



WHO IS A Migrant Care Worker?

If you are working in Ontario on a work permit in an employer's home taking care of children, or taking care of seniors or people with disabilities and your work permit says your occupation is Caregiver, Nanny, In-Home Caregiver, Live-In Caregiver, or Au Pair then you are part of the Live-In Caregiver (prior to November 2014), Caregiver program (November 31, 2014 to June 17, 2019), or Home Child Care and Home Support Worker programs (after June 18, 2019)

In Ontario, the *Employment Standards Act* protects non-unionized workers.

If you are working in Ontario as a Care Worker, you have basic rights. Employment Standards cover all workers, no matter what your immigration status is. The Ministry of Labour is responsible for making sure these standards are respected. Workers can file claims with the Ministry of Labour to get their unpaid wages. Below is a basic overview of your rights at work.

Minimum wage

You must be paid at least the minimum wage for every hour you work. As of January 1, 2018, the minimum wage is \$14.00 per hour. Your employer must provide you with a pay slip each pay period that shows your pay, hours worked and any deductions from your pay.

Under Ontario law, employers are allowed to make deductions for a private room and meals for live-in Care Workers, but only up to a limited amount. This applies only to Care Workers under the Live-in Caregiver Program who received permits with LMIA approval before November 30, 2014 or workers with a work permit under the 2019 Home Child Care and Home Support Worker programs . Your employer can deduct:

- Private Room weekly: \$31.70
- Meals Weekly: \$53.55 or \$2.55 per meal
- Room and Meals Weekly: \$85.25

For Care Workers with work permits under the Caregiver Program (November 30, 2014 to June 17, 2019), your employer cannot make deductions for room and meals from your pay.

Hours of work

The maximum number of hours your employer can schedule you in a week is 48. If your employer wants you to work more, they must ask you to sign a written agreement It is your legal right to refuse. If you sign it, you can cancel the agreement by giving your employer 2 weeks' notice.

Overtime

Every hour you work after the first 44 hours in a week is considered overtime. You should get paid 1.5 times your regular pay for your overtime hours. You can agree in writing to take paid time off instead of overtime. For example, if your pay is \$14.00/hour, for your first 44 hours, you should either be paid \$21.00 for every hour after OR take lieu time; that is 1.5 paid hours off for each hour of overtime worked.

Breaks and rest periods

The maximum number of hours your employer can make you work is 13 hours in one day This includes a half hour or two 15 minute unpaid breaks for every 5 hours you work.

Leaves

You are allowed to take time off work using the following unpaid job-protected leaves:

Sick Leave: 3 days for your own personal illness, injury or medical emergency

Family Responsibility Leave: 3 days for the illness, injury, medical emergency or urgent matter of family members.

Bereavement Leave: 2 days for the death of a family member. Your employer can ask you for reasonable evidence in order to take these leave days.

You must have worked for 2 consecutive weeks for the same employer before you can take a leave day. Check the Ministry of Labour website for information about other leaves such as pregnancy, parental, family caregiver, family medical, critical illness, and domestic violence leaves.

Public holiday pay

There are 9 public holidays in Ontario: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving, Christmas Day, Boxing Day. You must work your scheduled shift before and after the holiday to qualify for public holiday pay. If you work on a public holiday you get premium pay (1.5 times your regular pay) and an alternative day off with public holiday pay.

Vacation pay

After 1 year working for the same employer, you are entitled to take off 2 weeks of paid vacation. You are entitled to 3 weeks of holidays after you have worked for an employer for 5 years. You are entitled to 4% vacation pay for every dollar you earn or you get vacation time off with pay. If you leave a job without taking a vacation, get any outstanding vacation pay.

Termination notice pay

Your employer can terminate you without notice if you have worked less than 3 months. After 3 months, your employer must give you written notice of the date you will be terminated. If you do not get notice, you should get termination pay instead. The amount you receive depends on how long you have worked for the employer. Your employer should also give you your Record of Employment (ROE), unpaid vacation pay and any unpaid wages.

Reprisals

It is illegal for your employer to fire you, threaten you or penalize you for asking about your rights under the ESA or raising issues of safety or discrimination at the workplace.

DISCRIMINATION

You have the right to a workplace free from discrimination and harassment under the Human Rights Code regardless of your immigration status, race, gender, age and sexual orientation among others. Discrimination is unfair treatment of a person or a group.

Get in touch with the Human Rights Legal Support Centre if you're being discriminated against. Contact them at 1-866-625-5179.

INJURED AT WORK

Most workers who get hurt or sick because of their job can get workers' compensation benefits. Workers Compensation is financial assistance that you can receive if you have to take time off work to heal from a workplace injury.

The Workplace Safety and Insurance Board (WSIB) is the government body that runs the workers' compensation system. It does not matter if the workplace injury was your fault or if your employer says they do not pay into workers' compensation. If you were hurt at work, the WSIB can:

- pay you if you cannot work because of your injury;
- pay healthcare you need to treat the injury; and
- help you return to a job that you can do safely with your injury.

WSIB can pay compensation to people even if they don't have a work permit or are in the province without immigration status.

INCOME SUPPORT

Employment Insurance (EI)

Employment Insurance is an employer-employee paid fund that provides workers with benefits when they are without work or are on parental or sick leave. When a worker loses their job, they may qualify for benefits for a specific number of weeks if enough hours are worked. You may qualify if you are laid off but still have a valid work permit while you are looking for a new job.

You must have worked between 420 and 700^F hours in the last 52 weeks to qualify for EI depending on where you live.

Accessing employment insurance benefits will not negatively affect your permanent residency application. It is a benefit that you contribute to.

You should apply within 4 weeks of your last day of work. You must be able to show Service Canada that it was not your fault that your last job ended, or that you were forced to quit. It helps to write a letter of explanation about what really happened and add it to your EI application. If you take a leave from work to care for your newborn baby or for a family member who is very sick and at risk of death, you could be eligible to get EI benefits. You must have worked 600 hours in the last 52 weeks to be eligible for these benefits.

Maternity benefits are paid to the mother for up to a maximum of 15 weeks. You may collect benefits up to 8 weeks before you expect to have your baby, but no more than 17 weeks after the week when your child was born.

Parental benefits can be paid to one or both eligible parents for up to a combined maximum of 35 weeks. You cannot apply for this type of benefit before your child is born. You can receive parental benefits within the 52 weeks after your child was born. (This also applies to adoptive parents).

You can receive **compassionate care benefits** for up to 6 weeks to care for a relative who is very ill.

Sickness benefits: If you need to take a leave from work because of an illness, you may be eligible for Employment Insurance sickness benefits for up to 15 weeks if you have worked 600 insured hours in the last 52 weeks. You must be in Canada to receive sickness benefits.

⚠ You can receive these leave benefits while you are outside of Canada but you need to have a valid work permit. Get assistance to help you apply.

TIPS for PROTECTING YOURSELF

The greatest risk migrant workers feel in fighting for unpaid wages or filing a complaint against employers is that the employer may retaliate. But remember: it is illegal for an employer to fire or penalize any worker for speaking out about violations at work.

Here are some basic tips you need to know:

- Your employer or the government does not need to know where you live. The employer only needs an address to send you information like your Record of Employment or tax information. You can use another address if you don't feel safe giving out this information.
- Be aware of deadlines, you must file within certain dates.
- If you are leaving the country, file your claim before you leave. You should leave your personal contact information with them so they can call or email you when you are out of the country. The Ministry can still make your employer pay and can send you any money they collect even if you are not in Canada.
- Keep a diary of information and details relating to hours worked and wages received, and any other details about your working conditions that you think are important.
- Get the license plate of your employer. Collect as much information on your employer as possible. It will make it easier to track them down if they don't pay you.
- Be sure you only share details about your status with people you trust.

GET SUPPORT

You are not alone! You can get assistance and work with others to get your legal rights! It is often difficult to take action on an individual situation. That is why Care Workers are joining together to make changes collectively so that workers will have stronger protections at work no matter where they work.



**Caregivers
Action Centre**
info@caregiversactioncentre.org | 647-922-6651

Have a problem at work or questions about your rights? Contact us at 647-782-6633 or email at info@caregiversactioncentre.org

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