

## The Wacky World of Exclusions from Employment Standards Laws, Or Fun with Employment Law Exclusions

Over time, governments in Ontario (and across Canada too) have created all sorts of exemptions and special rules to prevent general employment standards rules from applying to all segments of the labour market. This Handout and Assignment explains the statutory minimum wage as an example.

### Assignment One (I will help you with this one):

*Is an employee on a llama farm entitled to the minimum wage?*

*How about an employee on a farm that raises ratites?*

[Hint: A ratite is a large flightless bird, like an emu or an ostrich]



### 1. The General Minimum Wage in Ontario is \$11.25 (in 2016).

Note firstly that the ESA only applies to *employment contracts*, so any worker not categorized as an “employee” is excluded from the minimum wage law and every other employment standard. Now let’s consider which employees are excluded from that general minimum wage. For each category, can you think of a strong policy reason for the special rule or exemption?

### **2. The following employees are excluded altogether from the minimum wage:**

- A person performing work as part of an educational co-op program through a school
- A person receiving training similar to that which they might receive in a co-op or experiential learning program at a school, when certain other conditions are satisfied (this is the section dealing with ‘unpaid interns’)
- A person performing work as part of the *Ontario Works Act*
- An inmate or person performing work as part of a criminal

- conviction sentence
- A person performing work as part of a physical rehabilitation program
  - A holder of political, religious, or judicial office
  - An elected officer of an organization, including a union
  - A police officer
  - Employees of the Ontario Crown
  - A Director of a corporation
  - a person who is a full-time student who works at a recreational program operated by a charitable organization
  - a person who is a full-time student who is employed to instruct or supervise children
  - a person who is a full-time student who works at a camp for children
  - a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building
  - architects
  - lawyers
  - engineers
  - accountants
  - surveyors
  - veterinaries
  - chiropodies
  - chiropractors
  - dentists
  - massage therapists
  - medical doctors
  - optomotrists
  - pharmacists
  - physiotherapists
  - psychologists
  - teachers
  - commercial fishers
  - real estate agents
  - commissioned travelling salespersons
  - employees employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.

**HINT:LOOK  
HERE!!**

**(From Reg.  
285/01, s. 2(2))**



**3. The following employees are subject to a special minimum wage that is more or less than the general minimum wage**

- A full-time student under the age of 18 who works 28 hours per week or less or during a school holiday
- An employee who regularly serves liquor
- An employee who is a hunting or fishing guide
- A 'homeworker'
- An employee who receive room and board from the employer.

**Assignment Two (You're on your own now):**

Review the Employment Standards Act and Ontario Reg. 285/01, and that answer the following question:

Is a person employed at a mushroom farm entitled to overtime pay?  
How about a person who breeds minks?