



## **The High School Law Project**

This program is funded by the Law Foundation of Ontario

### **Employment Standards Act (Day One)**

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### Employment Standards Act

#### **Lesson Plan - To be completed before the lesson:**

##### Student Coordinators:

- Read the "Employment Standards Act and Young Workers' Rights" handout, the "Minimum Wage Fact Sheet Handout", the two worksheets, and the "Answer Sheet" pages
- The "Employment Standards Act and Young Workers' Right" fact sheet is for the student facilitators to use in teaching the students.
- The "Minimum Wage Fact Sheet Handout" and the two worksheets are to be handed out to the students.
- The "Answer Sheet" pages are to be used by the student facilitators only in helping the students and in taking up the answers to the questions.
- Read the detailed lesson plan
- Provide both the handout and the worksheet to teachers in hardcopy in advance so that teachers can copy and distribute in the week before the lesson as homework

##### Student Facilitators:

- Study the "Employment Standards Act and Young Workers' Rights" fact sheet, the "Minimum Wage Fact Sheet Handout", the two worksheets, and the "Answer Sheet" pages
- The "Employment Standards Act and Young Workers' Right" fact sheet is for the student facilitators to use in teaching the students.
- The "Minimum Wage Fact Sheet Handout" and the two worksheets are to be handed out to the students.
- The "Answer Sheet" pages are to be used by the student facilitators only in helping the students and in taking up the answers to the questions.
- Read the detailed lesson plan
- Ensure that you have examples of your own or your friends' work experiences for discussion in case it is necessary to keep the discussion going
- Attend training

**Students:**

- Read the handout before class
- Complete the worksheet before class
- Discuss the handout during class

**Teachers:**

- Distribute and assign the handout and worksheet as homework in the week before the lesson stressing how important it is for the worksheet to be completed
- Two of the four groups are to receive "Handout #1 Employment Standards Act Worksheet" and the other two groups are to receive "Handout #2 Employment Standards Act Worksheet"
- All students are to receive the "Minimum Wage Fact Sheet Handout"

**Handouts to be provided:**

- "Handout #1 Employment Standards Act Worksheet"
- "Handout #2 Employment Standards Act Worksheet"
- "Minimum Wage Fact Sheet Handout"



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### Employment Standards Act

#### Lesson Plan Summary:

##### Student Coordinators:

- Introduce the topic. Student Coordinators do not give a lecture for this module. They just divide the class into the groups after introducing the topic.

##### Student Facilitators:

- Go over the information under the “Employment Standards Act and Young Workers’ Rights” handout.
  - Do not just read off of the pages. Know your material before you present it to your group. BE COMFORTABLE with what you are saying to help make your students understand.
  - Prepare for any questions your students may have. You may also look at the Ontario Ministry of Labour website before your lesson.
  - Let them know, before you start, that they will have a case to work on and they need to know the information you provide them with in order to complete this module.
- After you have gone through the information, give the students the handouts:
  - **Groups 1 and 2** → Give **handout #1** to your students only.
  - **Groups 3 and 4** → Give **handout #2** to your students only.

Note: It will be helpful if you go through the handout yourself before your lesson to make sure you know what the answers are. If you have any problems finding the relevant information, consult with the student coordinators.



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### **Employment Standards Act**

#### **Detailed Lesson Plan:**

##### **Day 1:**

- **No Lecture**
- 1. Introduction** – led by Student Coordinators
    - The student coordinators will explain the format for the day and divide the students into their groups
  - 2. Small Group Activity (4 groups of 8)** - led by Student Facilitators
    - The facilitators should give a lecture by going through the “Employment Standards Act and Young Workers’ Rights” handout
    - The facilitator will go through the question on the worksheet and have the students discuss their answers to the question that they had previously recorded in the worksheet
    - The facilitator should demonstrate to the students whether or not the students’ previous employers complied with the ESA
    - The facilitator must be prepared to either talk about their own experiences or their friends’ work experience if necessary to keep the discussion going
    - The facilitator should remind the students about the website:  
**<http://www.labour.gov.on.ca/english/site/youngworkers.html>**
  - 3. Wrap up**
    - The student coordinators will tie up the class and remind the class about the website and its importance



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### **Employment Standards Act and Young Workers' Rights**

*This information comes from the Ontario Ministry of Labour*

#### ***Does the ESA cover young workers?***

Yes.

Students have the same rights as other employees in Ontario under the ESA. There are special rules and exemptions that apply to students.

#### ***Are young workers who are part-time employees covered by the ESA?***

Yes.

This includes part time jobs in retail stores, restaurants and hotels, construction, farming, and domestic services.

#### ***What is "minimum wage"?***

Minimum wage = The lowest hourly wage an employer can pay employees, whether they are full time or part time.

Tips and gratuities are not considered wages and will not be considered in determining whether an employee is receiving at least the minimum wage.

Please refer to the "Minimum Wage Fact Sheet" handout:

Students under the age of 18 who work no more than 28 hours/week when school is in session and students who work during a school holiday are entitled to the student minimum wage.

All others are entitled to the general minimum wage or the other minimum wages depending on their work.

***Who is not entitled to minimum wage under the ESA?***

- Students in training for certain occupations such as architecture, law, professional engineering, medicine, optometry;
- Secondary school students performing work under a work experience program authorized by the school board that operates at that student's school;
- Persons performing work under a program approved by a college of applied arts and technology or university; and
- Persons employed as a student to instruct or supervise children and a person employed as a student at a camp for children.

***Are young workers entitled to a lunch break or coffee break?***

Yes.

Most employees may not work longer than five hours in a row without getting a 30-minute eating period. This break may be divided into two breaks within each five-consecutive-hour work period. Meal breaks are unpaid unless the contract states otherwise.

Employees are not entitled to coffee breaks or any other breaks other than the eating period.

***Do young workers get paid a minimum amount when they are called in to work?***

In most cases, when an employee who regularly works more than three hours a day is called in to work, the employer must pay that employee for a minimum of three hours at minimum wage even if the employee works for less than three hours.

**NOTE:** This rule does not apply to students, including students over 18 years of age, who are called in to work. Those employees are entitled to be paid only for the amount of time they actually work.

***When are young workers eligible for overtime?***

The ESA requires employers to pay most employees, including young workers, overtime of at least one and a half times their regular rate of pay for each hour of work over 44 hours a week.

If the employee and the employer agree in writing, the employee can take one and a half hours of paid time off work for each hour of overtime worked.

**NOTE:** The paid time off must be taken within three months of the work week in which the overtime was earned or, with the employee's written agreement within 12 months of that work week.

### ***Who is not eligible for overtime?***

Those who do the following jobs are not eligible for overtime:

- the installation and maintenance of swimming pools
- landscape gardeners
- growing, transporting and laying sod
- person employed as a student to instruct or supervise children
- person employed as a student at a camp for children.

### ***Are young workers entitled to be paid for public holidays?***

Yes.

This applies to both part time and full time workers.

Most employees are entitled to take the following eight public holidays off with public holiday pay:

- New Year's Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- December 26 (Boxing Day)

### ***What is public holiday pay?***

Public holiday pay is the total of the employee's regular wages earned and vacation pay payable in the four work weeks before the week in which the public holiday falls, divided by 20.

There are special rules about substitute days off and pay for work performed on a public holiday where an employee is required to work or agrees to work on the public holiday.

Employees don't have the right to a paid public holiday or a substitute day off if they:

- fail to work all of their last regularly scheduled shift before or first regularly scheduled shift after the public holiday without reasonable cause (eg., something beyond their control that prevents them from working);

***or***



- they fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.

Most employees in these circumstances are entitled to be paid premium pay (time and a half) for every hour they work on the holiday.

### ***Who is not entitled to a public holiday off or to be paid public holiday pay?***

Those who do the following jobs:

- the installation and maintenance of swimming pools
- landscape gardeners
- growing, transporting and laying sod
- person employed as a student to instruct or supervise children
- person employed as a student at a camp for children.

### ***What if an employee agrees to work on a public holiday?***

If the employee has the right to a day off with public holiday pay and works on the holiday, and agrees in writing to work during a holiday, he or she is entitled to wages at the regular rate for the hours worked on the public holiday plus a substitute day off with public holiday pay.

If the employee and employer agree in writing, the employee is entitled to public holiday pay for the day, plus premium pay at time and a half for each hour worked on the holiday. **NOTE:** in this case, the employee is not entitled to a substitute day off.

### ***Are young workers who are employed in retail required to work on public holidays and on Sundays?***

A retail business sells goods or services to the public.

Retail workers generally have the right under the ESA to refuse to work on public holidays, even if they do not qualify for public holiday pay.

Retail workers hired before September 4, 2001 have the right to refuse to work on Sundays. Retail workers who agreed in writing at the time of being hired on or after September 4, 2001 that they would work on Sundays, cannot refuse to work on Sundays except in certain circumstances for reasons of religious belief or observance.

### ***Are there times when retail employees can't refuse to work on public holidays or Sundays?***

The rules that allow certain retail employees to refuse to work public holidays and Sundays do not apply if the main business is:

- selling prepared meals (i.e., restaurants, cafeterias, cafés)
- renting living accommodations (i.e., hotels, tourist resorts, camps, inns)
- providing educational, recreational or amusement services to the public (i.e., museums, art galleries, sports stadiums)
- selling goods and services that are secondary to the businesses described above and are located on the same premises (i.e., museum gift shops, souvenir shops in sports stadiums).

For employees working in these kinds of businesses, there is no general right to refuse Sunday work except for reasons of religious belief, practice or observance and the regular rules about public holidays apply. In some cases, these employees will have the right to refuse to work during public holidays under those regular rules.

***Can an employer deduct the cost of a uniform, or other items, from an employee's pay?***

Only if the employee agrees in writing to have a specified amount deducted.

Even if an employee agrees in writing, there are certain situations where the deduction may not be made. For example, an employer cannot make deductions for a cash shortage when more than one individual has access to a cash register-even with a written agreement. Also, an employer is prohibited from deducting an amount due to faulty work.

***How can a young worker tell whether he or she is being paid correctly?***

Employers must give all employees a "pay stub" or "pay slip" with each pay that shows the full details of the pay period, including rate of pay, gross and net amount of wages, deductions and the reasons for any deductions.

***Are young workers entitled to vacation pay?***

Yes.

To a minimum of two weeks of vacation with pay after each 12 months of employment, starting from the date they are hired.

Vacation pay must be at least 4% of the employee's gross wages (excluding vacation pay) earned in the period for which the vacation is being given.

Employees must receive their vacation pay, and any wages due, no later than seven days after employment ends, or on what would have been their next regular pay day, whichever is later.

***Do employers have to tell young workers in advance if they are going to end their employment?***

After working for an employer continuously for three months, most employees must receive advance notice in writing and/or termination pay when their employer ends their employment.

The amount of notice depends on how long they have worked for the same employer:

- three months or more but less than one year, one week's notice must be given
- one year or more but less than three years, two weeks' notice must be given
- after three years, one weeks' notice must be given for each year worked, to a maximum of eight weeks.

An employee is not terminated if he or she is only "temporarily laid off". If an employee has been with an employer for at least five years, he or she may also be entitled to receive severance pay upon termination of employment.

***How can a young worker get wages owed by an employer?***

If an employee is unable to recover wages from an employer, he or she may contact the Ministry of Labour to file a complaint.

It is important to file claims promptly because, in most cases, there is a six-month time limit from the date wages became due for an employee to file a written claim for recovery of wages.

***Remember that employees can't be penalized in any way for:***

1. asking the employer to comply with the ESA
2. asking questions about rights under the ESA
3. filing a complaint under the ESA
4. exercising or trying to exercise a right under the ESA
5. giving information to an employment standards officer
6. taking, planning on taking, being eligible or being in a position to become eligible to take a pregnancy, parental, emergency, or family medical leave
7. being subject to a garnishment order (i.e., a court order to have a certain amount deducted directly from wages to satisfy a debt)
8. participating in a proceeding under the ESA or section 4 of the Retail Business Holidays Act
9. refusing to take a lie detector test.

If an employee believes he or she has been penalized, or the employer has threatened to penalize the employee for any of the above reasons, the employee may file a claim with the Ministry. A two-year time limit applies to such claims.

***What if the employer does not follow the ESA?***

If an employee thinks the employer is not complying with the ESA, he or she can call the Employment Standards Information Centre at 416-326-7160 or toll free at 1-800-531-5551 for more information about the ESA and how to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the ESA. The ministry has a number of other options to enforce the ESA, including requesting voluntary compliance, issuing an order to pay wages, an order to reinstate and/or compensate, a notice of contravention, or issuing a ticket or otherwise prosecuting the employer under the Provincial Offences Act.

**Employment Standards Information Centre**

**416-326-7160** (Greater Toronto Area)

**1-800-531-5551** (toll free Canada-wide)

**1-866-567-8893** (TTY for hearing impaired)

Please also visit the Ontario Ministry of Labour website:

**<http://www.labour.gov.on.ca/english/site/youngworkers.html>**

## Minimum Wage Fact Sheet Handout

*This information comes from the Ontario Ministry of Labour*

<b>Minimum Wage Increases for General and Specific Job Categories:</b>				
<b>Minimum Wage Rate</b>	<b>Current Rate (February 1, 2007)</b>	<b>March 31, 2008</b>	<b>March 31, 2009</b>	<b>March 31, 2010</b>
General Minimum Wage	\$8.00 per hour	\$8.75 per hour	\$9.50 per hour	\$10.25 per hour
Students under 18 and working not more than 28 hours per week during the school year or working during a school holiday	\$7.50 per hour	\$8.20 per hour	\$8.90 per hour	\$9.60 per hour
Liquor servers	\$6.95 per hour	\$7.60 per hour	\$8.25 per hour	\$8.90 per hour
Hunting and Fishing guides	\$40.00: per day: paid this minimum rate for working less than five consecutive hours in a day;	\$43.75 per day	\$47.50 per day	\$51.25 per day
	\$80.00 per day: for working five or more hours in a day whether or not the hours are consecutive	\$87.50 per day	\$95.00 per day	\$102.50 per day
Homeworkers (defined as people doing paid work in their home for an employer)	110 per cent of the general minimum wage	110 per cent of the general minimum wage	110 per cent of the general minimum wage	110 per cent of the general minimum wage



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### **Handout #1 Employment Standards Act Worksheet**

*This information comes from the Ontario Ministry of Labour*

Please read the following case and answer the question that follows with your group:

**Case:** Elizabeth and the Donut Shop

Elizabeth is a 16 year old high school student. She works at a donut shop in West London, Ontario. She started work on March 29, 2007. She gets paid \$7.00/hour and usually works for five hours straight for each shift. She works a total of 18 hour each week. She gets a 20 minute lunch break everyday. She has asked for a coffee break, but her employer refuses to give her a coffee break.

She often works overtime and is paid only \$6.50 for each overtime hour. She has been told by her employer that she has been paid for every hour she has worked but she does not have a record of the hours she has worked and her employer refuses to provide her with an official record.

A month after Elizabeth started work, Elizabeth noticed that her employer was not complying with the ESA and decided to complain to the Ministry of Labour. Her employer terminated her employment (fired her) without notice (without giving her the required time) and did not give her a reason.

**Question:**

1. Elizabeth's employer is not complying with the ESA in a number of ways. How many violations can you find? What can Elizabeth do?

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### **Handout #2 Employment Standards Act Worksheet**

*This information comes from the Ontario Ministry of Labour*

Please read the following case and answer the question that follows with your group:

#### **Case:** Amanda and the Restaurant Shift

Amanda is a 16 year old high school student. She works at a restaurant in downtown London, Ontario. She started work on June 15, 2007. She gets paid \$6.50/hour and usually works for five hours straight for each shift. She works a total of 25 hour each week. She gets a 30 minute lunch break everyday. She has asked for a coffee break, but her employer refuses to give her a coffee break.

She is often called in to work and is paid \$7.00/hour for the hours she works when she is called in. She has been told by her employer that she has been paid for every hour she has worked but she does not have a record of the hours she has worked and her employer refuses to provide her with an official record. She recently found out that her employer deducted uniform costs from her cheque without her consent.

A few months after Amanda started work, another worker who had access to the cash register stole money from the store and Amanda's employer took that money off of everyone's cheque.

#### **Question:**

1. Amanda's employer is not complying with the ESA in a number of ways. How many violations can you find? What can Amanda do?

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### **ANSWER SHEET**

#### **Handout #1 Employment Standards Act Worksheet**

*This information comes from the Ontario Ministry of Labour*

Please read the following case and answer the question that follows with your group:

#### **Case:** Elizabeth and the Donut Shop

Elizabeth is a 16 year old high school student. She works at a donut shop in West London, Ontario. She started work on March 29, 2007. She gets paid \$7.00/hour and usually works for five hours straight for each shift. She works a total of 18 hour each week. She gets a 20 minute lunch break everyday. She has asked for a coffee break, but her employer refuses to give her a coffee break.

She often works overtime and is paid only \$6.50 for each overtime hour. She has been told by her employer that she has been paid for every hour she has worked but she does not have a record of the hours she has worked and her employer refuses to provide her with an official record.

A month after Elizabeth started work, Elizabeth noticed that her employer was not complying with the ESA and decided to complain to the Ministry of Labour. Her employer terminated her employment (fired her) without notice (without giving her the required time) and did not give her a reason.

#### **Question:**

1. Elizabeth's employer is not complying with the ESA in a number of ways. How many violations can you find? What can Elizabeth do?

Elizabeth is not getting paid the minimum wage; Elizabeth is entitled to a 30 minute break for the number of hours she works, however, her employer does not have to give her a coffee break; Elizabeth should be receiving one and a half times her regular pay for over time and not \$6.50/hr.; Elizabeth also has a



right to obtain a record of the hours she has worked; and Elizabeth has the right to complain to the Ministry of Labour without being penalized for it by her employer.

Elizabeth can contact the Ministry of Labour and file a complaint → Give the students the contact information again.



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### **ANSWER SHEET**

#### **Handout #2 Employment Standards Act Worksheet**

*This information comes from the Ontario Ministry of Labour*

Please read the following case and answer the question that follows with your group:

#### **Case:** Amanda and the Restaurant Shift

Amanda is a 16 year old high school student. She works at a restaurant in downtown London, Ontario. She started work on June 15, 2007. She gets paid \$6.50/hour and usually works for five hours straight for each shift. She works a total of 25 hour each week. She gets a 30 minute lunch break everyday. She has asked for a coffee break, but her employer refuses to give her a coffee break.

She is often called in to work and is paid \$7.00/hour for the hours she works when she is called in. She has been told by her employer that she has been paid for every hour she has worked but she does not have a record of the hours she has worked and her employer refuses to provide her with an official record. She recently found out that her employer deducted uniform costs from her cheque without her consent.

A few months after Amanda started work, another worker who had access to the cash register stole money from the store and Amanda's employer took that money off of everyone's cheque.

#### **Question:**

1. **Amanda's employer is not complying with the ESA in a number of ways. How many violations can you find? What can Amanda do?**

Amanda is not getting paid the minimum wage; Amanda's employer, however, does not have to give her a coffee break; Amanda should be receiving one and a half times her regular pay for over time and not \$7.00/hr.; Amanda has the right to obtain a record of the hours she has worked;

Amanda must agree to the uniform fee deduction from her pay cheque in writing before her employer can deduct it from her pay cheque; Amanda's employer cannot deduct the stolen cash register money from Amanda's cheque.

Amanda can contact the Ministry of Labour and file a complaint → Give the students the contact information again