

Stronger Workplaces for a Stronger Economy Act, 2014:

Changes to the Employment Standards Act (ESA), Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009 (EPFNA), Occupational Health and Safety Act (OHSA) and Workplace Safety and Insurance Act (WSIA)

1. Expanded protection for migrant workers

Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009 (EPFNA)

In response to live-in caregiver's campaign to stop recruiters and employers from charging them fees for employment under the Live-in Caregiver Program (LCP) in Ontario, the provincial government passed protections for caregivers in 2009. But many other workers under the Temporary Foreign Worker Program face the same problems as caregivers. The *Stronger Workplaces for a Stronger Economy Act* recognizes that and expands *Employment Protection for Foreign Nationals Act (EPFNA)* to include all workers under a foreign temporary employee program. Starting on November 20, 2015, all migrant workers under temporary foreign worker programs will have the following protections:

- Recruiters cannot charge migrant workers fees for any part of the process of getting employment under an immigration or temporary foreign worker program;
- Employers cannot charge migrant workers any of the costs from hiring the worker;
- Neither the recruiter nor employer can take a worker's property such as passport or work permit;
- Migrant workers cannot sign away any of these rights, even if the recruiter or employer ask them to say so in an agreement;
- Recruiters and Employers cannot punish workers for asking or trying to enforce their rights;
- If any of these rights have been violated, then migrant workers can file a claim against the recruiter or employer at the Ministry of Labour within 3.5 years of the date of the violation.

Migrant workers under an immigration or temporary foreign worker program will be able to file claims for violations of the above rights starting November 20, 2015. That also means that workers can only claim illegal recruitment fees or employer deductions that were made on or **after** November 20, 2015. Before that date, only caregivers can enforce these rights under this EPFNA.

2. Employment Rights information

An Employment Standards poster must be posted by employers in the workplace where employees will likely see it. This poster is called "What You Should Know about the Ontario Employment Standards Act." It describes workers' minimum employment rights like public holidays, overtime pay and minimum wage. This poster is prepared by the Ministry of Labour.

Starting on May 20, 2015, employers will also be required to give each worker a copy of the Employment Standards poster. The employer has to give new employees this poster within 30 days of being hired.

If a worker needs the poster in a language other than English, then the worker can ask the employer to see if the poster has been translated into the required language and to provide that translated poster to the worker. The Ministry of Labour has information available in many languages.

3. Minimum Wage

The minimum wage sets the lowest wage rate an employer can pay a worker. Starting in 2015, the minimum wage will be increased by the rate of inflation each year. This is being done to ensure that the minimum wage will not be eroded as the cost of living goes up. Almost one in ten workers earns minimum wage.

No later than April 1st of each year, the Minister of Labour will announce the minimum wages that will apply starting October 1st of that year. So each October 1st, the minimum wage will be increased by the rate of inflation.

The rate of inflation will be determined by the Consumer Price Index for the previous calendar year. If the change in Consumer Price Index would result in a decrease in the minimum wage, then no adjustment to the minimum wage will be made that year.

Most workers are eligible for minimum wage, whether they are full-time, part-time, casual employees, or are paid on hourly rate, commission, piece rate, flat rate or salary. There are different minimum wages depending on age and what type of job you do.

Minimum Wage Rate	Wage Rates (as of June 1, 2014)
General Minimum Wage	\$11.00 per hour
Student Minimum Wage	\$10.30 per hour
Liquor Servers Minimum Wage	\$9.55 per hour
Homeworkers Wage	\$12.10 per hour

There are also some types of workers that are excluded from the general minimum wage. Eleven percent of workers are not fully covered by minimum wage rules. Some of these workers include farmworkers, harvesters, building superintendents and others.

The Ministry of Labour established a Minimum Wage Advisory Panel in 2013 to review the process of setting the minimum wage in Ontario. Two of the Panel's recommendations resulted in changes. One change was to annually increase the minimum wage by the Consumer Price Index. Another recommendation was to review the minimum wage rate and revision process every five years. The Ministry of Labour adopted both these recommendations. The *Employment Standards Act* requires the Minister of Labour to review the minimum wage and process for adjusting the minimum wage before October 1, 2020 and every five years after that.

4. Temporary Agency Workers

The *Employment Standards Act* sets out rules that temporary help agencies must follow for its employees. The agency is responsible for temporary agency workers. Sometimes temporary agency workers have trouble enforcing their rights under the ESA because they have both the temporary agency that assigns them to work and the client company where they work.

Starting on November 20, 2015, client companies will be jointly and severally liable for any wages, overtime pay or public holiday pay that the temporary help agency fails to pay. It is the agency's responsibility to pay the worker properly. But if it doesn't, the worker can seek unpaid wages, overtime and public holiday pay from the client company.

Temporary workers can file claims for unpaid wages, overtime and public holiday pay at the Ministry of Labour and the Ministry will enforce a worker's right to such wages from both the agency and the client company starting November 20th 2015. The unpaid wages would have to become due to the worker on or **after** November 20, 2015.

Both temporary agencies and client companies will be required to keep records of all the hours and dates that a temporary agency worker works.

Safer Work for temporary agency workers

Temporary agency workers have higher accident rates than their co-workers directly hired by the client company. The *Stronger Workplaces for a Stronger Economy Act* introduced a definition of "temporary help agency" in the Workplace Safety and Insurance Act. The new definition of a temporary help agency includes businesses that primarily lend or hire out the services of its workers to other employers on a temporary basis for a fee. The changes also gives the government the ability to make regulations that could make client companies take responsibility when

a temporary agency worker is injured or becomes sick on the job. This would be done by attributing the injury to the client company for the purpose of setting experience rating premiums. There is no requirement in the Act that such regulations be made. Therefore it is unclear whether or when such improvements would be made for temporary agency workers.

5. Employer's self-audit

The Ministry of Labour is setting up an online self-audit program for employers. The goal of this program is to help employers identify practices that may be in violation of the ESA and how to comply with the law. This program will be in addition to individual claims that workers file for violations and Ministry of Labour proactive or spot inspections of employers to identify ESA violations.

The *Stronger Workplaces for a Stronger Economy Act, 2014*, gives the Ministry of Labour the power to require an employer to do a self-audit and report on the outcomes of the self-audit to the Ministry of Labour. If the self-audit identifies that wages are owed to one or more employees, the employer must provide proof of payment of the amount owed to the workers. If compliance is not demonstrated, the Ministry of Labour may issue orders for payment of wages.

The self-audit process does not prevent an employment standards officer from doing an investigation or an inspection of the employer. Nor does it stop enforcement action under the Act.

The self-audit provisions will come into effect May 20, 2015.

6. Recovering unpaid wages

The *Stronger Workplaces for a Stronger Economy Act* brings in changes that allow workers to claim all of their unpaid wages owed under the ESA for the previous two years. Workers will have up to two years to file a claim for unpaid wages. The shift to the new rules will take time and are complex for those workers filing claims for unpaid wages during this period of change.

Removal of \$10,000 Limit

Up until February 20, 2015, the maximum amount of unpaid wages that can be recovered is \$10,000. Even if the Ministry of Labour determines that more than \$10,000 is owed to a worker, it cannot order the employer to pay more than \$10,000. There are some exceptions to this rule. This limit does not apply to claims under the ESA that deal with leaves of absence or the right not to be penalized for exercising rights under the ESA.

Starting on February 20, 2015, there will no longer be a maximum amount or cap on unpaid wages that the Ministry of Labour can order an employer to pay an employee. But this is only for unpaid wages that become due to be paid to a worker on or **after** February 20, 2015.

Longer time limit for filing a claim for unpaid wages

Under the new rules for filing claims for unpaid wages, workers will have up to two years to file a claim from the date that the wages become due. This two year time limit comes into effect on February 20, 2015. Workers who have unpaid wages that came due on or **after** February 20, 2015 will have two years to file a claim at the Ministry of Labour to recover those wages.

For workers who have wages that came due before February 20, 2015, they have 6 months to file claim for unpaid wages. For workers who have unpaid vacation pay that became due **before** February 20, 2015, they have one year to file a claim (rather than 6 months).

During the transition to the new time limit on filing claims for unpaid wages, the key issue is when the wages became due. Generally wages, except vacation pay, become due on the employee's regular pay day. If the employment was terminated, then all the wages owed to the employee are due to be paid within seven days or what would be the worker's next regular pay day. It is the day that wages became due that is important when a worker is filing a claim

for unpaid wages. In the transition period, the important issue is whether the wages become due before or on/after February 20, 2015.

Time limits on Claim Period

Under the new rules for filing claims for unpaid wages, workers will be able to claim wages that are due in the two years prior to the date that the claim was filed. This is a big increase from the six month limit on wages recoverable from the date the claim was filed under the old rules (or 12 months in the case of vacation pay or repeat violations).

If wages became due before February 20, 2015, then the six month / 12 month limit on recover wages applies. That means that claims for unpaid wages that were due before February 20, 2015 can only be for wages that were due within six months of the claim being filed. This will be the case even if the claim is filed after February 20, 2015 – the issue is when the wages became due.

For example, if a worker filed a claim on March 20, 2015 for wages that were due February 1, 2015, then the claim can only include wages that were owed in the 6 months prior to March 20, 2015.

Starting on February 20, 2015, the transition to the new two year claim period for unpaid wages will begin to roll out. The period of time that a worker can claim wages for from the date the claim is filed will increase starting February 20 2015 until the two year time limit is reached February 20, 2017.

7. Better health and safety protection for unpaid Interns

Employees are protected under the Occupational Health and Safety Act (OHSA). But with the passage of the Stronger Workplace for Stronger Economy Act, 2014 on November 20, 2014, now volunteers, students, unpaid interns, and trainees will also be protected under the Health and Safety Act. The definition of who is considered a “worker” under the OHSA was amended to include unpaid interns, volunteers and similar types of workers.

For more information please contact Mary Gellatly at Parkdale Community Legal Services at 416-531-2411 extension 246.