Amount of Notice Due

# Assignment Employees Terminated	Minimum Notice Required
50-199	8 weeks
200-499	12 weeks
500+	16 weeks



Exceptions to Mass Termination Rules

The mass termination rules **do not** apply if:

1. The number of employees being terminated is **10% or less** of the number of employees who have been employed for at least **3 months**; and
2. None of the terminations are caused by the permanent discontinuance of all or part of the employer's business at the establishment.

Employee Resignation and Mass Termination

An employee whose employment is part of a mass termination may resign, but must provide written notice to the employer:

- Less than two years' employment: **1 week**
- More than two years' employment: **2 weeks**

NOTE: The employee does not have to give notice of resignation if the employer constructively dismisses the employee or breaches a term of the contract.

Temporary Work after Termination Date in Notice

An employer may provide work to an employee who has been given notice on a temporary basis in the 13-week period after the termination date set out in the notice, without affecting the original date of termination and without being required to provide any further notice when the temporary work ends.

If an employee works beyond the 13-week period after the original termination date, and then has their employment terminated, the **employee will be entitled to a new written notice of termination** as if the original notice had never been given.

Recall Rights

Is the right of an employee on a layoff to be called back to work by their employer under a term or condition or employment.

This right is commonly found in collective agreements. This is not a right under the ESA and must be contracted for with the employee.

An employee who has recall rights and is entitled to termination pay because of 35 week + layoff may:

- Keep recall right and not be paid termination pay at that time; or
- Give up recall rights and receive termination pay and severance pay, if entitled.

NOTE: If an employee is entitled to both termination and severance pay, he/she must make the same choice for both.

No Entitlement to Termination Pay

An employee is not entitled to termination pay where the employee:

- Refused a reasonable alternative employment offer;
- Refused a reasonable alternative employment offer through a seniority system
- Is on a temporary layoff;
- Is dismissed during or because of strike/lockout;
- Employed in construction;
- Terminated at retirement;
- Guilty of willful misconduct, disobedience, or willful neglect of duty; or
- Lost employment because contract is impossible to perform due to unforeseen circumstances*.



MODULE 5

Other

***NOTE:** Unforeseen circumstances include fire, flood, etc, but **DOES NOT** include bankruptcy, insolvency, or when contract is impossible to perform as the result of an injury or illness suffered by an employee.

An employee is not entitled to termination pay where the employee:

- Does not return after being recalled from temporary layoff within a reasonable time; or
- Was hired for a specific length of time or until completion of specific tasks

UNLESS: the employment ends before the term expires or task is completed; or

- Task is not completed more than 12 months after employment started; or
- Employment continues for three months or more after the term expires or task has completed

LIABILITY OF DIRECTORS

Under the ESA, a Director is:

- A Director of a corporation; and
- A shareholder who is party to a unanimous shareholder agreement.

NOTE:

This part applies:

To shareholders only to the extent that the directors are relieved, under subsection 108(5) of the Business Corporations Act or subsection 146(5) of the *Canada Business Corporations Act*, of their liability to pay wages to the employees of the corporation.

This part does not apply: to directors of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies.

Joint and Several Liability

Directors of an employer can be jointly and severally liable if:

- The employer is insolvent, an employee claims unpaid wages, and these wages aren't paid;
- The employer has not paid an Employment Standards Order; or
- An Employment Standards Order has been made, making the Director liable for wages.

Wages – Director Liability

For purposes of director liability, wages do not include severance or termination pay.

The employer is primarily responsible for outstanding wages, and the Director can still be liable at any time.

Overtime Wages – Director Liability

A Director is liable for the payment of the greater of these two outstanding overtime wages:

- The amount required under the ESA; or
- The amount agreed to in the employment contract.

Vacation Pay – Director Liability

Director liability for vacation pay is the greater of:

- The minimum vacation pay required under the ESA; or
- The minimum vacation pay agreed to in the employment contract.



Holiday Pay – Director Liability

Director liability for holiday pay is the greater of:

- At the rate required under the ESA; or
- At the rate agreed to in the employment contract.

Maximum Director Liability

The maximum amount a corporation's directors are jointly and severally liable to each employee of the corporation is **6 months' of wages that became payable while the Director is a Director of the corporation.**

Contribution to Director Liability

If one Director pays a claim, he/she can claim contribution from other liable Directors.

Example: A company has two Directors: Sal and Harry. Sal pays an order from an ESO for the unpaid wages of an employee after the employer becomes insolvent. Harry was also liable for this order, but was away on vacation and did not know about the order. When Harry gets back, he must provide his contribution for the order to Sal.

Contracting Out of Liability

No provision(s) in a contract, article of incorporation or corporation by-law can relieve a Director from liability under the ESA.

Indemnification – Director Liability

Any employer can cover costs, charges and expenses to satisfy an order made against a Director under the ESA if:

- The Director acted honestly and in good faith/best interests of the employer; and
- The Director believed his or her conduct was lawful.

NOTE: This refers to a Director, a former Director, and the heirs or legal representatives of a Director or former Director.

Limitation Period – Director Liability

An order for unpaid wages **cannot** be brought:

- **More than 2 years** after the employee filed a complaint;
- **More than 2 years** after another employee of same employer filed a complaint;
- **More than 2 years** after an ESO started an inspection for wages

NOTE: Civil remedies are protected; any civil remedy available to an employee or a Director can still be pursued regardless of whether this limitation period has expired.

NOTE: A 2 year limitation period in the ESA prevails over a limitation period in any other Act, unless the other Act states that it does in fact prevail over the ESA.



TEMPORARY HELP AGENCIES

A temporary help agency is one that provides workers to employers for temporary tasks and/or assignments.

Employment Relationship

An individual becomes an employee of an agency where:

- The agency and an individual agree the agency will assign or attempt to assign the individual to perform temporary work for clients or potential clients

NOTE: The agreement can be oral or written.

Agency Must Provide the Employee

- Legal Name of the Agency;
- Operating/Business Name (if applicable);
- Contact Information;
- Copy of the most recently published Ministry of Labour Temporary Help document; and
- If needed, a translated copy of the document.

Assignment Employee – Overview

Temporary help agencies employ people to assign them to perform work on a temporary basis for clients of the agency.

The duration of the assignment does not matter. Such employees are called “assignment employees.”

Under the ESA, temporary help agency assignment employees generally have the same rights as other employees.

There are also rules in the ESA that apply specifically to assignment employees, temporary help agencies and clients of temporary help agencies.

Start of Assignment

An assignment starts the first day work is performed by the employee for the client. An assignment

does **not** start because the agency:

- Provided client with a resume;
- Arranged an interview; and/or
- Introduced the employee to the client.

The Agency Must Provide its Employee with:

- Its client’s legal name;
- Its client’s contact information;
- Wage information/benefits;
- Hours of work;
- Work description;
- Pay period and pay day; and
- Estimated assignment term (if available).

NOTE: Information must be provided in writing.



End of Assignment

An assignment ends when:

- The end of the scheduled term has come; or
- When ended by the agency, the employee or the client.

While on assignment for a client, the employee is still an employee of the Agency

- The end of an assignment does not mean the assignment employee's employment relationship with the agency ends.

Termination of Assignment

An agency has obligations towards an assignment employee during termination where:

1. The assignment employee is assigned to perform work for client;
2. The assignment employee was advised the assignment was to be 3 months or more; and
3. The assignment is terminated earlier than the scheduled length of the assignment.

Where this happens, the Agency must provide the assignment employee with either:

1. One week's notice of termination of assignment;
2. Termination of assignment pay; or
3. A combination of both.

Termination of Assignment Pay

Where the Agency provides an assignment employee with pay in lieu of notice of termination of employment, the assignment employee is entitled to the wages he or she would have received had the one week's notice been provided.

No Termination of Assignment Pay or Notice Required

No termination pay or notice is required where:

1. The assignment employee is offered reasonable, alternate work with a client lasting one or more week during the notice period;
2. The assignment employee is guilty of willful misconduct, disobedience, or non-trivial neglect of duty;
3. The assignment has become impossible to perform; or
4. A strike/lock-out happens at location of assignment.

Public Holidays

Where a public holiday falls during an employee's assignment, they are entitled to a day off with public holiday pay.

Public Holiday Pay = Regular wages earned and vacation pay payable in four weeks prior to the week of the public holiday
20

However, an employee can agree to work on the holiday, as long as the agreement is **in writing**. Where this happens, he or she must receive:

- Regular pay for that day and a substitute day off with public holiday pay; or
- Premium pay for every hour worked on the holiday plus public holiday pay (with employee and employer agreement).

If the employee is **not scheduled** to work on the day of a public holiday, they will receive:

- A substitute day off with public holiday pay; or
- Public holiday pay only (with agreement electronically or in writing).



MODULE 5

Other

If the employee is **not on assignment** on the day of a public holiday, they are only entitled to public holiday pay.

Example 1:

Chris ends a six-month assignment on Friday, February 12. He had been earning \$800 per week, working 4 days a week while on that assignment. He has a weekly pay period that runs from Sunday to Saturday. He is offered another assignment that begins on April 15, which he accepts. Family Day falls on February 15, but because he is on a layoff when the holiday occurs, he is entitled only to public holiday pay for Family Day (no substitute day off).

Chris' public holiday pay is calculated as the regular wages earned and vacation pay payable in the four weeks prior to the week of the public holiday ($\$800 \times 4 = \3200) divided by 20.

Chris is entitled to **\$160** in public holiday pay.

Example 2:

Elias ends a six-month assignment on May 30. Canada Day falls on July 1. He was available and able to work, but was not offered another assignment between May 30 and July 1.

Because he is on a layoff when the holiday falls, he is entitled only to public holiday pay for the day.

Elias' public holiday pay is calculated as the regular wages earned and vacation pay payable in the four weeks prior to the week of the public holiday ($\$0 \times 4 = \0) divided by 20.

Because he has no earnings for that period, his public holiday pay for Canada Day is \$0.

Agency Record Keeping Obligations

The Agency must:

- Record hours worked by each employee for each client in each day and week; and
- Keep copies of any written notice;
- Keep records for 3 years; and
- Records must be readily available.

Agency is **NOT** Allowed to:

1. Charge employees membership fees;
2. Charge employees job skills training fees;
3. Charge "assignment" fees;
4. To stop client from providing references for assignment employee;
5. To stop an assignment employee from working with an agency client;
6. Restricting a client from providing references in respect of an assignment employee of the agency;
7. Restricting a client from entering into an employment relationship with an assignment employee;
8. Charging a fee to a client in connection with the client entering into an employment relationship with an assignment employee;
9. Charging a fee that is prescribed as prohibited; or
10. Imposing a restriction that is prescribed as prohibited.



*Agency's Client is **NOT** Allowed to:*

Penalize an assignment employee for:

- Asking client/agency to comply with ESA;
- Asking about or exercising his/her rights;
- Filing a complaint under ESA;
- Giving information to an Employment Standards Officer; or
- Asking about/disclosing pay rate to see if agency/client is complying with ESA.

Penalize an assignment employee for:

- Disclosing his/her pay rate to help another employee determine if agency is complying with ESA;
- Testifying or participating in proceedings under ESA;
- Participating in proceeding under Retail Business Holidays Act;
- Takes or becomes eligible to take a leave; or
- Is owed money and client/agency is required to pay third party amount owing to employee.

Where an employee has claimed his or her rights under the ESA, the Agency's client may not:

- Intimidate that employee;
- Refuse to have employee perform work;
- Refuse to allow employee to start an assignment;
- Terminate the assignment of that employee; or
- Otherwise penalize or threaten to penalize that employee.

Enforcing Agency Rules

An assignment or prospective employee may file a claim with the Ministry of Labour where he or she:

- Believes the agency is not complying with ESA; or
- Thinks he or she has been penalized for using/asking about their ESA rights.

Client Reprisal or Punishment

The burden of proof will lie with the client.

An Employment Standards Officer may order:

- Employee compensation; or
- Employee compensation **and** reinstatement.

If an order is issued under this section requiring a client to reinstate an assignment employee in the assignment, the temporary help agency must do whatever it can reasonably do to show compliance by the client with the order.

Employee Compensation

Employment Standards Officer may issue an order instructing a client to pay to the Director in trust:

- The amount of the compensation; and
 - Administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or
 - Pay compensation amount to the assignment employee.



MODULE 5

Other

Agency Client May Be Liable For:

The assignment employee's:

1. Regular Wages;
2. Overtime Pay;
3. Public Holiday Pay; and
4. Premium Pay.

Multiple Client Liability

Where an assignment employee who performs work for more than one client in a pay period, each client is liable for its portion of the work performed by the assignment employee.

Meaning, if wages are not paid by the agency for the employee's pay period, each client will have to pay proportional wages for that period.

Termination of Employment

Temporary help agency assignment employees generally have the same rights as other employees to notice of termination. However, some termination rules only apply to assignment employees.

Requirements During Notice Period

Wages paid to an assignment employee during the notice period must be:

1. Terminations because of extended layoff:
 - a. Total wages in 12 weeks before termination date, divided by 12
2. All other terminations:
 - a. Total wages earned in 12 weeks ending on last day of work for client, divided by 12

Calculating Pay Instead of Notice

If the employee is being terminated without working notice, pay in lieu of notice is calculated as:

- The amount of wages earned in the 12 weeks ending on the employee's last day of work for a client of the agency, or
- In the 12 weeks before the deemed termination date, if the termination is triggered by a layoff going on longer than a "temporary layoff", divided by 12, and multiplied by the number of weeks of notice to which the employee is entitled.

Termination Resulting From Layoff

An extended layoff can trigger termination of employment. If an assignment employee is not assigned to perform work for client during the week, the agency "lays off" him/her for a week.

What Constitutes a Layoff?

A layoff is when for **1 or more** days, the assignment employee:

- Is not able to work;
- Not available for work;
- Refuses an offer by agency;
- Subject to disciplinary suspension; or
- Not assigned to work due to strike/lock-out.



Mass Termination – Assignment Employees

Special mass termination rules apply where 50+ assignment employees working for the same client are terminated in the same 4 week period, and termination happened because:

1. The term of the employees' assignment ended; or
2. The client or agency ended the assignments.

# Assignment Employees Terminated	Minimum Notice Required
50-199	8 weeks
200-499	12 weeks
500+	16 weeks

Notice Obligations – Assignment Employees

If 50+ employees are being terminated, the agency will:

- Provide the Director with a form outlining the notice;
- Provide a copy of the form to every assignment employee facing termination; and
- Post form in a visible and noticeable part of the agency on the first day of notice and keep the form up until the last day of the notice period.

Example: Hosanna is one of 100 assignment employees who are assigned by XYZ Staffing Services, a temporary help agency, for an anticipated ten-month period of work at one of its clients, ABC Manufacturing. After six months, ABC Manufacturing changes its production plans and ends the assignments of the 100 XYZ Staffing Services employees immediately.

Because the assignments with ABC end, and ABC does not anticipate being able to find other assignments for 70 of its affected assignment employees, XYZ terminates the employment of these 70 employees, including that of Hosanna, without notice.

Severance of Employment

Temporary help agency assignment employees generally have the same rights as other employees to severance pay. An employee is entitled to severance pay when:

- Their employment is "severed"
- They have been employed for at least 5 years; and
- Certain other conditions are met.

NOTE: The five-year threshold is based on the total time the employee is employed by the agency, not the duration of any particular assignment.



MODULE 5

Other

Calculating Severance Pay

If severance is due to layoff going on for 35 weeks or more in a 52 week period, then they are due:

- The total wages earned by the assignment employee for client work in the 12 weeks before first day of the layoff; or
- (if severance due to other circumstances) the total wages earned by the assignment employee for client work during 12 week period ending on the last day of client work.

Then...

Divide the previous amount by 12.

Then...

Multiply the result by whichever is less:

1. $26 + \# \text{ of years of employment completed; or}$
2. $26 + \# \text{ of completed months of employment in the incomplete year divided by 12.}$

Severance Resulting From a Layoff

A layoff lasting 35+ weeks in a 52 week period can trigger severance.

An assignment employee is considered to be on a week layoff where the agency does not assign the employee to perform work for a client of the agency during that week.

What Constitutes a Layoff

An agency has not laid off an employee if for 1 or more days during a week, the assignment employee:

1. Is not able to work;
2. Not available for work;
3. Refuses an offer by agency;
4. Subject to disciplinary suspension; or
5. Not assigned to work due to strike/lock-out.

For more information regarding your rights and obligations under the *Employment Standards Act, 2000*, please visit www.labour.gov.on.ca, or call the Employment Standards Information Centre:

(GTA): (416) 326-7160

(Canada-wide): 1 (800) 531-5551

