

STEPS TO JUSTICE

Employment Law Workshop

An OJEN facilitator's guide demonstrating a CLEO public legal information resource.



ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE



CLEO

Community Legal Education Ontario
Éducation juridique communautaire Ontario



About this workshop guide

This workshop guide is a collaboration between the **Ontario Justice Education Network (OJEN)** and **Community Legal Education Ontario (CLEO)**. OJEN's Steps to Justice workshops introduce audiences to common legal problems and familiarize them with a specific area of law. Using hypothetical scenarios, workshop participants explore a legal topic by navigating the practical step-by-step information on CLEO's Steps to Justice website. They learn how to use the website to find legal information, including the forms, self-help guides and referral information for legal and social services which may be helpful in working through a future legal problem.

This workshop guide was written for use in Ontario high school classrooms, but can be used (or modified) for other audiences. For more information on how to use this workshop guide, please check out our short training video available on the OJEN website ojen.ca/steps-to-justice-workshops-training-video.

OJEN is a charitable, non-profit, public legal education organization. We develop innovative educational tools that introduce young people to the justice system, help them understand the law, and build their legal capability. We partner with schools and community organizations across Ontario to prepare young people to manage the legal problems that will arise in their lives. For more information on OJEN, please visit ojen.ca.

We gratefully acknowledge the support of law students who have contributed to this workshop guide through the Osgoode Public Interest Requirement (OPIR) at Osgoode Hall Law School and through placements with Pro Bono Students Canada (PBSC). We would also like to thank the high school students who provide us with their perspectives and feedback on this resource as OJEN summer interns through the Law in Action Within Schools (LAWS) Summer Job Program.

Any legal information in this resource is intended for general educational purposes and should not form the basis of legal advice of any kind. Individuals seeking specific information about their legal problem should always consult a lawyer.

For over 45 years, **CLEO** has developed clear, accurate, and practical legal rights education and information to help people understand and exercise their legal rights. We produce print and online resources, including the Steps to Justice website, the Family Law Guided Pathways, and CLEO Connect which has information and supports for community organizations. For more information on CLEO, please visit cleo.on.ca.

S2J EMPLOYMENT LAW WORKSHOP

Activity (minutes)	Content
Warm-up (5)	<ul style="list-style-type: none"> • Clarify differences between criminal and civil law. • Run group quiz on employment law (Slides 2-6). • Review the major areas covered by employment law / ESA (Slide 7).
Hook (5)	<ul style="list-style-type: none"> • Advance to Slide 8 and read the demonstration scenario out loud. • Encourage participants to identify potential legal issues in the scenario. • Advance to Slide 9 and briefly review the human rights information provided, giving examples of how they might be relevant in the workplace. • Advance to Slide 10. Explain that the Steps to Justice (S2J) website is a tool that can help people understand what they need to do when they have legal problems like this one. The group will next use the website to answer questions related to the scenario.
Introduce S2J (10)	<ul style="list-style-type: none"> • Distribute the student handout, "Scenario 1: Demonstration". • Advance to Slide 11. Read the questions about the scenario out loud. • Pull up the S2J website on the display screen. • As a group, use S2J to find answers to the questions about the demonstration scenario on the slide. • Use different search options (sub-topics, front page keyword search, and header menu) and introduce the actual "steps" to follow. Use the presenter's notes on where to find the information included in this guide for support. • Ask if anyone has questions.
Group work (25)	<ul style="list-style-type: none"> • Advance to Slide 12. • Divide participants into groups and cue them to pull up S2J on their phones/computer and to start on the "Employment and Work" legal topic. • Give each group a scenario worksheet (Scenarios 2-5). • Each group needs at least one device with internet to complete their worksheet. • Circulate and support the groups as needed.
Discussion (15)	<ul style="list-style-type: none"> • Each group has 3-5 minutes to explain their scenario and what they have learned through their investigations. Participants should refer to the completed worksheet for support. • Address questions and issues arising from their reporting.
Application (Optional)	<ul style="list-style-type: none"> • Advance to Slide 13. • Since the group has practiced using the S2J website, the presenter may introduce a more complex scenario. • Participants should comment on the scenario reflecting what they have just learned. • As a group, use the website to answer the scenario questions. • Facilitator's notes are included in this guide to support discussion.



Facilitator's Package: Employment Law

TRUE OR FALSE



- 1. If your job requires you to wear a uniform, your employer can make you pay for it.**
F – Only if you agreed to do so in writing.
- 2. I literally cannot function without caffeine. Good thing employers have to give coffee breaks!**
F – In Ontario, employees in most jobs are entitled to a break of at least thirty minutes (a meal break) for every five hours of consecutive work. The employer does not have to pay the employee for this break, unless it is required in the contract they have agreed to. If the employer and employee agree, the thirty minutes can be split into two fifteen minute breaks over the same period. Employers do not have to give employees “coffee” breaks or any other kind of break other than the eating period.
- 3. I work at McDonalds © and I accidentally ruined 6 Big Facks © because I forgot the buns (lol). Good thing they can't make me pay for those!**
T – An employer is prohibited from deducting an amount from an employee's pay due to faulty work. (But, they can fire you.)
- 4. I'M SOOOO TIIIIIRRRRRRED! It's November 10th. Good thing tomorrow is a guaranteed government holiday!**
F – But it would be different if you were in BC, Alberta, Saskatchewan, Manitoba, PEI, NB, NWT, Yukon or Nunavut!
- 5. I work at Lulumelon, and they want me to only wear their clothes to work. Good thing they have to give me a discount! Goooo, yoga pants!**
F – The employer is allowed to decide whether employees get a discount on products the employer makes or sells, or on services the employer provides. The employer is also the one who determines how much the discount will be.



See <https://www.labour.gov.on.ca/english/es/faqs/>

Facilitator's Package

Scenarios



Start on the Steps to Justice question, “Does my employer have to pay me for public holidays?” under **Getting Paid**. Follow the steps from the landing page to answer the questions. The relevant steps are listed in brackets following the question.



Scenario 1: Demonstration

My boss told me that I need to work on Good Friday. He said that because I don't celebrate Easter, he doesn't have to give me holiday pay like the other staff. This doesn't seem fair.

Start on the Steps to Justice topic, “Getting Paid” with the question, “Does my employer have to pay me for public holidays?”

- In general can employers force their employees to work on public holidays? (*Landing page*)
- How much is “holiday pay”? (*Landing page*)
- What is the name of the law that covers most jobs in Ontario? (*Landing page, Step 1*)
- What are some jobs that are not covered by this law? (*Link from Step 1*)
- Is there a human rights issue in this scenario?

Discussion

Most workplaces in Ontario are covered by the Employment Standards Act (ESA). Holiday pay is pay that you receive for a public holiday, and it is calculated by dividing an employee's total pay over the previous four weeks by 20 – so it is roughly the same as an “average” day's pay. Some employment sectors are exempted from this, such as emergency services and tourism, in which taking time off can be dangerous or unrealistic.

There is a clear human rights violation in this scenario as the employer is attempting to treat this employee differently than others on the basis of the employee's religious beliefs, which is a protected ground under the Ontario Human Rights Code.



Scenario 2

I slipped on some water on the floor at work and twisted my ankle. My boss sent me home for a week of sick leave. She says I don't need to file a claim for workers' compensation because the sick pay will cover my time off, but my friend said that was wrong. What should I do?

Start on the Steps to Justice topic, "Injured at work" with the question, "What if my employer wants me to take wages or sick pay instead of making a workers' compensation claim?"

- What are workers' compensation benefits? (*Landing page*)
- How can you find out if you are eligible for workers' compensation? (*Step 1*)
- What can workers' compensation benefits help pay for? (*Landing page, Step 2*)
- What is the first step in making a claim for benefits through worker' compensation? (*Step 3 – see the link for making a claim at the bottom of the page*)
- Do you think the worker in this scenario should just take sick pay, like their boss wants them to? Why or why not?

Discussion

Responses will vary, but should reflect the fact that there is more security and more varied kinds of support available through making a claim. Also, by offering you sick pay, employers may be trying to avoid scrutiny for unsafe practices, insurance premiums, and other payments.



Scenario 3

I run a small retail business and sometimes I need employees to work overtime. When I do, I pay them their hourly rate in cash, so they don't pay taxes and it ends up being a little more money for them. It's great for me too, because it's still less than I would pay in normal overtime wages. Is that okay?

Start on the Steps to Justice topic, "Getting Paid" with the question, "Does my employer have to pay me overtime?"

- For most jobs, how many hours can you work in a week before you qualify for overtime pay? (*Landing page*)
- For most jobs, how much should you get paid for overtime hours? (*Landing page*)
- Some jobs and industries are not covered by the *Employment Standards Act* and so they don't have these rules about overtime pay. Find a list of these jobs, and name three of them. (*Link from Step 1, then explore the rules for the different occupations listed in the Table of Contents in that link.*)
- Looking at the list of jobs in the previous question, does it seem likely that this employer is exempt from paying overtime? (*No, retail is not among the industries or sectors with these special exemptions.*)
- Should I keep track of the hours I work? Why? (*Step 2*)

Discussion

This is not okay! Both the employer and the employee are committing tax evasion in this scenario. Additionally, "a little bit more" than the regular wage is not what the employee is legally entitled to and should the additional hours extend into "time and a half", their pay will be far less than their legal entitlement.

Students will likely have questions about enforcement of minimum wage.

For help with enforcement questions, see the topic: [Claiming your rights as a worker – How do I make an employment standards claim?](#)



Scenario 4

I recently applied for a job teaching dance classes for kids. The hiring manager was really enthusiastic on the phone and said he loved my demo video. But I am pregnant, and when I came in for an interview and we met in person, his attitude was totally different. Later that day, I got a voicemail saying I did not get the job. I think it was discrimination. Is there anything I can do?

Start on the Steps to Justice topic, “Getting Hired” with the question, “What if I’m not hired because an employer discriminates against me?”

- In your opinion, why might an employer not want to hire someone who is pregnant?
- Which law would apply in this situation - the *Ontario Human Rights Code* or the *Canada Labour Code*?
(Links from Step 1)
- Do you think the person in this scenario has a reason to make a human rights claim? Why? (Landing page)
- Look for the Human Rights Legal Support Centre’s (HRLSC) online tool, called “Can We Help You?” Use it to find out whether or not the HRLSC would help this person to make a human rights claim. (Link from Step 2)
- If the Ontario Human Rights Tribunal decides that the employer violated human rights laws in hiring, what can they do? (Step 3)
- What basic information do you need to give in a human rights application? (Step 3)

Discussion

Employers might be concerned that a pregnant employee would be more likely to go on extended leave, after having been trained and becoming used to the workplace. The employers could also be concerned about replacing the employee temporarily while they are on parental leave. However, pregnancy is not a lawful reason to not hire someone and in fact it can amount to a human rights violation because it is a form of sex discrimination.



Scenario 5

I work as a server at a restaurant. My boss says that because we serve alcohol and get tips, my minimum wage is lower. She pays me \$11 per hour. She also makes all the servers pool our tips together and average them out between us. I don't think that's fair, because I know I pull in more tips from my tables than some other people. Can she do this stuff?

Start on the Steps to Justice topic, "Getting Paid" with the question, "How much does my employer have to pay me?"

- Is it legal to pay this person \$11 per hour? What does the law require?
- Find the link for the Ontario Ministry of Labour's rules about the minimum wage.
 - Write down two or three different minimum wages for different kinds of workers in Ontario.
(Links from Step 2)
 - Why would there be lower minimum wages for students?
- Is this boss allowed to pool tips?
- What can this worker do if their employer hasn't paid the correct minimum wage?
- How long can you wait if you want to make a claim for unpaid wages? How long will it take to process your claim? (Link from Step 3)

Discussion

There are many different "minimum wages" for different kinds of workers in Ontario. Some work, such as outdoor guiding, is seasonal and so has relatively high minimum wages levels. Because the person in this scenario serves alcohol and collects tips, they are not entitled to the basic minimum wage of \$14/h, but they are entitled to a minimum wage of 12.20/h.) The minimum wage often changes when different political parties come to power in Ontario, so it is a good idea to pay attention to what they say about it when they are campaigning for votes.



Display: *Large Group Practice* Scenario 6

I got fired from a job at a garden store where I had been working for about two months. When I first started working there, my boss said I was doing a great job.

After that, though, he started to act differently towards me. He would often put his hands on my hips or lean really close when he was talking to me. I always moved away but he didn't take the hint. He told me he was sick of his relationship and he wanted to be with other people. It made me really uncomfortable, but I never clearly told him to stop because I was worried he would fire me. Then, last week, he tried to kiss me and he asked me to come over to his apartment after work. I refused and I said it was because I am in a serious relationship.

He fired me a few days after that. He said there was no work for me, even though it was May and the store was really busy. I didn't get any notice or compensation - he just fired me on the spot and told me to go home. This all feels really wrong. Can he do that? What should I do?



Scenario 6: Focus Questions

Students can draw from their learning to identify potential legal issues and questions to investigate. The worker here is a clear victim of sexual harassment. The facilitator should pull out questions that establish the general legal rules around being fired, but clarify that the harassment makes the firing illegal. To do this, the facilitator can encourage students to look through the sections dealing with rules around firing, wages and paperwork, the relationship between sexual harassment and human rights in the workplace. Students will also benefit from searching and navigating to learn about making a human rights claim and getting legal advice.

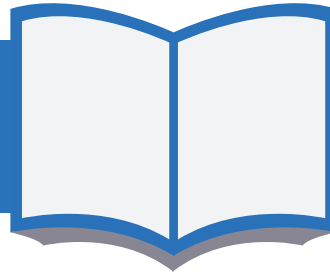
Start from the topic “Getting Fired or Laid Off”. Consider question lines like:

- Can an employer fire someone without giving a reason?
- Can an employer ever fire someone without notice? When?
- Was this person entitled to notice before being fired?
- Is this worker entitled to any compensation?
- So is this alright? What else is going on here?
- Do you believe the reason this employer gave was true?
- What is the real reason?
- Is this a legal reason?
- What options might this person have?



Participant Handouts

Scenarios



Scenario 1 Worksheet: Demonstration

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- How much is "holiday pay"?
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- What are some jobs that are not covered by this law?
- Is there a human rights issue in this scenario?



Scenario 2 Worksheet

I slipped on some water on the floor at work and twisted my ankle. My boss sent me home for a week of sick leave. She says I don't need to file a claim for workers' compensation because the sick pay will cover my time off, but my friend said that was wrong. What should I do?

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- What is the first step in making a claim for benefits through worker' compensation?
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Scenario 3 Worksheet

I run a small retail business and sometimes I need employees to work overtime. When I do, I pay them their hourly rate in cash, so they don't pay taxes and it ends up being a little more money for them. It's great for me too, because it's still less than I would pay in normal overtime wages. Is that okay?

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- For most jobs, how much should you get paid for overtime hours?
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- Looking at the list of jobs in the previous question, does it seem likely that this employer is exempt from paying overtime?
- Should I keep track of the hours I work? Why?



Scenario 4 Worksheet

I recently applied for a job teaching dance classes for kids. The hiring manager was really enthusiastic on the phone and said he loved my demo video. But I am pregnant, and when I came in for an interview and we met in person, his attitude was totally different. Later that day, I got a voicemail saying I did not get the job. I think it was discrimination. Is there anything I can do?

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- In your opinion, why might an employer not want to hire someone who is pregnant?
- Which law would apply in this situation - the *Ontario Human Rights Code* or the *Canada Labour Code*?
- Do you think the person in this scenario has a reason to make a human rights claim? Why?
- Look for the Human Rights Legal Support Centre’s (HRLSC) online tool, called “Can We Help You?” Use it to find out whether or not the HRLSC would help this person to make a human rights claim.
- If the Ontario Human Rights Tribunal decides that the employer violated human rights laws in hiring, what can they do?
- What basic information do you need to give in a human rights application?



Scenario 5 Worksheet

I work as a server at a restaurant. My boss says that because we serve alcohol and get tips, my minimum wage is lower. She pays me \$11 per hour. She also makes all the servers pool our tips together and average them out between us. I don't think that's fair, because I know I pull in more tips from my tables than some other people. Can she do this stuff?

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- Is this boss allowed to pool tips?
- What can this worker do if their employer hasn't paid the correct minimum wage?
- How long can you wait if you want to make a claim for unpaid wages? How long will it take to process your claim?