



## Workers' Rights In Focus: Changes to the Employment Standards Act (ESA)

---

### What is law...on January 1, 2018?

<b>MINIMUM WAGE INCREASE</b>		<i>As of Jan 1/19</i>
General	\$14.00	\$15.00
Student	\$13.15	\$14.10
Liquor Server	\$12.20	\$13.05

#### **Employee Misclassification**

Employers must not misclassify workers as "Independent Contractors" (self-employed) when they are being treated more like employees and are entitled to protections under the ESA. Should a concern be raised, the employer is responsible for proving that the individual is not an employee.

#### **Critical Illness Leave**

- 17 weeks per year - to provide care or support to a critically ill adult family member.
- 37 weeks per year - to provide care or support to a critically ill child who is a family member.

#### **Parental Leave Increase**

Workers can increase their parental leave from

- 35 weeks to up to 61 weeks for the worker that took pregnancy leave, and
- 37 weeks to up to 63 weeks for the worker who is not pregnant.

The total entitlement of EI remains the same regardless of the length of leave taken.

#### **Personal Emergency Leave (PEL)**

All workers in Ontario will be entitled to 10 PEL days, including 2 paid PEL days where the worker has been employed for at least 1 week. None of these PEL days will require a worker to provide a doctor's note.

#### **Public Holiday Pay**

Workers will be entitled to their average regular day wage when they are not working during a public holiday. If a worker is working during a public holiday, then the employer must provide a written statement that sets out when the substituted day will be provided.

#### **Paid Vacation**

Workers will be entitled to 3 weeks of paid vacation after 5 years of services with the same employer. As such, the employer must set aside 6% vacation pay.

#### **Overtime Pay**

Workers that hold more than 1 position with an employer and are working overtime must be paid at the position rate they are working at during the overtime period.

#### **TEMPORARY HELP AGENCIES (THA)**

**Early Termination of Assignment** - After working for 3 months, if a scheduled assignment is expected to last longer but is terminated early, then the THA must provide the worker with at least 1 week notice. If notice is not given, then the THA must provide 1 week pay in lieu of notice or provide the worker at least 1 week reasonable work during the notice period.

#### **Joint Liability of Related Employers**

Businesses such as Temporary Help Agencies and Employers who are carrying on associated or related activities will be treated as one employer and held liable for monies owed to a worker under the ESA.

#### **LEAVE RELATED CHANGES**

##### **Pregnancy Leave**

A worker that suffers a pregnancy loss, will be able to extend the 17-week pregnancy leave to up to an additional 12 weeks.

##### **Domestic Violence and Sexual Assault Leave**

Workers employed for 13 consecutive weeks are provided 10 individual days of leave (including 5 paid days leave), and up to 15 weeks of unpaid job-protected leave when a worker or their child has experienced or is threatened with domestic or sexual violence.

- Employers must protect the confidentiality of records they have on file relating to this type of leave.

##### **Family Medical Leave**

28 weeks of leave per year - to provide care to a critically ill family member (e.g. spouse, parent, child, sibling, uncle/aunt, nephew/niece, grandchild) with a significant risk of death occurring within a period of 26 weeks or shorter. A medical certificate must be provided.

##### **Leave for Death or Crime-Related Disappearance of a Child**

Workers are entitled to leave of 104 weeks due to a child death from any cause, as well as a separate leave of 104 weeks due to a crime-related child disappearance.

---

## What is law...on April 1, 2018?

### Equal Pay for Equal Work Provisions

Casual, part-time, temporary and seasonal workers must be paid equally to the full-time workers when performing “substantially the same job for the same employer.”

- Workers should not be punished or fired for asking about another worker’s wage rate.
- **Review of Rate of Pay** - Workers will be able to request a review of their rate of pay if they believe they are not receiving equal pay to full-time or permanent staff. An employer must respond to the request by either adjusting the pay or providing a written explanation as to why it was not adjusted.
- **Exceptions** include where a wage difference is based on a seniority or merit system, pay by quantity or quality of production, or other factors.

**Temporary Help Agencies (THA)** workers are also required to be paid equally to workers of the THA client when performing substantially the same job. Workers can inquire about wage rates without repercussions.

## What is law...on January 1, 2019?

### New Scheduling Rules

- **Schedule or Location Change** - After being employed for 3 months, workers will be able to request a schedule or location change without fear of reprisal.
- **3-Hour Rule** - Workers that regularly work more than 3 hours per day, but upon reporting to work end up working less than 3 hours, must be paid for 3 hours.
- **Shift Cancellation Pay** - If an employer cancels a shift within 48 hours (2 days) of its start, the worker must be paid 3 hours at their regular rate of pay.
- **Shift Refusal** - If an employer asks a worker to work a shift with less than 96 hours (4 days) notice, then the worker can refuse the shift without repercussions (punishment).
- **On-Call Pay** - If a worker is on call and is not called into work or works less than 3 hours, then the employer must be pay for 3 hours. This will be required for each 24-hour period a worker is on call.
- **Exceptions** include such situations as emergencies and the delivery of essential public services.

## Enforcement...on January 1, 2018

To enforce changes to the ESA, 175 additional Employment Standards Officers will be hired with the goal to support the resolution of claims within 90 days, and to inspect 1 in 10 Ontario workplaces every year.

### No Employer Contact

Workers will no longer be required to contact their employer prior to filing an ESA claim. In addition a claim investigation cannot be refused due to insufficient information from the worker filing the claim.

### Orders to Pay Workers Directly

Employment Standards Officers will be able to order money to be paid directly to a worker when an employer or Temporary Help Agency client owes money.

### Interest on Unpaid Wages

Interest can be awarded to unpaid wages and on fees that were unlawfully charged to the workers.

### Collections

There are improvements in the collection of unpaid wages by allowing the issue of warrants, liens on real and personal property and to hold a security while payment plan is underway

### Shame List

The names of individuals who have been issued a penalty will be able to be published (including online) and will include the description of the non-compliance, the date and the amount of the penalty.

### IMPORTANT NOTE!

#### Electronic Agreements

Electronic agreements via email between a worker and employer (e.g. working excess hours) can serve as an agreement in writing.



### Questions about workers' rights?

Workers' Health and Safety Legal Clinic

416-971-8832 or 1-877-832-6090

[www.workers-safety.ca](http://www.workers-safety.ca)

*“Workers’ Rights in Focus” factsheet contains general legal information and is not meant to replace legal advice for your particular situation. Please seek legal advice.*

---