

**The Law of Work**  
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**Statutory References**

**Ontario: Employment Standards Act and Regulations**

**Quick Summary:**

Employment standards legislation is a central pillar of a government's intervention into the labour market, as discussed in Part II of the book. In Ontario, the Employment Standards Act (ESA) regulates key issues in the employment relationship, including wages (Chapter 21), working time (Chapter 22), and the termination of employment contracts (Chapter 23). **This short chart provides a quick overview of key legal rules in these areas.** It does not describe every rule in the ESA is not intended as legal advice. Readers should always check the statute, regulations, and/or confer with a lawyer or other knowledgeable individuals.

Employment standards legislation creates mandatory *floors*—employment contracts can provide greater entitlements, but not less than required by the ESA. It is illegal to contract out of the ESA, so any term in an employment contract that provides for less entitlement than required by the ESA is void and unenforceable. The ESA is a complex piece of legislation, because there are many special rules and exemptions and many of these are found not in the ESA itself, but in Regulations. The Regulations must be read with the ESA in order to figure out what is legally required. Thankfully, the Ministry of Labour (MOL) has prepared many helpful tools and summaries.

**Cross-Reference to The Law of Work Text:**

Employment standards legislation is considered in Part II of The Law of Work, especially in Chapters 19, 21, 22, and 23.

**Links to Legislation Referenced in Chart:**

*Employment Standards Act:* [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_00e41\\_e.htm#BK93](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm#BK93)

*Regulation 285/01, Exemptions, Special Rules and Establishment of Minimum Wage:* [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_010285\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_010285_e.htm)

*Regulation 288/01, Termination and Severance of Employment:* [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_010288\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_010288_e.htm)

Subject/ Text Chapter	Statutory Section	Description of Rule	Exemptions & Special Rules	Comments & Useful Tools
<b>Application of Statute (Part III)</b>  Chapter 2	ESA, s. 3            s. 5.1	Applies to ‘employment’ and work performed in Ontario, provided that the employer is governed by Ontario law (see Chapter 19 discussion of jurisdiction)              <i>Unlawful to treat an employee as if not an employee, with onus on employer to demonstrate that person is not an employee</i>	Many employees and occupations are exempted altogether from the ESA (see list in s. 3(5))  Some occupations are also exempt from some parts of the legislation. These exemptions can appear in the part of the ESA where the benefit is described, or in Regulations. Some are identified below.  Note the broad exemptions listed in s. 2 of Reg. 285/01	The ESA applies only to ‘employment’, and not to other forms of pay for work. See Chapter 2 on how tribunals and courts distinguish between ‘employees’ and ‘independent contractors’.  It is important to investigate whether exemptions or special rules apply to an occupation when interpreting and applying this legislation.  The Ontario MOL has prepared a helpful chart describing exemptions and special rules for designated occupations:  <a href="http://www.labour.gov.on.ca/english/es/tools/srt/covrage_government_lawyer.php">http://www.labour.gov.on.ca/english/es/tools/srt/covrage_government_lawyer.php</a>  <i>Bill 148: New</i>
<b>Sale of Business (Part IV)</b>	Section 9	If a business is sold, and the purchaser hires an employee of the seller, the employee is deemed not to have been terminated by the sale and employment is to be treated as continuous for the purposes of calculating length of service in the ESA.	If the day on which the purchaser hires the employee is more than 13 weeks after the earlier of: 1) his or her last day of employment with the seller and, 2) the day of the sale  Then the rule of s.9 (1) does NOT apply.  (Check s.9 (2) for reference)	The Ontario MOL has prepared a helpful guide to ‘continuity of employment’ rules in the ESA:  <a href="https://www.labour.gov.on.ca/english/es/pubs/guide/continuity.php">https://www.labour.gov.on.ca/english/es/pubs/guide/continuity.php</a>
<b>Minimum Wage (Part IX)</b>  Chapter 21	ESA, s. 23 23.1         Regulation 285/01, s. 2, s. 5-8	Employers must pay at least the minimum wage.  Min. Wage is presently \$14, with plan to go up to \$15 on Jan 1 2019  s. 5 gave the minimum rates up to October 2015, but thereafter that Act increased the amount according to a cost-of-living formula	Some occupations, positions excluded from minimum wage (s. 2, s. 7)  The amount of the minimum wage varies for some designated occupations and students under 18  Special rules when employees receive room and board [s. 5(4)]	<a href="https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148#section-1">https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148#section-1</a>

<p><b>Overtime Pay (Part VIII)</b></p> <p>Chapter 22</p>	<p>ESA, s. 22, 22.1, 22.2</p> <p>Regulation 285/01, s. 2, 8, s. 13-18</p>	<p>Wages of at least 1.5 regular rate for hours worked beyond 44 in a week (s. 22)</p> <p>With government approval, employers and employees may enter into ‘<i>averaging agreements</i>’ to average hours worked over two or more weeks (s. 22(2); 22.1)</p> <p>Special rules regarding overtime pay for some occupations (s. 13-18)</p>	<p>Some occupations, positions excluded from overtime pay requirement (s. 2, s. 8), or are governed by special rules (s. 13-18)</p>	<p>The Ontario MOL has prepared a useful guide:</p> <p><a href="http://www.labour.gov.on.ca/english/es/tools/hours/overtime_tutorial.php">http://www.labour.gov.on.ca/english/es/tools/hours/overtime_tutorial.php</a></p>
<p><b>Hours of Work (Part VII)</b></p> <p>Chapter 22</p>	<p>ESA, s. 17, s. 17.1</p> <p>Reg. 285/01, s. 2</p>	<p>Employer cannot require or permit more than 8 hours per day, or greater if that is normal, and no more than 48 hours in work week.</p>	<p>However, the Act includes a number of exceptions that permit longer hours with employee’s consent and government permit. (s. 17. (2), s. 17.(3))</p> <p>Some occupations are exempt from the Hours of Work rules (s. 2(1))</p>	<p>Note that there are also rules requiring mandatory hours free from work between shifts (e.g. 11 hours, s. 18) and eating periods (e.g. 30 minutes every 5 hours, s. 20).</p> <p>The Ontario MOL has prepared a useful guide:</p> <p><a href="http://www.labour.gov.on.ca/english/es/pubs/guide/hours.php">http://www.labour.gov.on.ca/english/es/pubs/guide/hours.php</a></p>
<p><b>Equal Pay (Part XII)</b></p> <p>Chapter 21</p>	<p>ESA s. 42</p> <p>ESA, s. 42.1</p>	<p>Employers cannot pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when; 1) they perform substantially the same kind of work in the same establishment, their performance requires substantially the same skill, 2) effort and responsibility; and 3) their work is performed under similar working conditions. (s. 42 (1))</p> <p><i>Employers cannot pay a non-full-time employee less than a full-time employee if work is substantially the same.</i></p>	<p>Pay equity does not apply when the difference in the rate of pay is made on the basis of, a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or any other factor other than sex or employment status. (s. 42 (2)).</p>	<p>The rules relating to pay equity are reviewed in a helpful MOL pamphlet:</p> <p><a href="https://www.labour.gov.on.ca/english/es/pubs/guide/equalpay.php">https://www.labour.gov.on.ca/english/es/pubs/guide/equalpay.php</a></p> <p>The new pay equity requirements relating to employment status are described here:</p> <p><a href="https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148#section-2">https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148#section-2</a></p>
<p><b>Vacation Time (Part XI)</b></p>	<p>ESA, s.33</p>	<p>At least 2 weeks’ vacation after each vacation entitlement year</p>	<p>Some occupations are exempt from vacation time (s. 2(1)).</p>	<p>The rules relating to vacation pay and vacation time are reviewed in a helpful MOL pamphlet:</p>

Chapter 22	Reg. 285/01, s. 2(1)	<p><i>At least 3 weeks for employees with 5 or more years' service.</i></p>	If the Director approves and an employee's employer agrees, an employee may be allowed to forego taking vacation to which he or she is entitled under this part. (s. 41.(1))	<p><a href="http://www.labour.gov.on.ca/english/es/tools/esworkbook/vacation.php">http://www.labour.gov.on.ca/english/es/tools/esworkbook/vacation.php</a></p> <p><i>Bill 148, New</i></p>
<p><b>Part VII.2 (Scheduling Rules )</b></p> <p><b>New, Not Covered in text</b></p> <p><b>Come into effect January 1 2019</b></p>	<p>s. 21.2</p> <p>s. 21.3 - 21.7</p>	<p><i>Employees with 3 months' service can request change to work schedule or location of work and employer must discuss and provide reasons if refused.</i></p> <p>Variety of new rules relating to scheduling introduced by Bill 148, in effect January 1 2019.</p> <p><i>Minimum 3 hour pay for employees who usually work more than 3 hours and are called into work, on-call employees who are not called in, and employees who have their shift cancelled with less than 48 hour' notice.</i></p> <p><i>Employees can refuse to a shift if given less than 96 hours notice.</i></p>	Some of these new provisions are subject to exceptions and therefore the sections should be reviewed carefully.	<p>See link for useful summary of new rules:</p> <p><a href="https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148#section-4">https://www.ontario.ca/page/plan-fair-workplaces-and-better-jobs-bill-148#section-4</a></p>
<p><b>Vacation Pay (Part XI)</b></p> <p>Chapter 22</p>	<p>s. 35.2</p> <p>Reg. 285/01, s. 2(1)</p>	Employees entitled to vacation pay amounting to at least 4% of wages.	<p>Although an employee can forgo vacation entitlements, an employer cannot forgo paying vacation pay (s. 41.(2))</p> <p>Exemptions to overtime are found on s. 36 (3), s. 36. (4)</p> <p>Some occupations are exempt from vacation time (s. 2(1))</p>	<p>See link in the vacation time box for helpful resource.</p> <p><a href="https://www.labour.gov.on.ca/english/es/pubs/guide/vacation.php">https://www.labour.gov.on.ca/english/es/pubs/guide/vacation.php</a></p>

<p><b>Public Holidays (Part X)</b></p> <p>Chapter 22</p>	<p>ESA, s. 1</p> <p>ESA, s. 24-26</p> <p>Regulation 285/01, s. 9</p>	<p>New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, December 26, Family Day.</p> <p>Employees receive:</p> <p>(1) the public holiday off work with "holiday pay"; or</p> <p>(2) if the employee agrees to work on a holiday, he/she is entitled to 1.5 times their regular pay rate ("premium pay") plus "holiday pay", or their regular pay for the holiday worked, plus another day off later with "holiday pay".</p>	<p>There are multiple exceptions and qualifying conditions attached to the holiday pay provisions. These are found in Section 24-32, and should be considered carefully.</p> <p>Some occupations, positions are excluded from the public holiday pay requirement (s. 9)</p>	<p>The rules for calculating holiday pay and premium pay can be complicated. The Ministry of Labour has prepared helpful bulletins and calculation tools, available on its website:</p> <p><a href="http://www.labour.gov.on.ca/english/es/pubs/guide/public_holidays.php">http://www.labour.gov.on.ca/english/es/pubs/guide/public_holidays.php</a></p>
<p><b>Leaves of Absence (Part IIV)</b></p> <p>Chapter 22</p>	<p>ESA, ss. 45-53</p>	<p>Pregnancy (s. 46)</p> <p>Parental (s. s. 48)</p> <p>Family Medical (s. 49.1)</p> <p>Organ Donor (s. 49.2)</p> <p>Family Caregiver (s. 49.3)</p> <p>Critically Illness Leave (s. 49.4)</p> <p>Child Death or Disappearance Leave (s. 49.5. s. 49.6))</p> <p>Personal Emergency (s. 50)</p> <p>Emergency Leave (s. 50.1)</p> <p>Reservist (s. 50.2)</p> <p>General provisions (s. 51-53)</p>	<p>Each leave has its own conditions and rules.</p> <p>Details of some leaves were amended by Bill 148.</p>	<p>The rules relating to leaves are reviewed in a helpful MOL pamphlet:</p> <p><a href="http://www.labour.gov.on.ca/english/es/pdf/br_leave_s.pdf">http://www.labour.gov.on.ca/english/es/pdf/br_leave_s.pdf</a></p>
<p><b>Termination Pay (Part XV)</b></p> <p>Chapter 23</p>	<p>ESA, s. 54-62</p> <p>Reg. 288/09</p>	<p>Employees who are terminated must be given written notice, or pay in lieu of notice (s. 54, s. 61)</p> <p>Amount of notice is explained in s. 57</p> <p>Amounts increase in case of mass termination (s. 58). The special amounts in this case are described in Reg. 288/09, s. 3.</p>	<p>The ESA explains conditions for giving of notice.</p> <p>Some employees and occupations are not entitled to termination pay (s. 2), including employees guilty of 'willful misconduct'.</p>	<p>The MOL has prepared a helpful worksheet explaining termination pay:</p> <p><a href="http://www.labour.gov.on.ca/english/es/tools/esworkbook/termsev.php">http://www.labour.gov.on.ca/english/es/tools/esworkbook/termsev.php</a></p> <p>The MOL has also created electronic tools to help calculate the amounts of termination pay, which are linked in the above the document</p>
<p><b>Severance Pay (Part XV)</b></p>	<p>ESA, s. 63-66)</p>	<p>Severance pay must be given to employee, in addition to notice, in special circumstance described in s. 64(1)</p>	<p>Some employees whose employment meets conditions in s. 64 of the ESA are still not entitled to severance pay (s.</p>	<p>The MOL has prepared a helpful worksheet explaining severance pay. See the box above on termination pay for the link.</p>

Chapter 23	Reg. 288/09	The amount of severance pay is described in s. 65.	9)	<a href="http://www.labour.gov.on.ca/english/es/tools/esworkbook/termsev.php">http://www.labour.gov.on.ca/english/es/tools/esworkbook/termsev.php</a>
<b>Temp. Agencies (Part XVIII.1)</b>	ESA, s. 74.1 – 74.18	<p>A series of rules were introduced to impose greater liability on temp agencies.</p> <p>The temp agency is the employer of an employee assigned to work elsewhere and is therefore responsible for ESA compliance.</p> <p>Temp agencies cannot charge employees a fee or block employee from accepting employment at a client, although it may charge the client a fee in that circumstance within 6 months of assignment.</p> <p>Temp agency cannot pay its employees less than what the employees of the client firm pay its employees for substantially similar work.</p> <p>Temp agency must give one week’s notice of termination if an assignment expected to be at least 3 months is terminated sooner.</p> <p>Temp agencies must comply with termination notice and severance pay requirements.</p>	There are a variety of special rules relating to the application of the ESA to temp placement employees.	<p>The following helpful information page prepared by the government explains the rules and exceptions relating to temp placement employees:</p> <p><a href="https://www.ontario.ca/document/your-guide-employment-standards-act-0/temporary-help-agencies">https://www.ontario.ca/document/your-guide-employment-standards-act-0/temporary-help-agencies</a></p>