

Review of Special Rules and Exemptions under the Employment Standards Act, 2000: Managers and Supervisors

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 managers and supervisors (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:

- Residential Building Superintendents, Janitors and Caretakers
- Information Technology Professionals
- Pharmacists
- Architects
- Residential Care Workers
- Homemakers
- Domestic Workers

Who Is Covered by the ESA Exemptions Applicable to Managers and Supervisors?

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

The term “managers and supervisors” is not defined in O. Reg. 285/01. Instead, certain exemptions apply to “persons whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis.” Based on this description, the exemption can apply even if the employee is not exclusively performing supervisory or managerial work.

The word “exceptional” suggests that non-supervisory or non-managerial duties may be performed as long as they are outside the ordinary course of the employee’s duties. The word “irregular” implies that although the performance of non-supervisory or non-managerial duties is not unusual or unexpected, their performance is unscheduled or sporadic. “Irregular” may also depend on the frequency with which such duties are performed and the amount of time spent performing them.

The fact that an employee has the title of “supervisor” or “manager” does not necessarily mean that the exemption will automatically apply. The employee’s actual job duties need to be assessed.

What ESA Exemptions are Applicable to Managers and Supervisors?

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, managers and supervisors are exempt from the following parts of the ESA:

- Sections 17, 18 and 19 of Part VII: Hours of Work
- Part VIII: Overtime Pay

(See clauses 4(1)(b) and 8(b) of O. Reg. 285/01.)

Participating in the ESA Exemptions Review for Managers and Supervisors:

If you would like to participate in the Exemptions Review for managers and supervisors 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 managers and supervisors.

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.