



ONTARIO PORK



# Human Resources Manual For the Ontario Pork Sector



**Disclaimer:**

This document is intended to be used as a guide to human resource and personnel management for pork farm operations only. The authors and the Boards of the Ontario Pork Producers' Marketing Board and the Ontario Pork Industry Council do not take responsibility for the application of any or all suggestions, advice, or information contained in this document. Professional advice should be obtained for any potential litigious situation.

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# Human Resources Manual

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# 1. INTRODUCTION

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As farms have grown in size over time, the hiring of non-family labour has become necessary. As noted in Ontario Pork's 2015 Social Responsibility Report, more than half of pork farms in Ontario (59%) now employ non-family labour, including local and foreign labour. This new reality has led pork producers to develop skills and approaches to manage their workforce. However, understanding how the multiple regulations and legal requirements apply to farming operations can be confusing and navigating government websites frustrating.

The information contained in this human resource manual is offered as an aid to Ontario pork farm owners and managers in understanding their legal obligations as employers. Other types of farm operations and non-farming businesses may have additional or different legal requirements regarding employing staff. If you have other types of business enterprises, refer to the source documents and websites at the end of each chapter to determine your responsibilities.

Templates of documents are samples only and must be reviewed and adapted to reflect your particular circumstances. As well, government regulations, wage rates, and employment requirements change over time so you should check the websites or call the contact numbers given to ensure the information is up to date and to access more detailed information. A list of references is given at the end of most chapters.

This manual, its authors and reviewers, are not providing specific legal or consulting advice. The user must exercise judgment about the applicability of the materials contained herein and obtain professional legal or human resource advice where prudent.

**Note:** Some policies require staff signatures as acknowledgment of having read and understood the practices and procedures outlined in the policy. In cases where English is not the first language of the employee, an appropriate translation of the policy should be made available to ensure full comprehension. Many government websites provide employee resources in multiple languages. Links to those sites have been provided throughout the manual.

For additional information and tools relating to human resource management, visit the Ontario Pork Industry Council and Ontario Pork websites, [www.opic.on.ca/human-resources](http://www.opic.on.ca/human-resources) and <http://www.ontariopork.on.ca/secure>. References are also provided at the end of each chapter.

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## 2. EMPLOYMENT STANDARDS ACT (ESA)

### DOES IT APPLY TO ME?

Certain agricultural jobs are exempt from particular provisions of the Employment Standards Act (ESA).

There are four categories of agricultural employees that have varying exemptions under the ESA:

- farm employees (described in more detail below),
- harvesters (work on a farm harvesting fruit, vegetables or tobacco for wholesale, retail sale or storage)
- near farmers (work with trees/shrubs, sod, fur-bearing animals, horse boarding and breeding), and
- landscape gardeners (park gardeners and greenskeepers).

The category typically applicable to pork farms is farm employees. Farm employees are those who work on a farm and are directly involved in: growing or producing eggs, milk, grain, seeds, fruit, vegetables, mushrooms, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.

### EMPLOYER REQUIREMENTS

The ESA sets the legal minimums owed to an employee however the employer has the right to exceed those minimums and often will to remain competitive with other employers.

Under the ESA, farm employees are entitled to:

- leaves of absence
- notice of termination/termination pay
- severance pay
- equal pay for equal work
- regular payment of wages and wage statements

Farm employees, as described above, are not entitled to:

- minimum wage
- limits on hours of work
- eating periods
- overtime
- public holidays
- vacation with pay or vacation pay

NOTE: Although not entitled, many farm employers voluntarily provide some or all of the above benefits to their employees. Therefore, the ESA standards for these benefits are included at the end of this chapter.

Employees may have jobs where they are required to do more than one kind of work. For example, some of the work might be specifically exempt from overtime pay, while other parts might be covered. If at least 50 percent of the hours the employee works are in a job category that is covered, the employee qualifies for that entitlement.

If you are unclear regarding whether an employee is exempt, more details can be found in the [Guide to Employment Standards Act](#) and on the Ministry of Labour's website under [exempt agriculture positions](#).

In addition to the ESA, an agricultural employee who is also a foreign national that is working or seeking work in Ontario pursuant to an immigration or foreign temporary employee program also has rights under the [Employment Protection for Foreign Nationals Act, 2009](#). For example, employers cannot charge fees or recover costs for arranging employment or take the employee's passport or work visa. For more information on this law, please visit the [Employment Protection for Foreign Nationals site](#) and the chapter in this manual entitled Temporary Foreign Workers.

## PENALTIES AND CONSEQUENCES

Depending on the severity of the non-compliance and whether it is a repeat offence, penalties include:

- Tickets that carry a set fine of \$295 plus applicable costs and victim fine surcharges.
- Fines up to \$50,000 and/or imprisonment for up to 12 months upon conviction of an offence.
- A corporation is subject to a maximum fine of \$100,000 for a first offence, \$250,000 for a second offence and \$500,000 for a third or more offences.

## COMPLIANCE DETAILS – INFORMATION AND RECORDS

### Posting Information

- Employers must provide all of their employees with a copy of the most recent version of the Ministry of Labour's poster entitled Employment Standards within 30 days of becoming an employee.
- If the majority language in the workplace is something other than English, and the ministry has published a version in that language, the employer must provide the translated version to the relevant employees. All multilingual material is available on the [Ministry of Labour's website](#).

**Note:** You must provide the Ministry of Labour poster even though some of the employment standards noted do not apply to farm workers. The standards that apply to farm workers are listed on the Ministry of Labour's website, [https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs\\_agri.php](https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php). The information from the website is included in chapter 8 following the poster. You may wish to provide this information to employees along with the Ministry of Labour poster.

### Retention of Records

For each employee, the employer must record and keep the following information for a minimum of three years after the employee stops working for the employer.

- Employee's name, address and starting date of employment.
- Employee's date of birth if the employee is a student under 18. The file must be retained for either three years after the employee's 18<sup>th</sup> birthday or three years after employment ends whichever happens first.
- Information contained in an employee's wage statement including hours worked by the employee each day and week (most recent three years).
- All the documents relating to an employee's leave of absences (such as pregnancy, parental, personal emergency, family caregiver, critical illness, etc.) must be kept for three years after the day on which the leave ends.

- Records of the vacation pay earned and paid to the employee and how that vacation pay was calculated. This information must be kept for five years after the record of vacation time and pay was made. Vacation pay is not mandatory for farm employees.

For a more detailed description of recordkeeping, refer to the relevant section of the [Guide to the Employment Standards Act](#).

### **Wage Statements**

The employer must provide the employee with a wage statement that sets out:

- the pay period for which the wages are being paid;
- the wage rate;
- the gross amount of wages and how the gross wages were calculated (i.e. number of hours, rate per hour, and any overtime rate);
- the amount and purpose of each deduction;
- any amounts that were paid in respect of room or board; and,
- the net amount of wages.

The wage statement must be:

- in print copy;
- or**
- provided by e-mail if the employee has access to some means of making a paper copy. However, employers should be careful of providing pay statements by email as email is not considered to be a secure form of transmission for confidential data.

The employee must be able to keep their wage statement information separate from their cheque.

Employers are required to make deductions for income taxes, [employment insurance premiums](#) and [Canada Pension Plan contributions](#). The Canada Revenue Agency has an [on-line payroll deductions calculator](#) to assist in determining the appropriate amounts. Monthly remittances of these deductions to the Receiver General for Canada are required as well as a year ending summary. For information about completing slips and summaries or filing an information return electronically, see [Completing slips and summaries](#) or call **1-800-959-5525**.

### **When Employment Ends**

The employer must pay outstanding wages, including vacation and termination pay if applicable, no later than:

- seven days after the worker's employment ends;
- or**
- on what would ordinarily have been the employee's next regular pay day;
- whichever is later. Employers are also required to issue a Record of Employment within five calendar days of the employee's departure.

## COMPLIANCE DETAILS - MANDATORY ENTITLEMENTS FOR FARM EMPLOYEES

### Sick Leave

Employees are entitled to up to three unpaid sick leave days per year once they have worked for an employer for at least two consecutive weeks.

If an employment contract or terms of employment provide for paid or unpaid sick days, these are not added to the three unpaid sick days provided for under the ESA.

For example, if an employment agreement provides for one paid sick day per year that is counted as one of the three sick days under the ESA. In this case, the employee could use the one paid sick day allowed under the terms of employment and then two unpaid sick days as provided under the ESA.

### Domestic or Sexual Violence Leave

- Provides up to 10 days of leave and a total of 15 weeks leave in a calendar year of time off when an employee or an employee's child has experienced or been threatened with domestic or sexual violence.
- The first five days of leave taken in a calendar year are paid and the rest are unpaid.

### Time off to Vote

The Canada Elections Act states that eligible electors must have three consecutive hours to vote on election day. If an employee's hours of work do not allow for three consecutive hours to vote, they may request you give them time off. If an employee has three consecutive hours that fall within the voting hours and fall outside of work hours, there is no obligation to provide paid time off from work.

**Example:** Voting hours are 9:00 a.m. to 9:00 p.m. Employee usually works from 8:00 a.m. to 7:00 p.m. Employee could request to leave early (at 6:00 p.m.), or be given three hours off at some point during the work day.

The employer has the right to decide when the time off will be given. An employee must be paid what they would have earned during the time allowed off for voting.

Employers, who violate the Canada Elections Act by refusing to give employees the minimum amount of time to vote, or docking employees' pay, can lead to \$2,000 in fines or up to three months' imprisonment.

Under the Ontario Elections Act, employers who fail to provide time to vote, or who deduct pay from employees who take time off to vote, could be fined up to \$5,000. If a judge finds that the offence was committed knowingly, the employer could be fined up to \$25,000 or imprisonment up to two years less a day or both.

### Can an employer ask for proof that an employee is entitled to sick leave?

Yes, an employer may require an employee to provide a medical note from a health practitioner such as a doctor, nurse practitioner or psychologist when the employee is taking the leave because of personal illness, injury or medical emergency if it is "reasonable in the circumstances".

However, the employer can ask only for the following information:

- the duration or expected duration of the absence
- the date the employee was seen by a health care professional
- whether the patient was examined in person by the health care professional issuing the note

Employers cannot ask for information about the diagnosis or treatment of the employee's medical condition.

Source: [Guide to the Employment Standards Act](#)

### **Jury Duty**

The Juries Act requires an individual to report for jury selection and possible jury duty when summoned. Employers must give employees time off to attend jury selection and to serve as jurors. Under the Employment Standards Act, a juror is considered to be on unpaid leave for the period of jury duty.

### **Unpaid, Job-Protected Leaves**

The chart on the following page provides a summary of the terms and conditions for unpaid, job-protected leaves under the ESA. Family-related leaves are typically for specified relatives only. The list of specified family members for the noted leaves can be found at:

- Bereavement Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/bereavement-leave>
- Critical Illness Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave>
- Family Caregiver <https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-caregiver-leave>
- Family Responsibility Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-responsibility-leave>
- Family Medical Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave>

Although employers are not legally obligated to pay employees on unpaid leaves, the employee is considered to be in continuous employment for the purposes of calculating annual vacation, termination entitlements, as well as for pension, medical or other employee benefit plans. The employee is also entitled to all increases in wages and benefits which he or she would have received if not on leave. Further, the employer may not terminate an employee on leave, or change a condition of employment, without the employee's written consent. As soon as the leave ends, an employee must be returned to his or her former position or comparable position.

Additional details on employee, job-protected leaves can be found by utilizing the references listed at the end of this chapter.

### Summary of Unpaid, Job-Protected Leaves under the ESA

	Qualifying Period	Length of Leave	Details
Bereavement	2 consecutive weeks	2 days per year	Upon the death of <b>specified*</b> family members
Child Death (any reason)	6 consecutive months	104 weeks	Employee must inform the employer, in writing, of their intent to take this leave, indicating the weeks they will be absent.
Crime Related Death or Disappearance of a Child	6 consecutive months	104 weeks	Employee must inform the employer, in writing, of their intent to take this leave, indicating the weeks they will be absent.
Critical Illness Leave (for Family Member)	6 consecutive months	child 37 weeks adult 17 weeks	For <b>specified*</b> family members, whose baseline health has changed significantly and whose life is at risk from illness or injury.
Family Caregiver	None	8 weeks per calendar year	For <b>specified*</b> family members with a serious medical condition, but no risk of death. The employer may request medical certification.
Family Responsibility	2 consecutive weeks	3 days per year	Illness, injury, medical emergency or urgent matter relating to <b>specified*</b> family members
Family Medical	None	28 weeks per 52 week period	For <b>specified*</b> family members only with a significant risk of death within 26 weeks. The certificate to support the leave must be issued by a qualified health practitioner, which now includes a nurse practitioner.
Organ Donor	13 consecutive weeks	13 weeks	In some cases a 13-week extension is also possible.
Pregnancy	13 weeks before estimated due date	17 weeks	Employee should provide two weeks written notice.
Parental	13 weeks before estimated due date	61 weeks if pregnancy leave taken	Birth mothers who take pregnancy leave are entitled to up to 61 weeks Parental Leave. Birth mothers not taking Pregnancy Leave and all other new parents are entitled to up to 63 weeks Parental Leave.
Reservist	6 consecutive months	Until the service is completed	The employer is not required to provide benefits during this leave
Sick	2 consecutive weeks	3 days per year	Personal illness, injury or medical emergency including pre-planned (elective) surgery but not cosmetic surgery that is not medically necessary or is unrelated to an illness or injury.

### Notice of Termination and Termination Pay

- After three months of employment, an employee is entitled to notice of termination or termination pay instead of notice. A person is considered “employed” even if they are on sick leave or temporarily laid off.
- One week’s notice is required for every year of employment up to a maximum of eight weeks.
- You can either give the employee written notice of their termination the stipulated number of weeks prior to their termination date or provide them with the equivalent number of weeks’ pay. For example, for an employee who has worked for a company for two years, they are entitled to two weeks’ notice of their termination date (during which they are paid) or two weeks’ pay instead of notice (also referred to as Termination Pay).
- Written notice of termination must be addressed to the employee and provided in person or by mail, fax or e-mail, as long as delivery can be verified, i.e. get a signature confirming receipt.
- Termination pay must be paid to an employee either seven days after the employee’s employment is terminated or on the employee’s next regular pay date, whichever is later.
- The ESA does not require an employer to give an employee a reason why their employment is being terminated. However, an employer cannot terminate an employee for exercising a right under the ESA, e.g. taking a permitted leave.
- During the notice period all benefits must be continued (e.g. health, dental, life).

Also refer to chapter 9, Human Resources Best Practices and to the [Guide to Employment Standards Act](#) for specific details on terminations, requirements for notice periods and severance pay.

### Severance Pay

A terminated employee also qualifies for severance pay of one week’s pay per week of employment to a maximum of 26 weeks if:

- they have worked for the employer for at least five years (whether continuous or not and whether active or not)

and

- the employer has a payroll in Ontario of at least \$2.5 million or terminated 50 or more employees in a six-month period because all or part of the business permanently closed.

### Temporary Layoff

- An employee is on temporary layoff when an employer cuts back or stops the employee’s work without ending their employment (e.g., laying someone off at times when there is not enough work to do).
- A layoff is considered temporary if it is less than 13 weeks in a 20-week period or it can be up to 35 weeks in a 52-week period if the employee is receiving unemployment benefits or is employed elsewhere.
- If an employee is laid off for a period longer than a temporary layoff as set out above, the employer is considered to have terminated the employee’s employment and the employee will then be entitled to termination pay.

### Equal Pay for Equal Work

Employers cannot pay an employee a lower rate of pay than another employee who performs substantially the same kind of work in the same establishment; the work requires substantially the same skill, effort and responsibility and is performed under similar working conditions. All of these conditions must be met for equal pay for equal work to be required.

Employees who perform equal work *can* be paid different rates of pay if the difference is due to:

- a seniority system;

- a merit system; or
- a system that measures earnings by production quantity or quality.

These systems should be based on objective and measurable criteria and be transparent, meaning that they should be clear, documented and communicated to employees as part of employment policies.

The Pay Transparency Act, which was to come into force as of January 1, 2019, prohibits employers from asking job candidates about their past pay rates. It also requires all publicly advertised job postings to include a salary rate and range. The Act prevents employers reprimanding employees for discussing or disclosing their compensation rates. However, this Act was put on hold as of December 6, 2018.

### Travel Time

- Commuting time is the time it takes an employee to get to work from home and vice-versa. This is not counted as work time.
- If the employee takes a work vehicle home in the evening for the convenience of the employer, the work time begins when the employee leaves home in the morning and ends when he or she arrives home in the evening.
- If the employee is required to transport other staff or supplies to or from the workplace or work site, time so spent must be counted as work time.
- If the employee has a usual workplace but is required to travel to another location to perform work, the time traveling to and from that other location is counted as work time.
- Time spent travelling during the course of the workday is considered to be work time.

### Training Time

- If an employee is required by law or by the employer to complete training, that time is considered work time, e.g. new employee training, health and safety, etc.

### Voluntary Employment Compensation/Benefits for Farm Employees

Farm employees are not automatically entitled to the following compensation/benefits however they are included as a reference for employers who choose to provide them to employees in order to be competitive in the labour market.

- Employers may grant a 30-minute eating period (meal break) after five hours of work. Meal breaks, whether paid or unpaid, are not considered hours of work, and are not counted toward overtime. Employers do not have to give employees “coffee” breaks or any other kind of break.
- Employees with less than five years of employment may be given two weeks of vacation time after each 12-month vacation entitlement year (4% of gross wages). Employees with five or more years of employment would receive three weeks of vacation time (6% of gross wages). Employers may add vacation pay to each pay cheque (% of gross wages) or pay out vacation pay at the time the vacation break is taken.

### Minimum Wage and Overtime Pay

General minimum wage as of January 1, 2018 is \$14.00.

Student minimum wage as of January 1, 2018 is \$13.15.

Minimum wage rates may increase annually as of October 1 each year starting in 2020. The new rates will be published on or before April 1 of every year, beginning in 2020.

If a change to the minimum wage rate comes into effect partway through an employee's pay period, the pay period will be treated as if it were two separate pay periods and the employee will be entitled to at least the minimum wage that applies in each of those periods.

Check the [Ontario government website](#) for current rates.

Overtime pay is 1½ times the employee's regular rate of pay and is typically paid after 44 hours of work in one work week. Overtime pay is a voluntary employment benefit for farm employees.

- Ontario has nine public (statutory) holidays:
  - New Year's Day
  - Family Day
  - Good Friday
  - Victoria Day
  - Canada Day
  - Labour Day
  - Thanksgiving Day
  - Christmas Day
  - Boxing Day (December 26)

## References

The material in this chapter was adapted from the websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Employment Standards Poster  
[https://www.labour.gov.on.ca/english/es/pubs/poster.php#get\\_poster](https://www.labour.gov.on.ca/english/es/pubs/poster.php#get_poster)
- Guide to Employment Standards Act <https://www.ontario.ca/document/your-guide-employment-standards-act-0>
- Government of Canada, Employers' Guide - Payroll Deductions and Remittances,  
<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4001.html>
- Ministry of Labour, Agricultural Employees  
[https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs\\_agri.php](https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php)
- Ministry of Labour, Critical Illness Leave, [https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave?\\_ga=2.7432946.1581906750.1550849198-246061340.1542652039](https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave?_ga=2.7432946.1581906750.1550849198-246061340.1542652039)
- Ministry of Labour, Employment Standards <https://www.labour.gov.on.ca/english/es/>
- Ministry of Labour, Family Medical Leave, [https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave?\\_ga=2.49457510.1581906750.1550849198-246061340.1542652039](https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave?_ga=2.49457510.1581906750.1550849198-246061340.1542652039)

# 3. OCCUPATIONAL HEALTH AND SAFETY ACT

## DOES IT APPLY TO ME?

Generally, the Act and its regulations apply to farming operations with **one** or more paid workers. When there is a paid worker at a farm, even for a short time, the employer and all other workplace parties (e.g. supervisors, suppliers and workers) at that farming operation must comply with all applicable requirements of the Act and regulations. This includes workers who are employed in Ontario through the Temporary Foreign Worker Program and the Seasonal Agricultural Workers Program (SAWP). See chapter 5 for additional details on those programs.

The Occupational Health and Safety Act (OHSA) does not apply to a farming operation operated by a self-employed person without paid workers. Unpaid workers or trainees, such as those on learning experience programs, do not qualify as “workers” under this Act.

## EMPLOYER REQUIREMENTS

The employer’s legal obligations include:

- taking every precaution reasonable in the circumstances to protect a worker from injury or getting a work related illness;
- providing instruction, information and supervision to workers on how they can protect their health and safety;
- making sure that the equipment, materials, and protective devices provided to a worker are maintained in good condition;
- acquainting workers in the safe handling, storage, use, disposal and transportation of any equipment, substances, tools, material, etc.;
- making sure that anyone appointed as a supervisor is competent;
- helping health and safety representatives and joint health and safety committees carry out their functions;
- ensuring that every physical structure in the workplace meets the load requirements set out in the applicable Building Code provisions, any applicable standards and sound engineering practices;
- in a medical emergency, providing all essential information (e.g. even confidential business information) to qualified medical professional for the purpose of diagnosis or treatment;
- posting a copy of the Act in the workplace, as well as explanatory material prepared by the Ministry of Labour that outlines the rights, responsibilities and duties of workers (This material must be in English and the majority language in the workplace.);
- if more than five workers are regularly employed, preparing a written occupational health and safety policy, reviewing it at least annually and setting up and maintaining a program to implement it;
- posting a copy of the occupational health and safety policy in the workplace, where workers will be most likely to see it;

### Noise Protection

- Employers must take all reasonable measures to protect workers from exposure to hazardous sound levels.
- Workers must wear and use hearing protection devices appropriate to protect them from exposure to a sound level greater than 85 dBA, Lex, 8.
- An employer who provides a worker with a hearing protection device must also provide adequate training and instruction to the worker in the care and use of the device, including its limitations, proper fitting, inspection and maintenance and, if applicable, the cleaning and disinfection of the device.

- providing the health and safety representative or the joint health and safety committee with the results of any occupational health and safety report that the employer has and advising workers of the results of such a report (a copy in writing if available); and,
- only employing or allowing people who are over a prescribed age to be in or near the workplace.

A “competent person” is defined in the OHS Act as one who must:

- be qualified, through knowledge, training and experience, to organize the work and its performance;
- be familiar with the Act and the regulations that apply to the work being performed in the workplace, and,
- know about any actual or potential danger to health and safety in the workplace.

Employers must also ensure that workers and supervisors complete a basic occupational health and safety awareness training program which covers:

1. The duties and rights of workers under the Act.
2. The duties of employers and supervisors under the Act.
3. The roles of health and safety representatives and joint health and safety committees under the Act.
4. The roles of the Ministry, the Workplace Safety and Insurance Board and entities designated under section 22.5 of the Act with respect to occupational health and safety.
5. How to recognize, assess and control workplace hazards, and evaluate those controls.
6. Sources of information on occupational health and safety.

The employer must keep records of the training.

Supervisors are responsible for:

- making workers fully aware of the hazards that may be encountered on the job or in the workplace;
- ensuring employees work safely; and,
- responding to any hazards brought to their attention, including taking every precaution reasonable for the protection of a worker.

Worker responsibilities include:

- reporting hazards in the workplace;
- working safely and following safe work practices;
- using the required personal protective equipment for the job at hand; and,
- participating in health and safety programs established for the workplace.

### Policies and Health and Safety Training

Farms are covered under the Occupational Health and Safety Act. Under the Act, workplaces must have workplace violence and harassment policies.

As well, an employer with more than five employees must have a written occupational health and safety policy and a program to implement that policy. The program will vary depending upon the hazards at the particular workplace but may include all or some of the following:

- Confined space entry procedure
- Electrical safety
- Emergency procedures
- Engineering controls (e.g., ventilation)
- Fire prevention
- First aid and rescue procedures
- Lock out procedure
- Machine guarding
- Maintenance and repairs
- Protective equipment including hearing protection for noise
- Worker training (e.g. new workers, WHMIS)

Sample policies are available on the Ministry of Labour’s website

<https://www.labour.gov.on.ca/english/hs>

### Emergency Contact Lists

A list of all emergency contact numbers should be posted by each phone in the workplace and in farm vehicles. Include police, fire, ambulance, poison control, gas and electrical companies, Ministry of Labour, etc. Your list should also have the fire code numbers for all farm properties, the physical/legal land description, and any common name, e.g. #303831 Rough Road South, Lot 5, Con. 2, My Township = the Old Brown Farm.

## PENALTIES AND CONSEQUENCES

Non-compliance with OHS or its regulations could, for each conviction, result in:

- A fine of up to \$100,000 for an individual person and/or up to 12 months imprisonment;
- A fine of up to \$1,500,000 for a corporation.

Penalties for non-compliance with Workplace Hazardous Material Information System (WHMIS) requirements include:

- a fine of up to \$25,000 and/or
- a term of up to 12 months in jail.

## COMPLIANCE DETAILS

- The type of farming operation and the number of regularly employed workers determine if farms require a health and safety representative, a joint health and safety committee or certified members.
- The chart below is specific to pork farms; other types of farms may have different requirements.
- A worker is typically considered to be “regularly employed” if the worker’s position exceeds, or is expected to exceed, a period of three months.

No. of Employees	< 6	6 to 19	20 to 49	50 or more
Health and Safety Representative		✓	✓	✓
Joint Health and Safety Committee			✓	✓
Certified Health and Safety Committee members – one management and one representing workers				✓

### Health and Safety Representative

A health and safety representative has the power to:

- identify workplace hazards;
- obtain information from the employer;
- be consulted about and present at workplace testing;
- make recommendations to the employer;
- investigate serious injuries or fatalities; and,
- be present at, and consulted on, an investigation a work refusal.

### Joint Health and Safety Committee

The joint health and safety committee must:

- meet at the workplace at least once every three months,
- be co-chaired by two members, one chosen by the members who represent workers and the other by the members representing the employer; and,
- keep a record (minutes) of its meetings which must be made available, upon request, to a Ministry of Labour inspector.

### Joint Health and Safety Committee

- A joint health and safety committee is a workplace committee comprised of worker and management representatives.
- It must have at least two members who are regularly employed at the farming operation; one management employee and one who does not have a management or supervisory role.
- The worker representatives are chosen by the non-management employees, the employer may select the management members.

Members are generally entitled to one hour of paid preparation time before each meeting, time spent at meetings, and for carrying out certain other committee duties.

The joint health and safety committee has the power to:

- identify workplace hazards;
- obtain information from the employer;
- be consulted about and present at workplace testing;
- make recommendations to the employer, and
- investigate critical injuries or fatalities.

A “certified” member of a joint health and safety committee is one who has received [specialized training in occupational health and safety](#).

Where possible, the certified member who represents workers:

- conducts the monthly workplace inspections, and,
- is present (if possible) at any reassignment of refused work.
- may investigate any complaints received that dangerous circumstances exist, and, under certain circumstances, order the employer to stop work where dangerous conditions exist.

In most cases, it takes two certified members representing both management and the workers to direct an employer to stop dangerous work.

### Notification of Injuries

If a person has been critically injured or killed from any cause at a farming operation, the employer must immediately notify:

- a Ministry of Labour inspector, and
- the joint health and safety committee or health and safety representative (if any).

This notice must be by direct means, such as by telephone. Within 48 hours, the employer must also notify, in writing, a Director of the Ministry of Labour, giving the circumstances of the occurrence.

### ➡ Ministry of Labour Health & Safety Contact Centre

**Toll-free: 1-877-202-0008**

**Fax: 905-577-1316**

[Regional Offices](#)

**If a person is killed or critically injured at a workplace, no person can alter the scene where the injury occurred.**

Where there is an injury that is not a critical injury, the employer must notify the joint health and safety committee or health and safety representative (if any) in writing within four days.

### Critical Injury

A critical injury is one that:

- places life in jeopardy;
- produces unconsciousness;
- results in substantial loss of blood;
- involves the fracture of a leg or arm but not a finger or toe;
- involves the amputation of a leg, arm, hand or foot but not a finger or toe;
- consists of burns to a major portion of the body; or
- causes the loss of sight in an eye.

### Written Notice of Critical Injury or Fatality

Include the following information:

- the name, address and phone number of the employer;
- the type of farming operation;
- the name, address and phone number of the person who was killed or critically injured;
- the time and place of the occurrence;
- a description of the occurrence and the bodily injury sustained;
- a description of the machinery or equipment involved, if any;
- the names, addresses and phone numbers of all witnesses to the occurrence; and
- the name, address and phone number of the physician, if any, by whom the person was or is being attended; and,
- the steps taken to prevent a recurrence.

If an employer is told that a worker has an occupational illness or that a claim for an occupational illness has been filed with the Workplace Safety and Insurance Board, within four days, the employer must notify:

- a Director of the Ministry of Labour, and,
- the joint health and safety committee or health and safety representative (if any).

Under the OHS Act, occupational illness is defined as a condition that results from exposure in a workplace to a physical, chemical or biological agent.

### Right to Refuse Work

Workers have the right to refuse work they believe is dangerous to either their own health and safety or that of another worker in the workplace. For example, workers may refuse work if they believe their health and safety is endangered by: any farm equipment they are to use; the physical conditions of the workplace such as working in a confined space; or by workplace violence.

Refer to <https://www.ontario.ca/page/health-and-safety-farming-operations#section-11> for the defined process for work refusals and resolution.

### Communication about a person with a history of violent behaviour

Employers and supervisors must provide information to a worker about a risk of workplace violence from a person with a history of violent behaviour, if the worker can expect to encounter that person in the course of work, and if the risk is likely to expose the worker to physical injury. Personal information may be disclosed, but only what is reasonably necessary to protect the worker from physical injury.

**Example:** A farm worker should be told if there is person with a history of hitting workers at that workplace and what the triggers are for that person's violent behavior or other warning signs.

Seek legal advice if you are concerned about breaching privacy laws, e.g. Youth Justice Act, Personal Health Information Act, or Personal Information Protection and Electronic Documents Act.

### Workplace Harassment and Violence

All employers, who are subject to the OHS Act, must:

- prepare policies with respect to workplace violence and workplace harassment
- review the policies at least once a year,
- set up and maintain programs to implement the policies, and,
- provide information and instruction to workers on the contents of these policies and programs.

A workplace violence program must include measures and procedures:

- for controlling risks identified in an assessment of risks
- summoning immediate assistance when workplace violence occurs or is likely to occur, and
- for workers to report incidents of workplace violence to the employer or supervisor.

Workplace violence programs must also set out how the employer will investigate and deal with incidents or complaints of workplace violence.

A workplace harassment program must:

- include measures and procedures for workers to report incidents of workplace harassment, and,
- set out how the employer will investigate and deal with incidents or complaints.

See chapter 8, Mandatory Information Posting for sample workplace harassment and violence policies.

### Domestic violence

Employers who are aware, or ought reasonably to be aware, that domestic violence may occur in the workplace must take every precaution reasonable in the circumstances to protect the worker, e.g. keep external doors locked if possible, do not leave the worker alone on site, etc.

## WHMIS

Ontario's WHMIS legislation applies to all workplaces covered by the Occupational Health and Safety Act although there is one reference in the guide to the WHMIS legislation that states farms are exempted. This exception does not appear in the WHMIS Regulation or on the general Ministry of Labour website or print material. Requests for clarity have not resulted in a clear ruling. As a result, it would be prudent for farm operations covered by the OHS Act to comply with WHMIS requirements.

WHMIS legislation requires employers to obtain health and safety information about hazardous products from their suppliers, and to use that information to train their workers.

A worker education program on hazardous materials must include, at a minimum, the following:

- Labels on hazardous products - the information required on a supplier and workplace label and the purpose and significance of the information;
- Modes of identification when used at the workplace instead of labels;
- Safety Data Sheets - the information required, and the purpose and significance of the information;
- Procedures for the safe use, storage, handling, and disposal of a hazardous product;
- Procedures to be followed when hazardous emissions are present; and
- Procedures to be followed in case of an emergency involving a hazardous product.

**Note:** Ensure your training material is up-to-date. WHMIS pictograms, labels, material safety data sheets (MSDS), and classifications have been updated as of 2015 to match a global communication system (Globally Harmonized System of Classification and Labelling for chemicals).

## Drug and Alcohol Use

It is reasonable for employers to expect that employees will show up sober and ready to perform their duties. Safety sensitive positions, such as those requiring the use of heavy equipment, should be clearly identified in job descriptions and policy documents.

Although there are no specific provisions in the OHS Act that address controlled substance use in the workplace (e.g. alcohol and cannabis), some lawyers advise that employers have an obligation to implement an appropriate policy to deal with substance use as part of their due diligence requirements.

The objective of a drug and alcohol policy should be to clearly outline your expectations regarding fitness for duty, workplace use, possession, and sale of impairing substances. This includes what a worker is expected to do

## Smoke-Free Ontario Act

The Smoke-Free Ontario Act, 2017, which came into effect in October 2018, prohibits individuals from: smoking; holding lighted tobacco or cannabis products; vaping; or holding an activated e-cigarette, whether or not the vapour contains nicotine, in a number of places, including in an "enclosed workplace" or "enclosed public place."

The Act also requires employers to:

- post "No Smoking" and "No Vaping" signs at all entrances, exits, washrooms and anywhere signs can be easily placed and seen;
- make sure that no one smokes, vapes or holds lighted tobacco or e-cigarettes in an enclosed workplace, public place, or area where smoking is banned;
- make sure that a person who does not comply leaves the premises; and,
- remove ashtrays (or any object that serves as one).

Corporations who do not comply with the Act may be fined up to \$100,000 for a first offence and up to \$300,000 for subsequent offences. Individual employers may be fined up to \$1,000 for the first offence and up to \$5,000 for subsequent offences.

Farms typically prohibit smoking on site but there may be offices or lunch rooms where smoking is allowed. Under this Act, this practice is not allowed.

No smoking and no vaping signs can be downloaded at

<https://www.ontario.ca/page/no-smoking-no-vaping-signs-businesses>

(e.g. report the use of a controlled or illegal substance at the work site to a supervisor immediately) and what a worker is prohibited from doing (e.g. attending work while impaired).

Be sure to advise employees of the disciplinary consequences for violating the policy and workplace rules; this should be stated within your policy.

## References

The material in this chapter was adapted from the websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Certification for Joint Health and Safety Committee Members, Ministry of Labour <https://www.labour.gov.on.ca/english/hs/faqs/jhsc.php>
- Guide to the Occupational Health and Safety Act <https://www.ontario.ca/document/guide-occupational-health-and-safety-act>
- Occupational Health and Safety Act, R.S.O. 1990, c. O.1 <https://www.ontario.ca/laws/statute/90o01>
- Ontario Ministry of Labour, Farming Operations – Agriculture <https://www.labour.gov.on.ca/english/hs/topics/farming.php>
- Ontario Ministry of Labour, Regional Offices [https://www.labour.gov.on.ca/english/about/reg\\_offices.php](https://www.labour.gov.on.ca/english/about/reg_offices.php)
- Ontario Regulation 381/15: Noise <https://www.ontario.ca/laws/regulation/r15381>
- Reporting an Incident, Ministry of Labour <https://www.labour.gov.on.ca/english/hs/incident.php>
- Right to refuse or stop work <https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger>
- WHMIS <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/occupational-health-safety/workplace-hazardous-materials-information-system.html>
- Workplace Hazardous Materials Information System - A guide to the legislation <https://www.ontario.ca/document/workplace-hazardous-materials-information-system-guide-legislation/whmis-legislation>
- Workplace Safety and Prevention Services' (WSPS) [farm safety resources](#)

## Training Materials

Ministry of Labour workbooks and employer guides that cover the basics of occupational health and safety and fulfill the training obligation under the Act:

- [Worker Health and Safety Awareness in 4 Steps: Workbook](#)
- [An Employer Guide to Worker Health and Safety Awareness in 4 Steps](#)
- [Supervisor Health and Safety Awareness in 5 Steps: Workbook](#)
- [An Employer Guide to Supervisor Health and Safety Awareness in 5 Steps](#)

Electronic (e-learning) training tools:

- [Worker Health and Safety Awareness in 4 Steps](#)
- [Supervisor Health and Safety Awareness in 5 Steps](#)

Please note that employers are not required to use these specific Ministry products in order to comply with the regulation as long as the training they provide covers the necessary content.

## 4. WORKPLACE SAFETY AND INSURANCE ACT

### DOES IT APPLY TO ME?

If you hire workers, including family members or apprentices, for your farming operation, you must register with the WSIB within 10 days of hiring your first worker. You must also ensure any outside contractors hired by you to perform work on your operation are in compliance with WSIB.

Workplace safety and insurance is a no-fault insurance system for work-related injuries and diseases. It is governed by the Workplace Safety and Insurance Act, 1997 (WSIA) and is managed by the Workplace Safety and Insurance Board (WSIB). Workers or their dependents can claim WSIB benefits if the worker suffers an injury, disease or death that arose out of and in the course of employment.

### EMPLOYER REQUIREMENTS

#### Posting Information

Employers are required to prominently display the "In Case of Injury" Poster (Form 82) in their workplace. This [poster](#) is provided free of charge to employers directly by the WSIB. Employers can get the poster online or by calling the WSIB at 416-344-1000 or 1-800-387-0750. A copy is also included in this document as Appendix C to chapter 8, Mandatory Information Posting.

#### First Aid Requirements

All employers covered by the Workplace Safety and Insurance Act must follow the first aid requirements outlined in [Regulation 1101](#) including:

- Workplaces must have at least one worker on site at all times that has a valid first aid certificate from a [WSIB-approved training organization](#). Employers are required to identify any staff with first aid training.
- Employers must cover any costs for first aid equipment and services.
- Employers must inspect first aid equipment at least once every three months.
- First aid stations must be easy to find and near a worker who has a valid first aid certificate.
- Employers must post the [in case of injury at work poster \(Form 82\)](#), first aid certificates and first aid kit inspection card in an area that all workers can easily access.
- Employers must keep a detailed record of all incidents and any first aid treatment given.

There are very specific requirements for what first aid kits must contain depending on the number of workers and whether the kit is at a central location or in a vehicle. The brochure [First Aid Requirements](#) published by WSIB outlines prescribed kit requirements.

#### External Contractors

When engaging outside contractors to complete work on your farming operation, inquire whether they are compliant with WSIB requirements and have a valid clearance certificate.

### PENALTIES AND CONSEQUENCES

The WSIB may levy penalties on employers for various offences, including:

- failing to register your business within 10 days of hiring your first worker;

- failing to get a clearance certificate from all contractors performing construction work, and keeping all clearance certificates for three years;
- failing to report an accident;
- not reporting, or incorrectly reporting, your premium information;
- underestimating your earnings;
- knowingly making a false or misleading statement to the WSIB;
- willfully failing to inform the WSIB of a material change in circumstances; and,
- contravening rules regarding the disclosure of confidential information.

If found guilty under the Provincial Offences Act, individuals may be fined up to \$25,000 and/or imprisoned for up to six months for each offence. Corporations are liable for a fine of up to \$100,000 for each offence.

Employers who are found in breach of their work reintegration or re-employment obligations (covered later in this chapter) are also subject to additional financial penalties. The WSIB also charges interest for non-compliance regarding any WSIA obligations.

## COMPLIANCE DETAILS

### How to Register

Registration forms are available on the WSIB's website at [www.wsib.on.ca](http://www.wsib.on.ca), and through its eRegistration service. You can also call the WSIB at 1-800-387-0750 to have one sent to you. You should always check with the WSIB, preferably in writing, to determine whether or not you need to register.

### When You Need to Report

Employers must report accidents or occupational diseases.

Accidents include:

- a chance event caused by a physical or natural incident, e.g. falling off a ladder or frostbite;
- a willful and intentional act, but not an act of the worker, e.g. being assaulted by a co-worker; and,
- a disablement, which may be a condition that
  - has emerged gradually over time, and cannot be attributed to a clearly defined time or place, e.g. carpal tunnel syndrome, or
  - is an "unexpected result" of the worker's duties, wherein an accident that was originally believed to be minor resulted in disablement at a later date, e.g. a back injury from bending over to pick up equipment.

An occupational disease includes:

- a disease resulting from exposure to a substance that is related to a particular industrial process, trade or occupation, i.e., developing asthma from working in a flour mill;
- a disease peculiar to, or characteristic of, a particular industrial process, trade or occupation, i.e., the development of lead toxicity is not a disease, but is a precursor that can lead to severe damage of the central nervous system and is compensable prior to developing the disease;
- a medical condition that, in the WSIB's opinion, requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease;
- a disease mentioned in [Schedules 3 or 4](#) of O. Reg. 175/98; or
- a disease listed in the WSIA applicable to firefighters and fire investigators.

### What to do if an Accident Occurs

Administer first aid, and arrange and pay for transportation to a medical clinic, a health care practitioner, a hospital or the worker's home, if required. Have someone accompany the injured worker on your behalf, if necessary.

Ensure all the required forms are completed and submitted to WSIB including:

- Functional Abilities Form for Planning Early and Safe Return to Work" [Form 2647A \(FA Form\)](#) for the treating health care practitioner.
- "Worker's Report of Injury/Disease" [Form 0006A \(Form 6\)](#).
- The employer must report the accident to the WSIB by completing a [Form 7](#) within three calendar days of learning of the accident. You can also provide additional information such as copies of statements, drawings, photographs, etc.

Additional details regarding reporting can be found on the WSIB [website](#).

### Work Re-Integration

Employers and workers are required to:

- contact each other as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery and impairment;
- attempt to identify and provide suitable employment that is safe, productive, and consistent with the worker's functional abilities and that, where possible, restores the worker's pre-injury earnings;
- notify the WSIB if there is a dispute;
- give the WSIB any information it may request concerning the worker's return to work; and,
- notify the WSIB of any difficulty or dispute concerning their cooperation with each other in the worker's early and safe return to work.

"Suitable work" may include the combining or "bundling" of tasks or duties which together may constitute either a temporary or permanent job, or a short-term training program that results in a different job with the employer. But there is no requirement for the employer to create a new job.

If an employer is unable to offer suitable work to a worker who is not capable of performing his/her pre-injury job because of the work-related injury/disease, the WSIB will consider training the worker to do a suitable occupation.

Additional details regarding re-integration of injured workers and the employer's responsibilities are contained in the [Employer's Guide to Workplace Safety and Insurance](#).

### References

The material in this chapter was adapted from the documents and websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Copies of the Regulations under the Workplace Safety and Insurance Act are available from the [WSIB website](#).
- Employer Forms, WSIB [www.wsib.on.ca](http://www.wsib.on.ca)
- The Employer's Guide to Workplace Safety and Insurance [http://www.employeradviser.ca/en2/documents/report/nonconstruction\\_em\\_guide.pdf](http://www.employeradviser.ca/en2/documents/report/nonconstruction_em_guide.pdf)
- First Aid Requirements under Regulation 1101, WSIB brochure <http://www.wsib.on.ca/cs/groups/public/documents/staticfile/c2li/mdey/~edisp/wsib012725.pdf>
- Workplace Safety and Insurance Board <http://www.wsib.on.ca>

# 5. TEMPORARY FOREIGN WORKERS

## DOES IT APPLY TO ME?

For employers who have been unable to recruit Canadian citizens or permanent residents for job openings, the Temporary Foreign Worker Program (TFWP) makes it possible to hire workers from outside Canada.

As the TFWP is designed to help employers fill short-term gaps in Canada's labour market, temporary foreign workers are limited to working in Canada for two years or eight months, depending on the stream under which they were hired, before having to return to their home country.

### Seasonal Agriculture Worker Program (SAWP)

- eight-month contracts
- workers from Caribbean countries and Mexico only
- employer must provide housing at no cost to the worker with a small fee for incidentals, and
- pay for transportation and most flights

### Agricultural Stream

- two-year contracts
- employer must provide flights and transportation
- employer must provide housing

The employer may deduct \$30 a week from workers for on-site housing. For off-site housing, employers may deduct \$30 a week from low-skilled workers and no more than 30% of gross income from high-skilled workers.

## EMPLOYER REQUIREMENTS

The TFWP is jointly managed by Human Resources and Skills Development Canada (HRSDC) and Citizenship and Immigration Canada (CIC).

Employers require a labour market impact assessment (LMIA) from HRSDC to hire a foreign worker. A positive LMIA means that the employer has tried but has been unable to find a Canadian or permanent resident for the job. The LMIA is the key piece in being approved for participating in the TFWP.

After obtaining an LMIA, the worker needs to apply to CIC for a work permit. The employer must provide a copy of the positive LMIA from HRSDC for inclusion with the worker's application.

### Labour Market Impact Assessment (LMIA)

The LMIA is a critical step toward employing temporary foreign workers. An application can be submitted up to six months prior to the expected job start date. You must complete, sign and send it along with all required documentation for each position requested to the appropriate [Service Canada Processing Centre](#). A [processing fee](#) may apply. The application package must include:

- Labour Market Impact Assessment [application form for low-wage positions \(EMP5627\)](#)
- [Proof of business legitimacy](#)
- [Proof of recruitment](#)
- [Employment Contract \(PDF 28.85 KB\)](#)

### Required Recruitment Efforts

Employers are required to conduct recruitment efforts to hire Canadians and permanent residents before offering a job to a temporary foreign worker. Proof of recruitment efforts must be included with your LMIA application.

To meet the minimum advertising requirements:

- employers must advertise on the Government of Canada's [Job Bank](#);
- the advertisement must be posted for a minimum of 14 calendar days, accessible to the general public and done during the three-month period prior to applying for a LMIA; and,
- employers must also conduct recruitment activities consistent with the normal hiring practices for the job category being filled by choosing one or more of the following methods of advertising for a minimum of 14 calendar days:
  - on recognized Internet employment sites;
  - in local and regional newspapers or newsletters;
  - in local stores, places of worship, community resource centres; or
  - in local and regional employment centres.

The advertisement must include the:

- company operating name;
- business location;
- title of position;
- job duties (for each position, if advertising more than one vacancy);
- terms of employment;
- wage (must include any incremental raises, performance pay or bonuses);
- a wage range can be used for the purposes of complying with the advertisements; however the lowest wage in the range must meet the prevailing wage (see note below);
- benefits package being offered (if applicable);
- location of work (local area, city or town);
- contact information: telephone number, email address, fax number, or mailing address; and

Wages for Agricultural Stream Temporary Foreign Workers are posted annually on the Government of Canada website [Wages by Agricultural Commodity](#). These are the wages that pork farm employers must pay Temporary Foreign Workers and should also be included in the job advertisement.

## PENALTIES AND CONSEQUENCES

Potential sanctions for non-compliance with the TFWP:

1. LMIA suspended.
2. LMIA revoked.
3. Name of employer published on a public, government "blacklist".
4. Fines ranging from \$500 to \$100,000 per violation, up to a maximum of \$1 million in a one-year period.
5. Banned from the TFWP for periods ranging between one and 10 years, with an indefinite ban imposed in the most extreme cases.
6. If a criminal offence, could face additional fines and jail time.

## COMPLIANCE DETAILS

As an employer, your obligations under the Temporary Foreign Worker Program include:

- pay [National Commodity List](#) wage rates;
- cover all hiring costs;
- pay for round-trip transportation for the worker from their home country;
- provide safe working conditions compliant with Ontario laws;
- register the worker with the provincial health insurance plan (OHIP) (employees can apply after three months in the province);
- pay for basic medical insurance until OHIP coverage starts (best practice includes some extended medical coverage for the duration of the employment);
- arrange and pay for workplace safety insurance coverage from either the Workplace Safety and Insurance Board or a private insurance provider to correspond to the worker's arrival date in Canada (The private insurance coverage must be similar to that provided under the provincial workplace safety insurance plan.);
- provide suitable accommodations for the worker that follow the municipal housing occupancy rules; and,
- provide, where required, no-cost transportation between the on-site/off-site housing location and the work location.

Employer records must be kept for a minimum of six years. This includes proof of advertising, invoices, receipts, copies of flight itineraries, tickets, boarding passes, etc.

The Temporary Foreign Worker Guide Booklet produced by the [Ontario Pork Industry Council](#) and Ontario Pork provides more details on hiring Temporary Foreign Workers including fulfilling the federal government application requirements and suggested voluntary support for workers.

Another resource is [Foreign Agricultural Resource Management Services \(F.A.R.M.S.\)](#), a non-profit corporation which facilitates and coordinates the processing of requests for foreign seasonal agricultural workers. Authorized by Human Resources Skills Development Canada, F.A.R.M.S. performs an administrative role to the Caribbean and Mexican Seasonal Agricultural Workers Program. It is governed by a Board of Directors made up of agriculture sector representatives.

### References

The material in this chapter was adapted from the documents and websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Foreign Agricultural Resource Management Services (F.A.R.M.S.), <http://farmsontario.ca/>
- Temporary Foreign Worker Guide Booklet, Ontario Pork Industry Council and Ontario Pork, contact Andrea De Groot, Managing Director, [andrea.opic@gmail.com](mailto:andrea.opic@gmail.com)
- Program Requirements for Low-Wage Positions, <https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/low/requirements.html#h2.2>
- Temporary Foreign Worker Program Factsheet, Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/factsheet-temporary-foreign-worker-program.html>

## 6. ONTARIO HUMAN RIGHTS CODE

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### DOES IT APPLY TO ME?

The Ontario Human Rights Code (the "Code") applies to everyone. The Code's goal is to prevent discrimination and harassment on seventeen grounds including because of race, sex, disability and age. It is a provincial law that legislates equal rights and opportunities without discrimination in specific areas such as jobs, housing and services.

This chapter deals only with the section of the Code relating to employment equal rights and opportunities. Employment is used in a very general way in the Code; employees, independent contractors and volunteers are covered.

For a complete copy of the Code and guidelines see [www.ohrc.on.ca/english/code/index.shtml](http://www.ohrc.on.ca/english/code/index.shtml). Another excellent resource is the Human Rights at Work book available at no charge on the Ontario Human Rights Commission website <http://www.ohrc.on.ca/en/human-rights-work-2008-third-edition>

### EMPLOYER REQUIREMENTS

The Code and related human rights law are based on the principle that employment decisions should be focused on the applicant's ability to do the job rather than on factors that are unrelated to job requirements, qualifications or performance.

The right to "equal treatment with respect to employment" covers applying for a job, being recruited, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs. It also covers rate of pay, benefits, shift work, discipline and performance evaluations.

Employers, who have not defined the essential duties of a job, provided required accommodation and individually assessed the job applicant's ability to perform the essential job duties, will have difficulty defending themselves if a human rights complaint is filed.

### PENALTIES AND CONSEQUENCES

Fines up to \$25,000 can be assigned for breaches of the Ontario Human Rights Code. Courts may also award monetary compensation to the person whose rights were infringed for losses arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

### COMPLIANCE DETAILS

#### **Job Ads**

Having a clearly defined job description and the essential requirements of the job provides a solid, defensible basis for assessing the performance of applicants and employees, and for making decisions on hiring, promotions, discipline and termination.

When preparing to hire employees, an employer may consider the following questions:

- Is the job description current or does it need to be updated?

- Does the job description accurately reflect your needs and expectations of the position?
- Which are essential requirements and which are non-essential?

To help determine whether a particular task or duty is essential, consider:

- How often is the duty performed?
- How much time is spent on each duty?
- How does the duty fit with the others performed in the job?
- How would the job change if the duty were removed?

Refer to the prohibited topic areas listed below for job applications. These same prohibited categories are applicable to job descriptions unless they are deemed an essential requirement.

### Applications

The Code states it is not appropriate to include on application forms any questions that relate directly or indirectly to the following prohibited grounds of discrimination:

- |                    |                      |                      |                                 |
|--------------------|----------------------|----------------------|---------------------------------|
| • race             | • creed              | • record of offenses | • family status                 |
| • ancestry, colour | • sex                | • age                | • gender identity or expression |
| • place of origin  | • sexual orientation | • marital status     | • disability                    |
| • ethnic origin    |                      |                      |                                 |
| • citizenship      |                      |                      |                                 |

Drug and alcohol dependencies may be considered a form of disability under the Code. While not all people with drug and alcohol dependencies see themselves as having a disability, they are protected under the Code against discrimination in the workplace based on the ground of disability.

Below is a partial list of topics which are prohibited on application forms:

- Physical characteristics such as colour of eyes, hair, height, weight, or requests for photographs.
- Ability to speak English or French fluently, unless to do so is a reasonable and bona fide requirement for the position.
- Religious affiliation, religious institutions attended, religious holidays, customs observed, willingness to work on a specific day which may conflict with requirements of a particular faith (e.g., Saturday or Sunday Sabbath days).
- The name and location of schools attended.
- Questions about or relating to Canadian citizenship, landed immigrant status, permanent residency, naturalization, requests for Social Insurance Number. However, you may ask, “Are you

### What should be included in a job description?

A comprehensive job description should contain:

- the job title;
- a brief statement of the major responsibilities of the position;
- the training and work experience necessary to carry out the duties of the job;
- a list of the major activities involved with the position;
- who the employee reports to and who and how many people are supervised by them (if applicable);
- hours of work;
- may include wage ranges (see text box below); and
- may include safety responsibilities or environmental conditions.

### Pay Transparency Act, 2018

This Act was to come into effect as of January 1, 2019 however it has been put on hold. As currently written, all publicly advertised job ads **would have to include a salary rate or range.**

Employers would be prohibited from asking job candidates about their past pay rates and also could not reprimand employees for discussing or disclosing their compensation once hired.

Employers should watch for future announcements regarding the status of this Act.



Requests for medical examinations or health information necessary for pension, disability, superannuation, life insurance and benefit plans should also be made after acceptance of a conditional (preferably written) offer of employment.

### Harassment and Workplace Violence Policies

Workplace violence and harassment policies are a critical piece in demonstrating anti-discrimination practices in the workplace. These policies make it clear that harassment and discrimination will not be tolerated, and set standards and expectations for behaviour.

Related complaint procedures should set out how potential violations of these policies will be addressed in an employment context. Many organizations choose to combine their anti-harassment and anti-discrimination policies and procedures into a single document. Sample policies are contained in chapter 8, Mandatory Information Posting.

### Procedures for Resolving Complaints

Employers who do not have effective complaint mechanisms in place may be found to have failed in their duty to address discrimination and harassment. At minimum:

- complaints must be taken seriously;
- they must be acted upon promptly when received;
- appropriate resources must be applied to resolve complaints;
- a viable complaint mechanism must be in place and have been communicated throughout the organization;
- the complaint procedure must ensure a healthy work environment is created and maintained for the complainant; and,
- decisions/actions taken by the organization must be communicated to the parties.

For more detail on resolving complaints, refer to the Commission's [Guidelines on Developing Human Rights Policies and Procedures](#). For more information about the Ontario Human Rights Code in general, visit the Commission's website at [www.ohrc.on.ca](http://www.ohrc.on.ca) or call during regular office hours from Monday to Friday.

Ontario Human Rights Commission

Tel: (416) 326-9511 or Toll Free: 1-800-387-9080

### References

Guide to your rights and responsibilities under the Human Rights Code

<http://www.ohrc.on.ca/en/guide-your-rights-and-responsibilities-under-human-rights-code-0>

Guidelines on developing human rights policies and procedures <http://www.ohrc.on.ca/en/policy-primer-guide-developing-human-rights-policies-and-procedures>

Human Rights at Work 2008 - Third Edition <http://www.ohrc.on.ca/en/human-rights-work-2008-third-edition>

For more information on the human rights system in Ontario, visit: [www.ontario.ca/humanrights](http://www.ontario.ca/humanrights)

### Definition of Workplace Violence

The Occupational Health and Safety Act defines workplace violence as physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker. It also includes any statement or behaviour that a worker could reasonably interpret as a threat that could cause physical injury.

This may include:

- verbally threatening to attack a worker;
- leaving threatening notes at or sending threatening e-mails to a workplace;
- shaking a fist in a worker's face;
- wielding a weapon at work;
- hitting or trying to hit a worker;
- throwing an object at a worker;
- sexual violence against a worker;
- kicking an object the worker is standing on, such as a ladder; or
- trying to run down a worker using a vehicle or equipment such as a forklift.

Source: Ministry of Labour,  
[https://files.ontario.ca/wpvh\\_guide\\_englsh.pdf](https://files.ontario.ca/wpvh_guide_englsh.pdf)

# 7. ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT

## DOES IT APPLY TO ME?

The Accessibility for Ontarians with Disabilities Act (AODA) applies to all levels of government, non-profits, and private businesses in Ontario that have one or more employees (full-time, part-time, seasonal, or contract).

## EMPLOYER REQUIREMENTS

The Accessible Employment Standard requires you to make your employment practices accessible to meet the needs of employees and job applicants with disabilities.

You must provide workplace information in an accessible format if an employee asks for it. This includes:

- any information employees need to perform their jobs (e.g. job descriptions and manuals);
- general information that is available to all employees at work (e.g. company newsletters, bulletins about company policies and health and safety information); and
- emergency and public safety information.

If a person with a disability asks for accessible information or requires supports, work with them to figure out how to meet their needs.

## PENALTIES AND CONSEQUENCES

The maximum penalties under the AODA include:

- A corporation/organization that is deemed guilty can be fined up to \$100,000 per day.
- Directors and officers of a corporation/organization that is found guilty can be fined up to \$50,000 per day.

## COMPLIANCE DETAILS

### Hiring

If an applicant or successful candidate requests an accommodation, discuss their needs with them and make adjustments to support them. For example, you can make a document accessible by recreating it in a different format, e.g. printing it in large print for someone with vision loss.

### Definition of Disability

The AODA uses the Ontario Human Rights Code definition of “disability” which is:

- any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device;
- a condition of mental impairment or a developmental disability;
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- a mental disorder; or
- an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

**Note:** It is important that you identify in the job description any requirements of the job for which you cannot reasonably make accommodation. See chapter 6, Ontario Human Rights Code, for an explanation of human rights requirements and obligations.

### Communicate accessibility policies

You must tell your employees about your policies to support people with disabilities. Inform new employees when they are hired and update all your employees if you change the policies.

### Workplace information

Talk to your employees with disabilities about how they need to receive information. You don't have to have accessible formats on hand, but you need to provide the information in a timely manner.

You must also provide [accessible emergency information](#) to staff when you become aware an employee may need accommodation in an emergency.

In some cases you don't need to make information accessible if:

- it is not possible technically to convert a document to an accessible format (you must explain why and provide a short summary of it instead);
- the information comes from another organization;
- you don't control the information; or
- the information is found on products or product labels.

### Talent and performance management

If you have performance management or career development processes, you must consider the needs of an employee with disabilities when you hold formal or informal performance reviews or promote or move them to a new job.

Examples include:

- making documents available in accessible formats (e.g., large print for people with low vision);
- providing feedback and coaching in a way that is accessible to them (e.g., using plain language for someone with a learning disability); and
- providing the accommodations they need to successfully learn new skills or take on more responsibilities.

### Accommodation plans

If you have more than 50 employees, you must develop and write a process for creating accommodation plans for

### Accommodation Examples

- Employees with a learning disability may not be able to thoroughly understand print training manuals and emergency procedure guides. Employers could arrange for the employee to have the procedures explained to them in clear language to make the content easier to understand.
- An employee has an anxiety disorder and gets anxious in group learning situations. You could offer to go over the procedures with the employee personally rather than have them take part in a group meeting or exercise.
- If you utilize videos for safety or animal care training, you could provide employees who have hearing loss or impairment with a transcript of what's said in the video or source videos with captioning.

Adapted from

<https://www.ontario.ca/page/how-make-information-accessible>

### Review Your Emergency Information

Look at evacuation plans, fire safety plans, emergency maps, alarm systems, fire exits, designated waiting areas and any other emergency information. Ask yourself, how do staff learn about an emergency and what are they expected to do? Consider whether any employee requires special assistance in order to learn about and respond to an emergency. If so, prepare a plan to address these needs.

[Providing Emergency Response Information for Employees with Disabilities](#)

employees with disabilities. This process must be documented and should include:

- how you will provide workplace information in an accessible format, if requested
- how you will provide accessible emergency information, if needed
- any other accommodation that is to be provided

You and the employee with a disability will determine and implement appropriate accommodation measures. However, the final decision rests with you.

### Compliance Reporting

Every three years businesses **with 20+ employees** need to complete a report with the Ontario Government confirming their compliance with the AODA.

There are three steps:

1. [Download the Accessibility Compliance Reporting Form](#)
2. Complete the form by answering the questions relevant to your organization's size and type.
3. Submit your completed form, after which you will receive a confirmation email that includes an accessible PDF copy of your report for your files.

You'll need your organization's legal name, business number, and the name and contact information of your certifier (an owner or manager with legal signing authority to say that the report is complete and accurate).

### References

The material in this chapter was adapted from the websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Accessibility Ontario <https://accessontario.com/>
- Government of Ontario, How to Make Information Accessible, <https://www.ontario.ca/page/how-make-information-accessible>
- Accessibility for Ontarians with Disabilities Act, <https://www.aoda.ca/guide-to-the-act/>
- Accessibility for Ontarians with Disabilities Act, 2005, Ontario Regulation 191/11, Integrated Accessibility Standards, <https://www.ontario.ca/laws/statute/05a11>
- [Sample return to work process and template plan](#) Be sure to check the original for any recent changes, it was updated January 12, 2016. Original at <https://www.ontario.ca/page/accessible-workplaces>
- [Sample accommodation process and template plan](#)

## 8. MANDATORY INFORMATION POSTING

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There are seven primary information pieces that employers are required to provide to employees and/or post in workplaces in areas highly visible to employees.

1. Employment Standards in Ontario Poster – provide a copy to employees
2. Health & Safety at Work: Prevention Starts Here Poster – post
3. In Case of Injury Poster - post
4. Joint Health and Safety Committees Members (if applicable) - post
5. Occupational Health and Safety Act - post
6. Occupational Health and Safety Policy - post
7. Workplace Violence and Workplace Harassment Policies - post

If applicable, the following items must also be posted:

- a copy of any report received by the employer from Workplace Safety and Insurance Board;
- a copy of any order or a report of an inspection, issued by a Ministry of Labour (MOL) inspector; and
- copies of both the notice of compliance and the original order once submitted to MOL.

### Employment Standards in Ontario

Employers are required to provide the most recent version of the Minister of Labour's poster, "Employment Standards in Ontario", within 30 days of becoming an employee.

The poster outlines employees' rights and employers' responsibilities at work. For more information and to download free copies of the poster visit [Ontario.ca/ESAposter](http://Ontario.ca/ESAposter). Hardcopies can be ordered through [Service Ontario Publications](#) for the cost of shipping and handling. Copies of the English and Spanish versions are also included in this document as Appendix A to this chapter.

You must provide employees with a copy of the Ministry of Labour poster even though some of the employment standards noted do not apply to farm workers. The standards that apply to farm workers are listed on the Ministry of Labour's website, [https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs\\_agri.php](https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php). We have included the information from the website in Appendix A following the poster. You may wish to provide this information along with the Ministry of Labour poster to your employees.

### Health & Safety at Work: Prevention Starts Here

Under the Occupational Health and Safety Act, all provincially regulated workplaces must display this poster. It outlines the rights and responsibilities of workers, supervisors and employers on the job and provides a Ministry of Labour telephone number (1-877-202-0008) to report critical injuries, fatalities and work refusals and to obtain information about workplace health and safety information. See chapter 3, Occupational Health and Safety Act for a definition of what constitutes a critical injury. Printed colour posters are available in English and French from [Service Ontario](#) free of charge (catalogue number 015815) or can be downloaded in [English, French and 15 other languages](#). English and Spanish copies are also included in this document as Appendix B to this chapter.

#### Tip

Write out the fire code or 911 number for your property along with short, clear directions to your farm property and post near each telephone and in other prominent locations. Laminate the sheet if possible.

#### Example:

303831 Happy Land Road, Rainbow Township  
First farm on left when heading South on County Road 5 from Ourtown

### In Case of Injury Poster

Employers must prominently display the "In Case of Injury" Poster (Form 82) in their workplace. This [poster](#) is available in several languages and is provided free to employers. Employers can get the poster online or by calling the WSIB at 416-344-1000 or 1-800-387-0750, Monday to Friday from 7:30 a.m. to 5:00 p.m. An English copy is included in this document as Appendix C to this chapter.

### Joint Health and Safety Committees Members

In workplaces where the employer is required to establish a joint health and safety committee, the employer must also post the names and work locations of the committee members in a conspicuous place. Refer to chapter 3, Occupational Health and Safety Act for a description of which workplaces require a joint health and safety committee.

### Occupational Health and Safety Act

Employers are required to post a copy of the Occupational Health and Safety Act in their workplaces. The Act is available free online at [Occupational Health and Safety Act, R.S.O. 1990, c. O.1](#). It is also available from [Service Ontario Publications](#) for a cost of \$8, plus HST. As it is a 63-page document, a copy has not been provided in this manual. A copy of its cover is shown in Appendix D.

### Health and Safety Policy

The Occupational Health and Safety Act also requires employers to prepare and review, at least once a year, a written occupational health and safety policy, and to develop and maintain a program to implement that policy. The policy must be posted in the workplace. The [Guide to the Occupational Health and Safety Act](#) has detailed information about [how to prepare a health and safety policy](#). A sample health and safety policy is provided in Appendix E to this chapter. The Guide is also available in [Spanish](#) and contains a Spanish language health and safety policy.

### Workplace Violence and Workplace Harassment Policies

Employers must prepare and review, at least once a year, workplace violence and workplace harassment policies, and to maintain programs to implement those policies. These policies must be in writing and posted in the workplace except for workplaces with five or fewer regularly employed workers, unless ordered by an inspector.

The Ontario Ministry of Labour's guideline entitled [Workplace Violence and Harassment: Understanding the Law](#) includes examples of workplace violence and workplace harassment policies. This document is also available from [Service Ontario publications](#) and on the Ministry of Labour internet website. One example of a workplace harassment policy is provided as Appendix F and a sample workplace violence policy is included as Appendix G.

**NOTE:** Posters sold by private companies DO NOT COMPLY with the requirements of the Employment Standards Act, 2000, the Occupational Health and Safety Act, or the Workplace Safety and Insurance Act, 1997.

### Reference

- Guide to the Occupational Health and Safety Act – English  
<https://www.ontario.ca/document/guide-occupational-health-and-safety-act>
- Guide to the Occupational Health and Safety Act – Spanish  
[https://files.ontario.ca/books/ohsa\\_guide\\_spanish.pdf](https://files.ontario.ca/books/ohsa_guide_spanish.pdf)
- Ontario Ministry of Labour [https://www.labour.gov.on.ca/english/atwork/posting\\_training.php](https://www.labour.gov.on.ca/english/atwork/posting_training.php)
- Service Ontario Publications main page  
<https://www.publications.serviceontario.ca/pubont/servlet/ecom/>

Ministry  
of Labour

## Employment Standards in Ontario

The *Employment Standards Act, 2000* (ESA) protects employees and sets minimum standards for most workplaces in Ontario.

**Employers are prohibited from penalizing employees in any way for exercising their ESA rights.**

**FAIR AT  
WORK  
ONTARIO**

## What you need to know

### Minimum wage

Most employees are entitled to be paid at least the minimum wage. For current rates visit: [Ontario.ca/minimumwage](http://Ontario.ca/minimumwage).

### Hours of work and overtime

There are daily and weekly limits on hours of work, and rules around meal breaks, rest periods and overtime. For more information visit: [Ontario.ca/hoursofwork](http://Ontario.ca/hoursofwork) and [Ontario.ca/overtime](http://Ontario.ca/overtime).

### Public holidays

Ontario has a number of public holidays each year. Most employees are entitled to take these days off work and be paid public holiday pay. For more information visit: [Ontario.ca/publicholidays](http://Ontario.ca/publicholidays).

Learn more about your rights at:

**[Ontario.ca/employmentstandards](http://Ontario.ca/employmentstandards)**  
**1-800-531-5551 or TTY 1-866-567-8893**

 @ONlabour  @OntarioMinistryofLabour

### Vacation time and pay

Most employees earn vacation time after every 12 months of work. There are rules around the amount of vacation pay an employee earns. For more information visit: [Ontario.ca/vacation](http://Ontario.ca/vacation).

### Leaves of absence

There are a number of job-protected leaves of absence in Ontario. Examples include pregnancy, parental and family caregiver leave. For more information visit: [Ontario.ca/ESAGuide](http://Ontario.ca/ESAGuide).

### Termination notice and pay

In most cases, employers must give advance written notice when terminating employment and/or termination pay instead of notice. For more information visit: [Ontario.ca/terminationofemployment](http://Ontario.ca/terminationofemployment).

### Other employment rights, exemptions and special rules

There are other rights, exemptions and special rules not listed on this poster including rights to severance pay and special rules for assignment employees of temporary help agencies.



Subscribe to stay up-to-date on the latest news that can affect you and your workplace:  
[Ontario.ca/labournews](http://Ontario.ca/labournews)

## Las normas laborales en Ontario

La Ley de Normas Laborales de 2000 (*Employment Standards Act, 2000* o ESA) establece las normas mínimas para la mayoría de los lugares de trabajo en Ontario.

**Los empleadores no pueden sancionar a los empleados de ninguna manera por ejercer sus derechos bajo la ESA.**

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## Qué necesita saber

### Salario mínimo

La mayoría de los empleados tienen derecho a recibir al menos el salario mínimo. Se pueden consultar las tarifas actuales en:

[Ontario.ca/minimumwage](http://Ontario.ca/minimumwage).

### Horas de trabajo y horas extra

Hay límites diarios y semanales en cuanto a la cantidad de horas de trabajo, y reglas sobre pausas para comer, períodos de descanso y horas extra. Para obtener más información visite:

[Ontario.ca/hoursofwork](http://Ontario.ca/hoursofwork) y [Ontario.ca/overtime](http://Ontario.ca/overtime).

### Feridos

Ontario tiene varios feriados por año. La mayoría de los empleados tienen derecho a tomar estos días libres y recibir el pago por feriado. Para obtener más información visite:

[Ontario.ca/publicolidays](http://Ontario.ca/publicolidays).

### Período y pago de vacaciones

La mayoría de los empleados tienen derecho a un período de vacaciones por cada 12 meses de trabajo. Existen normas sobre el monto por vacaciones que un empleado puede percibir. Para obtener más información visite:

[Ontario.ca/vacation](http://Ontario.ca/vacation).

### Licencias

Hay varios tipos de licencia que protegen el trabajo en Ontario. Entre ellas: licencia por embarazo, por maternidad/paternidad y para atender a un familiar. Para obtener más información visite:

[Ontario.ca/ESAGuide](http://Ontario.ca/ESAGuide).

### Notificación de despido y/o indemnización por despido

En la mayoría de los casos, ante un despido el empleador debe enviar una notificación de preaviso por escrito o pagar una indemnización en lugar del preaviso o ambas. Para obtener más información visite:

[Ontario.ca/terminationofemployment](http://Ontario.ca/terminationofemployment).

Obtenga más información sobre sus derechos en:

**[Ontario.ca/employmentstandards](http://Ontario.ca/employmentstandards)**

1-800-531-5551 o línea para hipoacúsicos 1-866-567-8893

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### Otros derechos laborales, exenciones y normas especiales

Existen otros derechos, exenciones y reglas especiales que no están incluidos en este afiche, entre ellos, el derecho al pago de indemnización por despido y reglas especiales para los empleados asignados de agencias de trabajo temporario.



Suscríbase para mantenerse actualizado con las últimas novedades que pueden afectarlo a usted y a su lugar de trabajo:  
[Ontario.ca/labournews](http://Ontario.ca/labournews)

## Agricultural Employees

Issued: November 20, 2015

Content last reviewed: March 2018

See also: [Foreign Nationals](#) | [Disclaimer](#)

This information sheet provides a summary of the rights of agricultural employees covered under the [Employment Standards Act, 2000 \(ESA\)](#). The [ESA](#) is a law that sets minimum standards in most Ontario workplaces, such as minimum wage and limits on hours of work. [Special rules and exemptions](#) apply to certain employees.

In addition to the [ESA](#), an agricultural employee who is also a foreign national that is working or seeking work in Ontario pursuant to an immigration or foreign temporary employee program also has rights under the [Employment Protection for Foreign Nationals Act, 2009 \(EPFNA\)](#). For more information on this law, please visit the [Employment Protection for Foreign Nationals site](#).

Employers are required to provide all of their employees with a copy of the Employment Standards Poster published by the Ministry of Labour within 30 days of the date the individual becomes an employee.

If you request a translation of the poster in a language other than English and the ministry has published a version in that language, your employer must provide you with the translated version in addition to the English copy. [English and French versions of the poster and multilingual versions](#) are available online.

The [ESA](#) applies to all agricultural employees working in Ontario, including temporary foreign workers, however, not all of the rules and standards apply to every kind of agricultural employee. What rules and standards apply depends on what category of agricultural employee you fall into. In some cases, your work may fall into more than one category. In that case, how you spend most of your time in any specific work week determines which rules and standards apply.

### There are four categories of agricultural employees

#### 1. Farm employees

A farm employee is a person employed on a farm whose work is directly engaged in the primary production of certain agricultural products. Primary production includes planting crops, cultivating, pruning, feeding and caring for certain livestock.

What rights do farm employees have under the [ESA](#)?

- Regular payment of wages and wage statements
- Leaves of absence
- Termination notice and /or pay and severance pay
- Equal pay for equal work

#### 2. Harvesters

A harvester is a farm employee employed on a farm to harvest, or bring in, crops of fruit, vegetables or tobacco for marketing or storage, and there are some special rules for these employees.

What rights do harvesters have under the [ESA](#)?

- Regular payment of wages and wage statements
- Leaves of absence
- Termination notice and / or pay and severance pay
- Equal pay for equal work
- Minimum wage ([special rules apply](#) for harvesters who are paid on a piece-work basis)
- Vacation with pay (after being employed for 13 weeks as a harvester)
- Public holidays (after being employed for 13 weeks as a harvester)

### 3. “Near farmers”

Near farmers are employees whose employment is directly related to:

- o The growing of flowers or trees and shrubs for the retail and wholesale trade
- o The growing, transporting and laying of sod
- o The breeding and boarding of horses on a farm
- o The keeping of fur-bearing mammals (as defined in the [Fish and Wildlife Conservation Act, 1997](#), and including foxes, lynxes, martens, mink and racoons) for propagation or commercial production of pelts

What rights do “near farmers” have under the [ESA](#)?

- o Regular payment of wages and wage statements
- o Leaves of absence
- o Termination notice and / or pay and severance pay
- o Equal pay for equal work
- o Minimum wage
- o Vacation with pay

### 4. Landscape gardeners

Parks gardeners and greenskeepers on a golf course are considered to be “landscape gardening” employees. People working on retaining walls, and those who spray roads and industrial sites for weeds are not “landscape gardening” employees, nor are the office employees in a landscape gardening company.

What rights do landscape gardeners have under the [ESA](#)?

- o Regular payment of wages and wage statements
- o Leaves of absence
- o Termination notice and /or pay and severance pay
- o Equal pay for equal work
- o Minimum wage
- o Eating periods and daily, weekly and biweekly rest periods
- o Vacation with pay

## For more information or to file an [ESA](#) or EPFNA claim

**Please note:** Employers are prohibited from penalizing employees for asking about or exercising their [ESA](#) or EPFNA rights.

If you have questions about the [ESA](#) or the EPFNA, call the Ministry of Labour’s Employment Standards Information Centre at 416-326-7160, toll free at 1-800-531-5551, or [TTY](#), 1-866-567-8893. Information is available in multiple languages.

Information on the [ESA](#) can also be found at the [Employment Standards section](#) of the Ministry of Labour’s website. To file a claim, you can access the [Employment Standards Claim Form](#) online.

Information about the EPFNA, including an online claim form, can be found at the [Employment Protection for Foreign Nationals page](#).

**Disclaimer:** This resource has been prepared to help you understand some of the minimum rights and obligations established under the [Employment Standards Act, 2000](#) (ESA) and the [Employment Protection for Foreign Nationals Act, 2009](#) (EPFNA). It is not legal advice. It is not intended to replace the ESA, EPFNA, or their regulations and reference should always be made to the official version of the legislation. Although we endeavor to ensure that the information in this resource is as current and accurate as possible, errors do occasionally occur. The [ESA](#) provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation. You may wish to obtain legal advice.

# Health & Safety at Work

## ➤ Prevention Starts Here

*Ontario's Occupational Health and Safety Act gives workers rights. It sets out roles for employers, supervisors and workers so they can work together to make workplaces safer.*

### ➤ Improve Health and Safety:

- **Find out** about your Joint Health and Safety Committee or Health and Safety Representative.
- **Talk** to your employer, supervisor, workers, joint health and safety committee or health and safety representative about health and safety concerns.

**Call the Ministry of Labour at  
1-877-202-0008**

Report critical injuries, fatalities,  
work refusals anytime.

Workplace health and safety information,  
weekdays 8:30am – 5:00pm.

Emergency? Always call 911 immediately.

**Find out more:**  
[ontario.ca/healthandsafetyatwork](http://ontario.ca/healthandsafetyatwork)



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June 2012

### ➤ Workers have the right to:

- **Know** about workplace hazards and what to do about them.
- **Participate** in solving workplace health and safety problems.
- **Refuse** work they believe is unsafe.

### ➤ Workers must:

- **Follow** the law and workplace health and safety policies and procedures.
- **Wear** and **use** the protective equipment required by their employer.
- **Work** and **act** in a way that won't hurt themselves or anyone else.
- **Report** any hazards or injuries to their supervisor.

*Employers must NOT take action against workers for following the law and raising health and safety concerns.*

### ➤ Employers must:

- **Make sure** workers know about hazards and dangers by providing information, instruction and supervision on how to work safely.
- **Make sure** supervisors know what is required to protect workers' health and safety on the job.
- **Create** workplace health and safety policies and procedures.
- **Make sure** everyone follows the law and the workplace health and safety policies and procedures.
- **Make sure** workers wear and use the right protective equipment.
- **Do everything** reasonable in the circumstances to protect workers from being hurt or getting a work-related illness.

### ➤ Supervisors must:

- **Tell** workers about hazards and dangers, and respond to their concerns.
- **Show** workers how to work safely, and make sure they follow the law and workplace health and safety policies and procedures.
- **Make sure** workers wear and use the right protective equipment.
- **Do everything** reasonable in the circumstances to protect workers from being hurt or getting a work-related illness.



# Salud y seguridad en el trabajo

## Aquí comienza la prevención

*La Ley de Salud y Seguridad Ocupacional (Occupational Health and Safety Act) de Ontario otorga derechos a los trabajadores, y establece la función de los empleadores, los supervisores y los trabajadores de manera que, trabajando juntos, logren un ámbito de trabajo más seguro.*

### ► Para mejorar la salud y la seguridad:

- **Averigüe** sobre el Comité Conjunto de Salud y Seguridad o el Representante de Salud y Seguridad en su trabajo.
- **Hable** con su empleador o supervisor, con los otros empleados, con el comité conjunto de salud y seguridad o con un representante de salud y seguridad sobre sus preocupaciones respecto a salud y seguridad.

### Comuníquese con el Ministerio de Trabajo llamando al 1-877-202-0008

En cualquier momento denuncie lesiones graves, fatalidades, denegaciones de trabajo.

Para obtener información sobre la salud y la seguridad en el lugar de trabajo, comuníquese de lunes a viernes de 8.30 a. m. a 5.00 p. m.

¿Emergencia? Siempre llame al 911 de inmediato.

**Si desea más información, visite:**  
[ontario.ca/healthandsafetyatwork](http://ontario.ca/healthandsafetyatwork)



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### ► Los trabajadores tienen derecho a:

- **Conocer** los riesgos que existen en el lugar de trabajo y cómo manejarse con respecto a ellos.
- **Participar** en la resolución de los problemas relacionados con la salud y la seguridad en el ámbito de trabajo.
- **Negarse** a realizar tareas si consideran que son inseguras.

### ► Los trabajadores deben:

- **Respetar** la ley y las políticas y procedimientos referidos a la salud y la seguridad en el trabajo.
- **Utilizar** el equipo de protección exigido por el empleador.
- **Trabajar y desempeñarse** de manera de no lastimarse ni lastimar a los demás.
- **Informar** al supervisor sobre cualquier peligro o lesiones que ocurran.

*Los empleadores NO pueden tomar medidas contra los trabajadores por respetar y plantear sus preocupaciones sobre cuestiones de salud y seguridad en el trabajo.*

### ► Los empleadores deben:

- **Procurar** que los trabajadores conozcan los riesgos y peligros en el ámbito de trabajo brindándoles información, capacitación y supervisión sobre cómo trabajar de manera segura.
- **Procurar** que los supervisores sepan cuáles son los requisitos necesarios para preservar la salud y la seguridad de los trabajadores en el trabajo.
- **Elaborar** políticas y procedimientos sobre la salud y la seguridad en el trabajo.
- **Verificar** que todos respeten la ley y las políticas y procedimientos sobre la salud y la seguridad en el trabajo.
- **Supervisar** que todos los trabajadores utilicen el equipo de protección adecuado.
- **Hacer todo** lo que sea razonable según las circunstancias a fin de evitar lesiones o enfermedades laborales a los trabajadores.

### ► Los supervisores deben:

- **Informar** a los trabajadores sobre los riesgos y peligros existentes y dar respuesta a sus preocupaciones.
- **Mostrar** a los trabajadores cómo trabajar de forma segura y **verificar** que respeten la ley y las políticas y procedimientos de salud y seguridad en el trabajo.
- **Verificar** que los trabajadores utilicen el equipo de protección adecuado.
- **Hacer todo** lo que sea razonable según las circunstancias a fin de evitar lesiones o enfermedades laborales a los trabajadores.



# IN CASE OF INJURY OR ILLNESS AT WORK



1

## Get medical help

Your employer is responsible for providing first aid. Go to the doctor or hospital if you need treatment. Your employer pays for your transportation.



2

## Document

Tell your employer about your injury or illness. They investigate and keep a record of what happened.



3

## Report to the WSIB

Employers must tell us within three days if an injury or illness happens. You can report by submitting Worker's Report of Injury/Illness (form 6).



4

## Work together

We work with you and your employer to help you recover and return to work safely and at the right time.

**Questions?** We're here to help.

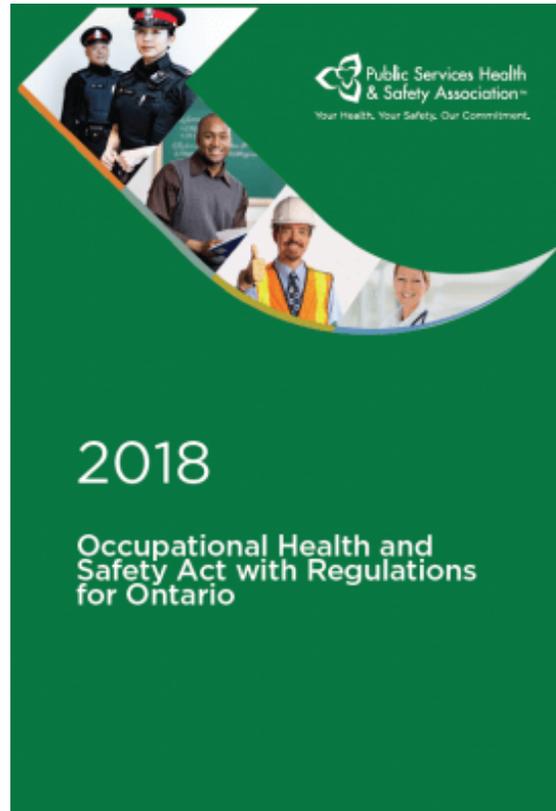
Call us at: 1-800-387-0750 | TTY: 1-800-387-0050

For details visit [wsib.on.ca/reporting](https://www.wsib.on.ca/reporting)



## Appendix D

Employers are required to post a copy of the 63-page Occupational Health and Safety Act in their workplaces. The Act is available free online at [Download copy of the Occupational Health and Safety Act, R.S.O. 1990, c. O.1.](#) It is also available from [Service Ontario Publications](#) for a cost of \$8, plus HST.



## Appendix E

### Sample Health and Safety Policy

from <https://www.ontario.ca/document/guide-occupational-health-and-safety-act/appendices>

The employer and senior management of *[insert name of business]* are vitally interested in the health and safety of its workers. Protection of workers from injury or occupational disease is a major continuing objective.

*[insert name of business]* will make every effort to provide a safe, healthy work environment. All employers, supervisors and workers must be dedicated to the continuing objective of reducing risk of injury.

*(insert name of business)*, as employer, is ultimately responsible for worker health and safety. As owner *(or operator, manager, president, etc.)* of *(insert name of business)*, I give you my personal commitment that I will comply with my duties under the Act, such as taking every reasonable precaution for the protection of workers in the workplace.

Supervisors will be held accountable for the health and safety of workers under their supervision. Supervisors are subject to various duties in the workplace, including the duty to ensure that machinery and equipment are safe and that workers work in compliance with established safe work practices and procedures.

Every worker must protect his or her own health and safety by working in compliance with the law and with safe work practices and procedures established by the employer. Workers will receive information, training and competent supervision in their specific work tasks to protect their health and safety.

It is in the best interest of all parties to consider health and safety in every activity. Commitment to health and safety must form an integral part of this organization, from the president to the workers.

Signed: (name)

Date:

## Appendix F

### Sample Workplace Harassment Policy

Adapted from Workplace Violence and Harassment: Understanding the Law, Ministry of Labour, page 47  
<https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>

(insert name of business), is committed to providing a work environment in which all workers are treated with respect and dignity. Workplace harassment will not be tolerated from any person in the workplace including other employees, supervisors, customers, contractors and members of the public, as applicable.

Workplace harassment means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome or workplace sexual harassment. Workplace sexual harassment means:

- a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
- b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Reasonable action taken by the employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment.

Workers are encouraged to report any incidents of workplace harassment to (insert the name of the person or job title to report any incident(s) of workplace harassment.)

Management will investigate and deal with all complaints or incidents of workplace harassment in a fair, respectful and timely manner. Information provided about an incident or about a complaint will not be disclosed except as necessary to protect workers, to investigate the complaint or incident, to take corrective action or as otherwise required by law.

Managers, supervisors and workers are expected to adhere to this policy, and will be held responsible by the employer for not following it. Workers are not to be penalized or disciplined for reporting an incident or for participating in an investigation involving workplace harassment.

If a worker needs further assistance, he or she may contact (insert the name of the person or job title that supervises the individual identified above as the first contact or insert (as applicable) the Joint Health and Safety Committee, health and safety representative (if any), Human Rights Legal Support Centre or employee assistance program.

Signed: *(Signature of the highest management level)*

Date:

## Appendix G

### Sample Workplace Violence Policy

Adapted from Workplace Violence and Harassment: Understanding the Law, Ministry of Labour, page 43  
<https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>

The management of (insert company name) is committed to the prevention of workplace violence and is ultimately responsible for worker health and safety. We will take whatever steps are reasonable to protect our workers from workplace violence from all sources.

Violent behaviour in the workplace is unacceptable from anyone. This policy applies to any person in the workplace including other employees, supervisors, customers, contractors and members of the public, as applicable. Everyone is expected to uphold this policy and to work together to prevent workplace violence.

There is a workplace violence program that implements this policy. It includes measures and procedures to protect workers from workplace violence, a means of summoning immediate assistance and a process for workers to report incidents, or raise concerns.

(insert company name) as the employer, will ensure this policy and the supporting program are implemented and maintained. All workers and supervisors will receive appropriate information and instruction on the contents of the policy and program.

Supervisors will adhere to this policy and the supporting program. Supervisors are responsible for ensuring that measures and procedures are followed by workers and that workers have the information they need to protect themselves.

Every worker must work in compliance with this policy and the supporting program. All workers are encouraged to raise any concerns about workplace violence and to report any violent incidents or threats to (insert the name of the person or job title to report any incident(s) of workplace harassment.)

Management pledges to investigate and deal with all incidents and complaints of workplace violence in a fair and timely manner, respecting the privacy of all concerned as much as possible.

Signed: *(Signature of the highest management level)*

Date:

# 9. HUMAN RESOURCES BEST PRACTICES

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## Interviewing

### Interviewers

- Have more than one person involved in the interviewing process if possible. This helps to ensure that every applicant is given the benefit of at least two opinions and is also a clear demonstration of a fair selection system.
- All interviewers should be present for the full interview. You may miss critical information or may add to the nervousness of the candidate by popping in and out of the interview. It can also be perceived as unfair if different or inconsistent interviewers are used for candidates.

### Questions

- Prepare a list of questions in advance and ask each candidate the same questions in order to evaluate all candidates in a uniform manner.
- Ensure that the questions relate to the stated job qualifications and skills in the job posting or job description.
- The interviewers must not ask questions which violate the Ontario Human Rights Code. These include questions about a person's race, religion, family planning activities, previous rates of pay (as of January 1, 2019), etc. Refer to the section on application form questions in chapter 6, Ontario Human Rights Code of this manual.
- Assign questions to each member of the interview panel if there is more than one person conducting the interview,
- Use open-ended questions rather than those that might simply elicit a "yes" or "no" response. Consider using "situational questions"; create scenarios that may be common to your operation, and ask each candidate how they would respond.

### Evaluation

- Document every applicant interview using valid criteria for the job opening.
- Consider developing a rating scale for each of the desired qualifications (relate this back to the job description and advertisement).
- Complete your notes for each candidate immediately after the interview. Do not trust your memory. After several interviews it is often difficult to distinguish one candidate from another. If documentation is not consistent, this can also be interpreted as discrimination or unfair treatment.

The minimum documentation an employer should maintain would be a list of applicants interviewed, the strengths and weaknesses of the candidate (the completed ranking sheets), and notation of the candidate selected with a brief note as to why they were selected. This list should be kept for a minimum of one year.

### Human Resources Material

The Ontario Pork Industry Council provides access to human resource information through HRdownloads.ca. For a modest annual fee, employers can access:

- sample human resource policies;
- job descriptions;
- forms and letters;
- metrics calculators;
- best practice guides;
- podcasts;
- PowerPoint presentations; and more.

For additional details, visit <https://www.opic.on.ca/human-resources>

## Conducting the Employment Interview

The employment interview should be conducted in a private place, and where possible, without interruptions. Most interviews should be able to be conducted within 30 to 40 minutes. A basic outline is given below:

1. The applicant should be introduced to each of the interviewers and their position within the company explained. Applicants should be informed how the interview will be conducted and the process for selection, i.e. "Each of us on the interview panel will be asking you a series of questions. We will explain the role and duties of the job for which you are being interviewed. Then, you will have an opportunity to ask questions or provide additional information. We will be conducting interviews today and hope to contact the successful candidate within 24 hours. All individuals interviewed will be contacted no later than \_\_\_\_\_."
2. Ask predetermined questions regarding the candidate's skills, experiences, interest in the job, etc. The following are some key questions that may be asked in the interview to assess the qualifications and interests of the applicant.
  - Why are you applying for this job?
  - What education or training have you had that you believe is relevant to the job you are applying for?
  - Describe your previous responsibilities and duties for your last two jobs.
  - What did you like or dislike about the jobs you have had?
  - What were the reasons you changed jobs?
  - Describe how you would perform this job.
  - Pose some situational questions regarding your operation and ask each candidate how they would respond. For example, you might ask a barn worker what they would do if they spotted a suspected serious health issue with an animal which required immediate attention but their supervisor had left for the day.
  - If there is missing information on the applicant's resume or application, such as an unaccounted for time lapse in the applicant's job history, the interviewer should ask about this.
3. Clarify the job responsibilities, rules, regulations, and codes of behaviour. The interviewers should ask questions to ensure the applicant understands the requirements of the job as stated.
4. Allow the applicant to ask questions about the job or anything else that may not have been covered. Thank the applicant.

## Checking References

- Once you have made your choice, ALWAYS check references.
- For full-time employees, you should, at a minimum, verify diplomas or degrees (if a requirement of the job) and the last two places of employment.
- If not provided with the application or resume, ask the candidate to provide you with a written list of references.
- If you are serious about a candidate, always ask to speak to their current employer. If their current employer is not a reference, ask why. However, do not immediately dismiss a candidate who fails to provide their current employer as a reference. Not all employers are ideal and contacting the present employer may have serious repercussions for the applicant.
- Prepare a written list of questions you wish to ask the referee and document the responses. Attach this to the candidate's application and interview assessment.

- Be suspicious if a reference only remarks on the candidate's attendance and tenure and avoids questions about performance. References may be subject to legal action and many will refuse to say anything negative about a past employee.
- You may only check the references named by the candidate.
- If there are some minor disparities between the information provided by the applicant and that gathered through the reference check, the applicant should be contacted and given the opportunity to explain. If reference checking indicates some major disparities, this should be documented.

For those applicants who were interviewed but not chosen, they should be informed they were not successful as quickly as possible.

### Offer of Employment

- Always prepare a **written** offer of employment so both the employee and the employer are clear as to the conditions of employment.
- The written letter of employment should spell out key items including: job title, starting date, wages, health benefits information and eligibility, probationary periods, and any other employment details not required by legislation.
- If the applicant accepts, they should return a signed copy of the job offer letter.

Include a probationary period for all new hires; recruitment mistakes are made. Carefully note the probationary period, and do not let it slip by, especially if you are having trouble with the new employee. Additional details are included under the paragraph entitled Probation Period.

### Orientation Process

- An effective orientation program sets a good tone for incoming employees and will help reduce miscommunication, staff turnover, absences, lateness, injuries and errors.
- You need to make new employees feel welcome and also provide them with the specific information they need to know about the job they are to perform.
- Be open and forthright about your preferences and expectations.
- Carefully plan how you will introduce your employees to the workplace.
- Make yourself available to answer questions especially during the first few weeks.

There are basically two components to new employee orientation:

- the formal documentation process, and
- introducing the individual to the components of the job.

A sample orientation checklist is included at the end of this chapter.

### Formal Documentation Process

- Completion of the appropriate paperwork and explanation of terms of employment should be completed before the worker actually engages in any work-related activity. This ensures that the

### Process for Reference Checking

- Request to speak with the applicant's former manager or the contact given by the applicant.
- State the intent of the call once the appropriate person is reached.
- Ask when the applicant began and terminated employment.
- Inquire regarding what job duties and responsibilities the applicant had in their role.
- Solicit the applicant's perceived strengths and weaknesses.
- Probe for the reason of termination.
- Ask any specific questions regarding experience and skill pertaining to the job you are attempting to fill.
- Ask if the candidate would be rehired by the employer if a suitable opening was available. If not, try to determine the reasons.

necessary payroll information is gathered, documentation signed, and important safety practices are covered.

- During the orientation process, new employees should be provided with written copies of these documents and asked to sign an acknowledgement of having read and understood the content.
- If English is not the first language of the employee, appropriate translations should be provided. Some employees may require the person conducting the orientation to read the policies to them and ensure they understand the content.

At the end of this chapter, we have provided a sample acknowledgement form that the employee would sign and date after having read your company's policies. Some of the policies are mandatory, (such as workplace violence and harassment, and health and safety) whereas others are suggestions only.

### Employee Handbook

- A best practice would be to have an employee handbook for your farm business which includes all policies, conditions of employment, mandatory information to be posted (see chapter 8), contact numbers, etc. The policies can simply be a paragraph in the handbook; they do not need to be lengthy, formal documents.
- Be sure to have the employee sign and date an acknowledgement that they have read and understand the contents of the handbook. Keep a copy of the signature page in your files.
- In cases where English is not the first language of the employee, an appropriate translation of the handbook should be made available to ensure they fully understand the policies and procedures.

### Familiarization with Job Duties

- The new employee should be introduced to their new supervisor, if different from the person completing the above.
- A tour of the employer's facilities is an excellent starting point to introduce the employee to the duties and function of their job. This provides the employee with an opportunity to ask questions about the flow of the operation and to better understand how their job function relates to others in the organization.

Remember, new employees are normally anxious during their first few days. They are trying to learn new jobs as well as become accustomed to a new working environment and co-workers. They may suffer from information overload and forget some of the instructions or information they have been given. Make a point of interacting with the employee, observe their work activities, and inquire whether they have any questions or concerns.

#### Setting a Probationary Period

It is important for the employee to be informed of the probationary period prior to accepting employment, otherwise legal complications may arise if the employee is subsequently terminated during the probation period.

**Note** that probationary employees may still take civil action for wrongful dismissal.

### Probationary Period

- A probationary period is common when hiring new employees and is usually three months or less. A period of longer than three months may entitle an employee to notice and/or pay in lieu thereof if terminated.
- You must clearly state the length of the probationary period in your written offer of employment.
- Clearly define, preferably in written form, the conditions of employment that must be met for new employees. These conditions can be provided to a candidate during the selection process and again, in more detail, during the orientation session.

- Prior to the end of the probationary period, a performance review should be conducted to confirm whether the new employee will be retained.
- Ensure that any termination of a probationary employee is conducted fairly and reasonably. For additional details, refer to the section in this chapter, Termination of Employment, regarding suggested discipline and termination procedures.
- If employee benefit programs are available to employees, a common practice is to have those benefits take effect with the first of the month following the completion of the probationary period.

### **Performance Evaluation**

- If pay increases are contingent on performance, this needs to be clearly set out at the time of orientation for new employees. The criteria must be very specific and measurable.
- If there are problems with the employee's performance, document them and include them in the appraisal. If this is not done and an employee is terminated for unacceptable conduct, an employer can open themselves up to a wrongful dismissal charge since no concerns were documented.
- There are several ways to structure a performance appraisal. Both the employee and supervisor can complete an appraisal form beforehand and bring to the meeting. Or, simply ask the employee to make a list of three tasks they always perform well, three areas in which they have improved, and three areas needing improvement. Again, the supervisor should prepare their own list regarding the employee's performance.

### **Termination of Employment**

There are two types of terminations: voluntary termination or resignation by the employee and dismissal of the employee by the employer.

#### **Voluntary Resignations**

Although an inconvenience, a voluntary resignation is rarely complicated and should be expected in the normal course of business. There is no legislated requirement regarding the length of advance notice an employee must give when voluntarily leaving a job. However, the employer should have a policy outlining the advance notice an employee is expected to give before leaving. In most companies, the standard time is two weeks. The employer should insist the employee give notice in writing. When an employee hands in notice, the employee should be told, preferably in writing, what company property is to be returned.

#### **Discipline**

- The ultimate goal of policies and procedures on discipline is to improve performance and compliance with company standards by correcting unsatisfactory behaviour.
- Many companies use progressive discipline, where repeated or more severe offences result in stronger penalties. This approach gives the employee the opportunity to recognize and change their behaviour.
- Depending on the severity of an employee's action, employers may have the right to jump straight to termination.
- Your policy should clearly outline disciplinary procedures. It should provide examples of what type of action would result in an instant dismissal but also include a statement that the list is not exhaustive.

## Addressing Performance Issues

It is important when raising concerns or areas requiring improvement that the supervisor has details. For example, if you are concerned that the employee is not punctual, be able to state how many times they were late for work during the period under discussion. If it is a production issue, simply stating that an employee does not perform a given task quickly enough is not sufficient. For example, state that most employees are easily able to complete x number of heat checks on sows and gilts per day whereas they are only achieving x checks. Or, if it is an area that is less easy to measure, use a rating scale such as in the two examples noted below. Use the job description as a guideline for the activities and skills to be measured.

### Example 1

Application of commercial fertilizer and pest control products

#### Good

Always applies material correctly and accurately

#### Satisfactory

Usually applies material correctly but does not monitor accuracy

#### Poor

Frequently misapplies product

### Example 2

Manure application procedures

#### Good

Runs entire system properly

#### Satisfactory

Checks emitters and hose only

#### Poor

Ignores repair needs

Whenever you note an area needing improvement, consider the employee's perspective. Have they been given clear and precise instructions on how to perform the work? Did they understand the instructions given? Are they getting feedback when they do something incorrectly and told how to do it properly? Acknowledgement of good work is just as important.

## Dismissal

- Dismissal must be approached carefully. Employers considering dismissal of an employee are faced with the possibility of legal action if they do not handle the dismissal in a professional and fair manner.
- Clearly written policies and records are absolutely essential.
- Document all the incidents leading up to a dismissal and ensure it relates to your progressive discipline system.
- All jurisdictions have minimum standards for periods of notice required for termination without cause, and requirements for compensation in lieu of notice. Refer to the Guide to the Employment Standards Act which specifies required periods of notice for [termination](#) and [severance](#).
- If you are not sure how these standards apply to a particular situation, you may want to consult a lawyer.
- Note that courts often award notice periods and compensation that exceed the legislated provisions.

## Important terms

“**Termination with cause**” puts the onus on the employer to show that an act by an employee could seriously impact the company. Before initiating an indefinite lay-off or termination for cause, employers would be wise to seek the counsel of a lawyer who has expertise in employment law.

“**Termination without cause**” usually requires advance notice and/or compensation be given to the employee.

“**Wrongful dismissal**” is a legal claim about the cause or notice given to the employee when they are terminated. “**Constructive dismissal**” is when there is a significant change in the employment relationship, for example, the employer significantly reduces an employee's salary or makes a significant change to an employee's work location, hours of work, authority or position (without the employee being separated from the organization). You want to avoid both of these.

## Release Agreement

The purpose of a release agreement is to protect the employer from legal action by a departing employee in return for payment to the employee of a settlement package. As a result, a release will be required primarily where no “just cause” has been determined.

However, caution needs to be exercised when writing a release agreement and seeking legal advice would be wise. Not only are release agreements contracts which must conform to certain legal requirements in order to be valid, they are a form of contract that is subject to increased legal scrutiny because of the perceived inequality in the bargaining power of the two parties to the agreement. Failure to ensure the agreement's validity may pave the way for a wrongful dismissal action. If you are terminating an employee and intend to have them sign a release agreement, get the advice of a lawyer with employment law experience.

## Additional References

- AGRI HR Toolkit Canadian Agricultural Human Resource Council <https://hrtoolkit.cahrc-ccrha.ca/>
- Human Resources and Careers, Ontario Pork Industry Council website <https://www.opic.on.ca/human-resources>

### Sample Orientation Checklist for New Employees

**PART I**

✓ or N/A

- 1. Obtain fully completed, signed application form.....
- 2. Verify and record the following employee data:
  - Full name and address.....
  - Telephone number.....
  - Social Insurance Number (see note below).....
  - Job title, location and pay rate.....
  - Who to notify in case of emergencies and telephone number.....

Note: If the SIN begins with the number 9, the employer must obtain and keep on file a photocopy of the government-issued work permit. Before the permit expires, ask for a copy of the permanent SIN document. If none is provided, the employer must terminate employment prior to the expiry date on the work permit. Best practice would be to match the employee’s name and address with another form of photo identification.

- 3. Assign employee number and issue identification card (if used).....
- 4. Obtain completed and signed TD1 form (income tax).....
- 5. Obtain completed enrollment forms for employee benefit programs including beneficiaries where necessary and applicable.
  - Group life insurance.....
  - Accidental death and dismemberment insurance.....
  - Dental insurance.....
  - Extended health care insurance.....
  - Retirement plans.....
- 6. Issue and obtain signed acknowledgement as applicable
  - Health and Safety Policy Manual .....
  - Human Resources Policies.....
  - Employee Handbook.....
  - Group Benefits booklet.....
  - Confidentiality and other agreements.....

*If the employee's first language is other than English, consider having an appropriate translation of the above written documents available.*

7. Review details and process regarding:

- Method of paying wages (when, where, time sheets, etc.).....
- Terms of probationary period .....
- Available employee benefits and claim procedures.....
- Vacation, holiday and sick day policies.....
- Health and safety policies and procedures.....
- Behaviour and personal conduct standards.....
- Process for resolving conflicts.....
- Other important company policies and procedures.....

8. Introduce to supervisor *(if different from person completing Part I)* .....

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

**PART II**

✓ or N/A

- Tour of facilities.....
- Introduce to co-workers.....
- Show location of:
  - First aid stations.....
  - Lunch room or eating areas.....
  - Wash rooms.....
  - Where to park personal vehicle.....
  - Bulletin boards, if any .....
  - Time clocks, if any.....

✓ or N/A

- Review timing of and procedures for lunch and rest periods.....
- Review and issue a copy of:
  - Farm and office layout.....
  - Organization charts if applicable.....
  - List of co-workers' names and job titles.....
  - Telephone lists.....
  - Safety rules for particular job duties.....
  - WHMIS requirements.....
  - Personal protective safety devices.....
- Start job training (emphasize safety aspects).....

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

### Sample Employee Acknowledgement

We request that all employees read our human resources policies. The written policies serve to prevent difficulties and misunderstanding which may result from unwritten or inconsistent practices and lack of proper communication. We believe that having clearly written policies on the various topics and issues will provide everyone, management and employees, with a clear and consistent understanding of expected workplace conduct.

<b>Policy</b>	<b>Read ✓</b>	<b>Policy</b>	<b>Read ✓</b>
Animal Care Code of Conduct	<input type="checkbox"/>	Personal Conduct and Dress Code	<input type="checkbox"/>
Biosecurity Policy	<input type="checkbox"/>	Problem Resolution Policy	<input type="checkbox"/>
Communications Policy	<input type="checkbox"/>	Security of Premises Policy	<input type="checkbox"/>
Computer Security Policy	<input type="checkbox"/>	Sick Leave Allowance Policy	<input type="checkbox"/>
Confidentiality Policy	<input type="checkbox"/>	Statutory Holidays Policy	<input type="checkbox"/>
Conflict of Interest Policy	<input type="checkbox"/>	Telephone Usage Policy	<input type="checkbox"/>
Drug and Alcohol Policy	<input type="checkbox"/>	Termination and Resignation Policy	<input type="checkbox"/>
Education and Training Policy	<input type="checkbox"/>	Travel and Expenses Policy	<input type="checkbox"/>
Harassment Policy	<input type="checkbox"/>	Travel Time Policy	<input type="checkbox"/>
Hours of Work Policy	<input type="checkbox"/>	Vacation Policy	<input type="checkbox"/>
Internet and E-mail Policy	<input type="checkbox"/>	Use of Personal Information	<input type="checkbox"/>
Leave of Absence Policy	<input type="checkbox"/>	Workplace Equity Policy	<input type="checkbox"/>
Overtime Policy	<input type="checkbox"/>	Workplace Violence Policy	<input type="checkbox"/>
Performance Discipline Policy	<input type="checkbox"/>		

I have read and understand the above noted policies. I also understand that failure to comply with the practices could result in disciplinary action appropriate to the severity of the breach up to and including dismissal duly noted in the relevant policies.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

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