

Review of Special Rules and Exemptions under the Employment Standards Act, 2000: Homemakers, Domestic Workers and Residential Care Workers

On May 30, 2017, the Government of Ontario announced that there would be a review of the regulatory exemptions and special rules under the *Employment Standards Act, 2000* (ESA). The first phase of this review is now underway.

The Ministry of Labour is seeking input on the current exemptions that apply to homemakers, domestic workers and residential care workers. The Ministry invites feedback from all interested stakeholders on the impact of the special rules and exemptions.

Other exemptions and special rules being examined in this phase of the review are as follows:

- Managerial and Supervisory Employees
- Residential Building Superintendents, Janitors and Caretakers
- Information Technology Professionals
- Pharmacists
- Architects

Who Is Covered by the ESA Exemptions Applicable to Homemakers, Domestic Workers and Residential Care Workers?

The exemptions applicable to homemakers, domestic workers and residential care workers are found in O. Reg. 285/01, *Exemptions, Special Rules and Establishment of Minimum Wage*, which is one of the regulations of the ESA.

Homemakers:

A “homemaker” under the ESA refers to a person employed by a person other than a householder to perform homemaking services for a householder or member of a household in the householder’s private residence.

There is no definition of “homemaking services” within the ESA. The Employment Standards Program uses the definition contained in a regulation under the *Homemakers and Nurses Service Act* for the purposes of the ESA. Under that regulation, “homemaking services” means housekeeping services including:

- the care of a child or children,
- meal planning, marketing and the preparation of nourishing meals, and the preparation of special diets where required,
- light, heavy and seasonal cleaning,
- light laundry, ironing and essential mending of clothing,
- personal care, including assistance in walking, climbing or descending stairs, getting into or out of bed, eating, dressing, bathing and other matters of personal hygiene,

- simple bedside care, where required, under the direction of a physician or nurse, but not including nursing services, and
- training and instruction in household management and the care of children.

Domestic Workers:

A domestic worker is defined by ESA regulation as “a person who is employed by a householder to perform services in the household or to provide care, supervision or personal assistance to children, senior or disabled members of the household, but does not include a sitter who provides care, supervision or personal assistance to children on an occasional, short-term basis.”

Residential Care Workers:

A residential care worker is defined by ESA regulation as “a person who is employed to supervise and care for children or developmentally handicapped persons in a family-type residential dwelling or cottage and who resides in the dwelling or cottage during work periods, but does not include a foster parent.”

Note: The *Ontarians With Disabilities Act, 2001* amended the *Ontario Human Rights Code* by replacing the word “handicap” in the Code with the word “disability”. The ESA definition of “residential care worker” uses the term “handicap”. This document makes use of the out-dated language for consistency with the legislation.

In order to be a residential care worker, the employee must:

- supervise and care for children or developmentally handicapped persons;
- work in a family-type residential dwelling or cottage; and
- reside in the dwelling or cottage during work periods.

The words “supervise” and “care” are broad terms and include all activities involved in looking after children and developmentally handicapped persons: preparing meals, feeding, cleaning, organizing play activities, and so on. A number of the duties performed by a residential care worker may be similar to those performed by a homemaker.

The exemptions and special rules for residential care workers were intended to cover workers responsible for the supervision and care of children or adults with developmental disabilities during the patients’/residents’ sleeping and eating periods, as well as during entertainment and recreational periods inside or outside the home.

What ESA Exemptions are Applicable to Homemakers, Domestic Workers and Residential Care Workers?

The ESA provides the minimum standards for most employees working in Ontario. It sets out the rights and responsibilities of employees and employers in most Ontario workplaces.

For the provisions regarding homemakers, see section 11 of O. Reg. 285/01. Homemakers are subject to special rules on minimum wage. Homemakers who are paid in accordance with the

special rule on minimum wage are exempt from Part VII (Hours of Work and Eating Periods) and Part VIII (Overtime Pay) of the ESA.

For the provisions regarding domestic workers, see section 19 of O. Reg. 285/01. Domestic workers are subject to a special rule on minimum wage. Householders must provide domestic workers with information in writing about the employee's hours of work and hourly rate of pay.

For the provisions regarding residential care workers, see sections 20 to 23 of O. Reg. 285/01. Residential care workers are subject to special rules on minimum wage, weekly/bi-weekly rest periods and when work can be deemed performed under the ESA. They are exempt from Part VII (Hours of Work and Eating Periods) and Part VIII (Overtime Pay) of the ESA.

A detailed explanation of the exemptions is available from the Ministry of Labour if you wish to participate in the Exemptions Review (see below).

Participating in the ESA Exemptions Review for Homemakers, Domestic Workers and Residential Care Workers:

If you would like to participate in the Exemptions Review for homemakers, domestic workers and residential care workers please contact Exemptions.Review@ontario.ca. Please ensure that your email includes your name and contact information and states that you are requesting the Exemptions Toolkit for homemakers, domestic workers and residential care workers.

The Ministry of Labour's Exemptions Toolkit includes:

- Information about relevant provisions of the ESA, as well as proposed changes to the ESA that are contained in Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*.
- An overview of the policy framework used by the Ministry of Labour to determine whether to grant exemptions to the minimum standards in the ESA to an occupation or sector.
- A list of questions that will provide the Ministry of Labour with the information necessary to conduct an informed and balanced analysis of the exemptions.

Accessible formats and French translations of documents are available upon request.