



Employment Standards Act: Your rights at work

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Employment Standards Act

- ▶ The *Employment Standards Act, 2000* (ESA) establishes minimum standards that all Ontario employers must provide to their employees (s. 3(1))
 - ▶ If a worker has a work contract or is part of a union, they may have better terms than those found in the *ESA* – *but they cannot have worse terms* (s. 5(1) and (2))

Employment Standards Act

- ▶ Specific areas covered by ESA protection:
 - ▶ minimum wage and payment of wages
 - ▶ hours of work, lunch periods and overtime pay
 - ▶ public holidays and public holiday pay
 - ▶ vacation time and vacation pay
 - ▶ leave for pregnancy, parents, family, medical, organ donation, personal emergencies and reservists
 - ▶ notice of termination/termination pay and
 - ▶ severance pay
 - ▶ Guide to ESA ([link](#))

New changes: Bill 47

- ▶ The Doug Ford Government has passed Bill 47 - *Making Ontario Open for Business Act, 2018* ([link](#))
- ▶ Bill 47 blocks many of the changes made under the previous Liberal Government's "Fair Workplaces, Better Jobs" Act



New changes: Bill 47

The 2018 CBC Massey Lectures: [A](#) x [Scraping labour reforms is dami](#) x +
https://www.thestar.com/politics/provincial/2018/11/13/scraping-labour-reforms-is-damaging-fords-popularity-poll.html



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Scrapping labour reforms is damaging Ford's popularity: poll

By **ROBERT BENZIE** Queen's Park Bureau Chief
Tues., Nov. 13, 2018



Rolling back labour reforms — including cancelling paid sick days and freezing the \$14-an-hour minimum wage — is taking its toll on Premier Doug Ford's popularity, a new poll

Employment Standards Act

- ▶ The ESA **does not apply** to :
 - ▶ Students on a school-related work program (high school, university or college)
 - ▶ A participant in a community participation program for Ontario Works
 - ▶ Inmates in correctional institutes
 - ▶ Police officers, holders of public office, ...
 - ▶ Employees covered by Federal laws (e.g., postal workers)
- ▶ Some terms do not apply to all workers (e.g., overtime and holidays)

Misclassification of employees

- ▶ Employers cannot **misidentify employees** as independent contractors to avoid ESA requirements
 - ▶ Ford has changed the law so that the employer no longer bears the onus to justify their classification





Wages and hours worked

- ▶ **Minimum wage:** \$14/hour
 - ▶ Plans to raise it to \$15/hour have been scrapped
 - ▶ Some workers have lower rate (e.g., if under 18 get \$13.15, if alcohol servers get \$12.20)
- ▶ **Hours of work:** 8 hours per day with a max of 48 hours in a week, unless approval granted
- ▶ **Overtime:** 44 hours/week is the standard threshold – after that, a worker is owed time and a half (HOWEVER, there are exemptions)

Wages and hours worked

- ▶ **Breaks:** 30 min. break required no later than 5 hours into shift (unpaid)
- ▶ **3 hour rule:** if called in for a shift you normally work and if it is supposed to be more than 3 hours but you are sent home, you will get paid for 3 hours
 - ▶ Previously you did not have to show up – if on call you could still get paid
 - ▶ Also, scheduling rights were repealed by Ford





Wages and hours worked

- ▶ **Scheduling changes introduced by Ford:**
- ▶ You will not be compensated for being “on call” but not called in to work
- ▶ You do not have a right to refuse shifts on short notice (4 days)
- ▶ You cannot request a change in your schedule or location of work



Wages and hours worked

▶ **Equal pay for equal work:**

- ▶ If you are doing “substantially” the same work as another employee, but are paid less because you are a woman, then you can make a claim
- ▶ Previously, you could also make a claim if you were discriminated against based on employment status (e.g., part-timer)

Wages and hours worked

- ▶ **Payment** must be made to the employee according to a regular pay period
- ▶ **Wage statements** are required
- ▶ **Tips:** the employer cannot keep them from you to cover wages, operating costs, breakage, or other losses, but they can be kept in a tip pool to be shared out





Holidays, vacations and leaves

- ▶ **Public holidays:** there are 9 paid days off in the year (based on prior 4 weeks of pay/20 days)
- ▶ **Vacation:** 2 weeks every 12 months, unless you have worked 5+ years, in which case you get 3 weeks
- ▶ **Vacation pay:** 4% of your annual pay or 6% if you have worked more than 5 years



Holidays, vacations and leaves

▶ **Leave days**

- ▶ Sickness: 3 days
- ▶ Family responsibility: 3 days
- ▶ Bereavement: 2 days
- ▶ All are unpaid – “reasonable proof” may be requested
 - ▶ Ford is reversing the previous government's 10 Personal Emergency Leave days (incl. two paid days)



Holidays, vacations and leaves

▶ Leaves of absence

- ▶ **Family medical leave:** up to 28 weeks unpaid, if risk of death and if a qualified family member
- ▶ **Family caregiver:** up to 8 weeks each year if serious illness
- ▶ **Critical illness:** for a child (up to 37 weeks), for adult (up to 17 weeks)
- ▶ **Child death:** 104 weeks
- ▶ **Domestic of sexual violence leave:** up to 10 days and up to 15 weeks (5 of which are paid)

Holidays, vacations and leaves

▶ Leave of absence

- ▶ **Pregnancy leave:** 17 weeks before due date or birth
- ▶ **Parental leave:** 61 weeks (if pregnancy leave also taken) or else 63 weeks
- ▶ You have to have worked at least 13 weeks to get these leaves
- ▶ Note that EI may pay you while on leave if you qualify (based on number of hours worked)





Termination pay

- ▶ An employer may terminate an employee provided that the appropriate amount of **termination pay** is provided (or “payment in lieu of notice”)
 - 3 months to 1 yr: 1 week
 - 1yr to 3 yrs: 2 weeks
 - 3 yrs to 4 yrs: 3 weeks
 - 8 yrs + = 8 weeks
- ▶ Common law notice periods are much higher



Severance

- ▶ Severance only applies to employers who:
 - ▶ Have worked for 5 years or more
 - ▶ Have 2.5 million in payroll or 50 or more workers laid off in past 6 months
 - ▶ Can get up to 26 weeks of pay (approx. 1 week per year)



Reprisals

- ▶ An employer cannot intimidate, dismiss or penalize an employee who asserts his or her rights under the ESA or makes a complaint or gives information to an Employment Standards Officer
- ▶ To do so constitutes a reprisal (s. 74)



Employment Standards Act

- ▶ A recent Worker's Action Centre (WAC) survey found that on average, 1 out of 3 low wage workers face ESA violations but only 4% of these workers file ESA claims
- ▶ 70% of employee claims of employer violations are confirmed by Ministry of Labour investigations



Making a claim

- ▶ To assert your rights under the ESA, you must submit a claim to the Ministry of Labour (MOL) within 2 years
 - ▶ The forms are available online
- ▶ An Employment Standards Officer will investigate
- ▶ The MOL may order payment or impose other penalties against the employer (e.g., compliance order, ticket, notice of contravention or prosecution)
 - ▶ Note that the Ford government has reduced the fines in Bill 47



Other Resources

- ▶ Steps to Justice (<https://stepstojustice.ca/>) provides practical information about rights
- ▶ Worker's Action Centre – Advocacy group (<http://workersactioncentre.org/>)
- ▶ [Office of the Worker's Advisor](#) (for Occupational Health and Safety and WSIB) (1-800-660-6769)
- ▶ If you have any questions, call us or refer your clients to our office