



ONTARIO PORK



Human Resources Manual For the Ontario Pork Sector



Disclaimer:

This document is intended to be used as a guide to human resource and personnel management for pork farm operations only. The authors and the Boards of the Ontario Pork Producers' Marketing Board and the Ontario Pork Industry Council do not take responsibility for the application of any or all suggestions, advice, or information contained in this document. Professional advice should be obtained for any potential litigious situation.

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Human Resources Manual

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1. INTRODUCTION

As farms have grown in size over time, the hiring of non-family labour has become necessary. As noted in Ontario Pork's 2015 Social Responsibility Report, more than half of pork farms in Ontario (59%) now employ non-family labour, including local and foreign labour. This new reality has led pork producers to develop skills and approaches to manage their workforce. However, understanding how the multiple regulations and legal requirements apply to farming operations can be confusing and navigating government websites frustrating.

The information contained in this human resource manual is offered as an aid to Ontario pork farm owners and managers in understanding their legal obligations as employers. Other types of farm operations and non-farming businesses may have additional or different legal requirements regarding employing staff. If you have other types of business enterprises, refer to the source documents and websites at the end of each chapter to determine your responsibilities.

Templates of documents are samples only and must be reviewed and adapted to reflect your particular circumstances. As well, government regulations, wage rates, and employment requirements change over time so you should check the websites or call the contact numbers given to ensure the information is up to date and to access more detailed information. A list of references is given at the end of most chapters.

This manual, its authors and reviewers, are not providing specific legal or consulting advice. The user must exercise judgment about the applicability of the materials contained herein and obtain professional legal or human resource advice where prudent.

Note: Some policies require staff signatures as acknowledgment of having read and understood the practices and procedures outlined in the policy. In cases where English is not the first language of the employee, an appropriate translation of the policy should be made available to ensure full comprehension. Many government websites provide employee resources in multiple languages. Links to those sites have been provided throughout the manual.

For additional information and tools relating to human resource management, visit the Ontario Pork Industry Council and Ontario Pork websites, www.opic.on.ca/human-resources and <http://www.ontariopork.on.ca/secure>. References are also provided at the end of each chapter.

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2. EMPLOYMENT STANDARDS ACT (ESA)

DOES IT APPLY TO ME?

Certain agricultural jobs are exempt from particular provisions of the Employment Standards Act (ESA).

There are four categories of agricultural employees that have varying exemptions under the ESA:

- farm employees (described in more detail below),
- harvesters (work on a farm harvesting fruit, vegetables or tobacco for wholesale, retail sale or storage)
- near farmers (work with trees/shrubs, sod, fur-bearing animals, horse boarding and breeding), and
- landscape gardeners (park gardeners and greenskeepers).

The category typically applicable to pork farms is farm employees. Farm employees are those who work on a farm and are directly involved in: growing or producing eggs, milk, grain, seeds, fruit, vegetables, mushrooms, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.

EMPLOYER REQUIREMENTS

The ESA sets the legal minimums owed to an employee however the employer has the right to exceed those minimums and often will to remain competitive with other employers.

Under the ESA, farm employees are entitled to:

- leaves of absence
- notice of termination/termination pay
- severance pay
- equal pay for equal work
- regular payment of wages and wage statements

Farm employees, as described above, are not entitled to:

- minimum wage
- limits on hours of work
- eating periods
- overtime
- public holidays
- vacation with pay or vacation pay

NOTE: Although not entitled, many farm employers voluntarily provide some or all of the above benefits to their employees. Therefore, the ESA standards for these benefits are included at the end of this chapter.

Employees may have jobs where they are required to do more than one kind of work. For example, some of the work might be specifically exempt from overtime pay, while other parts might be covered. If at least 50 percent of the hours the employee works are in a job category that is covered, the employee qualifies for that entitlement.

If you are unclear regarding whether an employee is exempt, more details can be found in the [Guide to Employment Standards Act](#) and on the Ministry of Labour's website under [exempt agriculture positions](#).

In addition to the ESA, an agricultural employee who is also a foreign national that is working or seeking work in Ontario pursuant to an immigration or foreign temporary employee program also has rights under the [Employment Protection for Foreign Nationals Act, 2009](#). For example, employers cannot charge fees or recover costs for arranging employment or take the employee's passport or work visa. For more information on this law, please visit the [Employment Protection for Foreign Nationals site](#) and the chapter in this manual entitled Temporary Foreign Workers.

PENALTIES AND CONSEQUENCES

Depending on the severity of the non-compliance and whether it is a repeat offence, penalties include:

- Tickets that carry a set fine of \$295 plus applicable costs and victim fine surcharges.
- Fines up to \$50,000 and/or imprisonment for up to 12 months upon conviction of an offence.
- A corporation is subject to a maximum fine of \$100,000 for a first offence, \$250,000 for a second offence and \$500,000 for a third or more offences.

COMPLIANCE DETAILS – INFORMATION AND RECORDS

Posting Information

- Employers must provide all of their employees with a copy of the most recent version of the Ministry of Labour's poster entitled Employment Standards within 30 days of becoming an employee.
- If the majority language in the workplace is something other than English, and the ministry has published a version in that language, the employer must provide the translated version to the relevant employees. All multilingual material is available on the [Ministry of Labour's website](#).

Note: You must provide the Ministry of Labour poster even though some of the employment standards noted do not apply to farm workers. The standards that apply to farm workers are listed on the Ministry of Labour's website, https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php. The information from the website is included in chapter 8 following the poster. You may wish to provide this information to employees along with the Ministry of Labour poster.

Retention of Records

For each employee, the employer must record and keep the following information for a minimum of three years after the employee stops working for the employer.

- Employee's name, address and starting date of employment.
- Employee's date of birth if the employee is a student under 18. The file must be retained for either three years after the employee's 18th birthday or three years after employment ends whichever happens first.
- Information contained in an employee's wage statement including hours worked by the employee each day and week (most recent three years).
- All the documents relating to an employee's leave of absences (such as pregnancy, parental, personal emergency, family caregiver, critical illness, etc.) must be kept for three years after the day on which the leave ends.

- Records of the vacation pay earned and paid to the employee and how that vacation pay was calculated. This information must be kept for five years after the record of vacation time and pay was made. Vacation pay is not mandatory for farm employees.

For a more detailed description of recordkeeping, refer to the relevant section of the [Guide to the Employment Standards Act](#).

Wage Statements

The employer must provide the employee with a wage statement that sets out:

- the pay period for which the wages are being paid;
- the wage rate;
- the gross amount of wages and how the gross wages were calculated (i.e. number of hours, rate per hour, and any overtime rate);
- the amount and purpose of each deduction;
- any amounts that were paid in respect of room or board; and,
- the net amount of wages.

The wage statement must be:

- in print copy;
- or**
- provided by e-mail if the employee has access to some means of making a paper copy. However, employers should be careful of providing pay statements by email as email is not considered to be a secure form of transmission for confidential data.

The employee must be able to keep their wage statement information separate from their cheque.

Employers are required to make deductions for income taxes, [employment insurance premiums](#) and [Canada Pension Plan contributions](#). The Canada Revenue Agency has an [on-line payroll deductions calculator](#) to assist in determining the appropriate amounts. Monthly remittances of these deductions to the Receiver General for Canada are required as well as a year ending summary. For information about completing slips and summaries or filing an information return electronically, see [Completing slips and summaries](#) or call **1-800-959-5525**.

When Employment Ends

The employer must pay outstanding wages, including vacation and termination pay if applicable, no later than:

- seven days after the worker's employment ends;
- or**
- on what would ordinarily have been the employee's next regular pay day;
- whichever is later. Employers are also required to issue a Record of Employment within five calendar days of the employee's departure.

COMPLIANCE DETAILS - MANDATORY ENTITLEMENTS FOR FARM EMPLOYEES

Sick Leave

Employees are entitled to up to three unpaid sick leave days per year once they have worked for an employer for at least two consecutive weeks.

If an employment contract or terms of employment provide for paid or unpaid sick days, these are not added to the three unpaid sick days provided for under the ESA.

For example, if an employment agreement provides for one paid sick day per year that is counted as one of the three sick days under the ESA. In this case, the employee could use the one paid sick day allowed under the terms of employment and then two unpaid sick days as provided under the ESA.

Domestic or Sexual Violence Leave

- Provides up to 10 days of leave and a total of 15 weeks leave in a calendar year of time off when an employee or an employee's child has experienced or been threatened with domestic or sexual violence.
- The first five days of leave taken in a calendar year are paid and the rest are unpaid.

Time off to Vote

The Canada Elections Act states that eligible electors must have three consecutive hours to vote on election day. If an employee's hours of work do not allow for three consecutive hours to vote, they may request you give them time off. If an employee has three consecutive hours that fall within the voting hours and fall outside of work hours, there is no obligation to provide paid time off from work.

Example: Voting hours are 9:00 a.m. to 9:00 p.m. Employee usually works from 8:00 a.m. to 7:00 p.m. Employee could request to leave early (at 6:00 p.m.), or be given three hours off at some point during the work day.

The employer has the right to decide when the time off will be given. An employee must be paid what they would have earned during the time allowed off for voting.

Employers, who violate the Canada Elections Act by refusing to give employees the minimum amount of time to vote, or docking employees' pay, can lead to \$2,000 in fines or up to three months' imprisonment.

Under the Ontario Elections Act, employers who fail to provide time to vote, or who deduct pay from employees who take time off to vote, could be fined up to \$5,000. If a judge finds that the offence was committed knowingly, the employer could be fined up to \$25,000 or imprisonment up to two years less a day or both.

Can an employer ask for proof that an employee is entitled to sick leave?

Yes, an employer may require an employee to provide a medical note from a health practitioner such as a doctor, nurse practitioner or psychologist when the employee is taking the leave because of personal illness, injury or medical emergency if it is "reasonable in the circumstances".

However, the employer can ask only for the following information:

- the duration or expected duration of the absence
- the date the employee was seen by a health care professional
- whether the patient was examined in person by the health care professional issuing the note

Employers cannot ask for information about the diagnosis or treatment of the employee's medical condition.

Source: [Guide to the Employment Standards Act](#)

Jury Duty

The Juries Act requires an individual to report for jury selection and possible jury duty when summoned. Employers must give employees time off to attend jury selection and to serve as jurors. Under the Employment Standards Act, a juror is considered to be on unpaid leave for the period of jury duty.

Unpaid, Job-Protected Leaves

The chart on the following page provides a summary of the terms and conditions for unpaid, job-protected leaves under the ESA. Family-related leaves are typically for specified relatives only. The list of specified family members for the noted leaves can be found at:

- Bereavement Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/bereavement-leave>
- Critical Illness Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave>
- Family Caregiver <https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-caregiver-leave>
- Family Responsibility Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-responsibility-leave>
- Family Medical Leave <https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave>

Although employers are not legally obligated to pay employees on unpaid leaves, the employee is considered to be in continuous employment for the purposes of calculating annual vacation, termination entitlements, as well as for pension, medical or other employee benefit plans. The employee is also entitled to all increases in wages and benefits which he or she would have received if not on leave. Further, the employer may not terminate an employee on leave, or change a condition of employment, without the employee's written consent. As soon as the leave ends, an employee must be returned to his or her former position or comparable position.

Additional details on employee, job-protected leaves can be found by utilizing the references listed at the end of this chapter.

Summary of Unpaid, Job-Protected Leaves under the ESA

	Qualifying Period	Length of Leave	Details
Bereavement	2 consecutive weeks	2 days per year	Upon the death of specified* family members
Child Death (any reason)	6 consecutive months	104 weeks	Employee must inform the employer, in writing, of their intent to take this leave, indicating the weeks they will be absent.
Crime Related Death or Disappearance of a Child	6 consecutive months	104 weeks	Employee must inform the employer, in writing, of their intent to take this leave, indicating the weeks they will be absent.
Critical Illness Leave (for Family Member)	6 consecutive months	child 37 weeks adult 17 weeks	For specified* family members, whose baseline health has changed significantly and whose life is at risk from illness or injury.
Family Caregiver	None	8 weeks per calendar year	For specified* family members with a serious medical condition, but no risk of death. The employer may request medical certification.
Family Responsibility	2 consecutive weeks	3 days per year	Illness, injury, medical emergency or urgent matter relating to specified* family members
Family Medical	None	28 weeks per 52 week period	For specified* family members only with a significant risk of death within 26 weeks. The certificate to support the leave must be issued by a qualified health practitioner, which now includes a nurse practitioner.
Organ Donor	13 consecutive weeks	13 weeks	In some cases a 13-week extension is also possible.
Pregnancy	13 weeks before estimated due date	17 weeks	Employee should provide two weeks written notice.
Parental	13 weeks before estimated due date	61 weeks if pregnancy leave taken	Birth mothers who take pregnancy leave are entitled to up to 61 weeks Parental Leave. Birth mothers not taking Pregnancy Leave and all other new parents are entitled to up to 63 weeks Parental Leave.
Reservist	6 consecutive months	Until the service is completed	The employer is not required to provide benefits during this leave
Sick	2 consecutive weeks	3 days per year	Personal illness, injury or medical emergency including pre-planned (elective) surgery but not cosmetic surgery that is not medically necessary or is unrelated to an illness or injury.

Notice of Termination and Termination Pay

- After three months of employment, an employee is entitled to notice of termination or termination pay instead of notice. A person is considered “employed” even if they are on sick leave or temporarily laid off.
- One week’s notice is required for every year of employment up to a maximum of eight weeks.
- You can either give the employee written notice of their termination the stipulated number of weeks prior to their termination date or provide them with the equivalent number of weeks’ pay. For example, for an employee who has worked for a company for two years, they are entitled to two weeks’ notice of their termination date (during which they are paid) or two weeks’ pay instead of notice (also referred to as Termination Pay).
- Written notice of termination must be addressed to the employee and provided in person or by mail, fax or e-mail, as long as delivery can be verified, i.e. get a signature confirming receipt.
- Termination pay must be paid to an employee either seven days after the employee’s employment is terminated or on the employee’s next regular pay date, whichever is later.
- The ESA does not require an employer to give an employee a reason why their employment is being terminated. However, an employer cannot terminate an employee for exercising a right under the ESA, e.g. taking a permitted leave.
- During the notice period all benefits must be continued (e.g. health, dental, life).

Also refer to chapter 9, Human Resources Best Practices and to the [Guide to Employment Standards Act](#) for specific details on terminations, requirements for notice periods and severance pay.

Severance Pay

A terminated employee also qualifies for severance pay of one week’s pay per week of employment to a maximum of 26 weeks if:

- they have worked for the employer for at least five years (whether continuous or not and whether active or not)

and

- the employer has a payroll in Ontario of at least \$2.5 million or terminated 50 or more employees in a six-month period because all or part of the business permanently closed.

Temporary Layoff

- An employee is on temporary layoff when an employer cuts back or stops the employee’s work without ending their employment (e.g., laying someone off at times when there is not enough work to do).
- A layoff is considered temporary if it is less than 13 weeks in a 20-week period or it can be up to 35 weeks in a 52-week period if the employee is receiving unemployment benefits or is employed elsewhere.
- If an employee is laid off for a period longer than a temporary layoff as set out above, the employer is considered to have terminated the employee’s employment and the employee will then be entitled to termination pay.

Equal Pay for Equal Work

Employers cannot pay an employee a lower rate of pay than another employee who performs substantially the same kind of work in the same establishment; the work requires substantially the same skill, effort and responsibility and is performed under similar working conditions. All of these conditions must be met for equal pay for equal work to be required.

Employees who perform equal work *can* be paid different rates of pay if the difference is due to:

- a seniority system;

- a merit system; or
- a system that measures earnings by production quantity or quality.

These systems should be based on objective and measurable criteria and be transparent, meaning that they should be clear, documented and communicated to employees as part of employment policies.

The Pay Transparency Act, which was to come into force as of January 1, 2019, prohibits employers from asking job candidates about their past pay rates. It also requires all publicly advertised job postings to include a salary rate and range. The Act prevents employers reprimanding employees for discussing or disclosing their compensation rates. However, this Act was put on hold as of December 6, 2018.

Travel Time

- Commuting time is the time it takes an employee to get to work from home and vice-versa. This is not counted as work time.
- If the employee takes a work vehicle home in the evening for the convenience of the employer, the work time begins when the employee leaves home in the morning and ends when he or she arrives home in the evening.
- If the employee is required to transport other staff or supplies to or from the workplace or work site, time so spent must be counted as work time.
- If the employee has a usual workplace but is required to travel to another location to perform work, the time traveling to and from that other location is counted as work time.
- Time spent travelling during the course of the workday is considered to be work time.

Training Time

- If an employee is required by law or by the employer to complete training, that time is considered work time, e.g. new employee training, health and safety, etc.

Voluntary Employment Compensation/Benefits for Farm Employees

Farm employees are not automatically entitled to the following compensation/benefits however they are included as a reference for employers who choose to provide them to employees in order to be competitive in the labour market.

- Employers may grant a 30-minute eating period (meal break) after five hours of work. Meal breaks, whether paid or unpaid, are not considered hours of work, and are not counted toward overtime. Employers do not have to give employees “coffee” breaks or any other kind of break.
- Employees with less than five years of employment may be given two weeks of vacation time after each 12-month vacation entitlement year (4% of gross wages). Employees with five or more years of employment would receive three weeks of vacation time (6% of gross wages). Employers may add vacation pay to each pay cheque (% of gross wages) or pay out vacation pay at the time the vacation break is taken.

Minimum Wage and Overtime Pay

General minimum wage as of January 1, 2018 is \$14.00.

Student minimum wage as of January 1, 2018 is \$13.15.

Minimum wage rates may increase annually as of October 1 each year starting in 2020. The new rates will be published on or before April 1 of every year, beginning in 2020.

If a change to the minimum wage rate comes into effect partway through an employee's pay period, the pay period will be treated as if it were two separate pay periods and the employee will be entitled to at least the minimum wage that applies in each of those periods.

Check the [Ontario government website](#) for current rates.

Overtime pay is 1½ times the employee's regular rate of pay and is typically paid after 44 hours of work in one work week. Overtime pay is a voluntary employment benefit for farm employees.

- Ontario has nine public (statutory) holidays:
 - New Year's Day
 - Family Day
 - Good Friday
 - Victoria Day
 - Canada Day
 - Labour Day
 - Thanksgiving Day
 - Christmas Day
 - Boxing Day (December 26)

References

The material in this chapter was adapted from the websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Employment Standards Poster
https://www.labour.gov.on.ca/english/es/pubs/poster.php#get_poster
- Guide to Employment Standards Act <https://www.ontario.ca/document/your-guide-employment-standards-act-0>
- Government of Canada, Employers' Guide - Payroll Deductions and Remittances,
<https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4001.html>
- Ministry of Labour, Agricultural Employees
https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php
- Ministry of Labour, Critical Illness Leave, https://www.ontario.ca/document/your-guide-employment-standards-act-0/critical-illness-leave?_ga=2.7432946.1581906750.1550849198-246061340.1542652039
- Ministry of Labour, Employment Standards <https://www.labour.gov.on.ca/english/es/>
- Ministry of Labour, Family Medical Leave, https://www.ontario.ca/document/your-guide-employment-standards-act-0/family-medical-leave?_ga=2.49457510.1581906750.1550849198-246061340.1542652039

Members are generally entitled to one hour of paid preparation time before each meeting, time spent at meetings, and for carrying out certain other committee duties.

The joint health and safety committee has the power to:

- identify workplace hazards;
- obtain information from the employer;
- be consulted about and present at workplace testing;
- make recommendations to the employer, and
- investigate critical injuries or fatalities.

A “certified” member of a joint health and safety committee is one who has received [specialized training in occupational health and safety](#).

Where possible, the certified member who represents workers:

- conducts the monthly workplace inspections, and,
- is present (if possible) at any reassignment of refused work.
- may investigate any complaints received that dangerous circumstances exist, and, under certain circumstances, order the employer to stop work where dangerous conditions exist.

In most cases, it takes two certified members representing both management and the workers to direct an employer to stop dangerous work.

Notification of Injuries

If a person has been critically injured or killed from any cause at a farming operation, the employer must immediately notify:

- a Ministry of Labour inspector, and
- the joint health and safety committee or health and safety representative (if any).

This notice must be by direct means, such as by telephone. Within 48 hours, the employer must also notify, in writing, a Director of the Ministry of Labour, giving the circumstances of the occurrence.

➡ Ministry of Labour Health & Safety Contact Centre

Toll-free: 1-877-202-0008

Fax: 905-577-1316

[Regional Offices](#)

If a person is killed or critically injured at a workplace, no person can alter the scene where the injury occurred.

Where there is an injury that is not a critical injury, the employer must notify the joint health and safety committee or health and safety representative (if any) in writing within four days.

Critical Injury

A critical injury is one that:

- places life in jeopardy;
- produces unconsciousness;
- results in substantial loss of blood;
- involves the fracture of a leg or arm but not a finger or toe;
- involves the amputation of a leg, arm, hand or foot but not a finger or toe;
- consists of burns to a major portion of the body; or
- causes the loss of sight in an eye.

Written Notice of Critical Injury or Fatality

Include the following information:

- the name, address and phone number of the employer;
- the type of farming operation;
- the name, address and phone number of the person who was killed or critically injured;
- the time and place of the occurrence;
- a description of the occurrence and the bodily injury sustained;
- a description of the machinery or equipment involved, if any;
- the names, addresses and phone numbers of all witnesses to the occurrence; and
- the name, address and phone number of the physician, if any, by whom the person was or is being attended; and,
- the steps taken to prevent a recurrence.

WHMIS

Ontario's WHMIS legislation applies to all workplaces covered by the Occupational Health and Safety Act although there is one reference in the guide to the WHMIS legislation that states farms are exempted. This exception does not appear in the WHMIS Regulation or on the general Ministry of Labour website or print material. Requests for clarity have not resulted in a clear ruling. As a result, it would be prudent for farm operations covered by the OHS Act to comply with WHMIS requirements.

WHMIS legislation requires employers to obtain health and safety information about hazardous products from their suppliers, and to use that information to train their workers.

A worker education program on hazardous materials must include, at a minimum, the following:

- Labels on hazardous products - the information required on a supplier and workplace label and the purpose and significance of the information;
- Modes of identification when used at the workplace instead of labels;
- Safety Data Sheets - the information required, and the purpose and significance of the information;
- Procedures for the safe use, storage, handling, and disposal of a hazardous product;
- Procedures to be followed when hazardous emissions are present; and
- Procedures to be followed in case of an emergency involving a hazardous product.

Note: Ensure your training material is up-to-date. WHMIS pictograms, labels, material safety data sheets (MSDS), and classifications have been updated as of 2015 to match a global communication system (Globally Harmonized System of Classification and Labelling for chemicals).

Drug and Alcohol Use

It is reasonable for employers to expect that employees will show up sober and ready to perform their duties. Safety sensitive positions, such as those requiring the use of heavy equipment, should be clearly identified in job descriptions and policy documents.

Although there are no specific provisions in the OHS Act that address controlled substance use in the workplace (e.g. alcohol and cannabis), some lawyers advise that employers have an obligation to implement an appropriate policy to deal with substance use as part of their due diligence requirements.

The objective of a drug and alcohol policy should be to clearly outline your expectations regarding fitness for duty, workplace use, possession, and sale of impairing substances. This includes what a worker is expected to do

Smoke-Free Ontario Act

The Smoke-Free Ontario Act, 2017, which came into effect in October 2018, prohibits individuals from: smoking; holding lighted tobacco or cannabis products; vaping; or holding an activated e-cigarette, whether or not the vapour contains nicotine, in a number of places, including in an "enclosed workplace" or "enclosed public place."

The Act also requires employers to:

- post "No Smoking" and "No Vaping" signs at all entrances, exits, washrooms and anywhere signs can be easily placed and seen;
- make sure that no one smokes, vapes or holds lighted tobacco or e-cigarettes in an enclosed workplace, public place, or area where smoking is banned;
- make sure that a person who does not comply leaves the premises; and,
- remove ashtrays (or any object that serves as one).

Corporations who do not comply with the Act may be fined up to \$100,000 for a first offence and up to \$300,000 for subsequent offences. Individual employers may be fined up to \$1,000 for the first offence and up to \$5,000 for subsequent offences.

Farms typically prohibit smoking on site but there may be offices or lunch rooms where smoking is allowed. Under this Act, this practice is not allowed.

No smoking and no vaping signs can be downloaded at <https://www.ontario.ca/page/no-smoking-no-vaping-signs-businesses>

(e.g. report the use of a controlled or illegal substance at the work site to a supervisor immediately) and what a worker is prohibited from doing (e.g. attending work while impaired).

Be sure to advise employees of the disciplinary consequences for violating the policy and workplace rules; this should be stated within your policy.

References

The material in this chapter was adapted from the websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Certification for Joint Health and Safety Committee Members, Ministry of Labour <https://www.labour.gov.on.ca/english/hs/faqs/jhsc.php>
- Guide to the Occupational Health and Safety Act <https://www.ontario.ca/document/guide-occupational-health-and-safety-act>
- Occupational Health and Safety Act, R.S.O. 1990, c. O.1 <https://www.ontario.ca/laws/statute/90o01>
- Ontario Ministry of Labour, Farming Operations – Agriculture <https://www.labour.gov.on.ca/english/hs/topics/farming.php>
- Ontario Ministry of Labour, Regional Offices https://www.labour.gov.on.ca/english/about/reg_offices.php
- Ontario Regulation 381/15: Noise <https://www.ontario.ca/laws/regulation/r15381>
- Reporting an Incident, Ministry of Labour <https://www.labour.gov.on.ca/english/hs/incident.php>
- Right to refuse or stop work <https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger>
- WHMIS <https://www.canada.ca/en/health-canada/services/environmental-workplace-health/occupational-health-safety/workplace-hazardous-materials-information-system.html>
- Workplace Hazardous Materials Information System - A guide to the legislation <https://www.ontario.ca/document/workplace-hazardous-materials-information-system-guide-legislation/whmis-legislation>
- Workplace Safety and Prevention Services' (WSPS) [farm safety resources](#)

Training Materials

Ministry of Labour workbooks and employer guides that cover the basics of occupational health and safety and fulfill the training obligation under the Act:

- [Worker Health and Safety Awareness in 4 Steps: Workbook](#)
- [An Employer Guide to Worker Health and Safety Awareness in 4 Steps](#)
- [Supervisor Health and Safety Awareness in 5 Steps: Workbook](#)
- [An Employer Guide to Supervisor Health and Safety Awareness in 5 Steps](#)

Electronic (e-learning) training tools:

- [Worker Health and Safety Awareness in 4 Steps](#)
- [Supervisor Health and Safety Awareness in 5 Steps](#)

Please note that employers are not required to use these specific Ministry products in order to comply with the regulation as long as the training they provide covers the necessary content.

COMPLIANCE DETAILS

As an employer, your obligations under the Temporary Foreign Worker Program include:

- pay [National Commodity List](#) wage rates;
- cover all hiring costs;
- pay for round-trip transportation for the worker from their home country;
- provide safe working conditions compliant with Ontario laws;
- register the worker with the provincial health insurance plan (OHIP) (employees can apply after three months in the province);
- pay for basic medical insurance until OHIP coverage starts (best practice includes some extended medical coverage for the duration of the employment);
- arrange and pay for workplace safety insurance coverage from either the Workplace Safety and Insurance Board or a private insurance provider to correspond to the worker's arrival date in Canada (The private insurance coverage must be similar to that provided under the provincial workplace safety insurance plan.);
- provide suitable accommodations for the worker that follow the municipal housing occupancy rules; and,
- provide, where required, no-cost transportation between the on-site/off-site housing location and the work location.

Employer records must be kept for a minimum of six years. This includes proof of advertising, invoices, receipts, copies of flight itineraries, tickets, boarding passes, etc.

The Temporary Foreign Worker Guide Booklet produced by the [Ontario Pork Industry Council](#) and Ontario Pork provides more details on hiring Temporary Foreign Workers including fulfilling the federal government application requirements and suggested voluntary support for workers.

Another resource is [Foreign Agricultural Resource Management Services \(F.A.R.M.S.\)](#), a non-profit corporation which facilitates and coordinates the processing of requests for foreign seasonal agricultural workers. Authorized by Human Resources Skills Development Canada, F.A.R.M.S. performs an administrative role to the Caribbean and Mexican Seasonal Agricultural Workers Program. It is governed by a Board of Directors made up of agriculture sector representatives.

References

The material in this chapter was adapted from the documents and websites noted below and was accurate at the time of writing. For additional information and to ensure compliance details are up to date, the website addresses are provided.

- Foreign Agricultural Resource Management Services (F.A.R.M.S.), <http://farmsontario.ca/>
- Temporary Foreign Worker Guide Booklet, Ontario Pork Industry Council and Ontario Pork, contact Andrea De Groot, Managing Director, andrea.opic@gmail.com
- Program Requirements for Low-Wage Positions, <https://www.canada.ca/en/employment-social-development/services/foreign-workers/median-wage/low/requirements.html#h2.2>
- Temporary Foreign Worker Program Factsheet, Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/factsheet-temporary-foreign-worker-program.html>

- Does the job description accurately reflect your needs and expectations of the position?
- Which are essential requirements and which are non-essential?

To help determine whether a particular task or duty is essential, consider:

- How often is the duty performed?
- How much time is spent on each duty?
- How does the duty fit with the others performed in the job?
- How would the job change if the duty were removed?

Refer to the prohibited topic areas listed below for job applications. These same prohibited categories are applicable to job descriptions unless they are deemed an essential requirement.

Applications

The Code states it is not appropriate to include on application forms any questions that relate directly or indirectly to the following prohibited grounds of discrimination:

- | | | | |
|--------------------|----------------------|----------------------|---------------------------------|
| • race | • creed | • record of offenses | • family status |
| • ancestry, colour | • sex | • age | • gender identity or expression |
| • place of origin | • sexual orientation | • marital status | • disability |
| • ethnic origin | | | |
| • citizenship | | | |

Drug and alcohol dependencies may be considered a form of disability under the Code. While not all people with drug and alcohol dependencies see themselves as having a disability, they are protected under the Code against discrimination in the workplace based on the ground of disability.

Below is a partial list of topics which are prohibited on application forms:

- Physical characteristics such as colour of eyes, hair, height, weight, or requests for photographs.
- Ability to speak English or French fluently, unless to do so is a reasonable and bona fide requirement for the position.
- Religious affiliation, religious institutions attended, religious holidays, customs observed, willingness to work on a specific day which may conflict with requirements of a particular faith (e.g., Saturday or Sunday Sabbath days).
- The name and location of schools attended.
- Questions about or relating to Canadian citizenship, landed immigrant status, permanent residency, naturalization, requests for Social Insurance Number. However, you may ask, “Are you

What should be included in a job description?

A comprehensive job description should contain:

- the job title;
- a brief statement of the major responsibilities of the position;
- the training and work experience necessary to carry out the duties of the job;
- a list of the major activities involved with the position;
- who the employee reports to and who and how many people are supervised by them (if applicable);
- hours of work;
- may include wage ranges (see text box below); and
- may include safety responsibilities or environmental conditions.

Pay Transparency Act, 2018

This Act was to come into effect as of January 1, 2019 however it has been put on hold. As currently written, all publicly advertised job ads **would have to include a salary rate or range**. Employers would be prohibited from asking job candidates about their past pay rates and also could not reprimand employees for discussing or disclosing their compensation once hired.

Employers should watch for future announcements regarding the status of this Act.

8. MANDATORY INFORMATION POSTING

There are seven primary information pieces that employers are required to provide to employees and/or post in workplaces in areas highly visible to employees.

1. Employment Standards in Ontario Poster – provide a copy to employees
2. Health & Safety at Work: Prevention Starts Here Poster – post
3. In Case of Injury Poster - post
4. Joint Health and Safety Committees Members (if applicable) - post
5. Occupational Health and Safety Act - post
6. Occupational Health and Safety Policy - post
7. Workplace Violence and Workplace Harassment Policies - post

If applicable, the following items must also be posted:

- a copy of any report received by the employer from Workplace Safety and Insurance Board;
- a copy of any order or a report of an inspection, issued by a Ministry of Labour (MOL) inspector; and
- copies of both the notice of compliance and the original order once submitted to MOL.

Employment Standards in Ontario

Employers are required to provide the most recent version of the Minister of Labour's poster, "Employment Standards in Ontario", within 30 days of becoming an employee.

The poster outlines employees' rights and employers' responsibilities at work. For more information and to download free copies of the poster visit Ontario.ca/ESAposter. Hardcopies can be ordered through [Service Ontario Publications](#) for the cost of shipping and handling. Copies of the English and Spanish versions are also included in this document as Appendix A to this chapter.

You must provide employees with a copy of the Ministry of Labour poster even though some of the employment standards noted do not apply to farm workers. The standards that apply to farm workers are listed on the Ministry of Labour's website, https://www.labour.gov.on.ca/english/es/pubs/factsheets/fs_agri.php. We have included the information from the website in Appendix A following the poster. You may wish to provide this information along with the Ministry of Labour poster to your employees.

Health & Safety at Work: Prevention Starts Here

Under the Occupational Health and Safety Act, all provincially regulated workplaces must display this poster. It outlines the rights and responsibilities of workers, supervisors and employers on the job and provides a Ministry of Labour telephone number (1-877-202-0008) to report critical injuries, fatalities and work refusals and to obtain information about workplace health and safety information. See chapter 3, Occupational Health and Safety Act for a definition of what constitutes a critical injury. Printed colour posters are available in English and French from [Service Ontario](#) free of charge (catalogue number 015815) or can be downloaded in [English, French and 15 other languages](#). English and Spanish copies are also included in this document as Appendix B to this chapter.

Tip

Write out the fire code or 911 number for your property along with short, clear directions to your farm property and post near each telephone and in other prominent locations. Laminate the sheet if possible.

Example:

303831 Happy Land Road, Rainbow Township
First farm on left when heading South on County Road 5 from Ourtown

9. HUMAN RESOURCES BEST PRACTICES

Interviewing

Interviewers

- Have more than one person involved in the interviewing process if possible. This helps to ensure that every applicant is given the benefit of at least two opinions and is also a clear demonstration of a fair selection system.
- All interviewers should be present for the full interview. You may miss critical information or may add to the nervousness of the candidate by popping in and out of the interview. It can also be perceived as unfair if different or inconsistent interviewers are used for candidates.

Questions

- Prepare a list of questions in advance and ask each candidate the same questions in order to evaluate all candidates in a uniform manner.
- Ensure that the questions relate to the stated job qualifications and skills in the job posting or job description.
- The interviewers must not ask questions which violate the Ontario Human Rights Code. These include questions about a person's race, religion, family planning activities, previous rates of pay (as of January 1, 2019), etc. Refer to the section on application form questions in chapter 6, Ontario Human Rights Code of this manual.
- Assign questions to each member of the interview panel if there is more than one person conducting the interview,
- Use open-ended questions rather than those that might simply elicit a "yes" or "no" response. Consider using "situational questions"; create scenarios that may be common to your operation, and ask each candidate how they would respond.

Evaluation

- Document every applicant interview using valid criteria for the job opening.
- Consider developing a rating scale for each of the desired qualifications (relate this back to the job description and advertisement).
- Complete your notes for each candidate immediately after the interview. Do not trust your memory. After several interviews it is often difficult to distinguish one candidate from another. If documentation is not consistent, this can also be interpreted as discrimination or unfair treatment.

The minimum documentation an employer should maintain would be a list of applicants interviewed, the strengths and weaknesses of the candidate (the completed ranking sheets), and notation of the candidate selected with a brief note as to why they were selected. This list should be kept for a minimum of one year.

Human Resources Material

The Ontario Pork Industry Council provides access to human resource information through HRdownloads.ca. For a modest annual fee, employers can access:

- sample human resource policies;
- job descriptions;
- forms and letters;
- metrics calculators;
- best practice guides;
- podcasts;
- PowerPoint presentations; and more.

For additional details, visit <https://www.opic.on.ca/human-resources>

Addressing Performance Issues

It is important when raising concerns or areas requiring improvement that the supervisor has details. For example, if you are concerned that the employee is not punctual, be able to state how many times they were late for work during the period under discussion. If it is a production issue, simply stating that an employee does not perform a given task quickly enough is not sufficient. For example, state that most employees are easily able to complete x number of heat checks on sows and gilts per day whereas they are only achieving x checks. Or, if it is an area that is less easy to measure, use a rating scale such as in the two examples noted below. Use the job description as a guideline for the activities and skills to be measured.

Example 1

Application of commercial fertilizer and pest control products

Good

Always applies material correctly and accurately

Satisfactory

Usually applies material correctly but does not monitor accuracy

Poor

Frequently misapplies product

Example 2

Manure application procedures

Good

Runs entire system properly

Satisfactory

Checks emitters and hose only

Poor

Ignores repair needs

Whenever you note an area needing improvement, consider the employee's perspective. Have they been given clear and precise instructions on how to perform the work? Did they understand the instructions given? Are they getting feedback when they do something incorrectly and told how to do it properly? Acknowledgement of good work is just as important.

Dismissal

- Dismissal must be approached carefully. Employers considering dismissal of an employee are faced with the possibility of legal action if they do not handle the dismissal in a professional and fair manner.
- Clearly written policies and records are absolutely essential.
- Document all the incidents leading up to a dismissal and ensure it relates to your progressive discipline system.
- All jurisdictions have minimum standards for periods of notice required for termination without cause, and requirements for compensation in lieu of notice. Refer to the Guide to the Employment Standards Act which specifies required periods of notice for [termination](#) and [severance](#).
- If you are not sure how these standards apply to a particular situation, you may want to consult a lawyer.
- Note that courts often award notice periods and compensation that exceed the legislated provisions.

Important terms

“**Termination with cause**” puts the onus on the employer to show that an act by an employee could seriously impact the company. Before initiating an indefinite lay-off or termination for cause, employers would be wise to seek the counsel of a lawyer who has expertise in employment law.

“**Termination without cause**” usually requires advance notice and/or compensation be given to the employee.

“**Wrongful dismissal**” is a legal claim about the cause or notice given to the employee when they are terminated. “**Constructive dismissal**” is when there is a significant change in the employment relationship, for example, the employer significantly reduces an employee's salary or makes a significant change to an employee's work location, hours of work, authority or position (without the employee being separated from the organization). You want to avoid both of these.

Release Agreement

The purpose of a release agreement is to protect the employer from legal action by a departing employee in return for payment to the employee of a settlement package. As a result, a release will be required primarily where no “just cause” has been determined.

However, caution needs to be exercised when writing a release agreement and seeking legal advice would be wise. Not only are release agreements contracts which must conform to certain legal requirements in order to be valid, they are a form of contract that is subject to increased legal scrutiny because of the perceived inequality in the bargaining power of the two parties to the agreement. Failure to ensure the agreement's validity may pave the way for a wrongful dismissal action. If you are terminating an employee and intend to have them sign a release agreement, get the advice of a lawyer with employment law experience.

Additional References

- AGRI HR Toolkit Canadian Agricultural Human Resource Council <https://hrtoolkit.cahrc-ccrha.ca/>
- Human Resources and Careers, Ontario Pork Industry Council website <https://www.opic.on.ca/human-resources>

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