

Reopening Ontario:

What you need to know about occupational health and safety & employment standards related to COVID-19

Business to Bruce – November 6, 2020

For the most up to date information, visit the Ministry of Labour, Training and Skills Development's website at Ontario.ca/labour.

Legal Disclaimer

- This presentation covers some of the minimum rights and obligations under the *Occupational Health and Safety Act* (OHSA), *Employment Standards Act, 2000* (ESA) and their regulations.
- **This presentation is not legal advice.** It is not intended to replace the OHSA, ESA, or their regulations and you should refer to the legislation at [Ontario.ca/laws](https://ontario.ca/laws).
- The OHSA main purpose is to protect the health and safety in the workplace.
- The ESA provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation. Employers and employees may wish to obtain legal advice.
- **Important:** Due to orders under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (previously under the *Emergency Management and Civil Protection Act*), the minimum standards under the ESA that are described may apply differently to certain employees.
- Although we endeavor to ensure that the information in this presentation is as current and accurate as possible, errors do occasionally occur.

Today, we'll take a look at:

1. Occupational Health and Safety Act (OHSA)

- Health and safety measures for COVID-19
- Workers' rights and responsibilities under OHSA
- Employer responsibilities under OHSA
- Resources
- Questions and Answers

2. Employment Standards Act (ESA)

- What the ESA is and who it applies to
- Recent changes to the ESA
- FAQs about employment standards and COVID-19
- Resources
- Questions and Answers



What is The Occupational Health and Safety Act (OHSA)?

- The OHSA came into force October 1, 1979
- The main purpose of the OHSA is to protect worker health and safety
- It applies to all workplaces in Ontario except federally regulated workplaces (e.g. banks, post offices, etc.) and work in the private home, carried out by an owner/occupant or servant of an owner/occupant

The Purpose of the OHSA

The main purpose of the OHSA is to protect workers from health and safety hazards on the job.

The OHSA sets out a number powers, requirements, and rights for workplace health and safety. This includes:

- ✓ **Duties of all workplace parties**, including employers, constructors, owners, supervisors, directors/officers of corporations, and workers
- ✓ **Workplace rights** for workers
- ✓ Requirement to establish **joint health and safety committees or health and safety representatives**, if necessary
- ✓ Requirements to **address workplace violence and harassment**
- ✓ Authority to **make regulations** (which detail how the general OHSA duties should be carried out).

The OHSA also:

- ✓ **Prohibits reprisals** against workers by employers
- ✓ Provides for **enforcement by inspectors**
- ✓ Establishes **offenses and penalties**



FAQ 1: What if a worker tests positive for COVID-19?

What does the OHSA say?

Under the Occupational Health and Safety Act (OHSA), [subsection 52(2)], if an employer is advised that a worker has an occupational illness **due to an exposure at the workplace** or that a claim has been filed with the Workplace Safety and Insurance Board (WSIB), the employer is required to notify the ministry in writing within four days.

If you have questions or would like to report an occupational illness, please call:
Occupational Health and Safety Contact Centre
1-877-202-0008

The employer may email notice to MLTSDoccillness.notices@ontario.ca

Develop a COVID-19 workplace safety plan

- The MLTSD guide will help employers develop a plan to work safely. It will help prepare to put controls into place to make the workplace safer for everyone.
- The COVID-19 safety plan template can be used to create a plan.
<https://www.ontario.ca/page/develop-your-covid-19-workplace-safety-plan>
- Check the [resources to prevent COVID-19 in the workplace](#) for sector-specific information and examples of controls that apply to specific workplaces.

Worker Rights

Along with the right to refuse unsafe work, workers also have the rights to:

Know about any hazards to which they may be exposed

- Employers are legally required to provide information, instruction and supervision to all workers and supervisors about known health and safety hazards in the workplace.

Participate in identifying and resolving health and safety concerns, including issues related to COVID19, for example, through membership on a joint health and safety committee (JHSC) or Health and Safety Representative (HSR).

FAQ 2: Can a worker refuse to work if they feel unsafe due to COVID-19?

What does the OHSA say?

Right to refuse:

- The OHSA provides a worker with the right to refuse work that the worker believes will endanger their health and safety. The worker must promptly report the circumstances of the work refusal to their employer or supervisor.
- There is a process to follow when refusing work you think is dangerous. There are processes outlined in the OHSA that must be followed for work refusals (see sec. 43 and the ministry website).
- The ministry encourages workplaces to resolve issues internally. If the issue cannot be resolved by the workplace parties – employer, supervisor, worker Health and Safety Representative, or workplace Joint Health and Safety Committee – then call the ministry's health and safety contact centre and ask that an inspector be sent to the workplace to investigate.

Reprisals

Employers are not allowed to reprimand (punish) a worker for obeying the law or exercising their rights (OHSA, section 50)

Employers cannot:

- dismiss (or threaten to dismiss) a worker
- discipline or suspend a worker (or threaten to do so)
- impose (or threaten to impose) any penalty upon a worker
- intimidate or coerce a worker.

* If a worker feels like they may have been reprimanded against, they can call the Contact Centre at 1-877-202-0008 or email: weboshs@ontario.ca

FAQ 3: Can an employer make workers wear protective equipment?

What does the OHSA say?

Under the OHSA, Duties of workers [subsection 28 (1) (b)], a worker shall use or wear the equipment, protective devices or clothing that the worker's employer requires to be used or worn.

In the hierarchy of controls, the last line of defence is PPE. If workers are required to wear PPE, workers must be trained in its use (including proper removal and disposal), care and limitations.

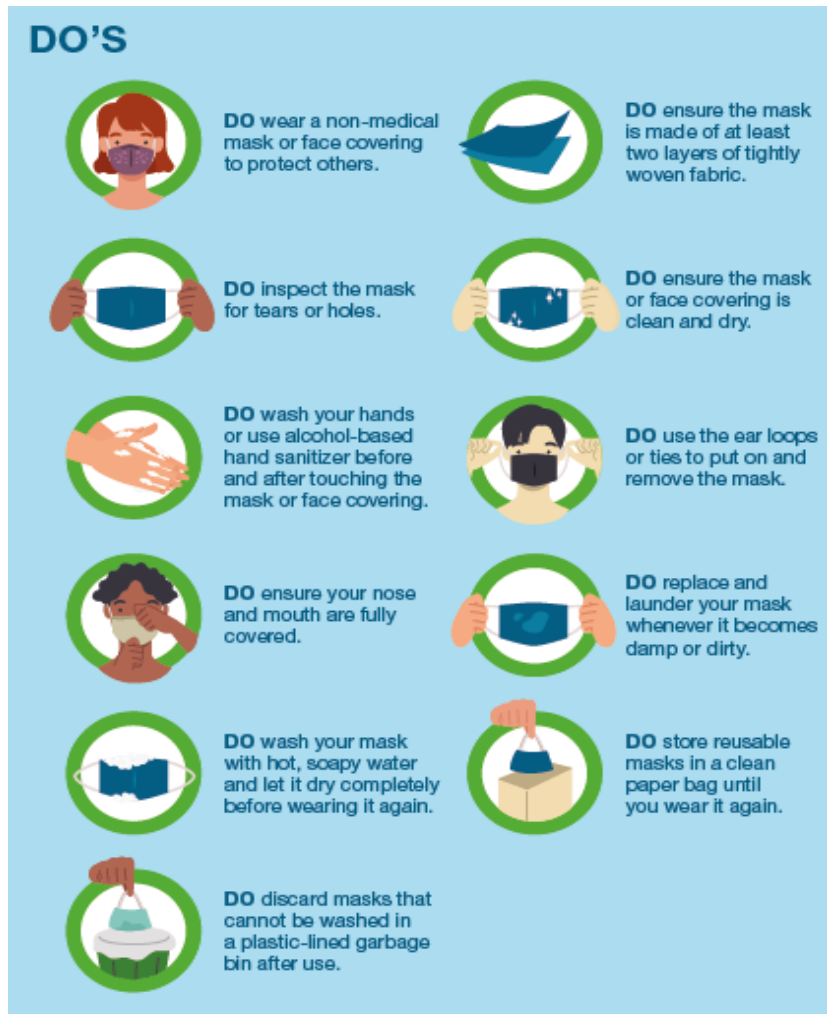
Personal Protective Equipment (PPE)

The application of the hierarchy of hazard controls is a recognized approach to containment of hazards and is fundamental to an occupational health and safety framework.

The hazard controls range from those considered most effective at reducing the risk of exposure to the lowest or last level of control, they are:

- Elimination or substitution
- Engineering control
- Administrative controls
- PPE

Face Coverings (Not PPE)



When used as source control, masks or face coverings protect others from the person wearing it by covering their nose and mouth so that one's own droplets don't get onto others.

FAQ 4: Are OHS inspectors enforcing physical distancing in workplaces?

What does the OHSA say?

Inspectors currently use the existing general duties section 25(2)(h) of the OHSA to require employers to take every precaution reasonable in the circumstances for the protection of a worker from COVID19 in the workplace.

This includes a focus on:

- ✓ Proactive screening to prevent workers who may have COVID-19 from coming to work
- ✓ Physical distancing (a 2m separation) between workers
- ✓ Proper onsite hygiene
- ✓ Engineering controls
- ✓ Other precautions including the use of PPE

Role of an Inspector

The role of an inspector is to enforce the *Occupational Health & Safety Act* (OHSA) by:

- ❑ Inspecting provincial workplaces
- ❑ Investigating complaints, work refusals, fatal and critical incidents
- ❑ Issuing orders for non-compliance with the Act and Regulations made under the Act
- ❑ Promoting the Internal Responsibility System

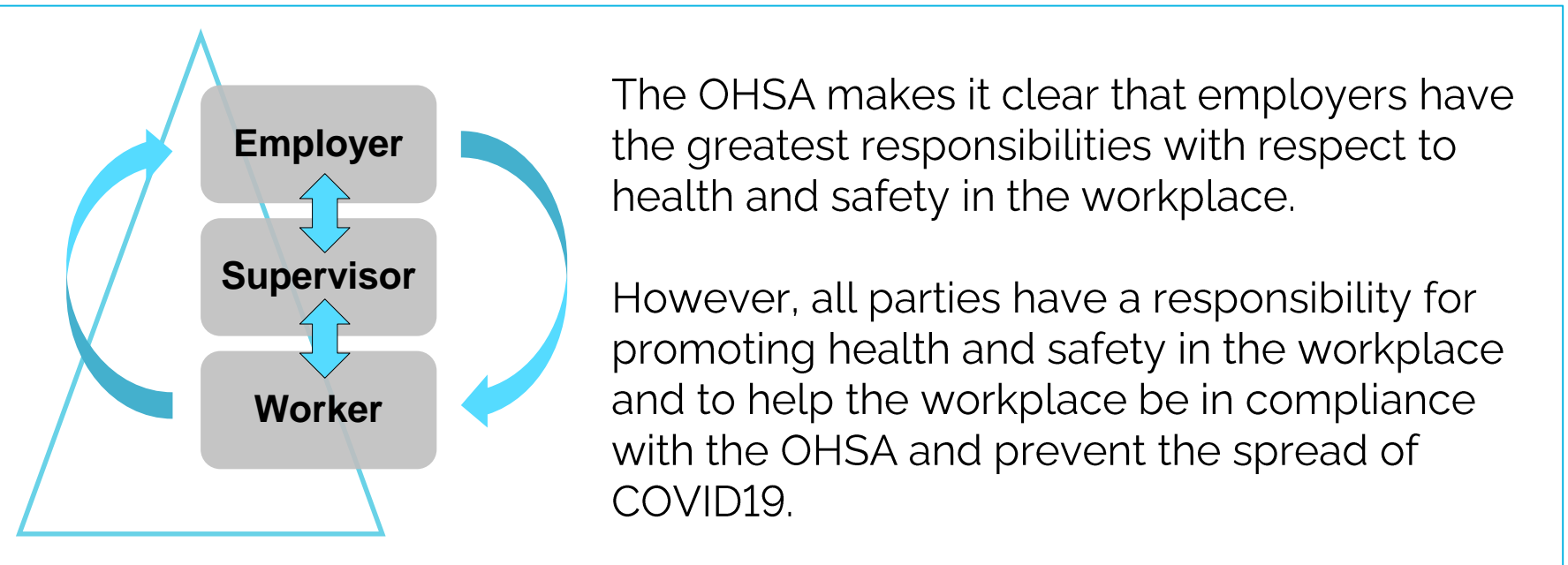


Inspectors also continue to enforce regulations, including but not limited to:

- [Regulation for Industrial Establishments](#), Reg. 851
- [Occupational Health and Safety Awareness and Training](#), Reg. 297/13

FAQ 5: Who is responsible for protecting workers against COVID19 in the workplace?

What does the OHSA say?



The respective roles and responsibilities for all workplace parties are detailed in the OHSA. This is the basis for the **Internal Responsibility System (IRS)**.

Employer responsibilities

Employers have obligations under the Occupational Health and Safety Act (OHSA) and its regulations to protect workers from hazards in the workplace, including infectious diseases.

Key Employer Duties

- ☐ Take **every reasonable precaution** in the circumstances for the protection of a worker
- ☐ **Provide, maintain, and ensure proper use of equipment, materials, and protective devices**
- ☐ Ensure **required measures and procedures** are carried out
- ☐ Provide **information, instruction and supervision** to workers
- ☐ **Acquaint workers** and supervisors with workplace **hazards**

Worker Responsibilities

- ❑ Workers should follow the safe work procedures and the requirements of the employer's health and safety policy.
- ❑ If a worker becomes ill due to COVID19 or experiences any symptoms, the worker should report it to a supervisor immediately so that others can be tested and further controls can be put in place to prevent spread.
- ❑ Workers should be aware of and follow public health directives and guidance issued by Ontario's Chief Medical Officer of Health and the [Ministry of Health](#).
- ❑ If a worker sees anything that looks unsafe, they should tell a supervisor or employer right away. The worker may also speak to a **Health and Safety Representative** or a member of the **Joint Health and Safety Committee**.

Health and Safety Representative (HSR)



In workplaces where there are **between six and 19 regularly employed workers**, an employer must have workers select a **health and safety representative (HSR)**.

- ☐ Inspect the entire workplace at least once per month
- ☐ Identify workplace hazards and make recommendations to employer
- ☐ Obtain information from employer regarding identification of hazards
- ☐ Inspect workplace/investigate following critical injuries, fatalities, or work refusals
- ☐ Have opportunity to accompany MOL inspector during inspection of the workplace
- ☐ A voluntary training for HSR can be found online with health and safety associations

Note: A period that exceeds three months is generally considered “regularly employed.”

Joint Health and Safety Committee (JHSC)



In workplaces where there are **at least 20 regularly employed workers**, an employer must set up **a joint health and safety committee** half of which must comprise of worker representatives, selected by workers.

- ❑ In addition to the duties of HSRs, the JHSC has the following additional requirements:
 - Committee members meet at least every three months and keep minutes
 - Mandatory training for a workers and a management representative
 - Certified JHSC member may initiate bilateral or unilateral work stoppage, if they believe that “dangerous circumstances” exist.

Note: A period that exceeds three months is generally considered “regularly employed.”

We are here to help...

Occupational Health and Safety Contact Centre

Call any time to report critical injuries, fatalities or work refusals.
Call 8:30 a.m. – 5:00 p.m., Monday – Friday, for general inquiries.

Toll-free: 1-877-202-0008

- ❑ **Press 1** to report an accident or work refusal
- ❑ **Press 2** to report a complaint *(including COVID19 concerns)*
- ❑ **Press 3** if you have questions

Once you have reached a telephone agent, you can ask for service in other languages.

In an emergency, always call 911

MLTSD Resources

- ❑ You can also e-mail questions to webohs@ontario.ca. Responses will be made within 5 business days.
- ❑ Employers and workers can refer to the Ministry's [Guide to the Occupational Health and Safety Act](#) to understand their health and safety rights and responsibilities
- ❑ For workplaces with under 50 workers easy steps are in [Health and Safety for Small Businesses](#)
 - Mandatory posting in workplace per business size
 - Mandatory trainings in workplace and free resources
 - Health and Safety Representative or Joint Health and Safety Committee
 - Health and safety incidents reporting

Covid-19 Resources

- ❑ For COVID-19 specific resources for each work sector, please visit the ministry's [sector guidance notes](#) which includes links to the Health and Safety Associations.
- ❑ Please check the [Ministry of Health \(MOH\) COVID-19](#) website regularly for updates, FAQs, and other information related to COVID19.
- ❑ Additional Guidance: www.ontario.ca/coronavirus
- ❑ Public Health Ontario's [How to Handwash Poster](#)
- ❑ [Cleaning and Disinfection for Public Settings:](#)
- ❑ [How to Self-Isolate](#)
- ❑ [How to Self-Monitor](#)

YouTube

- ❑ Smart, Safe, Supportive: <https://youtu.be/WdOvcqv7EOc>
- ❑ Mask Safety: <https://youtu.be/DcHNOCfIUOk>





Other Online Resources:

The ministry's health and safety partners offer detailed resources for businesses with fewer than 50 regularly employed workers:

- ❑ Workplace Safety and Insurance Board (WSIB): [Small Business Services](#)
- ❑ Workplace Safety and Prevention Services (WSPS): [Small Business Centre](#)
 - [Psychological Safety Resources Info](#)
- ❑ Public Service Health and Safety Association (PSHSA): [Small Business](#)
- ❑ Workplace Safety Nord (WSN): [Health and safety resources for small business](#)
- ❑ Infrastructure Health and Safety Association (IHSA): [Small Business](#)
- ❑ Occupational Health Clinic for Ontario Workers (OHCOW): [Occupational Health Toolkits and Apps](#)

WSIB's Health and Safety Excellence program

The Health and Safety Excellence program provides a roadmap of 36 topics towards a Ministry accredited health and safety management system.

Program benefits			
			
Earn rebate on premiums & recognition	Meet minimum requirements and beyond	Health and safety roadmap for pandemic readiness and recovery	Receive support from health and safety experts
<ul style="list-style-type: none">• Receive rebates on premiums and save money by improving safety experience• Earn digital badges that will be displayed on WSIB's Safety Check website	<ul style="list-style-type: none">• Successful implementation in program topics will help meet minimum requirements and beyond• Sample topic: Health and safety responsibilities	<ul style="list-style-type: none">• Recommended topics to help address immediate challenges with COVID-19• Sample topic: Control of hazards	<ul style="list-style-type: none">• Get support and guidance from a WSIB approved provider to effectively implement topics

Register for a HSEp information session webinar to learn more about the program: <https://www.wsib.ca/en/health-and-safety-excellence-program-webinars>

Email to learn more about the program: healthandsafetyexcellence@wsib.on.ca

Questions?



EMPLOYMENT STANDARDS ACT

What is the *Employment Standards Act, 2000* (ESA)?

- The ESA sets **minimum** standards for wages and certain other conditions of employment in Ontario.
- Employers and employees **cannot** contract out of or waive any of these employment standards.
- Employers can **offer** a greater right or benefit above these standards.

Reprisals

- Employers are not allowed to reprimand (punish) an employee because they exercised their rights under the ESA.
- Employers (or person acting on their behalf) are not allowed to:
 - intimidate
 - dismiss
 - threaten
 - penalize in any other way

A claim can be filed at [Ontario.ca/ESAcclaims](https://ontario.ca/ESAcclaims) if an employee feels they may have been reprimanded against.

Who is an employee?

The ESA covers employees. An employee is someone who...

- **performs work** for an employer for wages
- **supplies services** to an employer for wages
- **receives training** from an employer
- is a home worker
- ...and includes someone who **was** an employee.

Exceptions, Exemptions and Special Rules

The ESA **does not** apply to everyone, for example:

- Federal jurisdiction (banks, airlines)
- Some students in work-experience programs
- Office holders (judges, politicians)
- People who do community participation under the *Ontario Works Act, 1997*

For a complete listing, please see the ESA and its regulations at [Ontario.ca/laws](https://www.ontario.ca/laws).

Recent Changes to the ESA

Due to the COVID-19 pandemic, there have been a number of recent changes regarding:

- *New* Infectious Disease Emergency Leave
- How the termination, severance and constructive dismissal rules apply in certain circumstances



Leaves of Absence

New Infectious Disease Emergency Leave (job-protected, unpaid)

Who can take this leave?

Employees who aren't performing the duties of their position due to COVID-19–related reasons, including:

- Personal illness, quarantine or isolation
- As a result of an order under the *Reopening Ontario Act*
- Employer concerned the employee may expose other individuals in the workplace to COVID-19
- To provide care or support to certain family members for a reason related to COVID-19 (e.g. school or day care closures)
- Travel-related restrictions

FAQ 1: Can an employee be fired if they refuse to come back to work due to a COVID-19 health concern?

Scenario

- A workplace has reopened and the employer requests that the employee return to work
- The employee does not want to go back because they are worried they might come into contact with COVID-19
- **Note:** There may be other issues relating to the *OHSA (as discussed earlier)*

Learn more at Ontario.ca/ESAGuide

What does the ESA say?

Employer

- Can require the employee to return to work, unless the employee has a right to a job-protected leave
- Has the ability to set an employee's work schedule

Employee

- There are a number of unpaid, job-protected leaves
- Does not qualify for infectious disease emergency leave solely because they are concerned that they might get sick

FAQ 2: Can an employee be fired if they refuse to go back to work due to a family obligation related to COVID-19?

Scenario

- A workplace has reopened and the employer requests that the employee return to work
- Due to COVID-19, the employee has to take care of their child due to daycare closures

Learn more at Ontario.ca/ESAGuide

What does the ESA say?

Employer

- Can require the employee to return to work, unless the employee has a right to a job-protected leave
- Has the ability to set an employee's work schedule

Employee

- There are a number of unpaid, job-protected leaves including, infectious disease emergency leave
- To provide care or support to certain family members for a reason related to COVID-19, including school or day care closures, or due to certain travel-related restrictions

FAQ 3: An employee fails to give notice to the employer that they will be taking infectious disease emergency leave. What is next?

Scenario

- A workplace has reopened
- An employee takes the infectious disease emergency leave
- The employee has not notified the employer

Learn more at Ontario.ca/ESAGuide

What does the ESA say?

Employer

- An employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave).
- The employee does not lose the right to take the leave if they fail to notify the employer.

Employee

- Advise the employer (written or orally) that they will be taking the leave before starting the leave.
- If advance notice cannot be provided, the employee must inform the employer as soon as possible.

New Regulation - Termination, Severance and Constructive Dismissal Rules During COVID-19 Period (non-union employees only)

Before March 1, 2020

Termination and Severance Pay

- Employee is laid off for a period longer than a temporary layoff (13/20 or 35/52 weeks+)
- The employer is considered to have terminated the employee and they would generally be entitled to termination pay and severance pay (if applicable)

Constructive Dismissal

- Employer makes a significant change to an employee's employment without the employee's consent
- The employee would have to resign in response to the change within a reasonable period of time in order for the employer's actions to be considered a termination/severance of employment under the ESA



March 1, 2020 to January 2, 2021
("COVID-19 period")

- Regulation prevents ESA termination and severance pay obligations that would have arisen during the COVID-19 period where an employer temporarily reduces or eliminates employees' hours of work or wages for COVID-19 reasons:
 - Employee is not considered to be laid off.
 - The layoff clock stops ticking towards becoming a termination or severance of employment.
 - Employee is not considered to be constructively dismissed under the ESA

FAQ 4: An employer eliminated an employee's hours during the COVID-19 period, saying it was temporary and due to COVID-19. The employer hired someone else to do the employee's job. Does the regulation apply to freeze the layoff clock and prevent the employee from getting termination pay?

Scenario

- An employer eliminated an employee's hours
- The employer said the elimination was temporary, and due to COVID-19
- The employer says the regulation applies and the employee's layoff clock is frozen
- The employer hired a new employee to do the employee's work
- The employee thinks the employer is just delaying the employee's termination pay entitlements

What does the ESA say?

- The regulation's rules that freeze the layoff clock apply only if the elimination (or reduction) in hours is related to COVID-19 and is temporary.
- If those rules do not apply, the ESA's regular rules re: temporary layoffs apply.
- For examples, if the layoff exceeds the length of a temporary layoff the employee's employment is terminated and there may be termination (and/or severance) pay owing.

Learn more at
Ontario.ca/terminationofemployment

FAQ 5: Can an employer force an employee to work extra hours, due to staff shortages during COVID-19?

Scenario

- Due to COVID-19, the employer is experiencing a staff shortage
- The employer would like the employee to work extra hours

Learn more at Ontario.ca/overtime

What does the ESA say?

- Hours of work rules under the ESA have not changed.
- An employer and an employee can agree in writing that the employee will work more than:
 - eight hours a day or their established regular workday (if longer than eight hours), **or**
 - 48 hours a week

FAQ 6: Is the employee's job protected if the employee keeps the child home from school and takes time off work to care for the child?

Scenario

- An employee is concerned their child may be exposed to COVID-19 at school
- The employee would like to keep the child at home and take time off work to care for the child

Learn more at Ontario.ca/ESAGuide

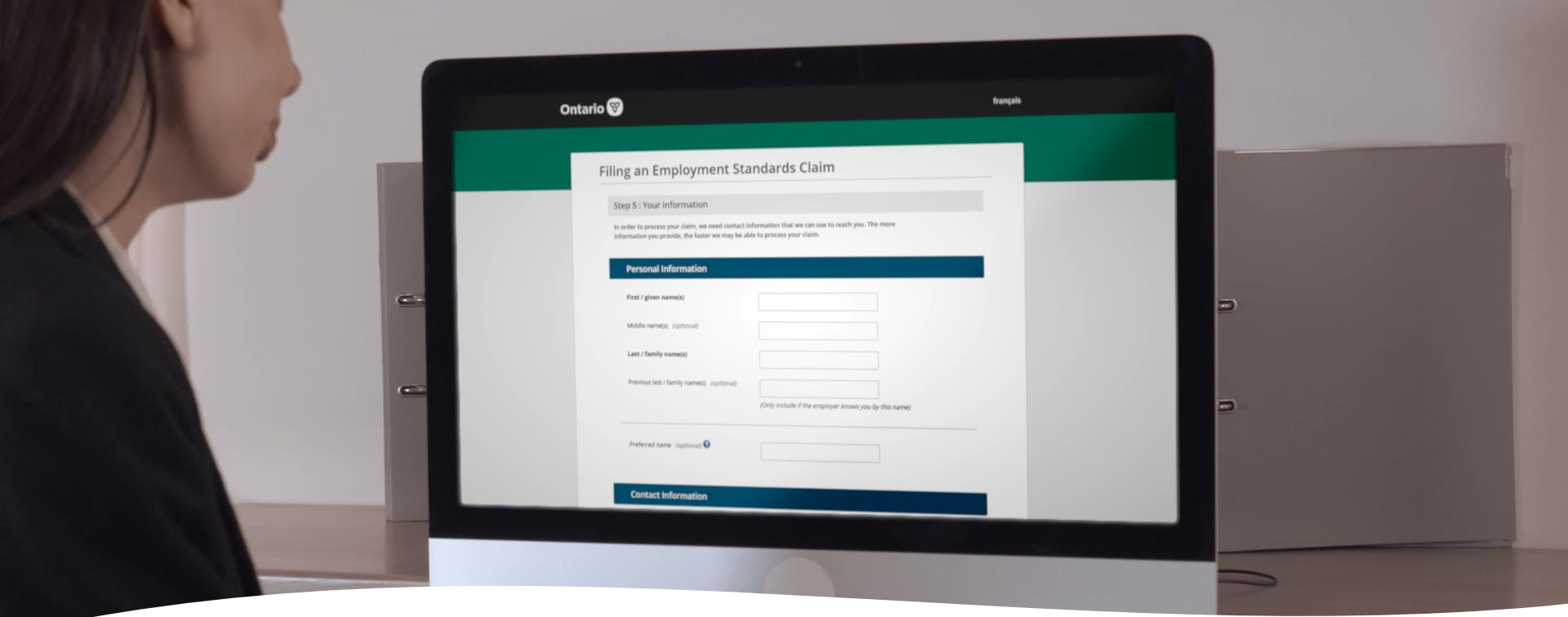
What does the ESA say?

- Infectious disease emergency leave protects the jobs of employees who take an unpaid leave for certain reasons related to COVID-19, such as where an employee provides care or support to their child because of a matter related to COVID-19 that concerns the child.
- For example:
 - where the employee chooses not to send their child to school or daycare out of fear the child would be exposed to COVID-19.
 - where the school or daycare is closed for reasons related to COVID-19.

Reminder

During COVID-19, it is important to remember that regular employment rules under the ESA still apply, such as:

- **Hours of Work and Overtime Pay**
There are daily and weekly limits on hours of work.
[Ontario.ca/hoursofwork](https://ontario.ca/hoursofwork) and [Ontario.ca/overtime](https://ontario.ca/overtime)
- **Vacation Time and Pay**
There are rules around the amount of vacation time and pay employees earn. [Ontario.ca/vacation](https://ontario.ca/vacation)
- **Leaves of Absence**
There are a number of job-protected leaves of absence in Ontario.
[Ontario.ca/ESAGuide](https://ontario.ca/ESAGuide)
- **Public Holidays**
Most employees are entitled to take public holidays off work and be paid public holiday pay. [Ontario.ca/publicholidays](https://ontario.ca/publicholidays)
- **Minimum wage**
Most employees are entitled to be paid at least the minimum wage.
[Ontario.ca/minimumwage](https://ontario.ca/minimumwage)
- **Termination notice and pay**
Generally, employers must give employees advance notice of termination or termination pay. [Ontario.ca/terminationofemployment](https://ontario.ca/terminationofemployment)



Filing an Employment Standards Claim

If an employee believes their employer has not followed the ESA?
File a claim or learn more at Ontario.ca/ESAcclaims.

Remember

- There are time limits to filing, generally within two years of the alleged contravention.
- Unionized employees should contact their union representative.
- An employee generally can't file a claim if they've already started a court action against their employer for the same matter.

Resources

[Ontario.ca/coronavirus](https://ontario.ca/coronavirus) for more COVID-19 information and resources.

Employment Standards

- **ES Information Centre**
1-800-531-5551 (Toll-Free)
1-866-567-8893 (TTY)
- [Ontario.ca/ESAguide](https://ontario.ca/ESAguide) for *Your guide to the ESA*
- [Ontario.ca/labournews](https://ontario.ca/labournews) to stay up to date on MLTSD news

Federal

- [Canada.ca/coronavirus](https://canada.ca/coronavirus) for Canada's COVID-19 resources and financial and economic support programs

Other

- [Ontario.ca/pandemicpay](https://ontario.ca/pandemicpay) for information on pandemic pay
- [Ontario.ca/EmploymentOntario](https://ontario.ca/EmploymentOntario) for information on training, building skills, finding a new job or talent
- publichealthontario.ca, for a summary of COVID-19 activity in Ontario and resources

Questions?

Please do not mention any personal details or information in your questions, for example the name of your employer.