



The Employment Standards Act

General Fact Sheet

Updated February 2020



General Fact Sheet

Introduction

The *Employment Standards Act* (the “Act”) and Regulation set the minimum standards for employment in Yukon.

The Act covers most employers and employees. It does not apply to:

- the territorial, first nations and federal governments;
- employees who are covered by a collective agreement (unless it does not meet the minimum standards);
- employees who are excluded by regulations, such as sitters; and
- employees who are employed by sectors that fall under the federal jurisdiction. These include banks, airlines, inter-provincial trucking companies, post offices and radio and television stations.

For more information on federal jurisdiction contact Labour Canada at 1-800-641-4049.

The Employment Standards Office is responsible for the interpretation and administration of the Act and its regulation. For information on employment standards, contact an Employment Standards Officer at 867-667-5944 or by email at employmentstandards@gov.yk.ca.

General Information

The Act sets out the rights and responsibilities of employees and employers, such as the following:

- Hours of work
- Minimum wages
- Annual vacations
- General holidays
- Maternity and Parental Leave
- Equal Pay
- Termination of employment
- Special Leave without Pay
- Payment of wages

The regulation sets out exemptions from the Act for certain employees and modifies the rules regarding hours of work and other standards for certain industries.

An employee is entitled to receive at least the minimum standards set by the Act regardless of their employment status (casual, full time or part time). Any agreement to waive the minimum standards is not a valid agreement. If an agreement gives an employee a greater right or benefit than the minimum standards, such agreement is enforceable under the Act.

(See section 3 of the Act)

To ensure that employers and employees are aware of their rights and responsibilities under the Act, the Employment Standards Office provides:

- public presentations and information about employment standards; and
- Complaint Resolution Services.

An employee may make a complaint to the director of employment standards that an employer has contravened or is contravening any sections of the Act.

(See subsection 73(1) of the Act)

The employee may request their identity be kept confidential when filing a complaint. In the circumstance, the complainant's name will not be disclosed unless absolutely necessary.

(See section 74 of the Act)

A complaint must be filed:

- anytime during their employment; or
- within six months of termination of their employment.

(See subsections 73(3)(a) and (b) of the Act)

The Employment Standards Office will investigate the complaint and determine the proper course of action. However, the director of employment standards may refuse or cease investigating if:

- the complaint is frivolous, vexatious, trivial, or has not been initiated in good faith; and
- there is insufficient evidence to substantiate the complaint.

(See subsections 75(2)(a) and (b) of the Act)

The director of employment standards may initiate an investigation if there is reason to believe there are contraventions of the Act.

(See subsection 75(3) of the Act)

Definitions

The Act defines some words in a specific way. The relevant sections must be read with definitions in mind.

“conditions of employment” means all matters and circumstances in any way affecting employers and employees in respect of the employment relationship.

“contract worker” means a worker, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the worker, who performs work or services for another person for compensation or reward on such terms and conditions that

- (a) the worker is in a position of economic dependence on, and under an obligation to perform duties for, that person, and
- (b) the relationship between the worker and that person more closely resembles the relationship of employee to employer than the relationship of an independent contractor to a principal or of one independent contractor to another independent contractor.

“day” means any period of 24 consecutive hours after the start of work.

“employee” includes

- (a) a person, including a deceased person, in receipt of or entitled to wages for employment or services performed for another,
- (b) a person being trained by an employer of the purpose of the employer's business,
- (c) a contract worker, and
- (d) a person who was an employee.

“employer” means a person having control or direction of, or responsible for the employment of or payment of wages to, an employee and includes a former employer.

“member of the employer's family”, in respect of an employer, means the employer's spouse, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother or half-sister, and a person who stands in the place of parent to the employer

or to whom the employer stands in the place of parent, whether or not there is any degree of consanguinity between that person and the employer.

“**wages**” means any monetary remuneration payable by an employer to an employee under the terms of a contract of employment, any payment to be made by an employer to an employee under this Act, and any allowance for travel as prescribed in the regulations, but does not include gratuities, money that is paid at the discretion of the employer and that is not related to hours of work, production or efficiency, damages awarded in a wrongful dismissal action, travelling expenses, or other expenses.

(See subsection 1(1) of the Act)

Payment of Wages

An employer must:

- Keep accurate employment records, and
- Provide employees with a wage statement

Records

An employer is required to keep records of the following:

- The employee’s name and address;
- The number of hours worked by the employee on each day, regardless of how the employee is paid;
- The employee’s wages, gross earnings and deductions;
- The overtime accumulated by the employee each week;
- The time off with pay instead of overtime pay accumulated and taken by the employee each week;
- The vacations taken by the employee;
- The leaves of absence taken by the employee; and
- The conditions of employment of the employee.

The records must be:

- Kept and maintained at the employer’s principle place of business in Yukon; and
- Kept for 12 months after work is performed or services are supplied by an employee.

An employer is required to produce records when required by the director of employment standard.

(See section 62 of the Act)

Wage statements

An employer must provide a wage statement to their employee at least once a month which contains all of the following information:

- The statement period;
- The number of hours worked including regular and overtime hours;
- The rate of wages including regular and overtime rate;
- Details of the deductions made from the wages; and
- The actual sum paid to the employee.

(See section 63 of the Act)

Deductions

An employer must not directly or indirectly, withhold, deduct or offset an employee's earnings for any reason without their written authorization. Such authorization does not include an agreement by an employee to pay any of the employer's business expenses. Amounts deducted without proper authorization or permitted by the Act are recoverable.

(See section 64 of the Act)

Allowable Deductions	Prohibited Deductions
Canada Pension Plan	An employer's business costs
Employment Insurance	Faulty work
Income Taxes	Damage of property
Court-Ordered Garnishments/Judgements	Cash shortages
An employee's written assignment of wages for specific reasons and amount	Loss of property
An employee's direction to pay wages to their spouse or to a family member	Any other deductions without an employee's written consent or authorized by the Act

Time for payment of wages

An employer has 10 days after the end of a pay period to pay all wages, other than vacation pay, owing for that period.

The Act defines “pay period” as any period of employment, not exceeding 16 consecutive calendar days, established by the employer for the computation of wages.

(See section 1 of the Act)

If an employee’s employment ends, the employer has seven days after the employment ends to pay their outstanding wages other than termination pay. Pay in lieu of termination notice can be paid to the employee by instalments of the same amount which would have been paid to the employee had the employee been allowed to work out the notice period.

(See subsections 65 (1), (2) and (3) of the Act)

Reduction of wages

An employer must give an employee at least one pay period notice, if the employer intends to reduce the employee’s wages.

(See sections 3 and 66 of the Act)

Method of payment of wages

An employer may pay wages by:

- cash;
- cheque; or
- direct deposit.

(See section 67 of the Act)

General Exemption Regulation

Some employees are not covered by certain parts of the Act. Under the General Exemption Regulation, an employee is excluded from Part 2 Hours of Work provisions of the Act if:

- the employee employed as a guide or outfitter;
- the employee employed in staking, line cutting, geological mapping, geochemical sampling or testing, geophysical surveying or manual stripping activities in the course of exploration for minerals;
- the employee employed exclusively as a watchman or caretaker, unless the employer is a private security agency;
- the employee employed as a farm worker; or
- the employee employed as a domestic.

And:

- A person employed as a sitter is exempted from the entire Act.
(See sections 3 and 4 of the General Exemption Regulation O.I.C. 1984/344)

The Act defines these employees in a specific way. The relevant sections must be read with the following definitions in mind:

“domestic” means a person employed to provide in respect of a household, cooking, cleaning, gardening, maintenance, chauffeuring, sitting, nursing, tutoring or other similar services, but does not include a person employed by an employer that is engaged in the business of providing such services to households.

“farm worker” means a person employed in farming, ranching or agricultural operations, but does not include:

- an employee employed in a temporary or permanent retail operation established to dispose of any product of those operations; or
- a landscape gardener.

“guide” means a person employed primarily to escort and assist persons engaged in a recreational activity in a wilderness environment.

“**outfitter**” means a person engaged primarily in providing, otherwise than by way of bona fide sale, any horse, vehicle, boat, transportation service, guiding service, camping equipment or other equipment or service ordinarily provided by outfitters to persons engaged in a recreational activity in a wilderness environment.

“**sitter**” means a person employed in a private residence solely to provide the services of attending to a child, or to a disabled, infirm or other person, but does not include a nurse, therapist, domestic, homemaker or an employee of:

- a business that is engaged in providing that service, or
- a day care facility.

(See section 2 of the General Exemption Regulation O.I.C. 1984/344)

Hours of work and overtime

An employee is entitled to overtime pay at a rate of time and one half (1.5) if the employee:

- works in excess of the standard hours of work; or
- works in excess of the hours as specified under an averaging agreement per section 10 and 11 of the Act.

(See sections 7 and 8(1) of the Act)

Standard hours may be different if an employee is working under an averaging agreement or a Short Work Week agreement.

(See section 10 and 11 of the Act)

The Act defines “**standard hours of work**” as eight hours in a day and 40 hours in a week.

(See section 6 of the Act)

The Act defines “**week**” as a period of seven consecutive days established by the employer’s payroll records or determined by an employment standards officer.

(See subsection 1(1) of the Act)

If a week contains a general holiday, the employee must be paid overtime when the employee works more than 32 hours in the week.

(See subsection 8(2) of the Act)

Certain employees are excluded from the hours of work provisions of the Act and its regulation, including:

- a member of the employer’s family;
- an employee whose duties are primary of a supervisory or managerial character;
- a person employed in staking, line cutting, geological mapping, geochemical sampling or testing, geophysical surveying or manual stripping activities in the course of exploration for minerals;
- watchman or caretaker unless their employer is a private security agency;
- a farm worker;
- a guide or outfitter;
- a domestic who is employed directly by householders to provide housekeeping, sitting, nursing, tutoring or other similar services in a private home other than those employed by a business or agency;
- a travelling salesperson.

(See section 4 of the Act and General Exemption Regulation O.I.C. 1984/344)

Although the above employees are excluded from the hours of work provisions of the Act under Part 2, they are entitled to be paid for all hours worked at regular rates. For more information, contact our office at 867-667-5944 or by email at employmentstandards@gov.yk.ca

Overtime pay examples

Hourly paid employees:

Example#1:

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Hours Worked		8	8	8	10	6		40
Regular Hours		8	8	8	8	6		38

OT hours @1.5					2			2
---------------------	--	--	--	--	---	--	--	---

Example#2:

	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total
Hours Worked	8	10	10	8	8	10	5	59
Regular Hours	8	8	8	8	8			40
OT Hours @1.5		2	2			10	5	19

Example#3:

An employee did not work on the general holiday.

	Sun	Mon(GH)	Tue	Wed	Thu	Fri	Sat	Total
Hours Worked			8	8	8	8	8	40
Regular Hours			8	8	8	8		32
OT Hours @1.5							8	8

Example#4:

An employee worked on the general holiday.

	Sun	Mon(GH)	Tue	Wed	Thu	Fri	Sat	Total
Hours Worked		8	8	8				24
Regular Hours			8	8				16
OT Hours @1.5		8						8

Salaried employees:

Example#1:

An employee is paid \$1,000.00/week and is based on 40 hours a week. The employee worked 45 hours this week:

Regular hourly rate is calculated:

$$\text{\$1,000.00} \div 40 \text{ hours} = \text{\$25.00/hr}$$

Overtime rate is calculated:

$$\text{\$25.00} \times 1.5 = \text{\$37.50/hr}$$

Overtime pay entitlement is calculated:

$$(45 \text{ hours} - 40 \text{ hours}) \times \text{\$37.50} = \text{\$187.50}$$

$$\text{Total wages: } \text{\$1,000.00} + \text{\$187.50} = \text{\$1,187.50}$$

Example#2:

An employee is paid \$2,500.00/month and is based on 40 hours of work per week. The employee worked 50 hours this week:

Regular hourly rate is calculated:

$$\text{\$2,500.00} \times 12 \text{ months} \div (52 \text{ weeks per year} \times 40 \text{ hours}) = \text{\$14.42/hr}$$

Overtime rate is calculated:

$$(50 \text{ hours} - 40 \text{ hours}) \times 1.5 \times \text{\$14.42} = \text{\$216.30}$$

$$\text{Total wages: } \text{\$2,500.00} + \text{\$216.30} = \text{\$2,716.30}$$

Commissioned employees**Example#1:**

An employee earned \$800.00 this week and the employee worked 45 hours.

Regular hourly rate is calculated:

$$\text{\$800.00} \div 40 \text{ hours} = \text{\$20.00/hr}$$

Overtime rate is calculated:

$$\text{\$20.00} \times 1.5 = \text{\$30.00/hr}$$

Overtime pay entitlement is calculated:

$$(45 \text{ hours} - 40 \text{ hours}) \times \text{\$30.00} = \text{\$150.00}$$

$$\text{Total wages: } \text{\$800.00} + \text{\$150.00} = \text{\$950.00}$$



Example#2:

An employee is pay a monthly rate of \$2,500, the employee worked 168 hours in this month.

Regular hourly rate is calculated:

$$\text{\$2,500.00} \div 160 \text{ hours (40 hours/wk} \times 4 \text{ wks)} = \text{\$15.63/hr}$$

Overtime rate is calculated:

$$\text{\$15.63} \times 1.5 = \text{\$23.45/hr}$$

Overtime pay entitlement is calculated:

$$(168 \text{ hours} - 160 \text{ hours}) \times \text{\$23.45} = \text{\$187.60}$$

$$\text{Total wages: } \text{\$2,500.00} + \text{\$187.60} = \text{\$2,687.60}$$

Reporting pay

If an employee reports to work as scheduled or at the call of their employer, the employee is entitled to at least two hours pay at the applicable regular or overtime rate whether or not the employee works part of all of the two hours.

On the application of the employer, the director of employment standards may issue a variance authorizing the employer to pay the actual hours worked by an employee.

(See Reporting Pay Order O.I.C. 1991/113)

Eating periods

An employer must give an employee at least a 30-minute unpaid eating break if:

- The employee works 10 hours or less in a day, the employee must not work longer than six hours in a row between eating periods.
- The employee works more than 10 hours in a day, the employee must not work longer than six hours in a row.

- The employee is required to remain on duty during their eating break, the employee is entitled to be paid for the break.
(See subsections 13(1) and (2) of the Act)

An employer is not required to provide coffee breaks.

Rest periods

An employee must have eight hours off work between shifts.

On the application of an employer, the director of employment standards may issue a variance authorizing the rest period be shortened to six hours due to extenuating circumstances.

(See subsections 14(1) and (2) of the Act)

Days of rest

An employer is required to give an employee at least two full days of rest in a week.

(See subsection 12(1) of the Act)

An employee may be required to work up to 28 continuous days or 35 continuous days if the additional seven days will complete the project. In these circumstances, the employee is then entitled to at least one day of rest for each seven continuous days worked. These days of rest must be taken consecutively.

(See subsections 12(2) and (3) of the Act)

Split shifts

A Split shift must be completed within a 12-hour period immediately following the start of the employee's shift.

On the application of an employer, the director of employment standards may issue a variance authorizing extended period beyond 12 hours on application by the employer and with the consent of the employee.

(See section 15 of the Act)

Orders limiting hours of work

On the application of an employee, the director of employment standards may issue a variance authorizing the employee's hours of work to be limited to eight hours in a day or 40 in a week.

(See section 16 of the Act)

Time off with pay instead of overtime

An employee and an employer may agree in writing that the employee will receive time off with pay instead of overtime pay. The following rules apply to how time bank should be credited:

- Overtime wages must be credited to the time bank at the overtime rate as set out in section 8 of the Act, or as specified under an averaging agreement per section 10 and 11 of the Act;
- Must be paid at the employee's regular rate of pay at the time it was earned;
- Must be paid within a 12-month period;
- Must be paid out at the end of the 12-month period stated in the agreement or, if no period is stated, within a calendar year;
- One month's notice is required on alteration or termination of the time bank agreement;

(See section 9 of the Act)

