

Fair Workplaces, Better Jobs Act, 2017

The Ontario Government, through Bill 148, has made major changes to the Employment Standards Act, 2000 (the 'ESA'). Most workplaces in Ontario are governed by the ESA. This "Fast Facts" is part seven in a series of high level information related to Bill 148 and how it affects Ontario employers governed by the ESA. This Fast Facts discusses special rules and exemptions.

Most people and professions in Ontario are covered under the ESA. But many are not; there are approximately 85 special rules and exemptions, many of them decades old and some dating back to 1944.

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Businesses which are federally regulated are not covered provincially including banks, airlines, federal civil service, post offices, radio and television stations and inter-provincial railways and more.

People who are in management positions do not receive overtime. They must actually manage people though (e.g. hiring, coaching, performance management). If a person is called a manager, but does not manage people, then they are eligible to receive overtime pay. Other examples of people who are ineligible for overtime include: Architects, Dentists, Lawyers, Doctors, Engineers, Accountants, Pharmacists, Veterinarians. Some professions don't receive overtime at 44 hours, for example, Local Drivers are entitled to overtime after 50 hours and Highway Drivers after 60 hours.

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The ESA website lists special rules and exemptions for jobs in the following sectors: EMS, healthcare and health professionals, manufacturing, construction and mining, hospitality services and sales, transportation, agriculture: growing, breeding, keeping and fishing, household, landscaping and residential building services, government employees and professionals, students, homeworkers, embalmers and funeral directors and more.

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When the Special Advisors completed their two year review and report about the ESA which led to Bill 148, they included a recommendation that ESA exemptions be reviewed. As a result of that recommendation, in October, 2017, the Government of Ontario asked for public input about exemptions, special rules and exclusions. Roles for which they specifically requested input as part of the first phase of the review: Architects, Domestic Workers, Homemakers, IT Professionals, Managerial and Supervisory Employees, Pharmacists, Residential Building Superintendents, Janitors and Caretakers, and Residential Care workers. Results of this review are slated for fall 2018.

Here is one example related to Lawyers and Articling students and their special rules and exemptions.

People in this profession are entitled to:

- Notice of termination pay and severance pay

They are **not** entitled to:

- Minimum wage
- Hours of work
- Daily rest periods
- Time off between shifts
- Weekly/bi-weekly rest periods
- Eating periods
- Overtime
- Personal emergency leave if taking the leave would be professional misconduct or abandoning their duty
- Public holidays
- Vacation with pay

Evidently the rationale behind these numbers and types of exemptions were that they were related to positions and industries which face less job scarcity or vulnerability.

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If the employer provides a greater benefit than a specific standard in the ESA, these greater benefits prevail.