

CLIENT ALERT

February 23, 2021

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WAGE AND HOUR LAW IN ONTARIO

by Eric Kay

1. Wage and Hour

What are the main sources of wage and hour law

The [Employment Standards Act, 2000](#) ("ESA") is the main source of wage and hour law in Ontario. It mandates equal pay for equal work where substantially the same kind of work is performed by co-workers and that performance requires substantially the same skill, effort and responsibility, and is performed under similar working conditions. Ontario also has pay equity legislation and pending pay transparency legislation.

What is the minimum hourly wage?

The general minimum wage is C\$14.00/hour.

The student minimum wage is C\$13.15/hour.

The minimum wage for liquor servers in Ontario is C\$12.20/hour.

The homeworker's minimum wage is C\$15.40/hour.

Modest increases in these minimum wage rates are scheduled for October 1, 2021.

What are the rules for calculating Public Holiday and Vacation Pay?

Public holiday pay is mandated by the *ESA* and is payable at different rates depending on whether the worker is given the day off with pay, or receives additional pay for working on the holiday, or receives regular pay for working on the holiday plus another paid day off.

Vacation pay is mandated by the *ESA*. Employees get unpaid annual vacation of two weeks plus vacation pay at 4% of wages during their first five years and then 3 weeks plus 6% after five years.

What are the rules for employees scheduled to work less than three hours a day?

When an employee who regularly works more than three hours a day is required to report to work but works less than three hours a day, they must be paid the higher of either (a) three hours at the minimum wage, or (b) the employee's regularly wage for the time worked.

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.

Despite receiving written authorization from an employee, an employer is not allowed to deduct wages if there is:

- a loss due to faulty work. For example, a mistake in a credit card transaction, work that is spoiled or rejected or damage to company tools or vehicles; or
- a cash shortage, or lost or stolen property if a person other than the employee had control over or access to the cash or property. For example, if customers leave without paying their bill.

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 8 hours a day and 48 hours per week, although special rules apply for certain industries (e.g., construction) or certain job dissatisfactions (e.g., professionals and IT). In most cases, an employee must receive at least 11 consecutive hours off work each day.

Ontario legislation also allows for employees to work more than 48 hours per week in emergency situations. An employer may also enter into an agreement with its employees (or the union representing them) to modify these rules subject to governmental approval.

How should overtime be calculated?

For provincially regulated employers in Ontario, 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. This also applies to salaried employees. However, special rules exist for certain industries and for managerial/supervisory employees.

For federally regulated employers, overtime is calculated as one and a half times the employee's regular rate for all hours worked in excess of 8 hours per day or 40 hours per week, whichever is greater. 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 [ESA](#). 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 whether the employee has the authority to:

- hire, fire or discipline,
- recommend hiring, firing or discipline,
- promote, demote or transfer,
- decide a worker's rate of pay,
- award bonuses,
- approve vacation time,
- grant leaves of absence, or
- enforce procedures established to protect worker health and safety.

Special exemptions also exist for some commissioned salespersons, certain professionals and IT personnel. Film and television industry employees are exempt from Ontario's hours of work laws, but not the requirement to pay overtime.

What statutory leaves are available?

The following unpaid annual leaves are provided under the ESA:

- Pregnancy Leave (up to 17 weeks)
- Parental Leave (up to 63 weeks)
- Family Medical Leave (up to 28 weeks)
- Organ Donor Leave (up to 13 weeks)
- Family Caregiver Leave (up to 8 weeks)
- Critical Illness Leave (up to 17 weeks)
- Child Death Leave (up to 104 weeks)
- Crime-Related Child Disappearance Leave (up to 104 weeks)
- Domestic or Sexual Violence Leave (up to 5 days paid and up to 15 weeks total)
- Sick Leave (up to 3 days)
- Family Responsibility Leave (up to 3 days)
- Bereavement Leave (up to 2 days)
- Emergency Leave, Declared Emergencies
- Reservist Leave
- Infectious Disease Emergency Leave

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 to which the information relates.

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.

Retention of written agreements to work excess hours or average overtime pay

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.

Hours worked by employees of temporary help agencies that are assigned to them must be kept for three years.

Retention of vacation time records

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 five years after they are made.

Retention of vacation pay records

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 five years after the record of vacation time and pay was made.

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

All documents relating to an employee's statutory leaves under the Employment Standards Act, 2000 must be kept for three years after the day the leave expired.

Consultation

Employment law is a constantly evolving field, so please contact **Eric Kay** at ekay@dickinson-wright.com to arrange a consultation or obtain advice with respect to wage and hour or other employment law issues.

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