



YOUR RIGHTS AT WORK

**ACTION GUIDE FOR
FAIR EMPLOYMENT**

WORKERS' ACTION CENTRE

ORGANIZING FOR
FAIR EMPLOYMENT

THE WORKERS' ACTION CENTRE

The Workers' Action Centre is a worker-based organization committed to improving the lives and working conditions of people in low-wage and unstable jobs. We fight for all workers to have a voice at work and be treated with dignity and fairness.

We are recent immigrants, workers of colour, women, youth and workers in low wage and unstable jobs. Most of our workplaces are not unionized. We believe that people who are directly affected by poor working conditions should be providing leadership in our struggle for fairness and dignity at work.

For us to win dignity and respect and make long-term improvements for all workers and their families – we need to change the bigger problems that keep our wages low and allow so many bosses to break the law. Join our campaign to bring fairness to Ontario's workplaces!

ONTARIO WORKERS NEED A FAIR DEAL!

- Bring minimum wage up to the poverty line and increase annually with inflation.
- Expand labour laws to include and protect people who work in temporary, contract and unstable work.
- Make all employers follow the law in all workplaces.

JOIN OUR MOVEMENT OF WORKING PEOPLE TO IMPROVE WORKING CONDITIONS AND WAGES



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PROTECT YOURSELF

FIRST STEPS

There are many steps to begin protecting and asserting your rights at work. If your rights are violated, be prepared.

Collect as much information as you can

Keep any contracts you receive. Document all details of hours and dates you worked. Take down any information about your boss and the company that you can find (name, address, position, phone numbers). This will help if you file a complaint.

Keep copies of everything

You should keep a copy of every document you receive from your employer or from the government. You will submit all of your originals so it is important to keep copies of your Record of Employment (ROE), a termination letter, a doctor's note and any forms you fill out for the Workplace Safety and Insurance Board (WSIB) or Employment Insurance (EI).

Call the Workers' Action Centre

Read this booklet. Calculate all wages you believe you are owed. Call us to attend an information session to plan your next steps. Every call is confidential.

Talk to other workers

The fight will be stronger if there are more workers standing together to improve working conditions. Invite them to the info session.

Write a letter to your boss

Ask us for a sample letter to demand your wages. Your letter should have a deadline to pay. There is a risk if you are still working. Contact us for advice.

Ministry of Labour

The Ministry of Labour is supposed to protect our rights and enforce the law. The limit you can claim on unpaid wages is \$10,000. You have 6 months from when your wages were due to file a claim. You can claim most unpaid wages 6 months back from when the wages were due. There are some exceptions. There is no fee to file a claim. 1-800-531-5551 or www.labour.gov.on.ca/english/.

Small Claims Court

This civil court handles any disputes for monies owing to you and also the recovery of personal property. The limit you can claim is \$25,000. You have up to 2 years from when your wages were due to file a claim. There is a fee to file a claim. 416-326-3554 or www.attorneygeneral.jus.gov.on.ca/english/courts/scc/.

Consult a Lawyer

If you want legal advice on your case or feel you may be entitled to more than the basic employment standards entitlements (through the Ministry of Labour) you should contact a lawyer. They may charge you a fee for a consultation. The Lawyer Referral Service may provide you with the name of a lawyer who will provide a free consultation of up to 30 minutes to help you determine your rights and options. 1-800-268-8326.

Unionize

Organizing a union could mean better wages and working conditions. Call us to find out how a union works and how to form a union in your workplace.

Join the Workers' Action Centre campaign to push for better enforcement of our labour laws. With no real risk of being caught breaking the law and often facing no penalty when they do, it is no surprise that employers break the law so often. Get involved!



IMPORTANT TERMS TO KNOW

Employment Standards Act (ESA): The law that covers non-unionized workers in Ontario. Not all sectors of workers are covered equally. Every province has its own labour laws.

Ministry of Labour: The provincial government body that enforces the Employment Standards Act and Occupational Health and Safety Act. They also have the power to update these laws. Workers make complaints against their bosses here. Call 1-800-531-5551 or go to their website at www.labour.gov.on.ca/english/. For the Occupational Health and Safety branch call 1-877-202-0008.

Service Canada: The federal government agency where you apply for Employment Insurance (EI), Maternity and Sick benefits. Service Canada provides many services related to employment and government benefits. Call 1-800-206-7218 for details or go to their website at www.servicecanada.gc.ca.

Employment Insurance (EI): You contribute a percentage of your wages into this federal government fund. Your boss also makes a contribution. You may be able to receive benefits while you are unemployed or on parental or sick leave. Service Canada administers EI.

Record of Employment (ROE): A document that every employer must give you when you leave your job. It records all hours worked and wages earned at your job. Service Canada uses this information to determine if you qualify for EI (and other) benefits, the amount you will receive and for how long.

Workplace Safety & Insurance Board (WSIB): Often called “Workers’ Compensation”. If you get hurt at work, you can apply for benefits while you are not at work. This is insurance for when workers are injured or become sick because of your job. Call 1-800-387-0750 or visit www.wsib.on.ca for details.

Canada Pension Plan (CPP): This is a federal government benefit based on contributions from workers and employers. If you are eligible you can receive retirement pension, death and disability benefits. Contact 1-800-277-9914 or visit www.servicecanada.gc.ca for details.

Temporary Agency: A business that finds you temporary work assignments at different companies. The agency is your employer.

Ontario Human Rights Tribunal: The provincial government agency that deals with discrimination complaints. The Canadian Human Rights Commission deals with complaints from federal workers. The Human Rights Legal Support Centre provides legal assistance if you believe you have faced discrimination. 1-866-625-5179 or visit www.hrlsc.on.ca

Canada Revenue Agency: The CRA is responsible for assessing and collecting taxes and delivering other federal benefits. They are a department of the Government of Canada. Self-employed workers and some other workers may pay taxes differently. Call us for information on your employee status and we can guide you in the right direction. Or call directly at 1-800-959-8281 or visit www.cra-arc.gc.ca



WHO IS COVERED UNDER THE LAW

Exemptions: Some workers, like farm workers, live-in caregivers, information technology workers, superintendents and people working in 24-hour operations, are not covered under the law equally. Find out which laws cover you by calling the Ministry of Labour inquiry line at 1-800-531-5551 or go to their website at www.labour.gov.on.ca.

Temporary Agency Workers: If you are working through a temporary agency, you are covered under the Employment Standards Act like all other workers. Being a temporary worker should not mean less respect, worse employment conditions and different treatment than other workers. However, in many cases this is the reality.

37% of jobs are temporary, contract or part-time in Canada. Companies are contracting out more work so they don't have to hire workers directly. Usually there is less pay too. Temp agency workers often make 40% less than permanent workers.

Temporary Foreign Workers Program and Live-in Caregivers Program: Temporary foreign workers and live-in caregivers have basic protection under our labour laws, but may face some exemptions and restrictions. Many temporary foreign workers face barriers in enforcing their rights because of their immigration status. Call us if you think your employer is not following the law to discuss a plan.

Non-status Workers: If you are working without a valid social insurance number (SIN) or work permit, you still have protection under basic labour laws, including employment standards, health and safety, human rights and the Workplace Safety and Insurance Board (WSIB). You may not be eligible for Employment Insurance (EI). It is often difficult for non-status workers to enforce their rights because of their immigration status. If you are owed unpaid wages, call us to discuss what you can do. All calls are confidential.

Self-Employed or Independent Contractor: Many employers are asking workers to sign contracts that say they are "independent contractors". This is another word for "self-employed", for example, when you have your own business. When you are self-employed you have fewer rights than an employee who is covered under the Employment Standards Act. Many bosses wrongly treat employees as independent contractors to avoid the law.

Union Contract: If you are in a workplace that has a union, you will be covered under your union contract or collective agreement. Your union is your legal representative. If you need help with your union, call us to discuss what you can do.

ALERT

Protections for all!

The Workers' Action Centre believes that immigration status should not be a barrier in enforcing our rights at work. Many temporary foreign workers are forced to put up with violations of their rights because they are in Canada on work permits that tie them to one employer, and that don't provide protection if they are sent back home for complaining about working conditions. Non-status workers also fear

deportation if they speak out about their rights. We must ensure all workers can count on protection at work. Our immigration policies must be changed to ensure permanent status for temporary foreign workers on arrival, an end to employer-specific work permits and a fair appeals process when workers are forced to return to their home country. We also need to see a full and inclusive regularization program for all non-status workers.



STARTING A NEW JOB

INTRODUCTION

Signing a Contract

You cannot sign away your rights. If you sign a contract that is illegal (for example, it says that the employer will not pay overtime) your boss is breaking the law, not you. The boss should not be making an illegal offer. Even if you sign an illegal contract, you are still entitled to your rights under the law. Write down all details of the hours and dates you work. This will help you claim your wages when you are ready.

Probation

This is a “trial period” set by the company to see if the job is a good match with your set of skills. The length of a probation period is up to the boss, it is not part of the law. If you are fired after working for more than three months, you may be owed termination pay or notice even if your boss says you are still on probation.

Paying a Fee for Employment

The Workers’ Action Centre is concerned that “job-finding” services take advantage of workers, often new immigrants who are looking for work, by charging fees. In the past, “job-finding” services would charge fees to a business looking for qualified employees, not to job seekers directly. Some businesses are unfairly profiting by charging workers fees based on the promise of services that may be false. Don’t pay unless you are sure the business can be trusted.

ALERT

Temporary Agency Workers and Fees

As of 2009, temp agencies cannot charge you money for signing up with them, assigning you work or helping you with a resume or job interview. Job recruiters or “headhunters” can still charge money for finding you permanent employment with a company. Call us to find out what to do when you discover an agency that is charging illegal fees.

Live-In Caregivers and Fees

In December 2009, the Ontario government passed a new law that makes it illegal for recruiters or employers to charge recruitment or placement fees to live-in caregivers. If you have been charged an illegal fee, you can make a complaint to the Ministry of Labour within 3.5 years to get your money back. It is illegal for an employer or recruiter to penalize you for exercising your rights under the new law. The law also makes it illegal for an employer or recruiter to take a live-in caregiver’s property, including documents such as passports. Call us for more information on how to make a complaint.

Temporary Foreign Workers and Fees

Unfortunately, these protections do not apply to other temporary foreign workers, who are often charged very costly recruitment fees. Call us if you have paid a fee to a recruiter or an employer to find work. We will be pushing the government to make recruitment fees illegal for all workers under the Temporary Foreign Worker Program and for all resident workers in Ontario.



INDEPENDENT CONTRACTOR OR EMPLOYEE?

Employment status (whether we are employees or independent contractors) directly affects our entitlement to basic rights such as minimum wage, overtime pay, health & safety protections, job-protected leaves, human rights and the right to bargain collectively and join a union.

Employment status also affects our right to Employment Insurance (EI), Canada Pension Plan (CPP) and Workplace Safety and Insurance (WSIB) or workers' compensation as it is often called. It affects how we are treated under the Income Tax Act. Employment status also affects what we can do when wages go unpaid or problems happen at work.

Know the Difference:

You may be an EMPLOYEE when some of the following describes your work:

- You receive training from the company.
- The company supervises your work.
- You do not have control over your work, hours or rate of pay.
- You work with tools or equipment that the company gives you.
- Your work is clearly a part of the business.

You may be an INDEPENDENT CONTRACTOR or SELF-EMPLOYED when some of the following describes your work:

- You control how your work is done. For example, you may hire other workers and direct their work.
- You can freely negotiate your pay and when your work has to be done. This means that you set your own work hours and where you work.
- You own some of your own tools or equipment you use to work.
- You take the full profit or loss from the work or business operation.

What if you still don't know the difference?

Sometimes you can't tell whether you are an independent contractor or employee. For example, your boss might supervise your work, but you use some of your own tools. In these cases there is no one correct "answer". Call us for information and resources to help you determine your employment status.

Know Your Rights:

Your Rights As An Employee:

If you have problems at work, you have protection under the Employment Standards Act, Human Rights Code and the Occupational Health and Safety Act. You may be eligible for Employment Insurance if you are unemployed. You can qualify for the Canadian Pension Plan (CPP) and WSIB.

Your Rights As An Independent Contractor:

If you have problems at work, like not being paid, your only protection is to take the boss to court. You have to pay your own CPP or WSIB contributions. And you must contact Service Canada yourself to set up Employment Insurance (EI) special benefits when you are out of work.



PROTECT YOURSELF

- When you are asked to sign a contract, ask for some time look it over first so that you fully understand what the contract says. This might not be possible. Your boss might put pressure on you to sign the contract without looking at it thoroughly.
- Write down the details of your work; dates, hours, pay you received and details about the work you do every day. If you need to ask for your overtime pay, vacation pay or even minimum wage, it will help to have this documentation.
- It is illegal for your boss to fire you for speaking about your rights, but many workers get fired when they speak out. Good documentation of all details of your work may be helpful later.
- Talk to other workers. Find out if they signed the same contract. Call the Workers' Action Centre and attend an info session as a group to learn how you can protect yourself.
- If you are owed wages, write a letter demanding what you are owed. Give your boss a deadline.
- If you are fired, forced to quit or laid off, you may be eligible for Employment Insurance. Your detailed records will help when applying for EI benefits.
- File a complaint at the Ministry of Labour. It may be hard to prove that you are an employee at the Ministry of Labour. Contact the Workers' Action Centre for assistance. For more details on the laws that protect you go to our website to see our factsheet: Are you an Independent Contractor or Employee?



BASIC RIGHTS AT WORK – EMPLOYMENT STANDARDS

GETTING PAID

Minimum Wage

You must be paid at least the minimum wage for every hour you work. The minimum wage rate may change during the life of this booklet – always check to ensure you know the current minimum wage. Not all workers have jobs that are covered by the minimum wage and some jobs have different rates. Call the Ministry of Labour at 1-800-531-5551 to find out how your job is covered.

Minimum Wage Rate

	March 31, 2009	March 31, 2010
General	\$9.50	\$10.25
Student	\$8.90	\$9.60
Liquor Server	\$8.25	\$8.90
Homeworkers 110% of general minimum wage	\$10.45	\$11.28

ALERT

Not enough!

The Workers' Action Centre and allies pushed the provincial government to raise the minimum wage over 28% over the past 4 years. Organizing around the province ensured the government heard our demands for decent wages we can live on.

However, the 2010 minimum wage of \$10.25 is still below the poverty line for a full-time worker. Our minimum wage should be based on the principle that a person working full-time, all year should earn enough to be at or above the poverty line. No one should work, yet still live in poverty.

A fair minimum wage must be increased each year by the annual cost-of-living increase to provide financial stability for Ontario's workers. Join the Workers' Action Centre in fighting for these improvements to our minimum wage.

PROTECT YOURSELF

- If your boss is paying you less than the minimum wage keep a record at home of all dates, hours and wages paid to you.
- Calculate how much money you are owed at the minimum wage.
- Is the boss paying everyone less than minimum wage? Talk to people you trust and organize a meeting with us to discuss how to improve your working conditions.

Cash Payments

Your boss can pay you in cash. This is legal. But they must give you a record or "pay slip" every time you are paid. A boss paying you in cash may not want to give you a pay slip because they want to avoid paying the employer contributions, such as EI.

A pay slip should show these things:

- Your Name
- Pay Period (for example: May 1 – May 15th)
- Hours you worked and rate of pay
- Overtime hours you worked & rate of pay
- Gross Pay (before deductions)
- Net Pay (after deductions)
- Vacation Pay (some employers pay every pay period)
- Employment Insurance deductions (You pay 1.73% of gross pay)*
- Canada Pension Plan deductions (You pay 4.95% of gross pay)*
- Tax deductions (rate depends on how much money you make)

*2010 rates – may change yearly.



Training and Pay

While training can be paid at a lower rate of pay than your hourly rate when you begin working, it must be at least minimum wage. The boss should tell you about wage rates when you are discussing the training and the job.

Not everyone is covered by the minimum wage provisions. Call the Ministry of Labour to find out how minimum wage covers you.

Beware of companies, like security guard companies, that offer you a job and then ask you to attend a training course that you must pay for. Often they guarantee a job later, but many find that there is no job or the job pays less than promised.

ALERT

Live-in Caregivers and Deductions

Employers are allowed to make deductions for a private room and meals for live-in caregivers but only up to a limited amount. You must have actually received the meals or occupied the room, and the room must be reasonably furnished and “fit for human habitation”. An employer can deduct \$31.70 per week for a room from your wages and \$2.55 for each meal, or up to a maximum of \$53.55 for meals per week. An employer can deduct \$85.25 per week to cover a room and meals together.

PROTECT YOURSELF

- Keep your own records of wages paid, hours and dates you worked and keep them at home. This will help you prove that your boss did not pay you properly.
- If you don't have a Social Insurance Number or a valid Work Permit write down your own record of wages paid, hours and dates worked to make sure you are getting paid properly. The employment standards law still applies to you and your wages should be calculated based on this law. Call us to discuss a plan if your boss breaks the law. All calls are confidential.
- Depending on your situation, you may want to consider small claims court or get a lawyer's advice.
- Often we lose all contact with the boss after we leave a job. It is important to get all phone numbers, addresses and license plates belonging to the boss that could make it easier to find them later.
- You have 6 months to file a claim at the Ministry of Labour and can claim most unpaid wages 6 months back from when the wages were due.
- If your boss doesn't deduct EI from your pay, you may still be entitled to your benefits. You can claim it later if you have dates and hours written down. You will not have to pay any EI deductions later, your boss pays.
- If you don't have a SIN or valid work permit you may not be entitled EI benefits.



HOURS OF WORK

Daily Hours

You do not have to work more than:

- 8 hours a day, **OR**
- the number of hours in your regular work day, if it is more than 8 (but no more than 13). This includes a half-hour unpaid break for each 5-hour period worked.

For example: If people have always worked a 12-hour shift at your workplace, then 12 hours would be your regular work day. If you agreed to work these hours when you got the job, then this is your regular workday.

Extra Hours

If your boss wants you to work more than your regular workday, they must ask you to sign a written agreement. You have the right to refuse to sign this agreement. You can cancel this agreement by giving your boss two-weeks notice in writing. Sometimes, in emergencies only, you could be required to work more hours than normal without signing an agreement.

Weekly Hours

You do not have to work more than 48 hours in a week.

If your boss wants you to work more than 48 hours in a week they must ask you to sign a written agreement. It is your legal right to refuse. If you sign an agreement, your boss must still get approval from the Ministry of Labour. You must see this approval. You can cancel an agreement by giving your boss two-weeks notice in writing.

3-Hour Minimum

If you are called into work or for an assignment, you must be paid for at least 3 hours if you are sent home early. This is only if you were scheduled to work 3 or more hours that day.

Overtime

After 44 hours in one week, you should get paid 1.5 times your regular pay. For example: If you get paid \$10 an hour normally, you should get paid \$15 for every hour worked after 44 hours.

Time Off Instead Of Overtime Pay

You can agree in writing to take paid time off instead of overtime pay. You should get 1.5 hours paid time off for each hour of overtime you worked. You should take this time off within 3 months of accumulating the overtime.

For example: You work 48 hours in one week. You agree in writing to take the time off instead of pay. Because you worked 4 hours of overtime you should take off 4 hours X 1.5 hours. This means you get 6 paid hours off.

Overtime Averaging

Overtime is always calculated on a weekly basis. But your boss can ask you to sign a written agreement to “average” your overtime over more weeks.

Averaging is calculated this way:

- In one week:
You get paid overtime after 44 hours
- In two weeks:
You get paid overtime after 88 hours
- In three weeks:
You get paid overtime after 132 hours
- In four weeks:
You get paid overtime after 176 hours

For example: You agree to average your hours over a two-week period. This means that you will only be paid overtime after 88 hours in two weeks. You could work 50 hours in week one and 38 hours in week two. You would NOT be paid overtime for the extra hours in week one because the overtime is averaged over the two weeks. You would lose 6 hours of overtime in week one. Overtime averaging is not good for workers. DO NOT sign if you don't want to. You can only cancel with your boss's permission.



PROTECT YOURSELF

- Keep your own records of wages paid, hours and dates you worked and keep them at home. This will help you prove that your boss did not pay you properly.
- If you don't have a Social Insurance Number or a valid Work Permit write down your own record of wages paid, hours and dates worked to make sure you are getting paid properly. The employment standards law still applies to you and your wages should be calculated based on this law. Call us to discuss a plan if your boss breaks the law. All calls are confidential.
- Depending on your situation, you may want to consider small claims court or get a lawyer's advice.
- Often we lose all contact with the boss after we leave a job. It is important to get all phone numbers, addresses and license plates belonging to the boss that could make it easier to find them later.
- You have 6 months to file a claim at the Ministry of Labour and can claim most unpaid wages 6 months back from when the wages were due.
- If your boss doesn't deduct EI from your pay, you may still be entitled to your benefits. You can claim it later if you have dates and hours written down. You will not have to pay any EI deductions later, your boss pays.
- If you don't have a SIN or valid work permit you may not be entitled EI benefits.

ALERT

Live-in Caregivers and Hours of Work

Live-in caregivers have the same rights to limits on hours of work and overtime pay as other workers. However, caregivers often face pressure to work long hours, because they are living in the home of their employer.



PAID TIME OFF

Vacation

After 1 year of working with the same employer, you are entitled to take off 2 weeks of paid vacation. Your boss has the right to tell you when you can take your vacation. It is illegal for your boss to make you take your vacation one day at a time. If you want single vacation days, you must get your boss's written agreement.

Vacation Pay

You are entitled to 4% vacation pay for every dollar you earn or vacation time off with pay. After the first year, if you had no vacation, you should get paid vacation pay (4%) on your total gross wages. Also, if you leave a job before taking vacation, make sure you get your 4% vacation pay! Some employers pay vacation pay on every cheque. If you file a claim at the Ministry of Labour, you can go back 1 year to file for unpaid vacation pay. You have 6 months to file a claim at the Ministry of Labour.

VICTORY!

Public Holiday Pay and Temporary Agency Workers

In 2009, the Workers' Action Centre and supporters from across the province won the fight for temp agency workers to have the same rights to public holidays as other workers.

Even if you are between assignments or on lay-off, you may be entitled to public holiday pay. However, some temporary agencies do not pay their workers for public holidays even though they are legally obligated to do so.

Agencies can no longer deny public holiday to workers by saying you are "elect to work". Call us if you do not receive public holiday pay. You may be entitled to it.

Public Holidays

What are the public holidays in Ontario?

New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving, Christmas, Boxing Day.

To Qualify for Public Holiday Pay

You must work your regularly scheduled shift before and after the holiday. This does not mean the day before and the day after. Your agency may tell you that you have to work for 3 months or a certain number of hours before you can receive public holiday pay. This is illegal.

If you have a good reason to not work your regular shift before or after the holiday (for example, if you are sick) you should still get paid. You may need a doctor's note to prove it.

Public holiday pay is calculated by dividing your earnings from your last 4 work week periods by 20 (the usual number of working days in a month). For temp agency workers, this could work out to \$0 if you are not on assignment for the agency in the four work week periods before the public holiday. The Ministry of Labour website has a public holiday calendar you can use to calculate your pay. www.labour.gov.on.ca/english/es/tools/php_calc.php

Working On A Public Holiday

You can agree in writing to either:

- Be paid premium pay (1.5 x the hourly rate for all hours worked) AND public holiday pay,

OR

- Work the public holiday at your regular rate of pay AND take another day off with public holiday pay.



ALERT

NEW PROTECTIONS UNDER THE LAW FOR TEMP AGENCY WORKERS

VICTORY! The Workers' Action Centre fought very hard to expand our labour laws to better protect temp agency workers. As a result, the Ministry of Labour brought in new legal rights in 2009 that will better protect temp agency workers. We believe that more protections are needed to truly raise our workplace standards. Join our campaign to keep up the fight for equal rights for temp workers in our workplaces.

IS YOUR AGENCY FOLLOWING THE PROTECTIONS WON IN 2009?

No Fees

A temporary help agency cannot charge you money for signing up with them, assigning you work or helping with a resume or job interview. Job recruiters or "headhunters" can still charge money for finding you permanent employment with a company.

An Agency Must Give You Information About Your Assignment

Your agency must give you, in writing, their name and contact information. When they offer you an assignment, they must give you; the company name, wage rate, hours of work, description of work and length of assignment (if known) and the pay period and pay day. They should do this as soon as possible. They must also give you information about your rights from the Ministry of Labour.

Termination Pay

If you have been employed for at least three months, you have the right to receive notice or pay in lieu of notice if your employment relationship ends (terminated or no work for 13 weeks in a 20 week period). The length of time you have worked for the agency will determine how many weeks of notice or pay in lieu of notice you will receive.

Severance Pay

If you have been an employee of an agency for five or more years, you may also have a right to severance pay if the agency ends your employment. Also, the employer must have an annual payroll of more than \$2.5 million or must have terminated 50 or more employees in the last 6 months. Severance pay is one week of pay for every year worked to a maximum of 26.

An Agency Cannot Stop A Company From Hiring You Directly

The agency can charge a fee to the company (not you) for hiring you. This fee can only be charged to the company in the first six month period after you are assigned at the company. An agency cannot stop a company from giving you a reference.

No Penalty for Asking About Your Rights

Temp agencies should not penalize you for asking about your rights. The client company (where you work) can also be held responsible if you are penalized for trying to enforce your rights.



TERMINATION OF WORK

Termination Notice or Pay

Your boss can fire you with no notice if you have worked less than three months. When you leave, they should always give you:

- A record of employment (ROE)
- Unpaid vacation pay (4% of gross earnings)
- Any unpaid wages, overtime pay, etc.

After three months, your boss must give you written notice of the date you will be fired or laid off. If they do not give you notice, they must give you termination pay instead. If you are fired because of “neglect of duty, disobedience or willful misconduct” – you may not get any notice or pay. But, contact the Workers’ Action Centre; minor mistakes should not be enough to deny your right to termination pay or notice.

How much notice you should receive depends on how long you worked for your employer. According to the Employment Standards Act, the minimum notice or termination pay that a worker should receive is as follows:

How Much Notice or Pay?

More than 3 months, less than 1 year worked = 1 week

More than 1 year, less than 3 years worked = 2 weeks

More than 3 years, less than 4 years worked = 3 weeks

And so on up to 8 weeks for 8 years worked.

Severance Pay

Severance pay is not the same as termination pay. To get severance pay, you must have worked for at least 5 years for your employer. Also, the employer must have an annual payroll of more than \$2.5 million or must have terminated 50 or more employees in the last 6 months. Severance pay is one week of pay for every year worked to a maximum of 26.

Wrongful Dismissal

The Employment Standards Act only states the minimum notice a worker should receive. A wrongfully dismissed worker who believes that he or she should receive more than the minimum notice or termination pay can sue his or her former employer for more. You will need to go to the courts to do this.

ALERT

Temp Agency Workers and Termination and Severance

The law changed in 2009 to give temp agency workers the same rights as other workers to receive both termination and severance, if you qualify.



PROTECT YOURSELF

Under the Employment Standards Act, an employer does not have to provide a good reason for terminating you. These laws do not say that the boss must follow a fair process. Some employees choose to take their employer to court when they feel they have been fired unfairly. Some hire a lawyer.

- It is illegal for your boss to fire you for asking about your rights. Write down exactly what happened.
- Your boss may force you to quit by harassing you in your job, write down every detail of the harassment.
- You should be able to return to your job after being on sick leave or other leaves. If not, write down everything they say to you. Your boss should not fire you if you have an injury or serious medical condition without trying to accommodate you. If they do, you may have a human rights complaint.
- You can fight for Employment Insurance benefits if you quit for some reasons or are fired without cause. Talk to someone before you take action as you may not be entitled to EI benefits.
- Workers need better protection under the Employment Standards Act against unfair firings. Call the Workers' Action Centre for advice on how you can take action.
- You have 6 months to file a claim at the Ministry of Labour and can claim most unpaid wages 6 months back from when the wages were due.



EMPLOYMENT INSURANCE (EI) AND OTHER LEAVES

THE BASICS OF EI

What is Employment Insurance?

EI is your right. It is paid out by the federal government through Service Canada. Both you and your boss contribute to this plan. It is your boss's responsibility to deduct EI contributions from your pay. This should be recorded on your pay slips.

Do I Qualify for Employment Insurance?

No more work? Fired or forced to quit? You may be able to get EI benefits. To collect EI, you usually need to have worked between 420 and 700 hours in the previous year. Or you will need 910 hours to qualify if you are in the workforce for the first time or return to work after a period of two years. There is a two week unpaid waiting period for benefits. Always check with Service Canada for the most recent qualifying hours you need in your region.

EI also considers the reason that you are no longer working. If you were fired or quit, it may be more difficult to collect EI. Write an explanation of what happened in your application or in a separate letter submitted later.

How Do I Apply?

Go to the nearest Service Canada office to apply for EI. Make sure to apply within 4 weeks of your last day of work. You may lose some of your benefits if you apply late. You can still apply even if you don't receive your Record of Employment (ROE). You can use all of your ROE's from every job you had during the past 52 weeks.

Working For Cash With No Deductions?

Calculate the number of hours you worked in the last 52 weeks. Write down the dates you worked. Don't wait. You may still qualify for EI. If you are working without a SIN or valid work permit, you may not qualify for EI.

RECORD OF EMPLOYMENT (ROE)

Your boss must give you a Record of Employment (ROE) every time you leave a job. This document is important because it allows you to apply for Employment Insurance (EI) more easily.

The ROE records the following information from your last place of work in order to calculate your benefits and the number of weeks you will receive them:

- Your name and the name of the company
- Total hours worked in a 52-week period
- Total gross wages earned in a 26-week period
- Reason for leaving

You must get the ROE within five working days OR on the next pay period.

Reason for Leaving on ROE

Your boss must write down a reason for leaving on your ROE. Some reasons they can give are: fired, quit, illness or injury, shortage of work, temporary lay-off, pregnancy, parental, compassionate leave and "other". The reason for being out of work will affect your eligibility for EI. If your ROE says that you were FIRED or QUIT, you may be told that you will not get EI benefits.

No ROE?

Is your employer refusing to give you an ROE? You should still apply even if you don't have it. If you do not have your ROE after 14 days from your last day you are paid, contact Service Canada to find out how to obtain it. They may ask you to bring proof of your employment, like a pay stub, cancelled cheque or T4. If possible, Service Canada will use the proof to calculate your claim.

Temp Agency Workers and ROEs

The temp agency has to give you an ROE documenting all your assignments. If you have not worked or received income for seven days, you are considered on lay-off. Ask the temp agency for an ROE. This does not mean you are quitting. Tell this to the temp agency.



ALERT

Self-Employed Workers or Independent Contractors and EI

If you are truly self-employed or an independent contractor, you have to pay your own contributions to CPP or WSIB. As of January 2011, self-employed Canadians may also access Employment Insurance (EI) special benefits.

There are four types of EI special benefits:

- maternity benefits;
- parental benefits;
- sickness benefits; and
- compassionate care benefits.

To be eligible, a self-employed person must enter into an agreement (begin paying into EI) with the Commission through Service Canada. You must also be a Canadian citizen or a permanent resident of Canada. Call Service Canada at 1-800-206-7218 or visit www.servicecanada.gc.ca for more details.

ALERT

Fix Employment Insurance!

We need major improvements to the EI program. EI is hard to access and even when we get EI, we struggle to survive on low benefit rates. The EI program is failing us and our families. We need to urge the government to fix the EI program now. Join us to push for these changes.

PROTECT YOURSELF

Fired unfairly? Forced to quit? To apply for EI, write a letter of explanation about what really happened or add it to your EI application. Call the Workers' Action Centre for help.



OTHER LEAVES

The following leaves are unpaid under provincial employment standards laws. But you may qualify for income benefits through Employment Insurance from the federal government (Service Canada) for these leaves.

Sick Leave

There is no legal requirement for employers to provide paid “sick days”. Each employer is different. Some employers provide a set number of unpaid sick days per year. Other employers provide a set number of sick days with pay. Find out what the policy is where you work. There is a two week unpaid waiting period.

EI Sick Leave

Through EI, sick benefits may be paid up to 15 weeks to a person who is unable to work because of sickness or injury. To receive sick benefits you are required to have worked for 600 insured hours in the last 52 weeks. After your regular EI benefits run out, you may be entitled to apply for sick benefits with a doctor’s note if you are unwell and cannot work. There is a two week unpaid waiting period.

Emergency Leave

Employers in large companies (50 or more employees) are legally required to provide 10 days, unpaid “Emergency Leave” each year. You may take this leave for illness, injury, medical emergency and death of a family member. Your employer can consider a half day off as one full day. You may have to show proof, like a doctor’s note, for the reason of your leave.

Compassionate Leave (Family Medical Leave)

If you are supporting or taking care of a seriously ill family member who may die within 26 weeks, you can apply to Employment Insurance for up to 6 weeks of benefits. People already on EI can also ask for this type of benefit. You must have worked 600 insured hours in the last 52 weeks. You will need a doctor’s note to confirm the illness and probability of death. You must inform your boss in writing that you will be taking the time off as soon as possible.

Maternity & Parental Leave

Maternity benefits are payable to the birth mother or surrogate mother for a maximum of 15 weeks. To receive maternity benefits you are required to have worked for 600 hours in the last 52 weeks and sign a statement declaring the expected date of birth of your child.

Parental benefits are payable either to the biological or adoptive parents while they are caring for a new-born or an adopted child, up to a maximum of 35 weeks. To receive parental benefits you are required to have worked for 600 hours in the last 52 weeks or since your last claim. You must sign a statement declaring the newborn’s date of birth, or, when there is an adoption, the child’s date of placement for the purpose of the adoption, and the name and address of the adoption authority.

Parental benefits can be claimed by one parent or shared between the two partners but will not exceed a combined maximum of 35 weeks.

Your employer does not have to pay you during your leave, but they should give you back your job or give you a similar job when you return. If you are fired for taking parental or maternity leave you may have a human rights complaint.

Sick benefits during pregnancy

If you are sick during your pregnancy you can apply for up to an additional 15 weeks of sick benefits. You must provide a doctor’s note that supports you.

Check with Service Canada for more information

There are many different rules relating to all of the above benefits. Call the Employment Insurance Inquiry Line toll-free at 1-800-206-7218 for details on your situation or check out their website www.servicecanada.gc.ca.



PROTECT YOURSELF

- You should not be penalized or fired for taking any leave that you are entitled to. If you are penalized or fired write down all details of what happened and call us to find out how to take action.
- If you go on leave, you should get your old job back with the same responsibilities or a similar job with the same wages if your old job does not exist anymore.
- Your boss must try and accommodate your injury or illness. This may mean changes to your job or a different job.



INJURED AT WORK?

BE SAFE

In Ontario, the law that protects workers is the Occupational Health and Safety Act. It gives workers 3 basic rights. These 3 rights are:

- The right to know about health and safety hazards
- The right to participate in keeping your workplace healthy and safe
- The right to refuse work that you feel is unsafe

WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

Although we have laws meant to protect us, we know that many workers are still injured or killed at work every year due to unsafe conditions in their workplaces. If you are injured at work or made sick as a result of your work or work environment, and have to miss work because of this, you may be eligible to receive financial compensation from the WSIB. Not every company has WSIB coverage.

If you are injured at work or sick due to work, you could receive a percentage of your regular wages. The amount of compensation and length of payments will depend on your specific case. You should also find out if you have a private insurance plan at your workplace that may cover prescriptions or your wages while you are off.

Check with WSIB for more information

There are many rules applying to the WSIB program. Contact them directly for details on the forms to fill out and your specific situation. See contact information below.

Filing a WSIB claim

You should make sure that you report your work-related injury or illness as soon as possible following your injury or are aware of your illness. Workers should fill out a Form 6, which describes the injury or illness in detail, and send it by mail or fax (keep the fax confirmation) or drop it off in person at your local WSIB office. Give a copy to your employer and keep a copy for your records. A claim must be filed within 6 months of the incident. Check out www.wsib.on.ca for information on filing and downloading of a Form 6.

You should fill out a Form 6 as soon as possible and report to a doctor or hospital where they will fill out a Form 8 and send it to WSIB. This will verify your injury or illness even if the employer does not report the incident. An employer is supposed to fill out a Form 7.

Sick Benefits and the Employment Insurance program

If you have filed a claim at WSIB and are waiting for a decision, you may apply for up to 15 weeks of sick benefits through the Employment Insurance program until you begin to receive compensation from WSIB. You will have to pay back the sick benefits once you receive payments from WSIB.

PROTECT YOURSELF

If you are injured at work, fill out the proper forms as soon as you are able. Always report an injury immediately to your supervisor or employer.

If you need help with advice or forms relating to WSIB, contact them directly or one of the following agencies for more detailed information:

Worker's Safety and Insurance Board (WSIB) 416-344-1000 or if you need translation call 416-344-4999

Toronto Workers Health and Safety Legal Clinic: 416-971-8832

Injured Workers Consultants: 416-461-2411

Industrial Accident Victims' Group of Ontario (IAVGO): 1-877-230-6311



HUMAN RIGHTS AND HARASSMENT

HUMAN RIGHTS

You have the right to a workplace free from discrimination and harassment under the Human Rights Code. Discrimination is the unfair treatment of a person or group. Harassment is when someone is doing or saying things to make you feel uncomfortable or putting you at risk in some way. This is behaviour they should reasonably know to be unwelcome.

The Human Rights Code prohibits workplace discrimination and harassment based on race, colour, ethnicity, country of origin, age, sex, sexual orientation, disability, marital and family status, religion and citizenship and pardoned criminal offences. A worker who believes they have faced discrimination can file a complaint with the Human Rights Tribunal.

Application Forms and Human Rights: It is illegal for temp agencies to ask for your SIN, date of birth, or country of origin on the application form before they have offered you the job. However, many agencies ask for this information.

In most workplaces, temporary agency workers will receive less pay and fewer benefits than the permanent employees. This is unfair, but it is legal.

ALERT

Temp Agency Workers and Human Rights

It is legal for a temporary agency to decide who they will send to which assignments or jobs, but it cannot be based on the kinds of discrimination listed in the Human Rights Code.

PROTECT YOURSELF

- Speak to your boss or supervisor. Write down the actions of your employer. If your employer does not take action to stop the problem, they may be responsible for allowing the discrimination to happen.
- Write down everything about the discrimination. This could help you later if you decide to make a complaint. If you feel forced to quit, it may help you receive Employment Insurance and/or termination and severance pay.
- The Human Rights Legal Support Centre provides human rights legal services if you feel you have experienced discrimination. They may also help you fill out your application to the Tribunal. Call them Toll Free: 1-866-625-5179 or visit their website at www.hrlsc.on.ca for more information.



WORKPLACE HARASSMENT & VIOLENCE

Many workers face harassment (sometimes called bullying), discrimination and even violence in their workplaces. This type of abuse can make us sick, depressed and force us to quit our jobs. Be Safe. Understanding your rights will help you better protect yourself.

This information deals specifically with harassment, discrimination and violence experienced while working at your job. There are different kinds of harassment and different protections for each. This information will help you understand which steps to take and who to contact if there is a problem at work.

What is the difference between workplace violence and workplace harassment?

Workplace Violence: This could mean a person using physical force against you while at work that causes or could cause physical harm. Even if they only attempt to use physical force against you that causes or could cause physical harm, this is workplace violence. A statement or any behavior that a worker could reasonably believe to be a threat of physical harm in the workplace may also be workplace violence.

Workplace Harassment: This is when a person carries out a certain behavior towards you at work that they should “reasonably know to be unwelcome”. This could mean a person teasing you, yelling at you, bullying you, sending you offensive jokes or materials or intimidating you. This kind of harassment is not covered under the Human Rights Code unless it is happening because of one of the grounds of discrimination as listed above.

Domestic Violence

When an employer is aware, or should reasonably be aware, that domestic violence could occur in the workplace, they are required to respond and take every precaution to protect a worker from physical harm. You should be protected even if the abuser is not a co-worker.

ALERT

Workplace Violence and Harassment: New Protections Under the Law

In June 2010, changes to the Occupational Health and Safety Act address workplace violence and workplace harassment in all workplaces in Ontario. These changes are meant to make workplaces safer and employers more responsible for protecting their employees from harassment and violence. These changes will not deal directly with the harassment or violence, but only ensure your employer is taking steps to make the workplace safer.

Under this legislation, employers are required to develop:

- Workplace harassment and violence policies and programs to implement them
- Information for workers on the content of these policies and programs
- Procedures for workers to report incidents or complaints of workplace harassment or violence
- Procedures to investigate any reports, incidents or complaints of workplace harassment or violence

Workplace violence programs:

- Must include procedures to deal with emergency situations where violence has occurred or is likely to occur. For example, how to summon immediate help in an emergency situation.
- Employers must be proactive about assessing the risks of workplace violence. They must then outline how they will control possible incidences of violence in your workplace.
- Where an employer knows about an individual with a history of violent behavior that you may come across as part of your work, they must make you aware in order to protect you from physical harm.



PROTECT YOURSELF

- Be safe. If you feel in any danger, you should contact the police right away. They are the only ones who can send a response unit to your workplace to deal with emergencies.
- Under the Occupational Health and Safety Act you have the right to refuse work if you believe you are in danger from workplace violence. Your boss should not penalize you for refusing. Certain workers have only a limited right to refuse (eg: police officers, firefighters, etc).
- Speak to your boss or supervisor. They should take action to ensure you are safe at work. If your employer does not take action to stop the problem, you could report the situation to the Ministry of Labour, Occupational Health and Safety branch at 1-877-202-0008.
- Write down everything about the harassment or violent incident. This could help you later if you decide to make a complaint. If you feel forced to quit, it may help you receive Employment Insurance and/or termination and severance pay.
- Call the Workers Action Centre to discuss a strategy to approach your boss and ensure your safety.
- Ministry of Labour. Occupational Health and Safety branch. For information on health and safety at work and enforcement of the new changes. Toll Free 1-877-202-0008 or www.labour.gov.on.ca/english/
- Assaulted Women's Helpline. Phonenumber that supports women in violent situations. Multiple languages. 1-866-863-0511



ORGANIZING FOR FAIR EMPLOYMENT

If every worker only fights for himself or herself, we will never change the deeper problems that keep our wages low and our conditions unacceptable. This is why the Workers' Action Centre works hard to stop workplace violations for all workers in all workplaces. Let's improve workplace conditions for all workers and their families.

HOW DO WE DO THIS?

Organize

Our voices are stronger together. If we want to pressure the government and employers for change, they need to hear from workers that there are problems. Change will not happen if we only take on problems one-by-one. We need to address the roots of the problems we face, the weak laws that allow racism and poverty to affect our lives and our workplaces. Supporting each other means we can make the changes we need that better protect us as workers. For now and for the future.

Organizing to Change Our Labour Laws

We organize to make labour laws and enforcement stronger so that working conditions are improved and wages increased. The laws covering workers don't really protect us and the government is not doing enough to enforce the weak laws that do exist.

Workers' Rights Phone line

We operate a phone line that receives hundreds of calls every month from people facing problems at work. We provide support and talk about ways to deal with a bad boss or get unpaid wages. Our phone number is (416) 531-0778.

Education

We provide workshops at our Centre and all across the city about how to improve working conditions. It helps us at work if we know our rights. It helps us even more if we know how to protect ourselves when the law doesn't. Fact sheets and booklets on workplace rights, temp work, job scams and other issues are available in many languages on our website at www.workersactioncentre.org

Outreach

Our members get out into neighbourhoods and talk to workers about how we can support each other and get organized. We also let other workers in our communities know how to push for change to our work conditions and labour laws.

**JOIN OUR MOVEMENT OF
WORKING PEOPLE TO
IMPROVE WORKING
CONDITIONS AND WAGES**



**Phone: 416-531-0778 | info@workersactioncentre.org
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