

## Working Time Regulation: Ontario

Ontario uses a variety of legal tools to regulate hours of work of employees. The government has elected against a simple bright line test, such as no employee shall work more than 48 hours in week. Instead, the legal model uses a mix of fixed maximum hour rules subject to a range of exceptions and opt-out agreements. All of this makes for a complex legal regime that is very difficult for employees (and many employers too) to navigate.

### 1. Maximum hours of work

ESA Section 17: No employer shall require an employee to work:

- (1) more than 8 hours per day, or another amount that the ER establishes as a regular work day, AND
- (2) 48 hours in a week.

An employee and employer can agree to work longer hours than these, however if that agreement would require the employee to work more hours in a week than 48, the Ministry of Labour must give consent. But there are also exceptions to the general rule that the Employer needs government's consent (See Section 17(4)).

And, there are many jobs that are **excluded** altogether from the hours of work laws (see [Regulation 285/01, s. 4](#)), including "*a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis*".

If you want to drive yourself insane and learn how governments go nuts trying to make employment standards rules flexible for employers who might not want to comply, read Section 17 and 17.1 in their entirety and try and make sense of it all. Very complicated.

### 2. Overtime Pay

Although there is discretion built into the maximum hours of work legislation, employers do have to pay overtime pay. The general rule is found in [section 22 of the ESA](#):

22. (1) An employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each work week or, if another threshold is **prescribed**, that prescribed threshold.

However, [Regulation 285/01](#) includes a long list of sometimes inexplicable exceptions to this general rule.

3. **Averaging Agreements**

If all of this isn't confusing enough, the Ontario ESA also permits 'averaging agreements' between an employee and employer that permits the averaging out of hours worked over multiple weeks. If the average number of hours worked per week falls below 44, then no overtime is payable. Averaging agreements must be in writing and approved by the government. (Section 22(2))