

Review of Special Rules and Exemptions under the Employment Standards Act, 2000: **Architects**

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 the profession of architecture (see the description below). The Ministry invites feedback from all interested stakeholders on the impact of the 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
- Pharmacists
- Information Technology Professionals
- Residential Care Workers
- Homemakers
- Domestic Workers

Who Is Covered by the ESA Exemptions Applicable to Architects?

The exemptions applicable to the profession are found in a regulation of the ESA, O. Reg. 285/01, *Exemptions, Special Rules and Establishment of Minimum Wage*.

The exemptions apply to two kinds of employees:

i) Duly Qualified Practitioners of Architecture:

Persons employed as “duly qualified practitioners of architecture” are exempted from certain Parts of the ESA, as well as from the entitlement to personal emergency leave in certain circumstances.

In order for the exemptions to apply, the employee must be both “duly qualified” (i.e. licensed by the Association to practice architecture) and a “practitioner” of the profession (i.e. actually practising the profession of architecture, which may require other regulatory requirements to be met, such as holding a certificate of practice).

ii) Students in Training:

The exemptions also apply to persons employed as “students in training” to become duly qualified practitioners of architecture. As one of the criteria for licensing, applicants must complete a practical experience requirement (the Intern Architect Program) regulated under the *Architects Act, 1990*. Individuals engaged in a practical experience requirement are subject to the same exemptions from the ESA as duly qualified practitioners of architecture.

Note: For ease of reference in this document, duly registered practitioners of architecture and students in training are both referred to as practitioners of architecture or architects.

What ESA Exemptions are Applicable to Architects?

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.

As set out in O. Reg. 285/01, architects are exempt from the following parts of the ESA:

- Part VII: Hours of Work and Eating Periods
- Part VIII: Overtime Pay
- Part IX: Minimum Wage
- Part X: Public Holidays
- Part XI: Vacation with Pay

(See sections 2(1)(a)(i) and 2(1)(e) of O. Reg. 285/01.)

In addition, O. Reg. 285/01 provides that personal emergency leave (section 50 of the ESA) does not apply to architects where taking the leave would constitute an act of professional misconduct or a dereliction of professional duty. The rest of Part XIV (Leaves of Absence) of the ESA does apply to architects.

Participating in the ESA Exemptions Review for Architects:

The Ministry of Labour is consulting directly with the Ontario Association of Architects as part of its review of the ESA exemptions that apply to the profession of architecture. The Ontario Association of Architects will be conducting its own consultation with its members and the public and will report its feedback to the Ministry.

If you would like to participate in the Exemptions Review for architects 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 architects.

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.