

2021

Your Rights At Work

**Action Guide for
Fair Employment**

WORKERS' ACTION CENTRE



The Workers' Action Centre (WAC) is a worker-based organization committed to improving the lives and working conditions of people in low-wage and unstable jobs. Our members are workers in precarious jobs, recent immigrants, workers of colour, women, and youth. Most of us don't belong to unions because we work in small workplaces, are temporary workers, on contract, independent contractors, or unemployed. WAC members educate and organize to win better working conditions, and we believe that the leaders of this fight for decent work should be workers themselves.

We believe that we must come together and use our collective power to change the systems and laws that keep our wages low and allow so many bosses to break the law. Through the collective efforts of WAC and our allies, we have been able to win important improvements in the rights of workers outlined in this booklet. Together, we can win fair wages and working conditions for all workers. Join our movement.

WORKERS' ACTION CENTRE

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HOW TO USE THIS BOOKLET

This booklet provides a summary of your rights at work under the various laws that protect workers. But our laws alone are not enough to protect us against violations of our rights.

That is why at the beginning of this booklet, we have included a 'Checklist for Workers', which includes tips on how to prepare yourself in case your rights are ever violated at work. Throughout the rest of the booklet, each section also includes a mini-checklist of things you can do to protect yourself in specific situations. Each section also has phone numbers and websites of places you can contact for more help.

If you have any questions about your rights at work or think your rights may have been violated, call the Workers' Action Centre. We can help you develop a plan for getting what you are owed and making your workplace more fair. All calls are confidential.

PROTECT YOURSELF

It is important to be prepared in case your rights are violated at work. Use this checklist to protect yourself. This information will help you defend yourself, recover wages you are owed, file complaints, and qualify for benefits and entitlements that you deserve.

Checklist for Workers

- ✓ Ask for time to read a contract before you sign it. If your boss pressures you to sign your contract without reading it, try to get a copy of the contract or take a photo of it. Keep copies of any contracts you receive.
- ✓ Keep your own record of the hours and dates you worked, and the details of the work you do every day. Keep this record at home.
- ✓ If you don't have a Social Insurance Number, valid Work Permit or you get paid in cash, write down the wages you have been paid and hours and dates worked. The employment standards law applies to you.
- ✓ Write down any information about your boss and the company that you can find: name, title, work and home address, phone numbers, license plate number.
- ✓ Keep records of any communication you have with your employer: texts, emails, phone calls, letters.
- ✓ It is illegal for your boss to fire you for speaking about your rights. If this happens to you, write down the details of how and when you were fired. Your boss may also force you to quit by harassing you at work. Write down the details of the harassment.
- ✓ If you are fired, forced to quit or laid off, you may still be eligible for Employment Insurance. Your detailed records will help when applying for EI benefits.
- ✓ Keep copies of every document you receive from your employer: contract, pay stubs, cheques, Record of Employment (ROE), termination letter, etc.
- ✓ Keep copies of any document you receive from the government, such as any forms that you have filled out for the Workplace Safety and Insurance Board (WSIB) or Employment Insurance (EI).
- ✓ Your boss cannot fire you for taking a leave (paid or unpaid) or for being injured or sick. If this happens to you, write down everything your boss says.
- ✓ Make sure you apply for Employment Insurance (EI) within 28 days of your last day of work, even if your employer has not given you a Record of Employment (ROE). If you have been working for cash, write down the dates and hours you worked and apply as soon as you stop working. You may still qualify for EI.
- ✓ If you think your rights have been violated, call the Workers' Action Centre to get help.

PROTECT YOURSELF

Talk to other workers

Talk to people you trust at work and find out if your co-workers are facing the same problems as you. Your fight will be stronger if there are more workers standing together to improve working conditions.

Find a workers' centre near you

There are several workers' centres in Ontario that can support non-unionized workers to defend their rights. Call us to find out if there is one near you.

Unionize

Unions protect workers when employers do not follow labour laws. Organizing a union could mean better wages and working conditions. Call us to find out how a union works and how to form a union in your workplace.

Call the Workers' Action Centre

Read this booklet. Identify all wages you believe you are owed and any other rights that have been violated. Call us for help to plan your next steps. Every call is confidential.

Your Legal Options

Ministry of Labour

The Ministry of Labour is supposed to protect our rights and enforce the Employment Standards Act. It is free to file a claim. You have 2 years to file a claim to recover unpaid wages. Contact the Ministry of Labour at 1-800-531-5551 or www.labour.gov.on.ca.

Small Claims Court

This civil court handles any disputes for wages owing to you, wrongful dismissal, and also the recovery of personal property. The limit you can claim is \$35,000. You have up to 2 years from when your wages were due to file a claim. There is a fee to file a claim. For more information: call 416-326-3554 or visit www.attorneygeneral.jus.gov.on.ca/english/courts/scc/.

Consult a Lawyer

If you want legal advice on your case or feel you may be entitled to more than the basic employment standards entitlements (through the Ministry of Labour), you should contact a lawyer. They may charge you a fee for a consultation. The Lawyer Referral Service may provide you with the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options: 1-800-268-8326.

Community Legal Clinics

Some community legal clinics provide information and legal support for workers. Clinics generally provide services to people with low incomes and that live in their area. To find a community clinic near you, contact Legal Aid Ontario: www.legalaid.on.ca or call toll-free at 1-800-668-8258.



Enforcement of our labour laws is not strong enough, which means employers believe they can get away with breaking the law. If you file a Ministry of Labour claim, it could take a long time for your case to be resolved and there is no guarantee that you will get what you are owed. Call us to discuss your options and develop a plan for defending your rights. Get involved!

IMPORTANT TERMS TO KNOW

Employment Standards Act (ESA)

The ESA provides minimum rights for wages, hours of work, leaves, termination and other benefits. It is the labour law that non-unionized workers rely on. Not all sectors of workers are covered equally. Every province has its own labour laws.

Ministry of Labour (MOL)

This Ontario government ministry is responsible for enforcing the Employment Standards Act and Occupational Health and Safety Act. Workers can make claims against their employers when the labour laws are not followed. Call 1-800-531-5551 or visit www.labour.gov.on.ca. For the Occupational Health and Safety branch call 1-877-202-0008.

Service Canada

Service Canada is the federal government agency where you apply for Employment Insurance (EI) when you are unemployed, and for maternity and sick benefits. This agency provides many services related to employment and government benefits. For more information call 1-800-206-7218 or visit www.canada.ca/en/services/benefits/ei.html.

Employment Insurance (EI)

You contribute a percentage of your wages into this federal government fund. Your boss also makes a contribution. You may be able to receive benefits while you are unemployed or on parental or sick leave. Service Canada administers EI.

Record of Employment (ROE)

Every employer must give you an ROE when you leave or are fired from your job. The ROE is supposed to include your hours worked, wages earned and reason for leaving the job. Service Canada uses this information to determine if you qualify for EI benefits, the amount you will receive, and for how long.

Workplace Safety & Insurance Board (WSIB)

This is insurance for when you are injured or become sick because of your job. This is often called “workers compensation”. Not every company has WSIB coverage. Call 1-800-387-0750 or visit www.wsib.on.ca for details.

Canada Pension Plan (CPP)

CPP is a federal government benefit based on contributions from workers and employers. If you are eligible you can receive retirement pension, death and disability benefits. Call 1-800-277- 9914 or visit www.canada.ca/en/services/benefits/publicpensions/cpp.html for details.

Temporary Agency

A temporary help agency is a business that finds you temporary work assignments at different companies. The agency is your employer. The place where you work every day is called the client company.

Ontario Human Rights Tribunal

The Human Rights Tribunal deals with workers' claims of discrimination and harassment on the basis of rights protected under the Human Rights Code. The Canadian Human Rights Commission deals with complaints from federally regulated workers. The Human Rights Legal Support Centre provides legal assistance if you believe you have faced discrimination and harassment: 1-866-625-5179 or visit www.hrlsc.on.ca.

Canada Revenue Agency

The CRA is responsible for assessing and collecting taxes and delivering other federal benefits. They are a department of the Government of Canada. Self-employed workers and some other workers may pay taxes differently. Call us for information on your employee status and we can guide you in the right direction. Or call CRA directly at 1-800-959-8281 or visit www.canada.ca/en/revenue-agency.html.

WHO IS COVERED UNDER THE LAW

Exemptions

There are over 85 special rules in the ESA that allow some employers to not comply with some standards for their workers. This leaves many workers, such as farmworkers, landscapers, and others, without equal access to minimum standards.

Find out if your employer has an exemption by calling the Ministry of Labour inquiry line at 1-800-531-5551 or visiting www.labour.gov.on.ca.

TAKE ACTION

We believe that all workers should have basic labour standards with NO exemptions. We must keep fighting to ensure that all workers are protected by minimum employment standards. Contact WAC for updated information on exemptions and to get involved.

Temporary Agency Workers

If you are working through a temporary agency, you are covered under the Employment Standards Act like all other workers. Temporary agency workers usually earn lower wages, have fewer benefits, and less protection at work. Companies are contracting out more work so they don't have to hire workers directly. For more information on your rights as a temp agency worker, see our Factsheet: [Are You a Temp Agency Worker?](#)

Temporary Foreign Workers Program and Caregivers Program

Temporary foreign workers and care workers have basic protection under our labour laws, but may face some exemptions and restrictions. Many temporary foreign workers face barriers in enforcing their rights because of their immigration status. Call us if you think your employer is not following the law.

 **TAKE ACTION!**

Immigration status should not be a barrier to enforcing our rights at work. Many temporary foreign workers are forced to accept violations of their rights because they are in Canada on work permits that tie them to one employer. If they lose their jobs for complaining about working conditions, they may be deported. Non-status workers also fear deportation if they speak out about their rights. We must ensure all workers can count on protection at work. Our immigration policies must be changed to ensure permanent status for Temporary Foreign Workers on arrival, an end to employer-specific work permits and a fair appeals process before workers are forced to return to their home country. We also need permanent residency for all workers without immigration status in Canada. For more information on winning fairness for migrant workers, visit: www.migrantworkersalliance.org.

Non-status Workers

If you are working without a valid social insurance number (SIN) or work permit, you still have protection under basic labour laws, including employment standards, health and safety, human rights and the Workplace Safety and Insurance Board (WSIB). You may not be eligible for Employment Insurance (EI). It is often difficult for non-status workers to enforce their rights because of their immigration status. If you are owed unpaid wages, call us to discuss what you can do. All calls are confidential.

For more information on your rights as a non-status worker, go to the WAC website to see our Factsheet: [Undocumented? No Status? You Have Rights at Work.](#)

Self-Employed or Independent Contractor

When you are self-employed, you have fewer rights than an employee. That is because independent contractors are not covered under the Employment Standards Act. Many bosses wrongly classify employees as independent contractors to avoid the law.

 **WORKERS WIN!**

Many workers that come to WAC have been misclassified as an independent contractor by their employer. Employers do this to avoid their responsibilities for wages, hours of work, termination and other benefits. We have been fighting this. Now, the Employment Standards Act makes it illegal for employers to treat employees as independent contractors. It is the responsibility of the employee to prove that they are not an independent contractor. See page 10 for more details.

Union Contract

If you are in a workplace that has a union, you will be covered under your union contract or collective agreement. Your union is your legal representative. If you need help with your union, call us to discuss what you can do.

Students and Interns

Only students working under a program approved by a high school, college of applied arts and technology, university or Private Career College are excluded from protection under the ESA. All other students, interns, and trainees working for a company or organization have rights under the ESA.

Federally Regulated Workers

Some sectors such as banks, transportation, telecommunications and others are regulated under the federal Labour Code. The rights in that federal Code cover workers in these sectors.

STARTING A NEW JOB

Paying a Fee for Employment

Employers should not ask you to pay a fee to get a job. Temp agencies cannot charge you money for signing up with them, assigning you work or helping you with a resume or job interview.



PROTECT YOURSELF! MIGRANT WORKERS AND ILLEGAL FEES

- Recruiters cannot charge a Temporary Foreign Worker any fees during any part of the process of getting employment.
- 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 about or trying to enforce their rights.
- If any of these rights have been violated, 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.

Signing a Contract

You cannot sign away your rights under the Employment Standards Act. If you sign a contract that is illegal (for example, it says that the employer will not pay minimum wage) your boss is breaking the law, not you. Even if you sign an illegal contract, you are still entitled to your rights under the law. This includes migrant workers. Write down all details of the hours and dates you work. This will help you claim your wages when you are ready.

Employment Rights Information

The Ministry of Labour provides employers with a poster called “What You Should Know about the Ontario Employment Standards Act”. It describes basic rights in the workplace.

Employers are required to give each new worker a copy of this poster. You should receive it within 30 days of being hired. A worker has the right to ask for the poster in their first language. There are many languages available at the Ministry of Labour.

Probation

This is a “trial period” set by the company to see if the job is a good match with your set of skills. The length of a probation period is up to the boss, it is not part of the law. If you are fired after working for more than 3 months, you may be owed termination pay or notice even if your boss says you are still on probation.

Independent Contractor or Employee?

Are you self-employed?

Many bosses wrongly treat employees as independent contractors to avoid their responsibilities for wages, hours of work, termination and other benefits. This is illegal.

Employment status (whether you are an employee or independent contractor) directly affects your entitlement to basic rights such as minimum wage, overtime pay, health and safety protections, job-protected leaves, human rights and the right to bargain collectively and join a union. Employment status also affects your right to Employment Insurance (EI), Canada Pension Plan (CPP) and Workplace Safety and Insurance (WSIB) or workers' compensation as it is often called. It affects how you are treated under the Income Tax Act. Employment status also affects what you can do when wages go unpaid or problems happen at work.

| | |
|---|---|
| <p>You may be an EMPLOYEE if:</p> <ul style="list-style-type: none">• You receive training from the company.• The company supervises your work.• You do not have control over your work, hours or rate of pay.• You work with tools or equipment that the company gives you.• Your work is clearly a part of the business. | <p>You may be an INDEPENDENT CONTRACTOR or SELF-EMPLOYED if:</p> <ul style="list-style-type: none">• You control how your work is done. For example, you may hire other workers and direct their work.• You can freely negotiate your pay and when your work has to be done. This means that you set your own work hours and where you work.• You own some of your own tools or equipment you use to work.• You take the full profit or loss from the work or business operation. |
| <p>Your Rights As An Employee: If you have problems at work, you have protection under the Employment Standards Act, Human Rights Code and the Occupational Health and Safety Act. You may be eligible for Employment Insurance if you are unemployed. You can qualify for the Canadian Pension Plan (CPP) and WSIB.</p> | <p>Your Rights As An Independent Contractor: If you have problems at work such as not being paid, your only protection is to take the company to court. You have to pay your own CPP or WSIB contributions. You may contact Service Canada yourself to set up Employment Insurance (EI) special benefits to provide benefits when you are out of work.</p> |

What if you still don't know the difference?

Sometimes you can't tell whether you are an independent contractor or employee. For example, your boss might supervise your work, but you use some of your own tools. Call WAC for information and resources to help you determine your employment status.



PROTECT YOURSELF! MISCLASSIFICATION IS ILLEGAL

- Even if you sign a contract saying you are an independent contractor, you may not be. Ask for time to read a contract before you sign it.
- Write down the details of your work (dates, hours, pay, what tasks you do every day).
- If you believe you have been misclassified, contact WAC for assistance. You may be able to file a MOL claim. Employees must prove that they are not an independent contractor.

EMPLOYMENT STANDARDS: YOUR BASIC RIGHTS AT WORK

GETTING PAID

Minimum Wage

The minimum wage went up to \$14 on January 1, 2018. It will remain frozen until October 1, 2020, when it will start to increase by the cost of living each year.

| | General | Liquor Servers | Students under 18 |
|---|-------------------------------------|-------------------------------------|-------------------------------------|
| January 1, 2018 | \$14.35 | \$12.55 | \$13.50 |
| October 1, 2021 (and every year after) | \$14.35 + Cost of Living Adjustment | \$12.55 + Cost of Living Adjustment | \$13.50 + Cost of Living Adjustment |

You must be paid at least the minimum wage for every hour you work. Not all workers have jobs that are covered by the minimum wage (e.g. farmworkers). Call us to find out if your job is covered by the minimum wage or if you think you are not getting paid the minimum wage that applies to you.

★ WORKERS WIN!

Our minimum wage should be based on the principle that no one should be working full time yet still be below the poverty line. In 2014, WAC led a campaign that got the minimum wage indexed to inflation. This means that the minimum wage increases every year with the cost of living, so that workers don't keep falling deeper into poverty. Then, through the Fight for \$15 and Fairness campaign, we successfully pressured the government to increase the minimum wage to \$14 per hour. The minimum wage was supposed to increase to \$15 in January 2019, but the new government cancelled that increase and froze the minimum wage. We will keep fighting to ensure that workers get decent wages. Contact us to get involved.

⚠️ PROTECT YOURSELF!

- If your boss is paying you less than the minimum wage keep a record at home of all dates and hours worked and the wages you were paid.
- Is the boss paying everyone less than minimum wage? Talk to people you trust and organize a meeting with us to discuss how to improve your wages and working conditions.
- When the minimum wage goes up, some employers cut workers' benefits, hours, or tips, or make workers pay for things they didn't use to have to pay for. This is not fair. If this is happening in your workplace, call us for help.

Cash Payments

It is legal for you to be paid in cash. But your boss must give you a record or “pay slip” every time you are paid. A boss paying you in cash may not want to give you a pay slip because they want to avoid paying the employer contributions, such as EI.

A pay record should show these things:

- Your Name
- Pay Period (for example: May 1 – May 15th)
- Hours you worked and rate of pay
- Overtime hours you worked & rate of pay
- Gross Pay (before deductions)
- Net Pay (after deductions)
- Vacation Pay (some employers pay every pay period)
- Public holiday pay (if there was a public holiday)
- Employment Insurance deductions (You pay a percentage of your gross pay)*
- Canada Pension Plan deductions (You pay a percentage of your gross pay)*
- Tax deductions (rate depends on how much money you make)

*percentage rates may change yearly.

Tips and Gratuities

Tips are voluntary payments that a customer gives to an employee (in cash or by debit or credit card). Tips can also be a service charge required by the employer for large parties or banquet hall services. Tips are not wages. You still have to get at least minimum wage for each hour of your work.

Your boss can collect some of your tips to hand out to your coworkers; this is a tip pool. Your boss cannot use pooled tips to cover things like wages, operating costs, breakage, spilled food or beverages or other losses (e.g., dine and dash). In most cases, your employer cannot take some of your tips for themselves. Some employers may ask you to give a percentage of your total sales to the tip pool. This percentage cannot be more than you actually earned in tips.

PROTECT YOURSELF!

- Track and record the actual tips you receive and how much you pay into tip pools. It is illegal for your boss to keep tips for the company or require you to pay tips based on a percentage of total sales if that's more than you make in tips.
- Talk to your co-workers about how much they are paying into and receiving from the tip pool. You can file a claim at the Ministry of Labour if you believe the boss is illegally taking your tips.

Employers won a special rule that allows them to charge you a fee to pay for the credit card processing cost on the tip portion of the bill. This could be 1.5% of the tip, but only on service fees actually paid by the employer. That means the boss cannot charge you this fee if the tip is paid by cash or debit card.

Unfortunately employers have a lot of power to decide who puts tips in the pool, who gets tips from the pool and when those tips are paid out. It's hard for workers to know whether the employer is skimming money off the top or taking too much for credit card fees.

Training and Pay

For training, you can be paid less than your normal rate of pay, but you must be paid at least minimum wage. The boss should tell you about wage rates when you are discussing the training and the job.

PROTECT YOURSELF!

Beware of companies, like security guard companies, that offer you a job but ask you to first attend a training course that you must pay for. Often they guarantee a job later, but many workers find that there is no job or the job pays less than promised.

HOURS OF WORK

Daily Hours

You do not have to work more than:

- 8 hours a day, OR
- The number of hours in your regular work day (if it is more than 8 but no more than 13)

For example: If you have always worked a 12-hour shift, then 12 hours would be your regular work day. If you agreed to work these hours when you got the job, then this is your regular workday.

Extra Hours

If your boss wants you to work more than your regular workday, they must ask you to sign a written agreement. You have the right to refuse to sign this agreement. You can cancel this agreement by giving your boss 2 weeks notice in writing. Sometimes, in emergencies only, you could be required to work more hours than normal without signing an agreement.

Meal break

You are entitled to one half-hour (30 minute) unpaid break for each 5-hour period worked. The employer is not required by law to provide additional paid breaks, but many employers chose to do so.

Weekly Hours

You do not have to work more than 48 hours in a week. If your boss wants you to work more than 48 hours in a week they must ask you to sign a written agreement. It is your legal right to refuse. You can cancel an agreement by giving your boss 2 weeks notice in writing.

3-Hour Minimum

If you are called into work and get sent home early, you must be paid for at least 3 hours at your regular wage rate. This is only if you were scheduled to work 3 or more hours that day.

Starting on January 1, 2019, employers will be exempt from this rule if they are unable to provide work due to “fire, lightning, power failure, storms or similar causes beyond the employer’s control”.

Overtime

After working 44 hours in 1 week, you should get paid 1.5 times your regular pay. For example: If you get paid \$20 an hour normally, you should get paid \$30 for every hour worked after 44 hours.

Time Off Instead Of Overtime Pay

You can agree in writing to take paid time off instead of overtime pay. You should get 1.5 hours paid time off for each hour of overtime you worked. You should take this time off within 3 months of accumulating the overtime.

Overtime Averaging

Overtime is usually calculated on a weekly basis. But your boss can ask you to “average” your overtime over more weeks. It is your legal right to refuse to do this.

Averaging is calculated this way:

- In one week overtime is paid after 44 hours
- In two weeks overtime is paid after 88 hours
- In three weeks overtime is paid after 132 hours
- In four weeks overtime is paid after 176 hours

For example:

Normal overtime calculation:

Week 1: you work 50 hours = 6 hours overtime

Week 2: you work 38 hours = 0 hours overtime

Total overtime you are owed = 6 hours

With overtime averaging:

Week 1: you work 50 hours

Week 2: you work 38 hours

Total worked over two weeks = 88 hours

Total overtime you are owed = 0 hours

PROTECT YOURSELF!

- Overtime averaging is not good for workers. DO NOT sign if you don't want to. You can only cancel an overtime averaging agreement with your employer's permission.

PROTECT YOURSELF! MIGRANT WORKERS AND HOURS OF WORK

- Care workers and other migrant workers often face pressure to work long hours. Care workers may be living in the home of their employer which makes it difficult to say no when asked to take on tasks well beyond the work day. Document every hour you work in case you want to make a claim for unpaid hours of work and overtime pay later.
- When your work is tied to your immigration status, it makes you more vulnerable to abuse. The federal government rules for migrant workers may change. If you are a care worker, contact the Caregivers Action Centre for help: call 647-782-6633 or visit www.caregiversactioncentre.org. If you are a migrant worker, contact the Migrant Workers Alliance for Change at 1-855-567-4722 ext. 700 or visit www.migrantworkersalliance.org.

PROTECT YOURSELF!

- Keep your own records of wages paid, hours and dates you worked and keep them at home, on your cell phone, or somewhere else your boss cannot find it. This will help you prove that your boss did not pay you properly.
- Even if you don't have a Social Insurance Number or a valid Work Permit the employment standards law still protects you. Keep your own record of wages paid, hours and dates worked. If your boss breaks the law, call us to get help. All calls are confidential.
- Write down all phone numbers, addresses and license plates belonging to your boss. This will make it easier to find your boss and get any wages they owe you even after you have left the job. Workers have two years to file a claim at the Ministry of Labour for unpaid wages. Call us for advice.

PAID TIME OFF

Public Holidays and Public Holiday Pay

Public holidays in Ontario are:

New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving, Christmas Day, Boxing Day.

Most workers are entitled to take these days off work and be paid public holiday pay. Or, workers can agree in writing to work on a holiday and be paid:

- Public holiday pay plus premium pay (1.5 times your regular pay) for all hours worked on the public holiday; OR
- Regular wages for all hours worked on the public holiday, plus receive another day off (called a "substitute holiday") with public holiday pay.

Your employer must tell you in writing which day you will get as a substitute holiday.

To Qualify for Public Holiday Pay

You get public holidays as soon as you start working. Some employers may tell you that you have to work 3 months before you get public holidays and public holiday pay. That is wrong.

You must work your regularly scheduled shift before and after the holiday. This does not mean the day before and the day after. If you have a good reason to not work your regular shift before or after the holiday (for example, if you are sick) you should still get your public holiday and pay.

Public Holiday Pay

Public holiday pay is determined by adding up all the regular wages you earned in the four weeks prior to the week that the public holiday falls. Then you divide this total amount of wages by 20. For employees with full-time, regular hours, this usually works out to be a regular day's pay. For those employees who do not work full time or regular schedules, public holiday pay will be pro-rated.

The Ministry of Labour offers a Public Holiday Pay Calculator www.ontario.ca/page/public-holiday-pay-calculator for your convenience. There was a different rule for public holiday pay between January 1 and June 30, 2018. See the Ministry of Labour website www.ontario.ca/document/your-guide-employment-standards-act-0/public-holidays#section-3, if this applies to you.

Vacation Time and Vacation Pay

Vacation time

After 1 year of working with the same employer, you are entitled to take 2 weeks of paid vacation. After 5 or more years working with the same employer, you are entitled to take 3 weeks of paid vacation.

Vacation Pay

You are entitled to vacation pay.

If you have worked for the same employer for less than 5 years, you are entitled to 4% vacation pay for every dollar you earn (your total earnings for the year). This must be paid when you take your vacation.

If you have worked for the same employer for 5 years or more, you are entitled to 6% vacation pay for every dollar you earn.

Your boss can ask you to agree, in writing, to receive your vacation pay on each pay cheque. In this case, your vacation would not be paid out in a lump sum when you take vacation time off. If you leave a job before taking your full vacation or it's a short assignment, make sure you get your vacation pay!

LEAVES

You are allowed to take time off work using the following **unpaid** job-protected leaves:

Sick Leave

3 days for your own personal illness, injury or medical emergency.

Bereavement Leave

2 days for the death of a family member.

Family Responsibility Leave

3 days for the illness, injury, medical emergency or urgent matter* of family members. These family members include:

- Spouse (includes both married and unmarried couples, of the same or opposite genders)
- Parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- Spouse of the employee's child
- Brother or sister of the employee
- Relative of the employee who is dependent on the employee for care or assistance

* An urgent matter is an event that is unplanned or out of the employee's control, and can cause serious negative consequences, including emotional harm, if not responded to. Examples of an urgent matter include:

- Your child's babysitter cancels due to sickness
- You are called in to an appointment at your child's school
- Your elderly parent has an emergency

Generally you should inform your boss in advance, if that is possible, or as soon as you know you must take the leave. Notice does not have to be given in writing. It can be given by phone.

Only in the case of Family Responsibility leave, the employer is not allowed to ask for a note from a medical professional regarding the illness, injury or medical emergency of a family member.

In all other situations, your employer can ask you for evidence that is "reasonable in the circumstances" in order to take any of these leave days. You must have worked 2 consecutive weeks for the same employer before you can take a leave day.

★ WORKERS WIN!

Until 2018, almost 1 in 3 workers had no sick leave protection. Workplaces with less than 50 employees did not have to provide any unpaid leave. This meant that 1.7 million workers could not even take an unpaid day off without fear of losing their jobs. By bringing together low-wage workers and healthcare workers, the Fight for \$15 & Fairness campaign won job-protected leave days for all workers. We will keep fighting until we win **10** paid sick days for all so that workers can take care of their health and their families.

Domestic or Sexual Violence Leave

Domestic or sexual violence leave provides workers with job-protected leave when they or their children are facing domestic or sexual violence. You qualify for this leave after 13 weeks of consecutive employment with your employer.

Workers get 10 individual days of leave and up to 15 weeks of leave if the employee or their child experiences domestic or sexual violence or the threat of domestic or sexual violence.

The first 5 days of leave, each calendar year, will be paid. The rest will be unpaid.

Employers are allowed to require you to provide evidence “reasonable in the circumstances” before letting you take leave.

Workers who take domestic and sexual violence leave are entitled to the same rights as employees who take pregnancy or parental leave. That means your boss cannot threaten, fire or penalize you in any way taking or planning to take leave.

Rights during leave

Workers who take these leaves have the same rights as workers who take pregnancy or parental leave. That means your boss cannot threaten, fire or penalize you for taking or planning to take sick, bereavement, family responsibility or domestic violence leave. Special rules apply to some occupations.

OTHER LEAVES

The following leaves are unpaid under provincial employment standards laws. But you may qualify for income benefits through Employment Insurance (EI) from the federal government (Service Canada).

El Sick Leave

Through EI, sick benefits may be paid up to 15 weeks to a person who is unable to work because of sickness or injury. To receive sick benefits you are required to have worked for 600 insured hours in the last 52 weeks.

Maternity & Parental Leave

Under the Employment Standards Act you may qualify for the right to take unpaid time off work if you are pregnant or are a new parent.

You may also qualify for maternal and/or parental benefits under the federal Employment Insurance Act. The rules to qualify for provincial unpaid leave and federal paid benefits are different. You should check both to see what you are entitled to receive.

In general, maternity benefits are EI benefits payable to the birth mother or surrogate mother for a maximum of 15 weeks. To receive maternity benefits you are required to have worked for 600 hours in the last 52 weeks and sign a statement declaring the expected date of birth of your child. Your job is protected under the Employment Standards Act when you take this leave.

Parental leave provides both parents with EI benefits and job-protected leave. Please check the Employment Insurance website to view the different types of leave and benefits available to parents.

Leaves for Caregiving of Family Members

The Employment Standards Act provides job-protected leave for workers providing care to family members in a number of different situations. You may also qualify for paid benefits under the federal Employment Insurance Act. The rules to qualify for provincial unpaid leave and federal paid benefits are different. You should check both to see what you are entitled to receive.

Here is some general information about some of the leaves available:

Family caregiver leave is unpaid, job-protected leave that you can take to care for a family member with a serious medical condition. You can take up to 8 weeks of this leave per calendar year.

Family medical leave is unpaid, job-protected leave that you can take to care for a family member with a significant risk of death occurring within a period of 26 weeks. You can take up to 28 weeks of this leave in a 52-week period.

You may also qualify for “compassionate care benefits” under the federal Employment Insurance Act. Up to 26 weeks of employment insurance benefits may be paid to EI eligible workers. This EI benefit

also requires evidence that care is needed for a family member who has a serious medical condition with a significant risk of death within a 26-week period.

Critical illness leave is unpaid job-protected leave of up to 37 weeks to provide care or support for a critically ill child, or 17 weeks for a critically ill adult within the family. Workers may be eligible for EI special benefits for caregivers of critically ill minor children for up to 35 weeks or critically ill adults for up to 15 weeks.

To find out if you are eligible for EI benefits for any of these leaves, call the Employment Insurance Inquiry Line at 1-800-206-7218 or visit www.canada.ca/en/services/benefits/ei.html.

Infectious Disease Emergency Leave

Employees have the right to take unpaid, job protected infectious disease emergency leave, if they are not performing the duties of their position because of specified reasons related to a designated infectious disease. This leave is available to all employees who are covered by the Employment Standards Act. The only disease for which unpaid infectious disease emergency leave may be taken is COVID-19.

PROTECT YOURSELF!

- You should not be penalized or fired for taking any leave that you are entitled to. If this happens to you, write down all the details and call us to find out how to take action.
- When you come back from leave, you should get your old job back with the same responsibilities or a similar job with the same wages if your old job does not exist anymore.

IS YOUR TEMP AGENCY FOLLOWING THE LAW?

Temp agency workers have the same rights as other workers. The temp agency is your official employer, but the client company (the place where the agency sends you to work) has responsibilities for your work as well.

An Agency Must Give You Information About Your Assignment

Your agency must give you, in writing, their name and contact information. When they offer you an assignment, they must give you: the client company name, wage rate, hours of work, description of work, length of assignment (if known) and the pay period and pay day. They should do this as soon as possible. They must also give you information about your rights from the Ministry of Labour.

WORKERS WIN!

Over the years, many temp agency workers have gotten involved with WAC to fight for better protection from abuse. This is how we got the law changed to make client companies and temp agencies both responsible for unpaid wages. Now, as of January 1, 2018, temp agency workers have new protections in cases where they are terminated early from an assignment (see below for more details).

No Fees

A temp agency cannot charge you money for signing up with them, assigning you work or helping with a resume or job interview.

If you have worked 6 months or more on an assignment, the temp agency is not allowed to charge a fee to the client company for hiring you directly. Your agency cannot stop a company from hiring you or giving you an employment reference letter.

Termination of Assignment

If you were offered an assignment of 3 months or more but were terminated early, you may get 1 week of termination pay or notice.

There are some limitations on eligibility.

Termination of Employment

If your agency fires you or lays you off, you are entitled to termination pay or notice. You may qualify for termination pay or notice if you have been available to work for an agency but have not had an assignment in 13 weeks or more. The length of time you have worked for the agency will determine how many weeks of notice or pay in lieu of notice you will receive.

No Penalty for Asking About Your Rights

Temp agencies should not penalize you for asking about your rights. The client company (where you work) can also be held responsible if you are penalized for trying to enforce your rights.

Unpaid Wages?

If your agency fails to pay your wages, overtime pay and public holiday pay, the client company is responsible for the money you are owed. It can be hard to get your unpaid wages from an agency that operates through a telephone or online service. That is why it is important that client companies are also responsible for wages that are not paid.

TERMINATION OF WORK

Termination Notice or Pay

Your boss can fire you with no notice if you have worked less than 3 months. When you leave, they should always give you:

- A record of employment (ROE)
- Unpaid vacation pay (4% of gross earnings)
- Any unpaid wages, overtime pay, etc.

After 3 months, your boss must give you written notice of the date you will be fired or laid off. If they do not give you notice, they must give you termination pay instead.

If you are fired because of “neglect of duty, disobedience or willful misconduct” you may not get any notice or pay. Minor mistakes should not be enough to deny you your right to termination pay or notice. Contact us if you think you have been unfairly terminated.

How Much Notice or Pay?

How much notice you should receive depends on how long you worked for your employer. The minimum notice or termination pay you should receive is as follows:

3 months to 1 year worked = 1 week

1 to 3 years worked = 2 weeks

3 years to 4 years worked = 3 weeks

And so on, up to 8 weeks for 8 years worked.

Severance Pay

Severance pay is not the same as termination pay. To get severance pay, you must have worked for at least 5 years for your employer. Also, the employer must have an annual payroll of more than \$2.5 million or must have terminated 50 or more employees in the last 6 months. Severance pay is 1 week of pay for every year worked to a maximum of 26.

Wrongful Dismissal

The Employment Standards Act does not require employers to have “just cause” or good reasons for firing a worker. It only requires that employers give workers termination notice.

Unionized workers are protected from being fired without good cause. The only option for non-unionized workers who have been fired without good cause is to take their employer to court to sue for wrongful dismissal.

Constructive Dismissal

Sometimes bosses reduce our pay rate, hours of work or other conditions of work. They can do this as long as it is not a big change that significantly reduces our pay or work. If the reduction in pay and working conditions is substantial this may be considered “constructive dismissal”, meaning you are no longer able to work. Bosses sometimes do this to get us to quit so they won’t have to pay termination and severance. Other times, they try and pass on business costs to us by reducing our wages. This may happen when they are having financial problems. If you believe you are being “constructively dismissed” contact WAC. You may be able to file a claim for termination and severance pay or sue for breach of contract.

PROTECT YOURSELF!

- It is illegal for your boss to fire you for asking about your rights. This is called a reprisal. If this happens to you, write down all the details.
- Your boss may force you to quit by harassing you at work. Write down every detail of the harassment.
- If your boss has drastically changed your conditions of work, hours or benefits resulting in a significant decrease in how much you get paid, document all the changes. Call WAC for help.
- You should be able to return to your job after taking sick leave or other leaves. If your boss says you cannot come back to work, write down everything they say. Your boss should not fire you if you have an injury or serious medical condition; they must try to accommodate you first. If they do fire you, you may have a human rights complaint.
- You can still fight for Employment Insurance benefits if you quit or are fired. Contact WAC for help.

EMPLOYMENT INSURANCE (EI) AND SPECIAL BENEFITS

What is Employment Insurance?

EI is your right. This insurance plan provides you with benefits when you lose your job or are on leave from work when you are sick, have a child or are providing care for a family member.

Both you and your boss contribute to this plan. It is your boss's responsibility to deduct EI contributions from your pay. This should be recorded on your pay slips. EI is paid out by the federal government through Service Canada.

Do I Qualify for Employment Insurance?

To collect EI, you usually need to have worked between 420 and 700 hours in the previous year. There is a 1 week unpaid waiting period for benefits. Check with us or Service Canada for the most recent qualifying hours you need in your region.

How Do I Apply?

Go to the nearest Service Canada office to apply for EI or apply online. Make sure to apply within 4 weeks of your last day of work. You may lose some of your benefits if you apply late. You can still apply even if you have not received your Record of Employment (ROE) from your employer. You can use all of your ROEs from every job you had during the past 52 weeks.

Working For Cash With No Deductions?

Calculate the number of hours you worked in the last year. Write down the dates you worked. Apply as soon as you stop working. You may still qualify for EI.

PROTECT YOURSELF!

- If your boss doesn't deduct Employment Insurance from your pay, you may still be entitled to your benefits. If you have written down the dates and hours that you worked, you can still apply for EI. You will not have to pay any EI deductions, only your boss pays.
- If you don't have a SIN or valid work permit you may not be entitled EI benefits.
- If you were fired or quit, it may be more difficult to collect EI. But EI will consider the reason that you are no longer working. Write an explanation of what happened in your application or in a separate letter submitted later.

Self-Employed Workers or Independent Contractors and Employment Insurance

If you are truly self-employed or an independent contractor, you have to pay your own contributions to CPP or WSIB. Self-employed workers may access Employment Insurance (EI) special benefits.

There are four types of EI special benefits:

- Maternity benefits
- Parental benefits
- Sickness benefits
- Compassionate care benefits

To qualify, a self-employed person must make an agreement to begin paying into EI with the government through Service Canada. You must also be a Canadian citizen or a permanent resident of Canada. Call Service Canada at 1-800-206-7218 or visit www.canada.ca/en/services/benefits/ei.html for more details.



TAKE ACTION! FIX EMPLOYMENT INSURANCE!

We need major improvements to the EI program. EI is hard to access and when we receive it, we struggle to survive on low benefit rates.

- Workers should need only 360 hours to qualify.
- We should receive more weeks of EI to help us survive.
- We need an increase in the amount of benefits!

Call us for more information and to get involved.

RECORD OF EMPLOYMENT (ROE)

Your boss must give you a Record of Employment (ROE) every time you leave a job. This document is important because it allows you to apply for Employment Insurance (EI) more easily.

The ROE includes information from your last place of work in order to calculate your benefits and the number of weeks you will receive them:

- Your name and the name of the company
- Total hours worked in the 52-week period before your last day of work
- Total gross wages earned in approximately the last 6 months of work (depends on how you are paid; weekly, bi-weekly, etc.).
- Reason for leaving

It is common for an employer to submit your ROE online directly to Service Canada. You can access it by opening a “My Service Canada” account: www.canada.ca/en/employment-social-development/services/my-account.html.

“Reason for Leaving” on ROE

Your boss must write down a reason for leaving on your ROE. Some reasons they can give are: fired, quit, illness or injury, shortage of work, temporary lay-off, pregnancy, parental, compassionate leave and “other”. If your ROE says that you were FIRED or QUIT, you may be told that you will not get EI benefits. But you may still be entitled to EI if you were fired without a reason or quit with good cause, so you should still apply.

No ROE?

If your employer refuses to give you an ROE, you should still apply for EI. If you do not have your ROE after 14 days from your last day you are paid, contact Service Canada to find out how to obtain it. They may ask you to bring proof of your employment, like a pay stub, cancelled cheque or T4. If possible, Service Canada will use the proof to calculate your claim.

Temp Agency Workers and ROEs

The temp agency has to give you an ROE documenting all your assignments. If you have not worked or received income for 7 days, you are considered on lay-off and could qualify for EI. Ask the temp agency for an ROE. This does not mean you are quitting - tell this to the temp agency.

HEALTH AND SAFETY

OCCUPATIONAL HEALTH AND SAFETY ACT

The main purpose of the Occupational Health and Safety Act (OHSA) is to protect workers from health and safety hazards on the job. It sets out duties for all workplace parties and rights for workers. Those rights are:

- The right to know about health and safety hazards
- The right to participate in keeping your workplace healthy and safe
- The right to refuse work that you feel is unsafe

The OHSA applies to almost every worker, supervisor, employer and workplace in Ontario, including workplace owners, constructors, and suppliers of equipment or materials to workplaces covered by the Act. The OHSA is enforced by the Ministry of Labour.

Ministry of Labour Health & Safety Contact Centre
Toll-free: 1-877-202-0008
TTY: 1-855-653-9260
Fax: 905-577-1316

In an emergency, always call 911 immediately.

WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

Although we have laws meant to protect us, many workers are still injured or killed at work every year due to unsafe conditions in their workplaces. If you are injured at work or made sick as a result of your work or work environment, and have to miss work because of this, you may be eligible to receive financial compensation from the WSIB. Not every company has WSIB coverage.

It does not matter if the workplace injury was your fault. If you were hurt at work, the WSIB can:

- Help you return to a job you can do safely;
- Pay healthcare you need to treat the injury;
- Pay you if you cannot work because of your injury.

If you are injured at work or sick due to work, you could receive a percentage of your regular wages. The amount of compensation and length of payments will depend on your specific case. You should also find out if you have a private insurance plan at your workplace that may cover prescriptions or your wages while you are off.

There are many rules applying to the WSIB program. Contact the WSIB directly for details.

Filing a WSIB claim

You should make sure that you report your work-related injury or illness as soon as possible following your injury or illness. Workers should fill out a Form 6, which describes the injury or illness in detail, and send it by mail or fax (keep the fax confirmation) or drop it off in person at your local WSIB office. Give a copy to your employer and keep a copy for your records. A claim must be filed within 6 months of the incident. Visit www.wsib.on.ca for information.

You should fill out a Form 6 as soon as possible and report to a doctor or hospital where they will fill out a Form 8 and send it to WSIB. This will verify your injury or illness even if the employer does not report the incident. An employer is supposed to fill out a Form 7.

Sick Benefits and Employment Insurance

If you have filed a claim at WSIB and are waiting for a decision, you may apply for up to 15 weeks of sick benefits through the Employment Insurance program to cover you until you begin to receive compensation from WSIB. You will have to pay back these EI benefits once you receive payments from WSIB.

Undocumented? No Work Permit?

WSIB can pay benefits even if you don't have a work permit or are non-status. WSIB does not normally ask about immigration status or report status to Citizenship and Immigration Canada.

Volunteers, Unpaid Interns, Students, and Trainees

Volunteers, unpaid interns, students and trainees are considered workers under the Occupational Health and Safety Act. This means you are protected under the law.

PROTECT YOURSELF!

- If you are injured at work, fill out the proper forms as soon as you are able. Always report an injury immediately to your supervisor or employer.
- If you need advice or help applying for WSIB, contact WSIB directly or one of the following organizations for support:

Workplace Safety and Insurance Board (WSIB): 1-800-387-0750

Industrial Accident Victims' Group of Ontario (IAVGO): IAVGO also helps injured migrant workers and workers without status: 1-877-230-6311

Toronto Workers Health and Safety Legal Clinic: 416-971-8832

Injured Workers Consultants: 416-461-2411

Office of the Worker Advisor: The OWA provides free and confidential services in workplace insurance matters: 1-800-435-8980

Ministry of Labour Health and Safety Branch: 1-877-202-0008

TAKE ACTION!

Cuts to the WSIB compensation system and changes in what is required to qualify have made it increasingly difficult for injured workers to receive compensation and forces them to live in poverty. Injured workers are organizing for justice and demanding that the WSIB system be reformed. For more information and to get involved, visit: injuredworkersonline.org.

WORKPLACE HARASSMENT AND VIOLENCE

Many workers face harassment (sometimes called bullying) and even violence in their workplaces. This type of abuse can make you sick, depressed and force you to quit your job. Understanding your rights will help you better protect yourself.

What is the difference between workplace violence and workplace harassment?

Workplace Violence

This could mean a person using physical force against you while at work that causes or could cause physical harm. Even if they only attempt to use physical force against you, this is workplace violence. A statement or any behavior that a worker could reasonably believe to be a threat of physical harm in the workplace may also be workplace violence.

Workplace Harassment

This is when a person at work behaves towards you in a way that they should “reasonably know to be unwelcome”. This could mean a person teasing you, yelling at you, bullying you, sending you offensive jokes or materials or intimidating you. This kind of harassment is not covered under the Human Rights Code unless it is happening because of one of the grounds of discrimination listed in the Human Rights section of this guide.

Gender-based Violence

When an employer is aware, or should reasonably be aware, that gender-based violence could occur in the workplace, they are required to respond and take every precaution to protect a worker from physical harm. You should be protected even if the abuser is not a co-worker.

Workplace Violence and Harassment: Protections Under the Law

The Occupational Health and Safety Act includes mechanisms to make workplaces safer and employers responsible for protecting their employees from harassment and violence.

Under the OHSA, employers are required to develop:

- Workplace harassment and violence policies and programs to implement them
- Information for workers on the content of these policies and programs
- Procedures for workers to report incidents or complaints of workplace harassment or violence
- Procedures to investigate any reports, incidents or complaints of workplace harassment or violence

Workplace violence programs:

- Must include procedures to deal with emergency situations where violence has occurred or is likely to occur. For example, how to summon immediate help in an emergency situation.
- Employers must be proactive about assessing the risks of workplace violence. They must then outline how they will control possible incidences of violence in your workplace. Where an employer knows about an individual with a history of violent behavior that you may encounter as part of your work, they must tell you in order to protect you from physical harm.
- Your employer must ensure that an investigation into the harassment is conducted by a neutral person, which may mean someone who does not work for the employer.

PROTECT YOURSELF!

- You have the right to refuse work if you believe you are in danger from workplace violence. Your boss should not penalize you for refusing. Certain workers have only a limited right to refuse (e.g.: police officers, firefighters, etc.).
- Speak to your boss or supervisor. They should take action to ensure you are safe at work. If your employer does not take action to stop violence or harassment, they can be held responsible for allowing the problem to continue.
- Write down everything about the harassment or violent incident. This could help you later if you decide to make a complaint. If you feel forced to quit, written details may help you receive Employment Insurance and/or termination and severance pay.
- Call the Workers Action Centre to discuss a strategy to approach your boss and ensure your safety.
- **Ministry of Labour, Occupational Health and Safety branch:** For information on health and safety at work, call 1-877-202-0008 or www.labour.gov.on.ca
- **Assaulted Women's Helpline:** A phone line that supports women in violent situations. Available in multiple languages: 1-866-863-0511

HUMAN RIGHTS

You have the right to a workplace free from discrimination and harassment under the Human Rights Code. Discrimination is the unfair treatment of a person or group. Harassment is when someone is doing or saying things to make you feel uncomfortable or putting you at risk in some way. This is behaviour they should reasonably know to be unwelcome.

The areas covered by the Human Rights Code are:

- Employment
- Housing
- Contracts
- Services, goods and facilities
- Unions or occupational/professional associations

The Human Rights Code prohibits workplace discrimination and harassment based on:

- Race
- Colour
- Ancestry
- Place of origin
- Citizenship
- Ethnic origin
- Creed (religion)
- Receipt of social assistance (housing only)
- Disability
- Age
- Marital status
- Family status
- Sex or Gender (includes being pregnant, sexual harassment)
- Sexual orientation
- Gender identity
- Gender expression
- Record of offenses (for employment only, must have been pardoned)

A worker who believes they have faced discrimination can file a complaint with the Human Rights Tribunal.

Temp Agency Workers & Human Rights


It is legal for a temporary agency to decide who they will send to which assignments or jobs, but it cannot be based on the kinds of discrimination listed in the Human Rights Code.



PROTECT YOURSELF!

- Speak to your boss or supervisor. If your employer does not take action to stop discrimination, they can be held responsible for allowing the problem to continue.
- Write down everything about the discrimination. This could help you later if you decide to make a complaint. If you feel forced to quit, written details may help you receive Employment Insurance and/or termination and severance pay.
- **The Human Rights Legal Support Centre** provides human rights legal services if you feel you have experienced discrimination. Call 1-866-625-5179 or visit www.hrlsc.on.ca for more information.

Join our movement of working people to improve working conditions and wages



Our Mission

To improve the lives and working conditions of people who face discrimination, lack of protection, low-wages and unstable employment

To challenge unfair labour laws and work for change

To challenge employers who violate the law

To build and develop leadership of our members, workers directly affected by low wages and unstable work

www.WorkersActionCentre.org

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