Your Workplace Rights in Ontario

Quick Guide to Your Rights at Work

• Employment Standards Act
• Workplace Safety and Insurance Act
• Occupational Health & Safety Act
• Labour Relations Act
• Human Rights Code

UFCW
your VOICE at work
CANADA

This document has been created by UFCW Canada with input from its legal counsel.

The information in this booklet is not meant as actual law but, rather, only to provide readers an understanding of labour and employment laws in Ontario. This booklet does not contain the whole law.

Labour and employment law is constantly changing because of statutory and regulatory legislative changes and decisions of courts and tribunals and some parts of this booklet may be outdated, therefor.

Every effort has been taken to ensure accuracy but in no event will responsibility be accepted by UFCW Canada or its chartered bodies and members for errors and omissions of any kind or character, however caused.

The information in this document is not legal advice and should not be substituted for the advice, in individual, from a competent professional advisor or lawyer.

We hope you enjoy this booklet.

UFCW Canada
Training and Education Department
300 - 61 International Blvd.
Rexdale ON M9W 6K4
Phone: 416.675.1104
Fax: 416.675.6919
www.ufcw.ca

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UFCW Canada National Training and Education Department

UFCW Canada (United Food and Commercial Workers Union) has been actively working to better educate, not just our young union members, but all young workers.

We have been at the forefront of union education within the labour movement, creating programs and initiatives to involve young union members. This booklet is an extension of that goal.

Your Workplace Rights in Ontario was created to help union members, working people, and specifically young students understand the rights they have at work. This booklet is a summary of these laws, acts, and codes, but it is not the actual law. It is a summary of the *Employment Standards Act, Labour Relations Act, Occupational Health and Safety Act, Workplace Safety and Insurance Act, and the Human Rights Code*.

I hope this booklet will help you to better understand and protect your rights at work.

UFCW Canada is committed to educating all workers about their rights at work and suppling informational material to schools and employment centres. UFCW Canada is here to assist all union members, students, and other workers, and to answer questions and promote dignity and respect at their workplace.

In solidarity,
Wayne E. Hanley
National President

Employment Standards Act

A. Introduction

The *Employment Standards Act (ESA)* outlines the minimum employment related rights and responsibilities that must be observed by all employers in Ontario. Both employers and employees must abide by the Act and cannot ignore any of its sections.

The *Employment Standards Act* applies to part-time and full-time workers in Ontario unless they are in an industry that is regulated by the government of Canada, such as post-offices, railways, airlines, banks, shipping companies, and radio and television stations. The federal *Canada Labour Code* covers these workers.

The Act also does not apply to:

- Secondary school students in school board work experience programs
- Persons who perform work under a program approved by a college or university
- Social assistance recipients in workfare programs, inmates, youth offenders performing alternative work, persons in simulated jobs for rehabilitation
- Holders of political or religious offices, judges or tribunal members or holders of elected office in an organization including a trade union
- Police officers
- Corporate directors unless also employed by the company

By regulation some parts or sections of the *Employment Standards Act* do not apply to certain professions and occupations including:

- Co-op programs, workfare, and convicts

- Qualified professionals such as architects, doctors, and other healthcare professionals, veterinarians, lawyers, public accountants, surveyors
- Students training in the above profession(s)
- Teachers as defined in the *Teaching Profession Act*
- Commercial fisheries
- Registered real estate salespeople
- Crown employees
- Salespeople who receive a commission and sell away from the employer's place of business
- Farm workers who deal directly with the production of certain food and other products
- Drugless practitioners and domestic workers (in limited circumstances)
- Managerial employees
- Information technology professionals (so far as overtime and hours of work are concerned)

The exemptions are set out in more detail in Ontario Regulation 285/01/.

B. Minimum Wage

General Minimum Wage	$8.00/hour (01/02/07)
Liquor Server Minimum Wage • Serve liquor • Tips are not to be calculated	$6.95/hour (01/02/07)
Student Minimum Wage • Students under 18 years of age • Work 28 hours/week or less • Cannot be homeworkers during the school year (including the summer Christmas and March break). • Those who work more than 28 hours/week are entitled to the general minimum wage.	$7.50 (01/02/07)
Hunting and Fishing Guides Minimum wage	$40.00 (01/02/07)

Home Worker Premium Minimum Wage	$8.80/hour (01/02/07)
• Doing paid work in their home for an employer • E.g. word processing, telephone soliciting, sewing, online research • 110% of the general minimum wage.	

C. Hours of Work

The daily limit on hours of work is eight hours a day or the number of hours in the regular work day established by your employer. Therefore, an employer cannot make their employees work more than this amount, except in the case of accidents or emergencies which are defined as urgent situations that have not been planned. The weekly limit on hours of work is 48-hours per week.

Employees in the retail sector have the right to refuse to work on public holidays without being penalized, unless they work in the hospitality industry (i.e. places that sell meals, provide accommodation, or open to the public for educational, recreational, or amusement purposes). They also have the right to refuse work on Sundays, unless they agreed otherwise in writing, at the time of hiring. If their hiring took place on or after September 4, 2001 this right applies. Employees may refuse to consent to working on Sunday even at the time of hiring for religious reasons.

If an employee agrees, in writing, an employee can be required to work more than eight hours in a day (up to a maximum of 13-hours) and 48-hours in a week (up to a maximum of 60-hours). Also, an employer can request special approval from the Director of Employment Standards to extend beyond 60-hours a week, where the employee agrees, or in certain circumstances where the employer has a permit issued under the previous legislation.

An employee has the right to refuse to sign any agreement that extends the maximum hours of work. If an employer penalizes an employee for refusing to sign an agreement the employee can bring a complaint against the employer to the Ministry of Labour.

If an employee agrees, at the time of hiring, to work in excess of the maximum hours of work, and this agreement is approved by the Ministry of Labour, this agreement cannot be revoked without mutual consent.

An employer must give an employee at least one day off after seven days worked or two days off after working 12-days.

Employees in the retail sector must be given at least 36-continuous hours of rest per week unless they work in the hospitality industry.

The hours of work provisions do not apply to certain employees, such as agricultural workers, fisheries, construction workers, supervisory personnel, landscape gardeners, apartment superintendents who reside on the premises, and information technology professionals.

D. Payment of Wages

Your employer can decide what day they choose as the regular pay day and they are required to pay employees on the established day.

Employee wages must be paid in cash or by cheque at the employee's workplace, at some other place agreed to by the employee, or by direct deposit into an account in the employee's name (unless the employee agrees to a more distant location).

E. Deductions from Wages

Employers can only deduct money from an employee's wages for statutory deductions, such as Income Tax, Employment Insurance

(EI) premiums, Canada Pension Plan (CPP) contributions, court orders, and other written authorized deductions.

On the subject of court orders, unless the court has directed otherwise, 50% of the employee's net wages are exempted from deductions if the court order is for support payments, and 80% in any other case.

Employees cannot be terminated if their wages are garnished, or because they are ordered to pay a specified amount through a court order to a third party.

Employers cannot make deductions from employees' pay cheques for any mistakes or loss due to faulty workmanship, cash shortages, lost or stolen property, or where the employee did not have total control over the cash or property (i.e. if other people have access to cash or property).

Any authorization that the employee signs must state the specific amount that can be deducted (or a formula for determining the amount) as well as consenting to the deduction of wages. Employees must also sign an authorization to allow their employer to deduct benefit plans or RRSP contributions from their pay.

F. Overtime

Under the *Employment Standards Act* an employee is generally entitled to overtime at a rate of **1 1/2 times** the employee's regular wage after the employee has worked 48-hours in a workweek. Employees covered by a collective agreement (in a unionized workplace) may negotiate a lower threshold. There is no law providing for daily overtime.

The 48-hour limit does not apply to certain seasonal employees in hotel tourist resorts, restaurant and tavern industry, seasonal employees in fruit and vegetable processing, local cartage

drivers, drivers' helpers, and sewer and water main construction workers where the threshold is 50-hours. In the road building industry, the threshold is 55-hours. For highway transport truck drivers, overtime begins after 60-hours.

Certain other employees are excluded entirely from the overtime provisions, including firefighters, supervisors, fisheries, landscape gardeners, certain agricultural employees, students who instruct or supervise children at camps or in recreational programs, taxi-drivers, ambulance drivers, and information technology professionals.

Employees and employers cannot agree to give up their legal right to overtime pay. However, employees can agree in writing to take time off in lieu of premium pay. Paid time off must be taken within three months of the week in which it was earned, or, if the employee agrees in writing, within 12-months.

There are provisions that allow for employers and employees to agree that overtime pay be calculated by averaging hours worked over a period of up to four weeks. Averaging agreements cannot be indefinite, and it must have a termination date that comes within two years of the start of the agreement. Both the employee and the employer have to agree in order to cancel averaging agreements before the termination date.

In calculating overtime pay for *piece-workers* (employees who are paid in each unit of work performed), take the total amount earned by the employee over a pay period and divide it by the number of hours worked during that same pay period. The overtime rate is 1 1/2 times the average amount earned hourly during the pay period.

G. Meal Breaks

An employee cannot be required to work more than five consecutive hours without receiving a one-half hour unpaid meal break. An employee may agree in writing to two 15-minute unpaid breaks instead of the one-half hour break.

H. Vacations

Every employee is entitled to an annual two week vacation.

Employees are entitled to their vacation after they have been employed for a minimum of 12-months which includes both active and non-active employment. This would include any time that was spent away from work because of layoff, sickness, accident, approved leave, or pregnancy and parental leave.

Employees must receive their vacation no later than 10-months after the 12-month period in which they have earned it.

Employers are free to determine when an employee takes a vacation. Vacation is to be scheduled either two weeks in a row or two periods of one week each. However, an employer and employee may agree in writing that a vacation be taken in smaller time blocks.

Vacation Pay must amount to, at the very least, **4%** of an employee's annual earnings, including overtime pay, but does not include vacation pay, tips, discretionary bonuses that are not related to work, productivity, efficiency, expenses or travel allowances, and money to a benefit plan.

Public holidays do not count as part of an employee's vacation. If a public holiday falls during an employee's annual vacation, she or he is entitled to another day off with pay. Or be paid regular wages for that day if the employee agrees in writing.

- Vacation pay must be paid to the employee upon termination.

Certain employees including the following are exempt from the vacation provisions:

- Co-op programs, workfare, and convicts
- Qualified professionals such as architects, doctors, veterinarians, lawyers, public accountants, surveyors, and certain other health care professionals
- Students training in the above profession(s)
- Teachers, as defined in the *Teaching Profession Act*
- Commercial fisheries
- Registered real estate salespeople
- Crown employees
- Salespeople who receive a commission and sell away from the employer's place of business
- Farm workers who deal directly with the production of certain food and other products
- Drugless practitioners and domestic workers (in limited circumstances)
- Managerial employees

I. Statutory Holidays

There are eight paid public holidays in Ontario: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, and Boxing Day.

Retail employees (except those in the hospitality industry) have the right to refuse to work on a public holiday.

To qualify for a paid public holiday, employees must have worked their regular scheduled day before and after the holiday, unless they have reasonable cause for not working. Employees who have agreed to work or were required to work on a public

holiday and fail, without reasonable cause, to work their shift are not entitled.

Holiday pay is paid in accordance to the amount of an employee's total wages in the four weeks before the week in which the holiday occurred divided by 20 (see chart below for Canada Day). Employees must remember that you can round this number off to the second decimal point.

Week	Hour
June 9	15
June 16	25
June 23	5
June 30	35
TOTAL	**80 hours**
80 ÷ 20 = 4 (hours)	

Where a public holiday falls on a working day the employee is entitled to the day off work with pay as calculated above. Where the holiday falls on a non-working day an employee is entitled to another day off with public holiday pay. This substitute day off must be scheduled for a day that is no later than three months after the public holiday, or where the employee has agreed in writing. The substitute day off may be scheduled up to 12-months after the public holiday. Instead of the substitute holiday, the employee may agree in writing to receive holiday pay a lump sum with no corresponding day off.

Where an employee agrees in writing to work on a public holiday, the employee will be paid their regular rate and be given a substitute holiday. However, the employer and employee may

agree that the employee is entitled to public holiday pay and premium pay (1 1/2 times the normal rate for the holiday) rather than the substitute day off. The substitute day off must be granted within three months of the holiday, although the employer and employee may agree to extend the time to 12-months.

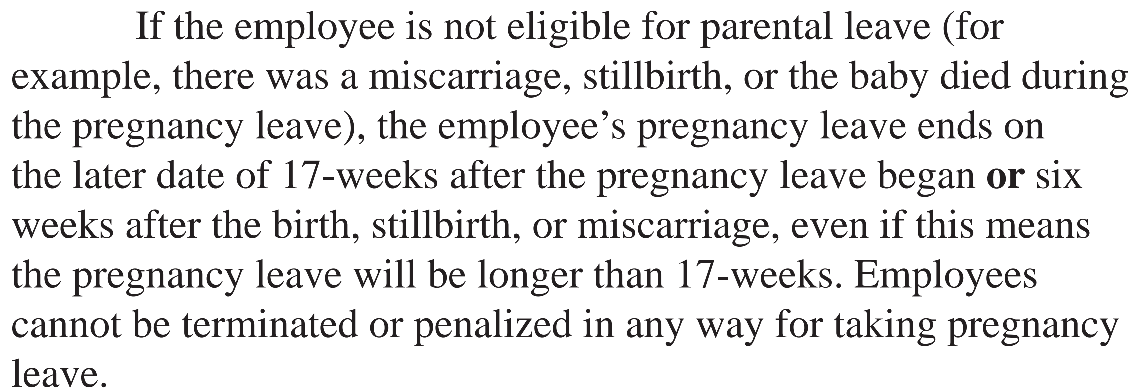
Employees working in hotels, motels, tourist resorts, restaurants and taverns, hospitals or nursing homes, or in continuous operations that operate 24-hours a day (i.e. oil refineries, security companies), may be required to work on a public holiday. They may either be paid 1 1/2 times their regular wage for all hours worked on the public holiday plus a regular day's pay, or be paid their regular wage for all hours worked on the public holiday and given a substitute day off with pay. The employer may choose which of the two options to apply.

J. Pregnancy Leave

Pregnant women are eligible to a 17-week unpaid pregnancy leave as long as they have worked for at least 13-weeks before the date that their baby is expected to be born (referred to as the "due date"). That means if the mother's baby is due 15-weeks from her due date, even if the baby was born 12-weeks later, she is still eligible for pregnancy leave because entitlement is based on due date and not the actual date of birth.

Most pregnant employees have the right to take up to 17-weeks of unpaid time off work. Employees may also choose to take less time off.

In certain cases, the leave may be longer. If the employee has taken 17-weeks of leave and the baby has not been born yet, the employee can stay on pregnancy leave until the baby is born, even if it means the pregnancy leave lasts longer than 17-weeks. When the baby is born, the employee may start her parental leave.



If the employee is not eligible for parental leave (for example, there was a miscarriage, stillbirth, or the baby died during the pregnancy leave), the employee's pregnancy leave ends on the later date of 17-weeks after the pregnancy leave began **or** six weeks after the birth, stillbirth, or miscarriage, even if this means the pregnancy leave will be longer than 17-weeks. Employees cannot be terminated or penalized in any way for taking pregnancy leave.

Employees are not paid during pregnancy leave, but retain their seniority (except when on probation) and their benefits while on leave. Employers are responsible for contributing their share to employee benefit plans, unless the employee specifies in writing that she does not want the company to make such contributions. An employee's pregnancy leave does not count towards fulfilling her probation period. Once the employee returns from her pregnancy leave, she resumes her probation period from where she left off prior to her pregnancy leave.

The entire 17-weeks of pregnancy leave must be continuous. Pregnancy leave can begin any time during the 17-weeks before the baby is due, but no later than the date at which the child is born. The mother is free to make the decision as to when to take her pregnancy leave.

The employer must be given written notice at least two weeks prior to the employee taking pregnancy leave. This notice must inform the employer of the date which the employee plans to begin the pregnancy leave. The employee may change the start date provided that two weeks notice of an alteration is given. The employer must be provided with a letter from the employee's doctor informing the employer of the due date of the baby, if requested from the employer.

The advance notice requirements do not apply if the employee's baby is born prematurely or the employee experiences any complications. In such cases employees are to give the employer notice as to the date on which the pregnancy leave commenced within two weeks after stopping work.

Employees can end their leave early by providing their employer with four weeks notice before the day the employee wishes to terminate her leave.

If an employee has a miscarriage or stillbirth, she is eligible for pregnancy leave, so long as the miscarriage or stillbirth occurred no more than 17-weeks before the due date.

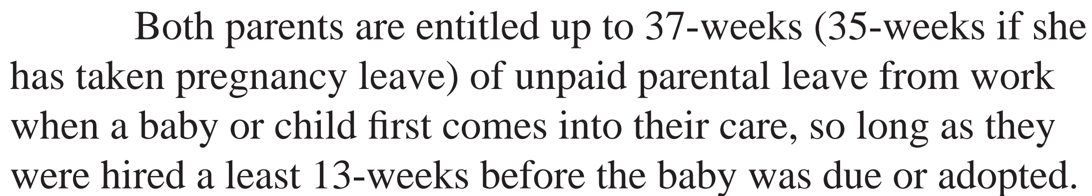
Employees cannot be made to take their pregnancy leave if they are sick, even if the illness is caused by their pregnancy. In such cases, the employee has a right to receive benefits under their benefit plan.

Upon returning to work, the employee must be given the same job and pay rate occupied prior to her pregnancy leave (including any raises they might have received during their absence). If the job no longer exists, the employee must be offered a comparable job.

K. Parental Leave

This leave is separate from pregnancy leave as defined in the Act. A "parent" includes:

- A birth parent,
- An adoptive parent (whether or not the adoption has been legally finalized), or
- A person who is in a relationship of some permanence with the parent of the child and who plans on treating the child as his or her own. This includes same-sex couples.



Both parents are entitled up to 37-weeks (35-weeks if she has taken pregnancy leave) of unpaid parental leave from work when a baby or child first comes into their care, so long as they were hired a least 13-weeks before the baby was due or adopted.

Employees cannot be terminated, laid off, penalized, or suspended in any way for taking parental leave.

Employees are not paid during such parental leaves, but they retain their seniority and their benefits while on parental leave. Employers are still responsible for contributing their share to employee benefit plans unless the employee specifies in writing that she or he does not want the company to make such contributions.

An employee cannot have their parental leave count towards their probation period. Once the employee returns from their parental leave, they resume the probation period from where they left off prior to the parental leave.

Both parents can be on parental leave at the same time. A mother can take both pregnancy and parental leave sequentially for a total of 52-weeks off from work. A mother's parental leave usually begins when her pregnancy leave ends. If the baby is not yet in the mother's care when her pregnancy leave ends, she can start her parental leave after the child comes home and into the mother's care.

An employee must start their parental leave no later than 52-weeks after the child was born or after the child first comes into the parent's custody, care, or control.

The employer must be given a written notice at least two weeks prior to taking parental leave and this notice must inform the employer of the date of which the employee plans to begin the parental leave. This notice can include both pregnancy and

parental leave notice. Employees must also inform their employer of the date they plan to return to work. If this information is not provided, it is assumed that the employee will be taking the full leave allowed. This duty to inform the employer is not absolute and can be waived if the employee's baby is born prematurely or the employee experiences any complications.

Employees can change the start date of their parental leave provided they give their employer two weeks written notice. An employee can also change the end date of their parental leave if they give four weeks written notice.

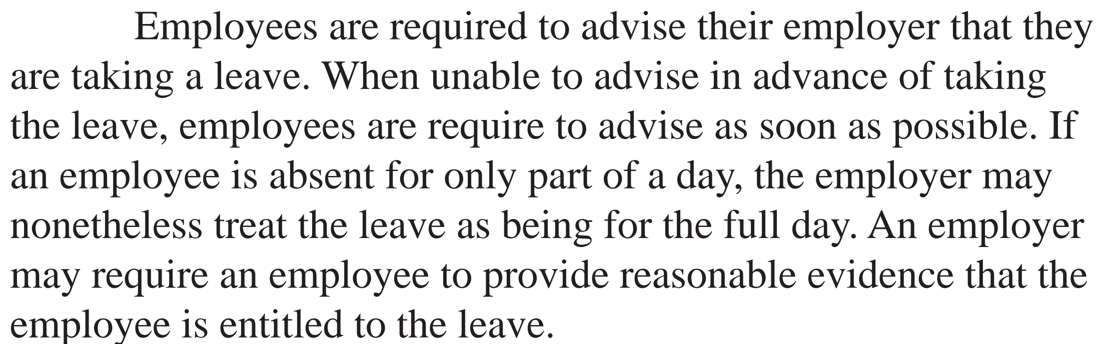
An employee who suffers a miscarriage or a stillbirth is not eligible for parental leave.

Upon returning to work, the employee must be given the same job and pay rate they had prior to his or her parental leave (including any raises they might have received during their absence). If the job no longer exists, the employee must be offered a comparable job.

L. Emergency Leave

Employees who work for an employer who regularly hires at least 50 employees are entitled to 10-days emergency leave per year for absences due to the death, illness, injury, medical emergency, or other urgent matters relating to:

- A spouse or same-sex partner
- A parent, step-parent, foster parent, child, stepchild, foster child, grandparent, step-grandparent, grandchild, step-grandchild of the employee
- The spouse or same-sex partner of an employee's child
- A brother or sister of the employee
- A relative of the employee who is dependent on the employee for care or assistance



Employees are required to advise their employer that they are taking a leave. When unable to advise in advance of taking the leave, employees are require to advise as soon as possible. If an employee is absent for only part of a day, the employer may nonetheless treat the leave as being for the full day. An employer may require an employee to provide reasonable evidence that the employee is entitled to the leave.

M. Family Medical Leave

Employees are entitled to take family medical leave for up to eight weeks to provide care or support to the following individuals:

- Employee's spouse (including same-sex couples)
- A parent, step-parent, or foster parent of the employee
- A child, step-child, or foster child of the employee or employee's spouse
- A person considered as family, as determined by a "compassionate care benefits" declaration

A qualified health practitioner must issue a certificate stating that the individual has a serious medical condition with a significant risk of death occurring within a period of 26-weeks or a shorter period as may be prescribed. The employee(s) must notify their employer, in writing, that they are taking family medical leave. The employee must provide a copy of the certificate to their employer, if requested.

The employee may begin family medical leave no earlier than the first day of the week in which the period referred to in the medical certificate. The employee may not remain on family medical leave after one of the following dates, whichever is earliest:

- The last day of the week in which the individual dies, or

- The last day of the week in which the period referred to in the medical certificate ends.

A "week" is defined as a period of seven consecutive days beginning on Sunday and ending on Saturday.

If two or more employees are taking family medical leave in respect to the same individual, then the total of the leaves taken cannot exceed eight weeks, during the period that applies to the first medical certificate issued. The employee may only take family medical leave in periods of entire weeks.

If an employee takes family medical leave, and the individual does not die within the period on the medical certificate, than the employee must take another leave.

Employees are entitled to family medical leave, in addition to any entitlement to leave under section 50 of the *ESA* (personal emergency leave).

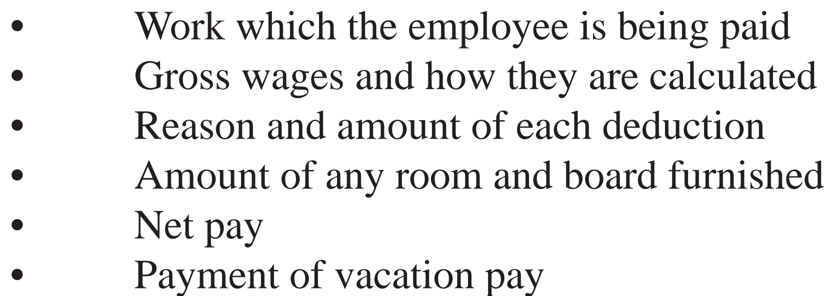
N. Pay Information and Record Keeping

Employers are required to keep written records about each person they hire, including: employee's name and address, date of birth, whether the employee is a student or under 18 years of age, date on which the employee began their employment, number of hours the employee worked in each day and each week, information contained in each written statement given to the employee, and all vacation time taken by the employee.

Employers shall retain or arrange for another party to retain the records or information required for three years after an employee ceased to be employed.

Payment of wages to employees must include:

- Payment of wages to employees must include:
- Written statement setting out the period of time



- Work which the employee is being paid
- Gross wages and how they are calculated
- Reason and amount of each deduction
- Amount of any room and board furnished
- Net pay
- Payment of vacation pay

O. Termination of Employment

An employer cannot terminate an employee for enforcing their rights under the *ESA*. This includes refusing to work excess hours, refusing to take a lie detector test, or as a result of taking a pregnancy, parental, or emergency leave.

The Act requires a minimum notice period when terminating employment. Employees may be entitled to greater notice at common law and are free to take legal action through "wrongful dismissal" actions in court. It should be pointed out however, that employees who decide to take action in court forfeit their right to have the Employment Standards branch enforce their rights under the Act.

Similarly, an employee who files a claim under the Act cannot file a court action unless the employee withdraws their ESA complaint within two weeks after it is filed. Court actions may also involve legal costs that may be prohibited in light of the amount claimed.

Notice of termination is required in writing when the employer:

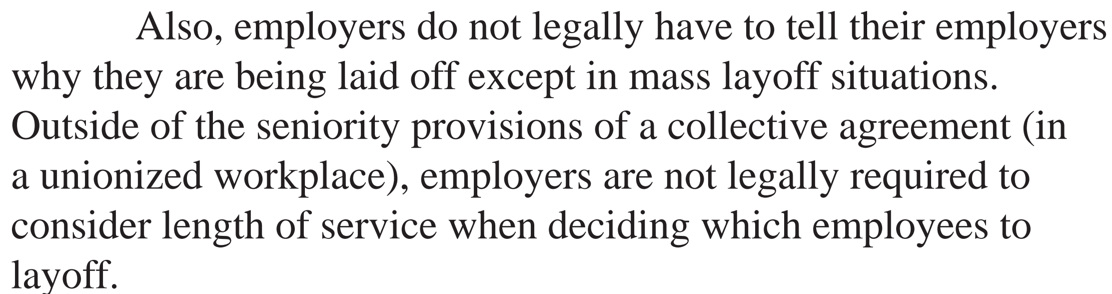
1. Dismisses an employee.
2. "Constructively" dismisses the employee by significantly altering fundamental terms and conditions of employment and the employee resigns as a result.

3. Where the employer lays off employees if the layoff is not temporary in nature.

A *layoff* is considered temporary if:

1. It is not more than 13-weeks in any period of 20 consecutive weeks.
2. It is greater than 13-weeks but less than 35-weeks in any period of 52-consecutive weeks
3. The employee continues to receive substantial payments from the employer, and the emoployer continues to make payments for the benefits of the employee under a legitimate group or employee insurance plan (such as a medical or drug insurance plan), a legitimate retirement or pension plan
4. The employee receives supplementary unemployment benefits. The employee would be entitled to receive supplementary unemployment benefits as long as they are not receiving them because he or she is employed elsewhere
5. The employer recalls the employee to work within the time frame approved by the Director of Employment Standards or Ministry of Labour
6. 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.

If a layoff is longer than described above, and the employer recalls an employee who is represented by a trade union within the time frames set out in an agreement between the union and the employer.



Also, employers do not legally have to tell their employers why they are being laid off except in mass layoff situations. Outside of the seniority provisions of a collective agreement (in a unionized workplace), employers are not legally required to consider length of service when deciding which employees to layoff.

Length of notice for termination:

- The employer must provide employees who have been employed for three months or more with a written notice of employment termination.
- If no notice of termination is provided, the employer must pay the employee in lieu of such notice. This "pay in lieu" or termination pay is a lump sum payment that is equal to the regular non-overtime wages the employee would be paid during the period of notice.
- The employer must also continue to make the benefit plan contributions the employee would have been entitled to had the employee continued in employment during the notice period. If the employer fails to make such payments, the amounts that have not been paid are deemed to be unpaid wages owing to the employee.
- Employers must continue to pay their employees' regular wages and benefits, after having received written notice of termination, until the end of the notice period. So long as the employee continues to work, the employer cannot alter the rate or any other condition of employment.

The length of advance notice for termination depends on the length of employment:

Period of Employment	Notice period
Less than 3 mos.	0
More than 3 mos. but less than 1 year	1 week
More than 1 year but fewer than 3 years	2 weeks
More than 3 years but fewer than 4 years	3 weeks
More than 4 years but fewer than 5 years	4 weeks
More than 5 years but fewer than 6 years	5 weeks
More than 6 years but fewer than 7 years	6 weeks
More than 7 years but fewer than 8 years	7 weeks
8 years or more	8 weeks

Mass termination:

Mass termination is a termination of 50 or more employees in any four week period in any establishment. Employees who are part of a mass termination are given longer notice of their termination, depending on the number of employees affected:

Number of employees	Notice period
50 - 199 employees	8 weeks
200 - 499 employees	12 weeks
500 or more employees	16 weeks

Employers terminating on a mass basis must submit a form advising the Ministry of Labour of their intention to reduce their workforce, including information concerning the reason for termination. This information must be posted in a visible place in the workplace.

Employees can perform their work past the termination date. In such cases, further notice of termination is not required unless the employee has worked (on a temporary basis) longer than 13-weeks past their original termination date. Employers

require the approval of the Director of Employment Standards for extending this deadline beyond 13-weeks.

Once temporary work exceeds 13-weeks, employers are required to provide another written notice of termination, which must be based on the length of time the employee has worked for them, including the expired notice period and the period of temporary work, unless the employer received advance authorization from the Director of Employment Standards.

P. Severance Pay

Severance pay is intended to compensate for the years and effort employees have put into the employer's business. Severance pay is not the same as termination pay.

Severance pay is payable when an employee's employment relationship is severed after five or more years of employment and based on the following details:

- The employer is no longer going to be carrying on all or part of the business - 50 or more employees will lose their jobs within an 6-month period.
- The employer has a payroll of at least $2,500,000 a year in Ontario.
- Employees who qualify for severance pay must be paid a lump sum payment equal to one weeks regular non-overtime pay for each year and each completed month (prorated) of their employment.
- Severance pay is limited to a maximum of 26-weeks regular pay.
- Employees are considered to have their employment severed where they are dismissed.
- They are laid off for a period of more than 35-weeks in a 52-week period. For the purpose of severance pay, a person

is considered to be on layoff where for a period of at least one week if the employee receives less than one quarter of the wages earned in non-overtime work unless they are not available, unable to work, suspended, or on a strike or locked out by the employer.

Recall rights are commonly provided in collective agreements. They may also exist in non-unionized workplaces although this is not common.

- Recall rights are the rights of employees on layoff to be called back to work. Employees who are on layoff have a choice regarding severance or termination pay. They can either choose to take recall rights or to give them up.
- Employees who choose to take termination and severance pay immediately lose the recall rights. If employees decide to keep the recall rights or do not make a decision, the severance pay and/or termination pay to which they are otherwise entitled must be sent to the Director of the Employment Standards where they will be kept in trust.
- If the employees later give up their recall rights, or their recalls rights expire, the Director will pay employees the severance pay and/or termination pay that is owing to them.

Unionized employees are required to attempt to negotiate arrangements for keeping severance or termination monies in trust. Where they cannot do so, the monies are to be paid in trust to the Director.

If employees provide a written notice of termination giving their intention to resign their employment subsequent to having received notice of termination, they are entitled to severance pay if they are otherwise eligible. For the purpose of severance pay two weeks notice of resignation is required and the resignation must be effective during the notice period.

Q. Equal Pay for Equal Work

In addition to rights contained in the Pay Equity Act (which provides for equal pay for work of equal value), the *Employment Standards Act* contains measures requiring equal pay for equal work.

For example, employers cannot pay a woman less than a man if she is doing "substantially" the same kind of work that the male employee is doing within the same establishment (or vice-versa.) Duties do not have to be exactly the same but they must involve "substantially" the same level of skill, effort, responsibility and working conditions.

If the employer has not been paying staff equally for equal work, the employer must take steps to change this by raising the lower wage so that it equals the higher wage. The employer cannot lower the higher wages.

Exceptions: an employer can pay its male and female employees differently for doing substantially the same work in workplaces where the difference in pay is made on the basis of a seniority system i.e., where a long-serving employee can earn more than a new employee; a piece-work system where an employee can be paid more for producing more work; a system of merit; or any other factor that is not based on the sex of the employee (i.e. paying employees more for working the night shift).

R. Wrongful Dismissal

Terminated employees may sue their employers in court for "*wrongful dismissal.*" Such actions are based on the principle that an employee is ordinarily entitled to a reasonable notice period prior to dismissal. Such action may not be open to employees hired for a specific term or who have agreed in advanced to a notice period (provided the notice period equals or exceeds the *Employ-*

ment Standards Act minimum).

Once civil action is taken to court, employees lose their protection under the *Employment Standards Act (ESA)*. Similarly the filing of an *ESA* complaint will bar a court action unless it is withdrawn within two weeks. However, civil court action can, in certain circumstances and particularly for long-service employees, result in greater amounts being awarded than would be paid in termination or severance pay, although legal costs may make such actions inadvisable in particular cases.

Employees in a unionized workplace cannot go to court, but must exercise the grievance procedure within their collective agreement. Unionized employees are confined to termination rights specified in the collective agreement and under the *Employment Standards Act.*

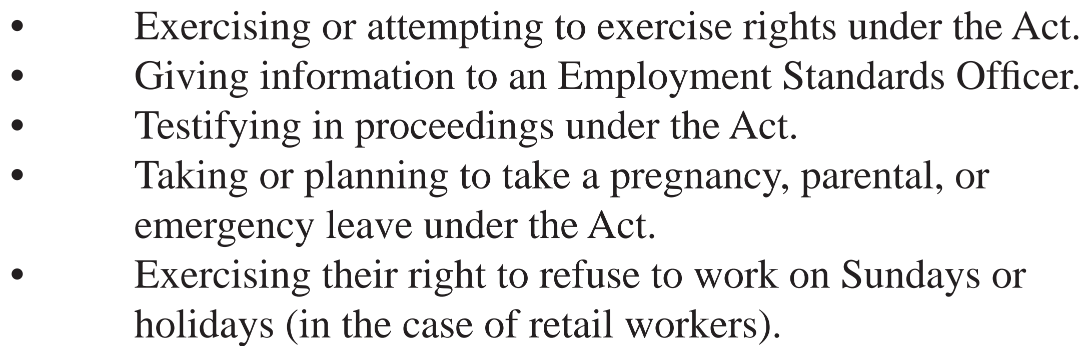
S. Complaints and Enforcement

The *Ministry of Labour* enforces the *ESA* and all its regulations regarding employees not covered by a collective agreement. They have the power to investigate possible violations and determine whether or not a violation has occurred. If a violation is found to have occurred, they can either resolve the issue or order the employer to fix the situation.

Employees covered by a collective agreement can only enforce the Act by filing a grievance under the collective agreement unless the Director of Employment Standards gives them permission to file a complaint under the Act.

Employees cannot be terminated for:

- Asking their employer to comply with the Act or the regulations.
- Making inquiries or filing a complaint under the Act.



- Exercising or attempting to exercise rights under the Act.
- Giving information to an Employment Standards Officer.
- Testifying in proceedings under the Act.
- Taking or planning to take a pregnancy, parental, or emergency leave under the Act.
- Exercising their right to refuse to work on Sundays or holidays (in the case of retail workers).

The employer is required to prove that it is not seeking to penalize employees where an employee files a complaint of reprisal under the Act.

Crappy Job?

You can quit, or you can do something about it!

For more information call: 1-877-248-6483

For More Information Contact:

Local 175 & 633
Head Office
2200 Argentia Rd
Mississauga ON L5N 2K7
Ph: 905.821.8329
1.800.565.8329
Fax: 905.821.7144
www. ufcw175.com

Eastern Ontario
20 Hamilton Ave N
Ottawa ON K1Y 1B6
Ph: 613.725.2154
Fax: 613.725.2328

Northern Ontario
Lakehead Labour Centre
21 - 929 Fort William Rd
Thunder Bay ON P7B 3A6
Ph: 807.346.4227
1.800.465.6932
Fax: 807.346.4055

Southern Ontario
124 Sydney St S
Kitchener ON N2G 3V2
Ph: 519.744.5231
Fax: 519.744.8357

Local 206
24 - 6645 Kitimat Rd
Mississauga ON L5N 6J3
Ph: 905.819.9065
1.800.294.0079
Fax: 905.819.0181

Local 333
803 - 45 Sheppard Ave. E
North York ON M2N 5W9
Ph: 416.222.2433
Fax: 416.222.6142

Local 459
61 Erie St S
Leamington ON N8H 3C4
Ph: 519.326.6751
Fax: 519.326.0597
ufcw@on.aibn.com

Local 1000A
70 Creditview Rd
Woodbridge ON L4L 9N4
Ph: 905.850.0096
1.800.637.5936
Fax: 905.850.0839
ufcw@ufcw1000a.org

Local 12R24
200 - 61 International Blvd
Rexdale ON M9W 6K4
Ph: 416.674.6606
Fax: 416.674.3458

Local 1977
RR 22 Ellis Rd #6616
Cambridge ON N3C 2V4
Ph: 519.658.0252
1.800.267.1977
Fax: 519.658.0255
www.ufcwlocal1977.on.ca

Local 1993
300 - 61 International Blvd
Rexdale ON M9W 6K4
Ph: 416.675.1104
Fax: 416.675.6919

Labour Relations Act

A. Introduction

The *Labour Relations Act (LRA)* provides employees with the tools to balance the power in the workplace. The Act deals with a variety of rules, rights, and responsibilities, including: rights of employees to organize, participate in union activities, negotiate collective agreements between employers and unions, rules of strikes and lockouts, and restrictions on unfair labour practices by employers.

The *LRA* applies to most workplaces in the private sector and to certain public sector employees, including most municipal workers, non-teaching staff of school boards, Ontario Hydro, etc. Many of the provisions of the *LRA* are also incorporated into specific legislation governing hospital workers, provincial government employees and teachers.

The *LRA* applies to all workers in Ontario except for:

- Domestic workers employed in a private home
- Persons employed in agriculture, horticulture, hunting or trapping
- Government of Ontario employees
- Teachers and community college employees
- Provincial judges
- Persons employed as labour mediators or labour conciliators
- Full-time firefighters and police force members
- Farmers and farm workers
- Employees of the Federal government and workplaces regulated by the Federal government, such as post offices, railways, airlines, banks, shipping companies, and radio and television stations

B. What is a Union?

A union is an organization of employees that negotiates with employers on such workplace matters as wages, benefits, and working conditions.

- All employees have the right to join a union.
- An employer cannot use their authority or position to attempt to influence any employee's decision to join a union.
- A union must prove itself as an organization of employees and cannot be dominated by the employer.
- A union must have a constitution which outlines its rules and how it operates as an organization.

It is illegal for an employer to intimidate, coerce, threaten, or penalize an employee for joining, supporting, or participating in union activities. Unions are legally required to represent all their bargaining unit members in a way that is not arbitrary, discriminatory, or in bad faith.

A bargaining unit is a unit of employees that is appropriate for collective bargaining, having already been certified by the *Ontario Labour Relations Board (OLRB)* or having been voluntarily recognized by the employer.

C. Certification

A union can apply to the *OLRB* for a certification vote to become the employees exclusive bargaining agent (representative), so long as the union establishes that 40% of the employees support them. Such support is usually achieved through the signing of a confidential membership card, kept by the *OLRB*.

A secret ballot representation vote will normally be held five days from the union's application to be certified as the

employees' bargaining agent. If more than 50% of the workers vote in favor of the union, the *OLRB* will usually certify the union to represent them. If less than 50% of the employees vote for the union, the application is dismissed.

If an application for certification is dismissed, or in certain circumstances where an application is withdrawn, a mandatory 12-month waiting period must be observed before further attempts at certification can be made by any union.

If the employer interferes with the certification process and as a result, the initial representation vote does not reflect the true wishes of employees in the bargaining unit, another vote may be held or the Board may order other steps be taken, i.e. the Board may automatically certifiy the union.

Unions do not automatically have access to private property, such as shopping malls, parking lots, or access roads for the purpose of organizing or picketing, although in some circumstances interference with such rights may amount to an unfair labour practice.

Workers at a particular workplaces are allowed to talk to their coworkers about unionizing and get cards signed at work, so long as it is not on the employer's time. Workers are permitted to carry out such activities on unpaid breaks, lunch hours and before or after work. To limit the employer's interference in this process, organizing campaigns are often kept secret from the employer.

After being certified or voluntarily recognized by the employer, a union will proceed to negotiate a collective agreement with the employer. A collective agreement is a written agreement between an employer and the employees represented by the union, containing a number of provisions regarding the condition of employment, rights, privileges, or duties of the employer and the employees.

D. The Collective Agreement

The collective agreement often provides employees with additional protection over and above existing workplace legislation. Collective agreements usually provide higher wages and benefits than would normally be the case, as well as protection against unjust discharge.

Most collective agreements contain a series of steps for discussion between the employer and the union to settle grievances. A grievance is a complaint raised by one party regarding the interpretation or administration of the collective agreement or allegations that the other party has violated the collective agreement.

All collective agreements are deemed to provide for arbitration where the grievance cannot be settled through any grievance procedure. An arbitrator is an independent third party who is called by either side to listen to both parties and issue a decision. Arbitration usually involves a hearing in front of an arbitrator or a board of arbitration, followed by a binding written decision.

In some cases where the union has been certified as the employees' exclusive bargaining agent and a first collective agreement cannot be reached, arbitration can be used as a tool to achieve a first collective agreement.

Arbitrators also have the power to: mediate disputes, which require the agreement of both parties; enforce written grievance settlements; compel witnesses to testify; required either party to produce certain documents; and interpret and apply human rights, health and safety, and other employment related legislation.

In certain circumstances employees can sign a petition asking the *OLRB* to decertify their union if they no longer wish to be represented by their union. Decertification can only occur

during the last three months of an expiring collective agreement or during the last three months of the third year if the collective agreement is longer than three years and the last three months of every subsequent year that the collective agreement is in effect (referred to as the "open period.")

Upon being hired, a new employee may be required to join a union and/or pay union dues. This is known as a closed shop, which is where the employee must be a member of the union in order to get a job. In other workplaces employees may not be required to join a union, but are still required to pay union dues since they still acquire all the benefits of the collective agreement – this is sometimes referred to as the "***Rand Formula***."

Upon union request during bargaining, the collective agreement may have to provide that the equivalent of dues be deducted from all employees and remitted to the union, the employer is obligated to include such a provision. This requirement does not apply in the construction industry.

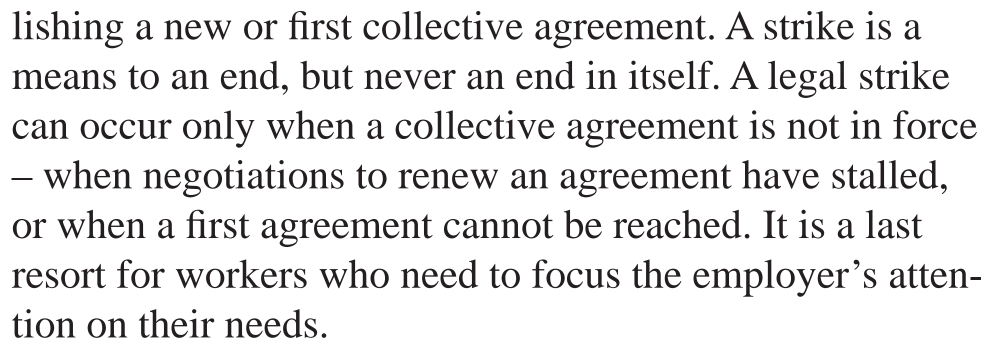
Every union has the right to set dues to pay for the service they provide to their bargaining unit members. These dues are almost always deducted automatically from the employees' wages.

All union members have a right to ask their union for a financial statement regarding its operation and to be provided with salary information respecting union officers, directors, or any employees who earn in excess of $100,000.

E. Strike or Lockout

The vast majority of collective agreements have been reached before a strike or lockout.

- A *strike* is a work stoppage by workers to force an employer to come to an agreement with them in estab-



lishing a new or first collective agreement. A strike is a means to an end, but never an end in itself. A legal strike can occur only when a collective agreement is not in force – when negotiations to renew an agreement have stalled, or when a first agreement cannot be reached. It is a last resort for workers who need to focus the employer's attention on their needs.

- A *lockout* is caused by the employer, who makes a decision to prevent workers from continuing their jobs. When an employer shuts down operations in the course of negotiations in order to put pressure on workers - that is a lockout.

For a union to be in a legal strike position, a mandatory strike vote must be taken any time during the last 30-days of an expiring collective agreement or any time after the collective agreement expires, requiring a minimum of 50% support of voting members of the bargaining unit.

If no collective agreement has been in operation, a strike or lockout cannot take place until a conciliation officer has been appointed by the *OLRB* and 14-days have gone by after a "no-board" report has been received from the Ministry. The no-board report is a letter from the *Minister of Labour,* which is routinely granted after the conciliation process, which states that the Minister does not consider it advisable to appoint a conciliation board.

All votes must be in the form of a secret ballot and the time and place of voting "must be reasonably convenient." All employees in the bargaining unit must be allowed to vote even though they may not be in the union. A notice is deemed to have been delivered two days after it is mailed. As a result, a strike or lockout is generally commenced lawfully 16-days after receiving the no-board report.

An employer cannot fire or penalize employees for exercising their legal right to strike.

Generally during a strike or lockout, employees have the right to peacefully picket on public property, e.g., public road, sidewalk.

During a strike or lockout an employer is legally allowed to use replacement workers to do the work of bargaining unit employees, as long as they are not professional strikebreakers.

Striking employees have the right to return to work at any time within six-months after the commencement of a labour dispute so long as the employee makes an "unconditional application in writing" and the employer has available work. Even after the six-month period elapses employers are not entitled to discriminate against strikers in making re-hiring decisions.

Ratification of a new collective agreement requires the minimum support of 50% of voting members in the bargaining unit voting through a secret ballot vote.

F. Complaints and Enforcement

Generally, the Act is enforced through filing complaints with the *OLRB*. The Board holds hearings and has wide powers to remedy breaches of the Act, including offering compensation and re-reinstatement of employees who have been fired. In addition, a request may be made to the Board to permit prosecutions in Provincial Court for violation of the Act.

The maximum fine for any individual having violated the Act or the regulations within the Act is $2,000.

The maximum fine for any corporation, trade union, council of trade unions or employees' organization having violated the Act or the regulations within the Act is $25,000.

KNOW YOUR RIGHTS

HEALTH AND SAFETY

RIGHT TO KNOW!
RIGHT TO PARTICIPATE!
RIGHT TO REFUSE!

If you work in a unionized workplace and have any questions or concerns, always contact your local union.

For More Information Contact:

Occupational Health Clinics for Ontario Workers Inc. (OHCOW) - Provincial Office
601-15 Gervais Dr.
DonMills ON M3C1Y8
1.877.817.0336
info@ohcow.on.ca
http://www.ohcow.on.ca/

Hamilton
848 Main St. E
Hamilton ON L8M 1L9
Ph: 905.549.2552
1.800.263.2129
Fax: 905.549.7993
hamilton@ohcow.on.ca

Sudbury
4 - 1300 Paris St.
Sudbury ON P3E 3A3
Ph: 705.523.2330
1.800.461.7120
Fax: 705.523.2606
sudbury@ohcow.on.ca

Windsor
1 - 3129 Marentette Ave
Windsor ON N8X 4G1
Ph: 519.973.4800
1.800.565.3185
Fax: 519.973.1906
windsor@ohcow.on.ca

Sarnia-Lambton
171 Kendall St.
Point Edward ON N7V 4G6
Ph: 519.337.4627
Fax: 519.337.9442
sarnia@ohcow.on.ca

Toronto
110 - 970 Lawrence Ave W
Ph: 416.449.0009
1.888.596.3800
Fax: 416.449.7772
toronto@ohcow.on.ca

Occupational Health and Safety Act

A. Introduction

The *Occupational Health and Safety Act (OHSA)* sets out the health and safety rights and duties for employees, employers, supervisors, and others in the workplace. It is designed not only to expand employee's knowledge of the hazards in the workplace, but also to provide the opportunity to use this knowledge to prevent accidents and injuries to themselves and others.

The *OHSA* applies to employers and employees, unless they work in private residences, agriculture, or are employers and employees working for the government of Canada in federally regulated industries.

B. Duties of Employers

The employer has an obligation to take every precaution reasonable for the protection of the worker. The employer must ensure that supervisors are competent and that they be acquainted with any possible hazards existing in the workplace. Employer must make sure that employees are:

- Using approved equipment, materials, and protective devices are in good condition, provided, maintained, and used
- Approved measures and procedures are carried out in the workplace
- Assist in medical emergencies by providing information
- Establish and maintain an occupational health service for workers, as well as a medical surveillance program
- Keep and maintain accurate records of the handling, storage, use, and disposal of biological, chemical, or physical agents

- Accurately keep, maintain, monitor, and make available records of exposure to workers
- Notify a Director of use or introduction into workplace of biological, chemical, or physical agents
- Provide safety-related medical examinations and tests for workers
- Carry out training programs for workers, supervisors, and committee members
- Provide written instructions as to measures and procedures for protection of workers

C. Duties of Supervisors

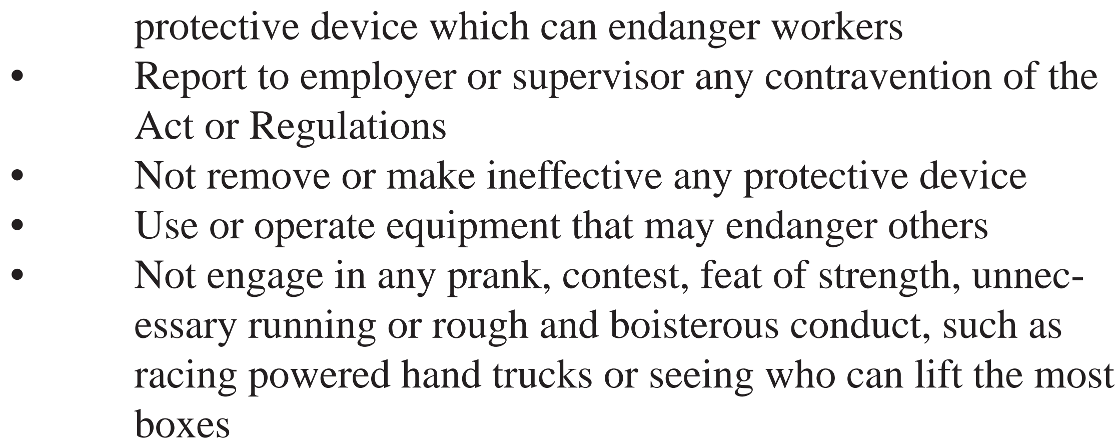
A supervisor must ensure that a worker:

- Comply with the act and regulations
- Uses or wears the equipment, protective devices, or clothing required
- Advise a worker of existence of potential or actual danger to the health and safety of workers
- Provide written instructions as to measures and procedures for protection of workers
- Take every precaution reasonable for the protection of workers

D. Duties of Workers

Workers also have several general duties under the Act. A worker must take responsibility for personal health and safety. Under the Act a worker must:

- Work in compliance with the provisions of the Act and Regulations
- Use and wear protective devices, equipment, or clothing required by employer
- Report the absence of or defects in any equipment or



protective device which can endanger workers

- Report to employer or supervisor any contravention of the Act or Regulations
- Not remove or make ineffective any protective device
- Use or operate equipment that may endanger others
- Not engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct, such as racing powered hand trucks or seeing who can lift the most boxes

E. Right to Refuse Work

The *OHSA* gives the worker the right to refuse work that he or she believes is unsafe.

This regulation does not apply to workers where it is inherent or is a normal condition of workers employment, such as police officers, firefighters, hospital staff, correctional institutes, residential group home with mental health needs, ambulance, and crown laboratories.

A worker may refuse to work if they have reason to believe that:

- Equipment, machines, devices, or tool that the worker is to use or operate may endanger workers or be in contravention of the Act or Regulations
- Existence of a physical condition or part of the workplace may endanger workers
- Any machine, equipment, or tool that the worker is using, or physical workplace, is in contravention of the act or regulations

Upon refusing to work, workers must promptly report the circumstances of refusal to employer or supervisor. The employer or supervisor must investigate the report in the presence of the worker, joint committee member, health & safety representative,

or a worker with knowledge of experience or training. All reports must be investigated by an inspector in consultation with employer.

Pending investigation and decision, no worker will be assigned to use or operate equipment, machine, device, or a thing the worker is to use or operate, unless otherwise advised of the original refusal to work.

F. Joint Health and Safety Committee

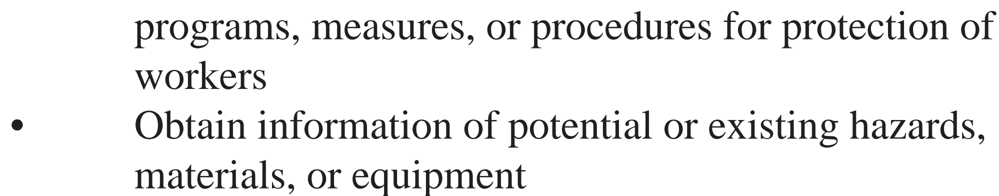
A Joint Health and Safety Committee is an advisory group of worker and management representatives. Joint committees are required:

- A workplace, with 20 or more employees must have a joint health and safety committee,
- At workplaces with respect to which an order to an employer is in effect;
- At workplace, other than construction project, where fewer than 20 regular workers are employed, with respect to which a regulation concerning designated substances applies.

Committees must consist of at least two (2) persons in workplaces of fewer than fifty (50) workers or at least four (4) persons in workplaces of fifty (50) or more workers. Committee members are to be selected by workers, or trade unions if applicable.

Committee – Roles and Duties

- Identify situations that may be source of danger or hazard
- Make recommendations for improvement
- Investigate work refusals
- Investigate serious injuries
- Recommend or establish maintenance and monitoring



programs, measures, or procedures for protection of workers
- Obtain information of potential or existing hazards, materials, or equipment

G. Hazardous Materials: Workplace Hazardous Materials Information System (WHMIS)

The *OHSA* gives workers the right to know about toxic substances in the workplace. This right has always been part of the Act, but it was expanded in 1988, when the Act was amended due to the implementation of the *Workplace Hazardous Materials Information System (WHMIS)*. All hazardous substances are listed in the WHMIS regulations and area legally required to contain labels which are designed to alert workers about the contents of any potentially hazardous product(s), potentially hazardous ingredients and procedures for safe handling.

Hazardous materials or toxic substances are biological, chemical, or physical agents whose presence or use in the workplace may endanger the healthy or safety of a worker. The Act deals with toxic substances in two ways:

1) To ensure that toxic substances in the workplace are clearly identified and that workers receive information about how to handle them safely; and
2) To ensure that worker exposure to toxic substances is controlled.

H. Workplace Smoking

Bill 164, Smoke-Free Ontario Act, this act prohibits smoking in all Ontario workplaces and enclosed public places as of May 31, 2006. This effectively repeals the Smoking in the Workplace Act and, in doing so, prohibits designated smoking rooms in workplaces.

If You Don't Report It, You Don't Get It!

Workers Safety & Insurance Board

It's important to report every workplace accident regardless if it's large or small.

If you work in a unionized workplace and have any questions or concerns, always contact your local union.

For More Information Contact:

Workplace Safety and Insurance Board (WSIB) - Head Office
200 Front St. W, Toronto ON M5V 3J1
416.344.1000, 1.800.387.5540
(Ontario): 1.800.387.0750, TTY: 1.800.387.0050
www.wsib.on.ca

Office Locations:

Guelph
2nd Floor, 1 Stone RdW
Guelph ON N1G 5L3
Ph: 519.826.4650
1.888.259.4228

Hamilton
P.O. Box 2099
Station LCD1
120 King St W
Hamilton ON L8N 4C5
Ph: 905.523.1800
1.800.263.8488

Kingston
304-234 Concession St
Kingston ON K7K 6W6
Ph: 613.544.9682
1.800.267.9461

Kitchener
55 King St W
3rd Floor
Kitchener ON N2G 4W1
Ph: 519.576.4130
1.800.265.2570

London
48 Fullarton St
7th Floor
London ON N6A 5P3
Ph: 519.663.2331
1.800.265.4752

North Bay
128 McIntyre St W
NorthBay ON P1B 2Y6
Ph: 705.472.5200
1.800.461.9521

Ottawa
700-99 Metcalfe St
Ottawa ON K1P 1E8
Ph: 613.237.8840
1.800.267.9601

Sault Ste. Marie
153 Great Northern Rd
Sault Ste. Marie ON
P6B 4Y9
Ph: 705.942.3002
1.800.461.6005

St. Catharines
8th Floor-301 St. Paul St
St. Catharines ON
L2R 7R4
Ph: 905.687.8622
1.800.263.2484

Sudbury
30 Cedar St
Sudbury ON P3E 1A4
Ph: 705.675.9301
1.800.461.3350

Thunder Bay
200-1113 Jade Crt
Thunder Bay ON
P7B 6V3
Ph: 807.343.1710
1.800.465.3934

Timmins
Ontario Government Complex
Highway 101 E
P.O. Bag4020
South Porcupine ON
P0N 1H0
Ph: 705.235.6130
1.800.461.9856

Toronto
3rd Floor, 200 Front St W
Toronto ON M5V 3J1
Ph: 416.344.1007
1.800.387.0080

Windsor
2485 Ouellette Ave
Windsor ON N8X 1L5
Mailing Address
P.O. Box 1617
Windsor ON N9A 7B7
Ph: 519.966.0660
1.800.265.7380

Workplace Safety & Insurance Act

A. Introduction

The *Workplace Safety and Insurance Act* covers most workers as soon as they start working for an employer. Part-time, seasonal, and domestic workers are covered by the Act. The *Workplace Safety and Insurance Board (WSIB)* provides benefits to cover medical treatment (including all prescription drugs and medical equipment), loss of wages and job training for those employees who become injured through the course of their employment.

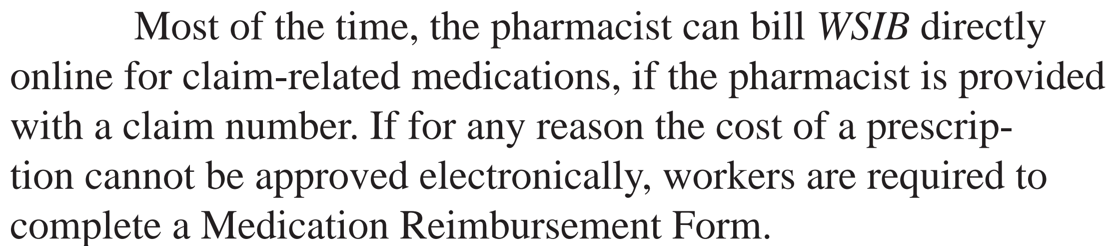
B. Accidents

Accidents include willful and intentional acts by others, chance events, and disablement arising out of and in the course of employment.

An employer must report an accident within three-days to the *WSIB* if the accident necessitates health care or the employee was not able to earn full wages as a result of the accident. This report must be made regardless of whether lost time from work occurred.

WSIB pays for all necessary, appropriate, and sufficient health care for an employee because of their injury or illness, including prescription drugs, medical devices, orthotics, and transportation costs related to the injury or illness.

It is important that employees keep all receipts for prescription drugs, medical equipment, and traveling expenses. The original receipts (not photocopies) are required by *WSIB* for reimbursement of expenses. Employees should always keep a copy of such receipts for their own records.



Most of the time, the pharmacist can bill *WSIB* directly online for claim-related medications, if the pharmacist is provided with a claim number. If for any reason the cost of a prescription cannot be approved electronically, workers are required to complete a Medication Reimbursement Form.

C. Different Kinds of Compensation

Employees may receive either temporary or permanent benefits. The nature and amount of the benefits will depend on the date of the accident.

Employees who are disabled and injured on or after January 1, 1998 do not receive temporary benefits but are entitled to *loss of earning benefits (LOE)* which covers both initial and permanent loss of earning situations. The *LOE* benefit is 85% of the difference between their normal pre-injury net average earnings, and their current net average earnings, or what they are deemed to earn. The worker is deemed to earn what they are able to earn from suitable employment. These benefits are mailed to the employee every two-weeks during the first 24-months of benefits. After 24-months, *LOE* is paid monthly.

Employees injured between April 2, 1985 and December 31, 1997 are entitled to temporary benefits in the amount of 90% of their take home pay and before April 1, 1985 75% gross pay (pay before deductions).

Employees are only eligible for *LOE* benefits if they are cooperating in health care measures, early and safe return to work and all aspects of a labour market re-entry assessment plan.

If an employee suffers a permanent impairment from a work-related injury or illness, a *non-economic loss (NEL)* benefit is paid to compensate the employee for the physical, functional, or psychological loss the impairment caused. This benefit is deter-

mined when the worker's condition has reached a point where no further improvement can be expected. The amount paid is based on a legislated base amount that is adjusted based on age and multiplied by the percentage impairment rating.

NEL payments are generally made in a lump sum. A worker can elect to receive their *NEL* in monthly installments if it is larger than $11,452.07.

If a worker is under 64 years of age and has received *LOE* benefits for 12-continuous months, the *WSIB* sets aside an amount equal to 5% of all subsequent *LOE* benefits to pay for a *loss of retirement income (LRI)* benefit. This is 5% over and above regular payments, but will not be paid until the worker turns 65.

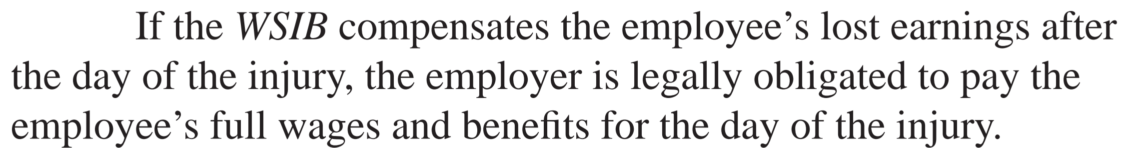
For those workers injured after January 1, 1990 and prior to January 1, 1998, benefits for future economic losses are payable. Workers who suffered an accident prior to January 1st, 1990 may be entitled to permanent pensions and pension supplements.

If a worker dies as a result of an accident or industrial disease, the spouse and children of the worker may receive survivor benefits from *WSIB*.

WSIB also offers a labour market re-entry service for those injured workers who cannot return to their regular jobs. These services often combine language-training, academic upgrading, counseling, training for other jobs, and helping an employer alter their workplace to accommodate an employees' return.

D. Employer Obligations

Where an employee is injured at work and requires medical treatment, the employer is required to arrange and pay for transportation. The injury must be reported to the *WSIB* within three-days.



If the *WSIB* compensates the employee's lost earnings after the day of the injury, the employer is legally obligated to pay the employee's full wages and benefits for the day of the injury.

In addition, an employer must make contributions for employment benefits for the first year after the worker is injured where the employer previously made contributions and where the employee continues to contribute his or her share.

Employees who employ 20 or more workers are obliged to re-employ injured workers who have been employed continuously for at least one year. The obligation extends to re-employing the worker in the position they held at the date of the accident, if the worker can perform the essential duties of the pre-injury employment.

If an employee is unable to return to their pre-injury employment, the employer is obligated to offer the employee the first opportunity to accept suitable employment that may become available with the employer.

In addition, the employer is required to accommodate the work or the workplace for the worker to the extent it does not cause the employer undue hardship. In unionized workplaces the re-instatement provisions prevail over the term of the collective agreement where they provide superior benefits. However, the provisions of the Act cannot displace the seniority provisions of the collective agreement.

If the employer fails to cooperate with the *WSIB* they can be penalized by having to make additional payments to the *WSIB* and the employee if he or she is entitled to loss of earning payments.

E. Employee Obligations

It is the employee's responsibility to inform his or her employer or supervisor immediately of any injury that occurs at the workplace or on the employer's property.

If there are any witnesses to a workplace accident or injury, it is a good idea to get their names, phone numbers, and written statements.

Dignity & Respect

It's Our Right!

If you work in a unionized workplace and have any questions or concerns, always contact your local union.

For More Information Contact:

Ontario Human Rights Commission
80 Dundas St W
Toronto ON M7A 2R9
Ph: 416.326.9511
(outside Toronto): 1.800.387.9080
TTY (Local): 416.314.6526
TTY (Toll Free): 1.800.308.5561
http://www.ohrc.on.ca/

Ontario Human Rights Commission, 8th Floor
Head Office
Ph: 416.314.4500
Fax: 416.326.9520
info@ohrc.on.ca

Mediation and Investigation Branch, 7th Floor

Legal Services Branch, 8th Floor

Policy and Education Branch, 9th Floor

Human Rights Code

A. Introduction

The *Human Rights Code (HRC)* guards against the discrimination and harassment of individual workers in the workplace and individual applicants throughout the job search process.

The *HRC* applies to all persons with the exception of those who work for the federal government or an industry regulated by the government of Canada. These workers are covered by the *Canadian Human Rights Act*.

B. Discrimination

The *HRC* protects the right of every person to equal treatment in services, accommodation, and employment without discrimination on prohibited grounds. Prohibited grounds include: race, ancestry, place of origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, or handicap.

In the case of accommodation, discrimination based upon receipt of public assistance is also prohibited. In employment, discrimination based upon a criminal conviction for which a pardon has been granted and discrimination based on any offense in respect of a provincial law is prohibited.

Employers may legally be able to treat job applicants and employees differently when it is part of a special program designed to relieve hardship or to assist disadvantaged groups to achieve equal opportunity.

The right to equal treatment in accommodation, services or employment does not apply where religious, educational, philanthropic, fraternal or social institutions engaged in serving the

interests of persons identified by prohibited grounds give preference to the target groups that the organization serves.

An employer must have a very good reason (referred to as a "*bona fide* qualification") for any discrimination in employment. A qualification will not be found to be *bona fide* if the person discriminated against can be accommodated without undue hardship.

An employer cannot discriminate in employment advertising, interviews, or application forms on one of the prohibited grounds of discrimination. For example, a job advertisement asking for "recent graduates" is in effect telling older people not to apply. Similarly, an ad cannot ask for "able-bodied persons." However, an ad can indicate that heavy lifting or a lot of walking is required.

No job application form can ask for any information, even indirectly, about any of the prohibited grounds of discrimination (including any information about physical or mental health).

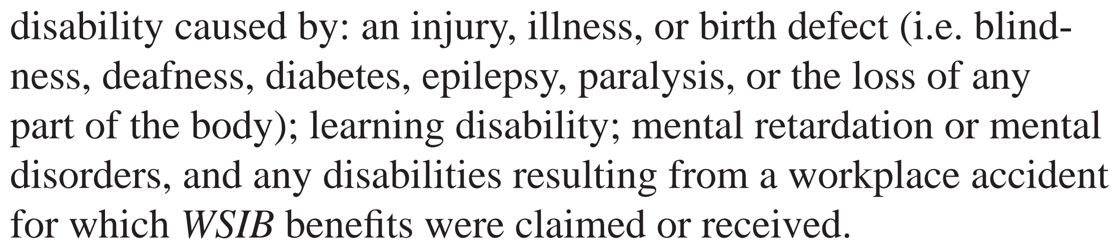
C. Harassment

The *HRC* also protects against harassment in accommodation and employment on prohibited grounds.

Harassment is defined as engaging in a course of annoying comments or conduct that is known, or ought reasonably be known, to be unwelcome. Harassment can result from insults, jokes, degradation, or discrimination. If the employer allows harassment or fails to prevent it from occurring, the employer may be liable.

D. Handicap and Disability

Legally, "handicap" and "disability" mean the same thing. Both handicap and disability are considered to be any degree of physical



disability caused by: an injury, illness, or birth defect (i.e. blindness, deafness, diabetes, epilepsy, paralysis, or the loss of any part of the body); learning disability; mental retardation or mental disorders, and any disabilities resulting from a workplace accident for which *WSIB* benefits were claimed or received.

An employer can only ask about the special needs of disabled persons to better accommodate her or him. In doing so, the employer is permitted to ask an employee or job applicant about his or her special needs as long as it pertains to the essential duties of the job. Essential duties refer to those skills or abilities that are involved with a job. Even if the employee cannot perform all the essential duties of a job because of his or her disability, the employer must make every reasonable effort to accommodate any disability.

The only exception is if the accommodation would cause an undue hardship to the employer. Undue hardship may involve considerations of cost in regards to outside sources of funding and health and safety requirements. The *Ontario HRC* has indicated that cost concerns will not amount to undue hardship unless they affect the economic viability of the employer.

Accessibility for Ontarians with Disabilities Act, sets out a sector-based process for achieving full accessibility for people with disabilities in both the workplace and the marketplace by 2025. The Act requires the government to work with the disability community and the private and public sector to jointly develop standards for each sector to identify and remove barriers facing persons with disabilities within 20-years.

E. Sexual Harassment

Sexual harassment includes any touching, comments, sexual jokes or unwanted sexual suggestions.

All employees have the right to freedom from harassment in the workplace, as well as the right to freedom from any reprisal for rejecting a sexual solicitation or advance by a person in authority. It is illegal for an employer or supervisor to make sexual suggestions or requests of an employee.

Your employer or supervisor is legally responsible for stopping or preventing sexual harassment or a poisoned work environment from occurring in the workplace.

F. Complaints

If an employee feels that they have been sexual harassed, they should tell the person responsible to stop, or they can complain to their supervisor (union steward or union representative in a unionized workplace). A record of the occurrence should be kept, including what was said or done, who was involved, where and when it happened and the names of any witnesses. If the harassment does not stop, a complaint can be made to the *Ontario HRC*, which will investigate the matter.

All complaints must be made within six-months of their occurrence. The *HRC* may extend the time when there is sufficient reason for the delay and there is no prejudice caused as a result of the delay.

The *HRC* will investigate the complaint and may try to mediate a settlement. A hearing before a Board of Inquiry may be ordered. A Board of Inquiry is entitled to remedy the discrimination and has the power to re-instate employees as well as to order damages for mental anguish not to exceed $10,000.

The maximum fine for any person having violated the Act is $25,000. Prosecutions under the Act cannot be launched without the consent of the Attorney General.

Conclusion

Since workplace legislation can change from time to time, it is extremely important that you seek additional advice about your particular situation. More information can be obtained from unions (if you are a union member) or from any of the agencies listed on the next page.

In protecting your rights, it is important to remember that the more you can prove, the better chance you have of substantiating your claim. Keep track of all information, regardless of how trivial it may seem. Keep all records and documents your employer gives you. Make a written record of any and all violations when they occur. If there are witnesses, get their names, addresses, phone numbers, and written statements.

These legal rights apply to most employees in Ontario, with the exception of certain employees who are covered by specific parts of some of these statutes, as well as others not listed. Specifically, employees working for the federal government or those in an industry regulated by the government of Canada, such as post offices, railways, airlines, banks, shipping companies, and radio and television station are not covered. Rather, these workers are covered by the federal *Canada Labour Code*, which incorporates all other work-related statutes.

Remember, these rights already belong to you, and you should not have to ask for them. As an employee, you must take the initiative and stand up for your legal rights. Do not rely on anyone to safeguard you against any wrongdoing. No amount of intimidation or frustration should discourage you from obtaining these minimally guaranteed standards.

Who To Call For More Help

Community Legal Aid Services Program

Central (Toronto)	416.598.0200
East (Scarborough)	416.750.7172
North (North York)	416.730.1588
West (Etobicoke)	416.237.1216

Industrial Accident Victims Group of Ontario
416.924.6477

Ontario Federation of Labour
416.441.2731

Occupational Health and Safety: Ministry of Labour
416.326.7770

Occupational Health Clinic for Ontario Workers
1.877.817.0336

Ontario Human Rights Commission
416.314.4500

Ontario Labour Relations Board
416.326.7500

Labour Community Services of Metro Toronto
416.445.5819

Pay Equity Commission
416.314.1896

Toronto Workers' Health and Safety Legal Clinic
416.971.8832

Workers Health and Safety Centre
416.441.1939

Workplace Safety and Insurance Board (WSIB)
416.344.1011

Youth Employment Services
416.504.5516

Useful Websites

Alliance for Employment Equity
http://www.web.net/~allforee/

Centre for Research on Work and Society
http://www.yorku.ca/crws

Community Legal Education Ontario – Community legal clinic, site provides order form of publications, such as family assistance, immigration, WCB, youth, seniors, etc.
http://www.cleo.on.ca/

HRSDC – Human Resources and Social Development Canada – Labour Standards: General Information
www.hrsdc.gc.ca/en/gateways/topics/lxn-gxr.shtml

Labour Education Centre Online
http://www.laboureducation.org/

Ministry of Labour – Employment Standards Information, Office of the Worker Advisor, Ontario Labour Relations Board, Pay Equity Commission, and Occupational Health and Safety Information
http://www.labour.gov.on.ca/

Occupational Health Clinics for Ontario Workers
http://www.ohcow.on.ca/

Ontario Human Rights Commission
http://www.ohrc.on.ca/

Ontario Federation of Labour (OFL)
http://www.ofl.ca/

Ontario Network of Injured Worker Groups
www.injuredworkersonline.org/index.html

Workers Health and Safety Centre
http://www.whsc.on.ca/

Workplace Safety and Insurance Board (Ontario)
http://www.wsib.on.ca/wsib/wsibsite.nsf/public/homepage

UFCW Canada National Training and Education Department

300-61 International Blvd
Rexdale ON M9W 6K4
Phone: 416.675.1104
Fax: 416.675.6919
www.ufcw.ca