

TEMPORARY FOREIGN WORKERS

Know Your Rights!



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WHO IS A TEMPORARY FOREIGN WORKER?

You are a Temporary Foreign Worker if you are on a work permit that allows you to only work for one employer, and are not a Caregiver or a Seasonal Agricultural Worker. Although the Temporary Foreign Worker program covers many job areas, this fact-sheet focuses on "low waged" workers. Common areas of work in this program are restaurants, meat processing and construction. If you are a Temporary Foreign Worker working in agriculture, please refer to our Agricultural workers factsheet.

In Ontario the Employment Standards Act protects all workers.

Employment Standards are the laws in Ontario that cover non-unionized workers. Every province has its own set of laws. The Ministry of Labour is the provincial government body that enforces the laws that cover workers in Ontario. This is where workers can file claims to get their unpaid wages. The Ministry of Labour is very clear - workers are covered by the law and are able to file claims "regardless of an employee's citizenship or immigration status in Canada". Below is a very basic and limited overview of your rights at work.

Minimum wage

You must be paid at least the minimum wage for every hour you work. As of June 1, 2014 the minimum wage is \$11.00 per hour. On October 1, 2015, the minimum wage will increase to \$11.25 per hour. Your employer must provide you with a pay slip each pay period that shows your pay, hours and any deductions from your pay.

Hours of work

The maximum number of hours your boss can schedule you in a week is 48. If your boss wants you to work more, they must ask you to sign a written agreement from the Ministry of Labour. It is your legal right to refuse. If you sign it, you can cancel the agreement by giving your boss 2 weeks' notice.

If you work in construction, there are no maximum hours of work per day. In all jobs, if you are working as a manager or supervisor, there are no maximum hours of work per day.

Overtime

Every hour you work after the first 44 hours in a week is considered overtime. You should get paid 1.5 times your regular pay for your overtime hours. You can agree in writing to take paid time off instead of overtime. For example, if your pay is \$11.00/hour, for your first you should either be paid \$16.50 OR take 1.5 hours off instead. If you work in construction, there are special rules for overtime pay if you are building roads or sewers. If you are working in a restaurant and are not a manager or supervisor, even if you are paid by salary, you are entitled to overtime pay for hours worked over 44 hours per week.

Breaks and rest periods

The maximum number of hours you can work in a day at one job is 13. This includes a half hour or two 15 minutes unpaid

breaks for every 5 hours you work. Construction workers are not entitled to a daily or weekly rest periods. Managers and supervisors are also not entitled to a daily or weekly rest periods.

Public holiday pay

There are 9 public holidays in Ontario: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving, Christmas Day, Boxing Day. You must work your scheduled shift before and after the holiday to qualify for public holiday pay. If you work on a public holiday you get premium pay (1.5 times your regular pay) and an alternative day off with public holiday pay.

Vacation pay

After 1 year working for the same employer, you are entitled to take off 2 weeks of paid vacation. You are entitled to 4% vacation pay for every dollar you earn or you get vacation time off with pay. If you leave a job without taking vacation, get your 4% vacation pay.

Termination notice pay

After 3 months of working for an employer, your boss must give you written notice if they wish to terminate you. If you do not get notice, you should get termination pay instead. The amount you receive depends on how long you have worked for the employer. Your employer should also give you your Record of Employment (ROE), unpaid vacation pay and any unpaid wages. Your boss can terminate you without notice if you have worked less than 3 months.

Reprisals

It is illegal for your employer to fire you, threaten you or penalize you for asking about your rights or raising issues of safety or discrimination at the workplace.

DISCRIMINATION

You have the right to a workplace free from discrimination and harassment under the Human Rights Code regardless of your immigration status, race, gender, age and sexual orientation among others. Discrimination is unfair treatment of a person or a group.

Get in touch with the Human Rights Legal Support Centre if you're being discriminated against. Contact them at 1-866-625-5179. [↗](#)

INJURED AT WORK

Most workers who get hurt or sick because of their job can get workers' compensation benefits. Workers Compensation is financial assistance that you can receive if you have to take time off work to heal from a workplace injury. The Workplace Safety and Insurance Board (WSIB) is the government body that runs the workers' compensation system. It does not matter if the workplace injury was your fault or if your employer says they do not pay into workers' compensation. If you were hurt at work, the WSIB can:

- pay you if you cannot work because of your injury;
- pay healthcare you need to treat the injury; and
- help you return to a job that you can do safely with your injury.

WSIB can pay compensation to people even if they don't have a work permit or are in the province without immigration status.

To have a confidential discussion with a legal worker about your rights following an injury at work, call IAVGO Community Legal Clinic at (416) 924-6477. [↗](#)

INCOME SUPPORTS

Employment Insurance (EI)

The Federal government pays out employment Insurance benefits. Usually, both an employer and an employee pay into the EI fund. When a worker loses their job, they may qualify for benefits for a specific number of weeks if enough hours are worked. You may qualify if you are laid off but still have a valid work permit while you are looking for a new job.

If this is your first job in Canada, you must have worked 910 hours in the last 52 weeks to get EI. If you have been working for more than a year, you may only need between 420 and 700 hours to qualify depending on where you live.

You should apply quickly within 4 weeks of your last day of work. You must be able to show Service Canada that it was not your fault that your last job ended, or that you were forced to quit. It helps to write a letter of explanation about what really happened and add it to your EI application.

If you take a leave from work to care for a newborn baby or for a family member who is very sick and at risk of death, you could be eligible to get EI benefits. You must have worked 600 hours in the last 52 weeks to be eligible for these benefits.

Maternity benefits are paid to the mother for up to a maximum of 15 weeks. You may collect benefits up to 8 weeks before you expect to have your baby, but no more than 17 weeks after the week when your child was born.

Parental benefits can be paid to one or both eligible parents for up to a combined maximum of 35 weeks. You cannot apply for this type of benefit before your child is born. You can receive parental benefits within the 52 weeks after your child was born. (This also applies to adoptive parents).

You can receive **compassionate care benefits** for up to 6 weeks to care for a relative who is very ill.

If you need to take a leave from work because of an illness, you may be eligible for Employment Insurance **sickness benefits** for up to 15 weeks if you have worked 600 insured hours in the last 52 weeks. You must be in Canada to receive sickness benefits.

You can receive these benefits while you are outside of Canada but you need to have a valid work permit.

FACTS ABOUT YOUR WORK PERMIT

To work in Canada as a temporary foreign worker your employer must obtain a Labour Market Impact Assessment (LMIA) and you should obtain a work permit. The Employment Services and Development Canada (ESDC) issues the LMIA and the work permit is issued by Citizenship and Immigration Canada. You can only work for the employer whose name is on your work permit. Your work permit could be cancelled if you work for anyone other than the person named on your work permit. If you want to change jobs you would need to find a new employer willing do an LMIA, and then apply for a new work permit.

Quitting your job

You can quit your job at any time, and can stay in the country as long as your work permit is valid. However, you are only allowed to work for the employer listed on your permit, and if you quit, you may not be able to get Employment Insurance or OHIP. Before you quit your job, you will need to request your record of employment (ROE), which is a document that shows the reason your job ended, hours worked, including overtime, and gross earnings. If your employer refuses to provide your ROE, contact your local Service Canada office. [↗](#)

Recruiters

You should not have to pay a recruiter to get a job in Canada. If you are paying a recruiter, try and keep receipts, copies of cheques and other documents so that you can make a claim to recover the fees paid. If the recruiter insists on cash payments, send them an email confirming the amount you paid and for what reason. As of November 20, 2015, new protections will be available to Temporary Foreign Workers who are paying fees to recruiters.

Changing your job

You must find an employer who is able to apply for an LMIA in order to hire you. LMIA processing fees is \$1,000, and your employer must pay it. There are many rules concerning which jobs can receive an LMIA. These include:

- The employer must show that no Canadian citizen or permanent resident is available for this job. To prove this, they must follow specific advertising guidelines that are different based on the job. In most cases, employers must post a job for 4 weeks on the Canada job bank, and advertise in two or more different kinds of outlets (for example, in a newspaper and on a website). Check to see what the specific rules are for your occupation.

- There may be other rules depending on your job that you need to be aware of. For example, in certain regions food sector or retail workers cannot be hired if the unemployment rate is over 6%. Also in certain occupations, new LMIA's are not being issued to employers with more than 10 employees for more than 20% of their workforce.
- Get in touch with us to find out what rules apply to you. [↗](#)

Once the employer has the LMIA, you must apply for a new work permit. If you've not received an LMIA in time and your work permit is expiring, get legal help to make a concurrent application. If your work permit has expired, get legal help to apply for a restoration of your permit. [↗](#)

Applying for a new work permit

Look for the expiration date on your work permit. After this date the work permit is no longer valid. You need to extend or change your work permit to legally reside in Canada. You can only hold a work permit for 4 years of continued employment in Canada. If your work permit is for over 4 years, and you are applying to renew it, you must show that you were not working for some of those 4 years. If you have questions about how to count your time, see our "4 & 4 factsheet".

If you want to renew your work permit, apply 30 days before it expires. You are able to apply for a restoration of a work permit for 90 days after your work permit has expired. Seek legal advice if you are in this situation. [↗](#)

To apply for a new work permit you need to fill out an application for a new work permit, and have a copy of a positive LMIA. Your future employer must obtain this document prior to hiring you. You should also have a signed employment contract with your new employer. If your future employer has not provided this documentation, you must send your application to renew your work permit, and send a letter of explanation (at least 30 days before your work permit expires) to Citizenship and Immigration Canada.

Applying for permanent residence?

A few workers may be able to apply for permanent residence in Canada, based on work experience here, or back home. Visit www.legalaid.on.ca/en/contact/contact.asp?type=cl to find your nearest community legal clinic that can support you. [↗](#)

PROTECT YOURSELF

The greatest risk migrant workers feel in fighting for unpaid wages or filing a complaint against employers is that the employer may retaliate. But remember: it is illegal for an employer to fire or penalize any worker for speaking out about violations at work.

Here are some basic tips you need to know:

- Your employer or the government does not need to know where you live. The employer only needs an address to send you information like your Record of Employment or tax information, while the government may need to send you information about your applications. You can use another address if you don't feel safe giving out this information.
- Be aware of deadlines, you must file within certain dates.
- If you are leaving the country, file your claim before you leave. You should leave your personal contact information with them so they can call or email you when you are out of the country. The Ministry can still make your employer pay and can send you any money they collect even if you are not in Canada.
- Keep a diary of information and details relating to hours worked and wages received.
- Get the license plate of your employer. Collect as much information on your boss as possible. It will make it easier to track them down if they don't pay you.
- Get the contact information of any supportive co-workers. They may be helpful later if you are looking for the new worksite of your boss or any other information.
- Be sure you only share details about your immigration status with people you trust.

GET SUPPORT

You are not alone! You can get assistance and work with others to get your legal rights!

It is often difficult to take action on an individual situation. That is why caregivers, farm workers, and other temporary workers are joining together as the Migrant Workers Alliance to Change to make changes collectively so that workers will have stronger protections at work no matter where they work.

CONTACT



Migrant Workers Alliance for Change
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WORKERS' ACTION CENTRE

Workers' Action Centre
416-531-0778