

## Ministry of Labour, Immigration, Training and Skills Development

# Your Rights as a Foreign National Under the Employment Standards Act, 2000

**Disclaimer:** This resource has been prepared to help employees and employers understand some of the minimum rights and obligations established under the *Employment Standards Act, 2000* (ESA) and regulations. It is not legal advice. It is not intended to replace the ESA or regulations and reference should always be made to the official version of the legislation. The ESA provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation.

This information sheet provides a summary of your rights as a foreign national employed in Ontario under the [Employment Standards Act, 2000](#) (ESA). Foreign nationals employed in Ontario have the same rights as most other employees working in Ontario.

The ESA sets minimum standards for most workplaces in Ontario, such as minimum wage and limits on hours of work. Special rules and exemptions apply to certain employees. For more information and to learn if your job has special rules or exemptions, go to [Ontario.ca/ESAtools](https://Ontario.ca/ESAtools).

Your recruiter is required to provide you a copy of this information sheet after making contact with you. If you did not use a recruiter, your employer is required to provide you a copy of this information sheet before starting your job. If your first language is not English and this sheet is available in your language, your employer must provide this information sheet to you in your first language.

Your employer must also provide you with a copy of the Employment Standards Poster within 30 days of starting your job. If your first language is not English, your employer must provide the poster to you in your first language, if you ask for it and it is available.

As a foreign national employed in Ontario, you are also covered under the [Employment Protection for Foreign Nationals Act, 2009](#) (EPFNA). After making contact with you, your recruiter, or your employer if you did not use a recruiter, must also give you an information sheet about your rights under the EPFNA before starting your job. If your first language is not English, your employer or recruiter must provide this information sheet to you in your first language, if it is available. For more information, please visit [Ontario.ca/EPFNA](https://Ontario.ca/EPFNA).

## What are my employment standards rights at work?

### Minimum wage

Generally, you must be paid at least minimum wage. In some cases, room and board amounts paid by the employer can be considered wages.

For more information on minimum wage or how room and board affects minimum wage, please visit: [Ontario.ca/minimumwage](https://Ontario.ca/minimumwage).

### Regular pay days and wage statements

Your employer must set out a regular pay day, for example, every two weeks on a Thursday, or the 1<sup>st</sup> and 15<sup>th</sup> of each month. Your employer must pay you all wages earned in a pay period no later than this pay day.

Your employer must also give you a wage statement (also called a pay stub). Your employer must give you your wage statement in writing or by email if you have access to a printer. Your pay stub must include the following information:

- Pay period
- Wage rate, if there is one
- Gross amount of wages
- Amount and purpose of each deduction
- Amounts paid for room and board (if any)
- Net amount of wages

## Limits on hours of work and eating periods

You cannot be required to work more than eight hours a day or the number of hours in your regular work day if your regular work day is longer than eight hours. You also cannot be required to work more than 48 hours in a week. You may work more hours per day or per week if you and your employer agree to this in writing.

Your employer must give you a 30-minute eating period once you have worked five hours. You and your employer can agree to two shorter eating periods that add up to 30 minutes if you take those two shorter periods before you have worked five hours.

You must receive at least 11 hours straight off from work each day. Generally, you must receive at least eight hours off between shifts. You must receive at least 24 straight hours off each work week, or 48 hours straight off every two work weeks. Learn more about hours of work at [Ontario.ca/hoursofwork](https://ontario.ca/hoursofwork).

## Overtime pay

Generally, your employer must pay you overtime pay if you work more than 44 hours in a week. Overtime pay is 1 ½ times your regular rate of pay. For example: Sherie earns \$17.00 per hour. She worked 48 hours in one week, which means she worked four overtime hours. Sherie's overtime rate is \$25.50 per hour ( $\$17.00 \times 1.5$ ). Sherie earned \$102.00 in overtime ( $\$25.50 \times 4$ ).

You can receive paid time off work instead of overtime pay if you and your employer agree to this in writing. Paid time off is provided at 1 ½ hours off for each overtime hour worked. The time off must be taken within three months of being earned.

Learn more about overtime at [Ontario.ca/overtime](https://ontario.ca/overtime).

## Vacation time and pay

Most employees have the right to vacation time and vacation pay. The amount of vacation time and vacation pay depends on how long you have worked for your employer. If you have worked for your employer for less than five years, you have the right to two weeks of vacation after every twelve-month vacation entitlement year and vacation pay of four percent of your total wages. If you have worked for your employer for five or more years, you have the right to three weeks of vacation time after every twelve-month vacation entitlement year and vacation pay of six percent of your total wages.

Generally, your employer must pay your vacation pay as a lump sum before you take your vacation. However, with your written agreement, your employer can pay your vacation pay on every pay cheque.

For example: Malala has worked for her employer for three years. She can take two weeks of vacation and earns four percent in vacation pay. She earns \$1500.00 every two weeks. Malala and her employer agreed that she will be paid vacation pay on each pay cheque. Malala is paid \$60.00 ( $\$1500 \times 4\%$ ) in vacation pay on each pay cheque.

Learn more about vacation time and vacation pay at [Ontario.ca/vacation](https://www.ontario.ca/vacation).

## Public holidays

Ontario has nine public holidays each year:

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

Generally, you have the right to take these days off work and be paid public holiday pay.

There is a formula for calculating public holiday pay:

- Add your regular wages earned and all vacation pay payable in the four weeks before the work week in which the public holiday occurs
- Divide that number by 20

For example: Josef earns \$600 per week. He receives 4% vacation pay on each pay cheque. In the four weeks before the work week in which the public holiday occurs, Josef's regular wages were \$2400 ( $\$600 \times 4$ ). In the four weeks before the public holiday, the amount of vacation pay payable to Josef was \$96 ( $\$2400 \times 4\%$ ). Josef is owed \$124.80 in public holiday pay ( $\$2496 \div 20$ ).

You can work on a public holiday if you and your employer agree to this in writing. Generally, if you work on a public holiday, you must be paid public holiday pay and premium pay for the hours you worked on the public holiday OR be paid your regular wages for the hours worked on the public holiday and take a different day off with public holiday pay. To learn more about public holidays at [Ontario.ca/publicolidays](https://Ontario.ca/publicolidays).

## Leaves of absence

Under the ESA, there are a number of unpaid, job-protected leaves of absence, including:

- Sick leave: You can take three unpaid sick leave days per year if you are ill, injured or have a medical emergency. You can only take sick leave after you have worked for your employer for at least two weeks in a row.
- Family responsibility leave: You can take three unpaid days per year to care for certain family members who are ill, injured, or have a medical emergency or urgent matter. These relatives include spouses, children, parents, grandparents or a relative who depend on you for care or assistance. You can only take family responsibility leave after you have worked for your employer for at least two weeks in a row.

- Pregnancy leave: Pregnant employees can take up to 17 weeks of unpaid leave starting anytime within 17 weeks before her due date. An employee can take pregnancy leave only if she started working for the employer at least 13 weeks before her due date.
- Parental leave: New parents can take up to 61 or 63 weeks of unpaid parental leave. An employee can only take parental leave if they started working for their employer at least 13 weeks before starting their leave.

There are other leaves under the ESA, including bereavement leave, family caregiver leave and family medical leave.

Learn more about leaves of absence at [Ontario.ca/ESAGuide](https://ontario.ca/ESAGuide).

## Termination notice and pay

In most cases, if your employer wants to terminate (end) your employment, your employer must give you written notice of termination or termination pay. You must work for your employer for at least three months to have a right to termination notice or termination pay.

The amount of notice or pay depends on how long you have worked for your employer:

- Less than one year of employment: one week
- One year to two years of employment: two weeks
- Three years of employment: three weeks
- Four years of employment: four weeks
- Five years of employment: five weeks
- Six years of employment: six weeks
- Seven years of employment: seven weeks
- Eight years or more of employment: eight weeks

For example: Li worked for his employer for 16 months. He earned \$800.00 per week. His employer must give him two weeks of termination notice or termination pay. His employer chooses to give him termination pay. His employer must pay him \$1600.00 (\$800 x 2).

Learn more at [Ontario.ca/terminationofemployment](https://Ontario.ca/terminationofemployment) or go to [Ontario.ca/ESAtools](https://Ontario.ca/ESAtools) to calculate how much termination notice or termination pay you may be owed.

## You cannot agree to give up your rights

You cannot agree or sign a contract to give up any of your rights under the ESA. These agreements or contracts are invalid. For example, if you sign a contract saying your employer will pay you less than minimum wage, this agreement would be invalid.

## You cannot be punished for asking about or exercising your ESA rights

If you ask about or exercise your rights under the ESA your employer cannot punish you in any way, including by ending your employment.

## For more information or to file a claim

For more information about the ESA visit [Ontario.ca/ESAGuide](https://Ontario.ca/ESAGuide).

If you have questions about the ESA you may also call the Employment Standards Information Centre at 416-326-7160, toll free at 1-800-531-5551, or TTY 1-866-567-8893. Information is available in many languages.

If you believe that you have not received your rights under the ESA, you can file a claim with the Ministry of Labour, Immigration, Training and Skills Development at [Ontario.ca/ESAclaims](https://Ontario.ca/ESAclaims).