

## LABOUR AND EMPLOYMENT

### RECRUITMENT AND WAGE AND HOUR LAW IN ONTARIO

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#### Recruitment

#### What are the requirements relating to advertising positions?

In accordance with Ontario's accessibility legislation, advertisements should note that employers will provide accommodations during the hiring process for candidates who have a disability.

Job advertisements should also comply with Ontario's human rights legislation and should not contain statements, qualifications, or references related to a protected ground of discrimination, or imply any limitations, specifications, or preferences based on a protected ground of discrimination. The Ontario [Human Rights Code](#) prohibits actions that discriminate against people based on the following protected grounds:

- age
- ancestry/colour/race
- citizenship
- ethnic origin/place of origin
- creed
- disability
- family status
- marital status (including single status)
- gender identity/gender expression
- record of offences
- sex (including pregnancy and breastfeeding)
- sexual orientation.

#### What can employers do with regard to background checks and inquiries?

##### (a) Criminal Records and Arrests

Employers should wait to perform all background checks until a conditional offer of employment has been extended. Employers may request that an applicant consent to a criminal record check as part of a conditional offer of employment. Employers may not discriminate against applicants for convictions for an offence for which a pardon has been granted or a record suspension has been ordered, unless there is a *bona fide* occupational requirement.

##### (b) Medical history

The medical history of an applicant should not be considered in the recruitment and hiring process, except where there is a *bona fide* occupational requirement (i.e. a condition that may affect his or her ability to perform the job safely and will threaten the safety of the applicant or others). Once a conditional offer of employment has been extended, further questions may be asked about the applicant's medical history as part of their pre-employment medical testing,

however the questions must relate to conditions which are directly relevant to the specific duties of the position in question.

##### (c) Drug Screening

Under Ontario's human rights legislation, drug and alcohol testing is inherently discriminatory, particularly as addiction is viewed as a disability. Subject to very limited exceptions, pre-employment and random testing is not permitted in Ontario. These exceptions generally apply to employees performing part of their work in the United States, such as international transport truck drivers, in states where drug screening is a requirement under US law.

If testing is conducted, its primary purpose must be to measure impairment, as opposed to deterring drug or alcohol use or monitoring moral values among employees. Even testing that measures impairment can be justified as a *bona fide* requirement only if it is demonstrably connected to performing the job (for example, if an employee occupies a safety-sensitive position and is involved in a significant accident or "near-miss"), and only then as part of a larger assessment of drug and alcohol addiction.

The Ontario Human Rights Commission has released a [new policy](#) on drug and alcohol testing that may be useful to employers.

##### (d) Credit Checks

Although credit checks are permitted with the applicant's consent, it is best practice to conduct credit checks only where it would be reasonable to do so (e.g., for positions where the applicant will have access to significant sums of money or valuable merchandise).

##### (e) Immigration Status

While employers can request proof from applicants that they are legally able to work in Canada as a condition of their employment, they are prohibited from inquiring into a prospective employee's ancestry, citizenship, ethnic origin or place of origin under Ontario's human rights legislation.

##### (f) Social Media

While employers may review an applicant's social media presence, social media checks during the recruitment and hiring stage can increase the risk of a discrimination complaint, particularly if the information gained from an applicant's social media presence may be connected to a protected ground of discrimination. As best practice, employers should obtain any applicant's consent before reviewing their social media presence to ensure that they are in compliance with privacy legislation.

##### (g) Other

##### *Pay Equity*

Ontario's pay equity legislation requires that employers develop a pay

equity plan to ensure that there is no gender bias in compensation for women and men performing substantially the same job or different jobs of equal value. Employers should ensure that this plan is updated routinely to address changing circumstances.

#### *Employee Accommodations*

All Ontario employers have obligations to notify candidates and employees about the availability of accommodations and provide such accommodations at all times, including during the recruitment process. As noted earlier, information about the availability of accommodations should be made part of an employer's regular job advertisements. Offers of employment must also contain explicit information regarding the company's policies on accommodation.

Ontario's legislation necessitates employers create and maintain:

- an explicit written process for the development of a written accommodation plan for employees with disabilities; and
- a written return-to-work policy for employees that have been absent from work due to illness or disability and require accommodation to facilities their return to work.

Employers must advise their employees of the company's policies on supporting employees with disabilities and the availability of job accommodations for employees with disabilities. It is best practice to advise new employees of these policies during their orientation or training period and provide written resources. Upon request by an employee, an employer must also provide any information that is generally available to employees and any information an employee requires to perform their job in an accessible format. Finally, employers should demonstrate that they have considered an employee's disability, accessibility needs and accommodation plan, if applicable, when considering an employee's performance management reviews, career development and advancement and redeployment.

#### **Wage and Hour**

The [Employment Standards Act, 2000](#) is the main source of wage and hour law in Ontario.

#### **What is the minimum hourly wage?**

The general minimum hourly wage is C\$11.40. The minimum wage for liquor servers in Ontario is C\$9.90.

#### **What are the rules applicable to final pay and deductions from wages?**

In Ontario, employers may deduct from employee's wages in two situations:

##### **a) when authorized by law**

These are deductions made according to federal and provincial legislation. They include federal and provincial Income Tax, Employment

Insurance Premiums and Canada Pension Plan contributions. The money deducted must be remitted to the proper authorities.

A court may also order an employer to deduct an amount from an employee's wages. The money deducted must be paid out in accordance with directions contained in the court order.

##### **b) when an employee has provided written authorization**

An employer may deduct money from an employee's wages if the employee has agreed to this in writing, subject to certain rules. Written authorization must specify the amount of money deducted or a method of calculating the amount of money to be deducted.

It is not enough to have an oral statement that the employee authorizes the deduction, or to have a written statement that the employee owes money to the employer without stating that the amount can be deducted from the employee's wages.

#### **What are the requirements for meal and rest breaks?**

After five hours of work, an employee must be provided a 30-minute unpaid meal period. This period can be divided into two 15-minute breaks with the employee's consent.

#### **What are the maximum hour rules?**

Generally, employees cannot work more than 48 hours per week, however special rules apply for certain industries (e.g., construction), while others are exempt from the hours of work rules altogether (e.g., professionals). An employer may also enter into an agreement with its employees (or the union representing them) to modify these rules subject to governmental approval.

Ontario legislation also allows for employees to work more than 48 hours in emergency situations.

#### **How should overtime be calculated?**

Overtime is payable at one and a half times the employee's regular rate for all hours worked in excess of 44 hours per week. However, special rules exist for certain industries and managers and supervisors.

#### **What exemptions are there from overtime?**

Employees who occupy a managerial or supervisory role are exempt from the overtime rules under the [Employment Standards Act, 2000](#). Even if they perform other kinds of tasks that are not managerial or supervisory, managers and supervisors are not entitled to get overtime pay if these tasks are performed only on an irregular or exceptional basis. According to the Ontario Ministry of Labour's policy manual:

- "Exceptional" suggests that non-supervisory or non-managerial duties may be performed as long as they are being performed outside of the ordinary course of the employee's duties.
- "Irregular" implies that although the performance of non-

supervisory or non-managerial duties is not unusual or unexpected, these duties are unscheduled or sporadic .

In order to determine whether an employee's work is considered managerial or supervisory in character in Ontario, an employer should consider:

- What percentage of a manager's time is spent performing non-managerial roles?
- How frequently do managers perform non-managerial work?
- Are managerial and non-managerial tasks performed at the same time?
- Are managers expected to perform non-managerial work on a regular or scheduled basis, or only in exceptional or unforeseen circumstances?
- Are managers evaluated on their performance of non-managerial work?
- What percentage of time do managers perform the same work as sales associates?
- How frequently do managers perform non-managerial work (e.g., do they perform the work of a sales associate every day or once a week)?

Special exemptions also exist for some commissioned salespersons, professionals (e.g., lawyers, engineers, dentists, and architects), and information systems professionals. Film and television industry employees are exempt from Ontario's hours of work laws, but not the requirement to pay overtime.

### What payroll and payment records must be maintained?

An employer must record and retain the following information for each employee.

*The employee's name, address and starting date of employment* must be kept for three years after the employee stopped working for the employer.

*The employee's date of birth if the employee is a student under 18* must be kept for either three years after the employee's 18th birthday or three years after the employee stopped working for the employer, whichever happens first.

*The hours worked by the employee each day and week* must be kept for three years after the day or week of work.

If an employee receives a fixed salary for each pay period and the salary does not change (except if the employee works overtime) the employer is only required to record:

- the employee's hours in excess of those hours in the employee's regular work week; and
- the number of hours in excess of eight per day (or in excess of the hours in the employee's regular work day, if it is more than eight hours).

Employers are not required to record the hours of work for employees

who are exempt from overtime pay and the provisions for maximum hours of work.

An employer must retain copies of every agreement made with an employee to work excess hours or to average overtime pay for three years after the last day on which work was performed under the agreement.

Employers are required to keep records of:

- the *vacation time* earned since the date of hire but not taken before the start of the vacation entitlement year,
- the vacation time earned during the vacation entitlement year,
- vacation time taken (if any) during the vacation entitlement year, and
- the amount of vacation time earned since the date of hire but not taken as of the end of the vacation entitlement year.

The records must be retained for three years after they are made.

The employer must also keep records of the *vacation pay* paid to the employee during the vacation entitlement year and how that vacation pay was calculated. These records must be made no later than seven days after the start of the next vacation entitlement year or the first payday after the next vacation entitlement year ends, whichever is later. This information must be kept for three years after the record of vacation time and pay was made.

*Information contained in an employee's wage statement* must be kept for three years after the information was given to the employee.

*All documents relating to an employee's pregnancy, parental, personal emergency, family caregiver, family medical, critically ill child care, organ donor, reservist, and crime-related child death or disappearance leave* must be kept for three years after the day the leave expired.

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