

Your Employment Standards Rights

Every year, thousands of workers are forced to file claims for unpaid wages or other employment violations when their boss breaks the law. Most workers in Ontario are covered by the Employment Standards Act (ESA), the law that sets out the minimum standards for your rights at work. Workers covered by the ESA can file a claim with the Ontario Ministry of Labor for unpaid wages and other violations at work. It's important that you know how and when to apply and where to go for support.

The Ontario ESA defines an employee as a person who “performs work for an employer” or “supplies services to an employer for wages.”

Employee rights under Ontario ESA include:

- minimum wage
- overtime pay
- public holidays
- vacation with pay
- notice of termination or termination pay

The ESA applies to all employees in Ontario. It applies if you are on probation, do not have a work permit, are on a visitor visa, work part-time or through a temporary help agency or receive your wages in cash. You can not sign away your rights even with a written contract. It is illegal for your employer to punish you for asking about your employment rights at work.

Your Rights at Work

Minimum wage: General Minimum Wage: \$16.55 per hour (as of October 1, 2023). Student Minimum Wage (under 18 years old, working less than 28 hours per week): \$15.60 You must be paid at least minimum wage, even if you are paid in cash or do piece-work. There are exceptions but the general minimum wage applies to most workers.

Hours of work: Maximum hours of work: 8 hours per day and 48 hours per week. If your employer wants you to work longer, they must get your agreement in writing. You must also be allowed a 30 minute meal break for every 5 hours of work.

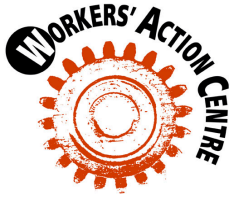
Overtime Pay: For most employees, after working 44 hours in one week, you should get 1.5 times your regular pay for every hour you work.

Vacation Pay: You should get 4% of all the wages you earn from the moment you start working for an employer. This is called vacation pay. Even if you work for one day or one week you are entitled to 4% for each hour worked. After one year of working for the same employer, you should get 2 weeks of vacation time. And after 5 years you are entitled to 6% vacation pay and 3 weeks of vacation time. Your employer may pay you vacation pay every pay cheque or they may pay it to you when you take your vacation.

Public Holiday Pay: There are 9 public holidays in Ontario: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving, Christmas Day, Boxing Day. Most employees receive the day off with pay. You must work your regularly scheduled shift before and after the holiday to qualify. If you work on the public holiday you should be paid 1.5 times your regular pay for the day and your public holiday pay

Are you self-employed?

If you are truly an independent contractor or self-employed, you cannot file a claim at the Ministry of Labour. Check out the Workers' Action Centre [Independent Contractor fact sheet](#) for details.



Ministry of Labour Claim

If you believe your *Employment Standards Act* rights are being violated, you can file a claim with the Ministry of Labour.

- **You do not have to be in Ontario to file a claim**, so long as the work you did was in Ontario or for an Ontario-based employer.
- **Your employer cannot punish you for filing an ESA Claim:** Your employer will be given details about your ESA complaint. They will be given your name but not your phone number or address. It is illegal for your employer to threaten, discipline, or punish you for trying to enforce your ESA rights.
- **Translation services are available:** If English or French is not your first language, you should let the Ministry of Labour know that you want language interpretation services when dealing with the Ministry of Labour.
- Though it is called the Ministry of Labour, Immigration, Training and Skills Development, **the Ministry does not investigate your immigration status** and generally should not ask you questions about your status if you have filed an ESA complaint.
- You cannot file a claim if you were a member of a union at the workplace where the violation took place. You also cannot file a claim if you filed in court for the same issue.

Ministry of Labour Claim	
Fees to file	Free
Penalty for losing	No penalty
Maximum monetary award	No limit
How long will it take	6 months - 9 months approximately

Time limit to file a claim	2 years
Collection when case won	The Ministry of Labour and the Ministry of Finance will take steps to try to make sure your employer pays the money you are owed if you win.

How to file an Employment Standards Act Claim

Sending your claim into the Ministry of Labour is called “filing” your claim. To file a claim, you must fill out the ESA claim form. You can do this by:

Using the online [e-form](#) OR downloading the [pdf form](#) and sending it to the Ministry of Labour by Fax to 1-888-252-4684 or by Mail to:

Provincial Claims Centre
 Ministry of Labour, Immigration, Training and Skills Development
 70 Foster Drive, Suite 410
 Roberta Bondar Place
 Sault Ste. Marie, Ontario
 P6A 6V4

Tips for filing your claim

- An Employment Standards Officer (ESO) will call or email you. They will not text or whatsapp message you. To avoid missing any updates about your claim, it is best to provide **a Canadian phone number you can receive calls and voicemail on, as well as an email address.**
- If you're unable to communicate in English or French, you should mention on your claim form what language you speak and request that the ESO use interpretation services when getting in touch with you.
- You can authorize a friend or family member to represent you on the claim. This may be a good idea if you have someone who can help you with translation.
- If you have someone in Canada who you trust, you can use their mailing address to receive your documents. This might help you get information from the Ministry faster than if they are required to send mail internationally. But make sure your

friend knows to tell you right away if any mail comes from the Ministry of Labour for you.

What to submit with your ESA claim

The claim form asks for a lot of information. It will take time to complete. But in order for your claim to be successful, you should provide the Ministry of Labour with as much information as possible. You will need to say:

- What rules did your employer break? For example, did they pay minimum wage?
- When did they break the rules? Which pay periods?
- How much money do they owe you?
- Your employer's name, contact information and address.

If you do not know your employer's full name or address, it may be hard for the Ministry to find your employer to properly conduct their investigation. It also makes it less likely that the employer will pay you if you win your claim. You should provide as much information as possible about your employer in the claim even if they are out of business. This information can include:

- The names of the companies you were working for;
- The full name of the owners and directors;
- The full name of the supervisors and subcontractors;
- Any phone numbers and email addresses you have for the company and owners;
- Any addresses associated with the company or its owners, including their home;
- Any addresses of the company office and the locations that you worked.

Evidence will help you explain your side of the story

Before you start filling out the claim form, collect all the documents you might need to refer to. It is a good idea to send copies of these documents to the Ministry of Labour with your claim. Evidence could include:

- An employment contract;
- Record of hours worked (for example, on a calendar, timesheet, on a note app in your phone, or in text messages to your co-workers and employer);
- Pay statements / invoices / E-transfer / cheques;
- Written notes you made about incidents that happened at work;

- Recordings or written notes on important conversations you had with your employer (for example, verbal conversations, text messages, or emails where you discussed how much you would get paid or when you would work);
- Screenshots of text messages, WhatsApp messages or emails.

Calculating your unpaid wages

The ESA complaint form asks you to identify all the Employment Standards that you believe were violated and to calculate how much money you are owed. The Ministry of Labour has online tools that you can use to figure out what your employer owes you.

These online [Employment Standards tools](#) include:

- Hours of work and overtime tool
- Pay calculator tool
- Public holiday pay calculator
- Termination tool
- Severance tool

There are many exceptions and rules when filing a claim. Call the Ministry of Labour at 1-800-531-5551 or visit the [Ministry of Labour website](#) to find out specifically what rules apply to your situation.



What to expect from the *ESA* complaint process

Claim Number: You will receive a claim number once you have filed an *Employment Standards Act* complaint. You should use this number when you contact the Ministry of Labour about your claim.

You will immediately receive a confirmation number if you submitted your claim with the online *ESA* complaint form. But if you submitted the claim by fax or mail, you will only receive a confirmation number later when the claim has been processed by the Ministry of Labour.

Once the Ministry decides that your claim is valid, they will verify it by adding a dash and a number onto your submission claim number.

Step 1: Your claim will be assigned to an Employment Standards Officer (ESO)

- The ESO will check your claim to see if any information is missing. They may contact you by phone or email to ask you for more information. You will have 15 days to provide the information.
- The ESO will tell your employer about the complaint. The ESO will ask the employer if they will fix the problem (pay your unpaid wages for example).
- If the employer does want to fix the problem then you and your employer can talk about the problem. You can agree to settle on an amount of money that your employer will pay you. If your employer offers you less money than you think you are owed, you do not have to agree to it.
- If you do not accept your employer's offer or if your employer does not want to fix the problem then the ESO will start an investigation.

Step 2: The ESO will investigate of your claim

If the claim is not settled, a different ESO will conduct an investigation. The ESO may tell you that they are “escalating” the claim when they start the investigation. Escalation does not mean that anything bad will happen.

- The ESO will look at all the evidence you provided to see if your employer broke the law.
- The ESO will ask your employer if they broke the law. Your employer may provide the ESO with evidence to prove their position.
- The ESO may talk to you by phone or by email to get more information about your case. They may also ask you or the Employer to provide further documents or records. You are supposed to be given 15 days notice of either request.
- If you do not provide the information requested by the ESO, they will decide your case based on the evidence you already have provided.

Tips for the Employment Standards investigation

- Pay close attention to what the ESO is asking you. Respond specifically to their questions in as much detail as possible.
- Do not try to guess what the ESO wants to hear. Do not withhold information that you think will not work in your favour. Just be honest about what your experience was at work.
- If you are asked about something and cannot remember the answer, it is okay to say that you do not remember. It is the employer’s responsibility to keep records of hours and pay. If your employer did not keep these records, this is another violation of the *Employment Standards Act* by your employer.

Step 3: The ESO will make a decision explaining if the *Employment Standards Act* has been broken and if any money is owed to you.

- **Orders to Pay:** If the ESO finds that the employer owes you unpaid wages (including overtime, vacation, public holiday, severance/termination pay), the ESO will order your employer to pay you that specific amount.
- **Non-Monetary Orders:** The ESO can also make other kinds of orders against your employer. For example, if your employer did not allow you to have lunch breaks, your employer could be ordered to do so.

Appealing the decision

If you disagree with the ESO decision, you can have your case looked at by other decision makers. This is called an appeal to the Ontario Labour Relations Board (OLRB). You must make your application for this **within 30 days** of the decision. You will have to make arguments about your case again.

The Employer also has a right to appeal the ESO decision within 30 days. If your employer files an appeal, you automatically have a right to participate in the OLRB proceedings. You will be given a copy of their arguments and any materials they provided with it.

If you are making an appeal or responding to an appeal, there are rules that need to be followed. You should consult the OLRB's [Information Bulletin #24](#) for more information on how to make an application for review and what to expect from the OLRB process.

Enforcing the order to pay

If the ESO issues an order to pay wages and your employer does not appeal the decision, the Ministry of Labour and/or Ministry of Finance will try to make your employer pay you.

Sometimes employers do not pay workers even after they have been ordered to do so. If that happens to you, contact the ESO. You may have information about the employer that could help the Ministry collect your money.