

ESA Exemptions Toolkit: Pharmacists

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Tab 1

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

The special rules and regulatory exemptions from the *Employment Standards Act, 2000* (ESA) that currently apply to the profession of pharmacy are under review by the Ministry of Labour. The review is part of the broader review of special industry rules and exemptions from the minimum standards of the ESA announced by the Government of Ontario on May 30, 2017.

The first phase of the exemptions review is now underway and is being conducted in consultation with affected stakeholders. 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
- Architects
- Information Technology Professionals
- Residential Care Workers
- Homemakers
- Domestic Workers

As regulated health professionals, in order to practice pharmacy in Ontario pharmacists must meet certain registration requirements under the regulations of the *Pharmacy Act, 1991*. The Ontario College of Pharmacists is the registering and regulatory body for the profession of pharmacy for the province.

In view of the College's unique position and role serving the public, we have asked the College to provide the Ministry of Labour with a formal written submission on whether the profession's exemptions from the ESA should be maintained.

This document outlines key information regarding the current exemptions applicable to the profession, the rationale for the current exemptions and additional background information that may assist you in responding to the Ministry of Labour's questions about the profession. This document should be read together with the following documents also contained in this *Exemptions Toolkit*:

- **Guide to the ESA and Bill 148:** This document at **Tab 2** provides more detailed information about the minimum standards in the ESA from which the profession is currently exempt. The document also outlines proposed changes to the ESA that are contained in Bill 148, the *Fair Workplaces, Better Jobs Act, 2017* that are relevant to the profession.
- **Ministry of Labour Policy Framework:** The Ministry of Labour has an established policy framework to address whether exemptions to the minimum standards in the ESA should be granted to an occupation or sector. The document at **Tab 3** provides an overview of the conditions and criteria that the Ministry uses in its analyses. These conditions and criteria will be applied to the profession of pharmacy in this exemptions review.

- **Questions for Discussion:** The document at **Tab 4** contains the questions that the College should respond to in its written submission. These questions are designed to provide the Ministry of Labour with information that will facilitate an informed and balanced analysis of the exemptions applicable to the profession.

Who Is Covered by the ESA Exemptions Applicable to Pharmacists?

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 Registered Practitioners of Pharmacy:

Persons employed as “duly registered practitioners of pharmacy” 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 registered” (i.e. registered by the College) and a “practitioner” of the profession (i.e. actually practising the profession of pharmacy).

ii) Students in Training:

The exemptions also apply to persons employed as “students in training” to become duly registered practitioners of pharmacy. The completion of a structured practical training program is a requirement for individuals seeking registration under the *Pharmacy Act, 1991* regulations. Individuals engaged in these structured practical training programs are subject to the same exemptions from the ESA as duly registered practitioners of pharmacy.

Note: For ease of reference, throughout this *Exemptions Toolkit*, persons employed as duly registered practitioners of pharmacy and students in training will both be referred to as practitioners of pharmacy or pharmacists.

What ESA Exemptions are Applicable to Pharmacists?

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, pharmacists 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)(b)(vii) 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 pharmacists 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 pharmacists.

Prior Rationales for the ESA Exemptions and Background Information:

The historical rationale for the exemptions applicable to pharmacists was that pharmacists have an obligation (i.e. a professional duty) to respond to patients' needs. As a result, interruptions in their work for rest may not be possible at times. In addition, many more pharmacists were also likely self-employed drugstore owners at the time the exemptions came into existence.

Today, pharmacists may be required to work regularly long hours in pharmacy settings that include 24-hour retail stores. Work remains client-driven, with an emphasis on meeting clients' schedules and needs. Staffing arrangements and regulatory requirements may also encourage the working of prolonged hours.

Other jurisdictions in Canada allow for exemptions from minimum employment standards for pharmacists. For example, in Manitoba, pharmacists are exempt from rest periods, eating periods, overtime pay, public holiday pay and minimum wage. In New Brunswick, pharmacists are exempt from the public holiday provisions of the province's *Employment Standards Act*.

During the Changing Workplaces Review, Special Advisors Murray and Mitchell considered recommending the elimination or variation of the exemptions applicable to pharmacists without further review. However, they ultimately concluded that the exemptions applicable to pharmacists presented sufficient complications to warrant a more careful review before any final decisions are made with respect to this professional occupation. The Special Advisors' commentary can be located at:

- Pages 161, 164 and 166-68 of the Interim Report; and
- Pages 156-57 of the Final Report.

The Interim and Final Reports are available online at <https://www.labour.gov.on.ca/english/about/workplace>.

Additional Information about the Profession:

According to statistics contained in the College's 2016 Annual Report, as of December 31, 2016, there are 15,715 pharmacists registered in Ontario. The following information was reported:¹

- 10,742 pharmacists (78%) are in community practice;
- 2,139 (15%) practice in hospital or other healthcare facilities;

¹ Based on a total of 13,869 respondents. 1,846 practitioners did not identify a place of practice.

- 308 (2%) work in association, academia or government;
- 533 (4%) work in industry or other; and
- 147 (1%) work in pharmacy corporate office, professional practice or clinic.

As compared to December 31, 2015, the above numbers reflect a 2% increase to pharmacists in community practice, and a 2% decrease of pharmacists in hospital or other healthcare facilities.

As of December 31, 2016, 58% of registered pharmacists are female (this has been steady since 2012). 38% of registered pharmacists are educated internationally.

Notice to Consultation Participants

Submissions and comments provided are part of a public consultation process to solicit views on reforms to Ontario's employment and labour law regime that may be recommended to protect workers and support business in the context of changing workplaces. This process may involve the Ministry of Labour publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period, including relevant regulatory bodies for professionals. Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Further, if you, as an individual, do not want your identity to be made public, you should not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission, such as found in a cover letter, will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

Personal information collected during this consultation is under the authority of the [Employment Standards Act, 2000](#) and the [Labour Relations Act, 1995](#), and is in compliance with subsection 38(2) of the Freedom of Information and Protection of Privacy Act.

If you have any questions regarding the collection of personal information as a result of this consultation you may contact the Ministry's Freedom of Information Office, 400 University Avenue, 10th Floor, Toronto, Ontario, M7A 1T7, or by calling 416-326-7786.

Tab 2

Guide to the *Employment Standards Act, 2000* and Bill 148, *Fair Workplaces, Better Jobs Act, 2017*:

**Information for
Pharmacists**

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I. Introduction

(a) Purpose

The purpose of this Guide is to provide an overview of the minimum employment standards of the ESA from which pharmacists are currently exempt. If the exemptions for pharmacists were eliminated, these are the standards that would apply.

The ESA already recognizes that some flexibility may be needed for employers and employees to agree to vary minimum standards, within certain limits. There are rules about the extent to which minimum standards can be varied, to ensure that parties are still meeting the general intent of the ESA. If the exemptions for pharmacists were eliminated, some variances would be available to pharmacist employers and employees in applying the minimum standards of the ESA. The Guide explains this in more detail.

In addition, Bill 148, the *Fair Workplaces, Better Jobs Act, 2017* (Bill 148), proposes a number of significant amendments to the ESA that would, if passed, alter existing minimum employment standards or add new standards. The Guide describes where Bill 148 would implement changes to ESA standards that would apply to pharmacists if the exemptions were eliminated, and Bill 148 proposals that would introduce new ESA standards that would apply to pharmacists. Where Bill 148 proposes to amend provisions within Parts of the ESA that already apply to pharmacists, those changes are not summarized here.

Following public consultation after First Reading, Bill 148 was amended by Standing Committee on August 21, 2017. Bill 148 has passed Second Reading and has been referred to the Standing Committee on Finance and Economic Affairs. More information about the Bill and its status is available on the Legislative Assembly website at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4963.

Please monitor the status of Bill 148 as you prepare your submission to the Ministry of Labour.

The information in this document is current to October 18, 2017. Further amendments to Bill 148 after this date are not captured and, as a result, the accuracy of information regarding Bill 148 in this document is not guaranteed.

(b) The ESA

The ESA sets out the rights and responsibilities of employees and employers in most Ontario workplaces. The ESA establishes a “floor” of minimum employment standards with respect to the following major areas:¹

¹ There are other standards with no exemptions, such as those dealing with payment of wages, equal pay for equal work and lie detectors, are not reviewed here.

- Maximum Hours of Work
- Rest Periods
- Eating Periods
- Overtime Pay
- Minimum Wage
- Public Holidays
- Vacation with Pay
- Pregnancy and Parental Leave
- Emergency Leave
- Other Leaves of Absence (Organ Donor Leave, Family Medical Leave, etc.)
- Termination and Severance of Employment

Currently, pharmacists 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

In addition, the personal emergency leave provisions at section 50 of the ESA do not apply to pharmacists in circumstances where the exercise of the entitlement to emergency leave would constitute an act of professional misconduct or a dereliction of professional duty.

II. ESA Provisions from which Pharmacists are Currently Exempt

This section of the Guide is an overview of all of the minimum ESA standards from which pharmacists are currently exempt. Where Bill 148 proposes amendments to these standards, the proposed changes are identified in text boxes.

(a) Part VII: Hours of Work and Eating Periods

Part VII of the ESA (sections 17 to 21.1) establishes three general categories of hours of work standards: daily and weekly maximums on the number of hours that employees may work, mandatory periods of rest, and eating periods. Part VII also outlines circumstances in which employers and employees can agree to modifications of the minimum standards and when employers can require employees to work.

The hours of work standards recognize that employees need a balance between their work and personal/family lives. Limits on hours of work and mandatory eating periods also support the health and safety of workers, and higher value-added production per hour worked – well-rested, healthy individuals are more productive.

The relevant employment standards are as follows:

Daily Limit on Hours of Work:

The maximum number of hours most employees can be required to work in a day is eight hours or the number of hours in an established regular workday, if it is longer than eight hours. The only way the daily maximum of eight hours can be exceeded is by written agreement between the employee and employer.

Weekly Limit on Hours of Work:

The maximum number of hours most employees can be required to work in a week is 48 hours. The weekly maximum can be exceeded only if there is a written agreement between the employee and employer and the employer has received the approval of the Director of Employment Standards.²

An agreement between an employee and an employer to work additional daily or weekly hours, or an approval from the Director of Employment Standards for excess weekly hours, does not

² The ESA provides a limited exception where an application for approval from the Director is pending. If, after 30 days after serving an application for excess hours on the Director, the employer has not received an approval or notice of refusal, the employer may require employees to start working more than 48 hours as long as certain conditions are met including, the employee does not work more than 60 hours in a work week or the number of hours the employee agreed to in writing, whichever is less.

relieve an employer from the requirement to pay overtime pay where overtime hours are worked.

Rest Periods: Hours Free from Work – Daily:

In most cases, an employee must receive at least 11 consecutive hours off work each day. Generally, an employee and an employer cannot agree to provide an employee with less than 11 consecutive hours off work each day. The daily rest requirement applies even if:

- The employer and the employee have agreed in writing that the employee's hours of work will exceed the daily limit.
- The employer and employee have agreed in writing that the employee's hours of work will exceed the weekly limit and the employer has received an approval from the Director of Employment Standards to exceed weekly limits on hours of work.

This rule does not apply to employees who are on call and called in to work during a period when they would not normally be working.

This requirement cannot be altered by a written agreement between the employer and employee.

Rest Periods: Hours Free from Work – Between Shifts:

Employees must receive at least eight hours off work between shifts.

However, this rule does not apply if the total time worked on both shifts is not more than 13 hours. For example, Mabel works in a pharmacy at a 24-hour drugstore. She is on split shifts, working from 6 a.m. to 11 a.m. and then from 2 p.m. to 7 p.m. The total time of her two shifts is 10 hours. Mabel does not have to have eight hours off between the split shifts, because the hours she worked do not exceed 13 hours.

An employee and employer can also agree in writing that the employee will receive less than eight hours off work between shifts.

Rest Periods: Hours Free from Work – Weekly or Bi-Weekly:

Employees must receive at least:

- 24 consecutive hours off work in each work week; or
- 48 consecutive hours off work in every period of two consecutive work weeks.

Requiring Employees to Work in Exceptional Circumstances:

In exceptional circumstances, and only so far as is necessary to avoid serious interference with the ordinary working of the employer's establishment or operations, an employer can require an employee to work:

- More than the normal limit of eight hours a day, or the established regular work day if that is longer;
- More than the 48 hours per week (or the greater number of weekly hours agreed to and which are the subject of an approval from the Director of Employment Standards);
- During a required period free from work.

Exceptional circumstances exist when:

- There is an emergency;
- Something unforeseen occurs that interrupts the continued delivery of essential public services, regardless of who delivers these services (for example, hospital, public transit or firefighting services, even if the employee only indirectly supports these services, such as an employee of a company that is contracted to prepare and deliver patient meals to a hospital);
- Something unforeseen occurs that would interrupt continuous processes;
- Something unforeseen occurs that would interrupt seasonal operations (that is, operations that are limited to or dependent on specific conditions or events--such as winter ski operations);
- It is necessary to carry out urgent repair work to the employer's plant or equipment.

Examples of exceptional circumstances include:

- Natural disasters (very extreme weather);
- Major equipment failures;
- Fire and floods;
- An accident or breakdown in machinery that would prevent others in the workplace from doing their jobs (for example, the shutdown of an assembly line in a manufacturing plant).

Examples of situations that do not fall under the exceptional circumstances exemption include:

- When rush orders are being filled;
- During inventory taking;
- When an employee does not show up for work;
- When poor weather slows shipping or receiving;

- During seasonal busy periods (such as Christmas);
- During routine or scheduled maintenance.

Eating Periods:

Employers are required to provide eating periods to employees, but they are not required to provide other types of breaks. Eating periods are scheduled by employers. Ensuring that employees have the right to eat at reasonable intervals is supportive of good health, and contributes to safety and productivity on the job.

An employee must not work for more than five hours in a row without getting a 30-minute eating period (meal break) free from work. However, if the employer and employee agree, the eating period can be split into two eating periods within every five consecutive hours. Together these must total at least 30 minutes. This agreement can be oral or in writing.

Meal breaks are unpaid unless the employee's employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work in order for the time to be considered a meal break.

Note: Meal breaks, whether paid or unpaid, are not considered hours of work, and are not counted toward overtime.

Coffee Breaks and Breaks Other Than Eating Periods:

Employers are required to provide employees with eating periods as described above. Employers do not have to give employees "coffee" breaks or any other kind of break.

Employees who are required to remain at the workplace during a coffee break or breaks other than eating periods must be paid at least the minimum wage for that time. If an employee is free to leave the workplace, the employer does not have to pay for the time.

Night Shifts:

The ESA does not put restrictions on the timing of an employee's shift other than the requirements for daily rest and rest between shifts described above. In addition, the ESA does not require an employer to provide transportation to or from work if an employee works late.

Written Agreement Requirements for Exceeding Daily Limits on Hours of Work:

An employer and an employee can agree in writing that the employee will work more than eight hours a day or his or her established regular workday, if the established regular workday is longer than eight hours.

These agreements are valid only if, prior to making the agreement, the employer gives the employee the most recent Information Sheet for Employees About Hours of Work and Overtime Pay prepared by the Director of Employment Standards that describes the hours of work and

overtime pay rules in the ESA. In order to be valid, the agreement must include a statement in which the employee acknowledges receipt of the Information Sheet.

In most cases, an employee can cancel an agreement to work more hours by giving the employer two weeks' written notice, while an employer can cancel the agreement by providing reasonable notice.

Director Approval Required to Exceed Weekly Limits on Hours of Work:

An employer and an employee can agree in writing that the employee will work more than 48 hours a week, but the agreement is subject to approval by the Director of Employment Standards.

These agreements are valid only if, prior to making the agreement, the employer gives the employee the most recent Information Sheet for Employees About Hours of Work and Overtime Pay prepared by the Director of Employment Standards that describes the hours of work and overtime pay rules in the ESA. In order to be valid, the agreement must include a statement in which the employee acknowledges receipt of the Information Sheet.

In addition, employers who would like to make an application for approval for excess weekly hours are required to make their application in a form provided by the Ministry of Labour at [Ontario.ca/ESAforms](https://www.ontario.ca/ESAforms). An employer who makes an application for excess weekly hours must post a copy of the application in their workplace on the day the application is submitted where it is likely to come to the attention of the employee(s) identified in the application. When the approval or a notice of refusal of the application is received, this must be posted in place of the application.

In most cases, an employee can cancel an agreement to work more hours by giving the employer two weeks' written notice, while an employer can cancel the agreement by providing reasonable notice. Once the agreement is revoked, an employee is not permitted to work excess daily or weekly hours even if the employer has an approval from the Director of Employment Standards for excess weekly hours.

(b) Part VIII: Overtime Pay

Part VIII of the ESA (sections 22 to 22.2) establishes minimum standards regarding overtime.

This standard compensates employees for the extra effort of working long hours and for the inconvenience associated with the unpredictable need to work such hours. Generally speaking, overtime begins after an employee has worked 44 hours in a work week. Hours worked after 44 must be paid at the overtime pay rate.

Overtime Pay:

Overtime pay is 1½ times the employee's regular rate of pay. (This is often called "time and a half.") For example, an employee who has a regular rate of \$12.00 an hour will have an overtime rate of \$18.00 an hour ($\$12.00 \times 1.5 = \18). The employee must therefore be paid at a rate of \$18.00 an hour for every hour worked in excess of 44 in a week.

No Overtime on a Daily Basis:

Unless a contract of employment or a collective agreement states otherwise, an employee does not earn overtime pay on a daily basis by working more than a set number of hours a day.

Overtime is calculated only:

- On a weekly basis; or
- Over a longer period under an averaging agreement.

Agreements for Paid Time Off Instead of Overtime Pay:

An employee and an employer can agree in writing that the employee will receive paid time off work instead of overtime pay. This is sometimes called "banked" time or "time off in lieu."

If an employee has agreed to bank overtime hours, he or she must be given 1½ hours of paid time off work for each hour of overtime worked.

Paid time off must be taken within three months of the week in which the overtime was earned or, if the employee agrees in writing, it can be taken within 12 months.

If an employee's job ends before he or she has taken the paid time off, the employee must receive overtime pay. This must be paid no later than seven days after the date the employment ended or on what would have been the employee's next pay day.

Calculating Overtime Pay:

The manner in which overtime pay is calculated varies depending on whether the employee is paid on an hourly basis, on a fixed salary, or has a fluctuating salary. Overtime pay calculations may also be affected by public holidays. For more information about how overtime pay is

calculated in different scenarios, see the Ministry of Labour's Guide to the ESA, available at <https://www.ontario.ca/document/your-guide-employment-standards-act>.

Averaging Agreements:

Sometimes employers may need employees to work extra hours during a peak period in order to fill customer orders. Likewise, employees may need to work variable hours to meet family or other responsibilities. For example, perhaps an employee needs to take a child once a month for a day of special medical treatment, but cannot afford to lose a day's pay. Instead the employee would like to work extra hours in the preceding weeks, to make up the time.

An employer and an employee can agree in writing to average the employee's hours of work over a specified period of two or more weeks for the purposes of calculating overtime pay. Under such an agreement, an employee would only qualify for overtime pay if the average hours worked per week during the averaging period exceed 44 hours.

- For example, if the agreed period for averaging an employee's hours of work is four weeks, the employee is entitled to overtime only after working 176 hours during the four work weeks (44 hours × 4 weeks = 176 hours).

Note that averaging periods cannot overlap one another and must follow one after the other without gaps or breaks.

Where a union does not represent employees, averaging agreements must contain an expiry date that cannot be more than two years from the date the averaging agreement takes effect. Where the agreement applies to unionized employees, the employer and union may agree to any expiry date.

An averaging agreement cannot be revoked by either the employer or employee(s) before its expiry date, unless both the employer and employee(s) agree in writing to revoke it.

In addition to having agreements in writing, the employer must also obtain an approval to average hours of work for overtime pay purposes from the Director of Employment Standards.

If, however, an employer has not received either an approval or a notice of refusal from the Director within 30 days of serving the application on the Director and has met all other conditions as set out in the ESA, the employer may begin averaging employees' hours but only over two-week periods.

An approval to average hours of work for overtime pay purposes expires on the date on which the averaging agreement between the employer and employee expires, or on any earlier date specified by the Director in the approval. The Director of Employment Standards may also unilaterally revoke an approval to average hours of work by providing the employer with reasonable notice.

Employers who would like to make an application for an approval to average hours of work for overtime pay purposes are required to make their application in a form provided by the Ministry of Labour. The application form is available on the Ministry's website at [Ontario.ca/ESAforms](https://www.ontario.ca/ESAforms).

An employer who receives an approval to average overtime pay must post a copy of the approval in the workplace where it is likely to come to the attention of the employee(s) identified in the approval and to keep it posted until it expires or is revoked and then remove it.

What Cannot Be Done:

An employee can make an agreement to take time off in lieu of overtime pay or, with the approval of the Director of Employment Standards, an agreement to average hours of work for overtime pay purposes. However, an employer and an employee cannot agree that the employee will give up his or her right to overtime pay under the ESA. Agreements such as these are not allowed and the employee is still entitled to overtime pay.

In addition, an employer cannot lower an employee's regular wage to avoid paying time and a half after 44 hours (or another overtime threshold that applies) in a work week. For example, if Josée's regular pay is \$15.00 an hour, her employer cannot drop her regular rate in a week when overtime was worked to \$12.00 an hour and then pay her \$18.00 ($1\frac{1}{2} \times \12.00) for overtime hours worked instead of \$22.50 ($1\frac{1}{2} \times \15.00).

Bill 148 Proposals Relevant to Pharmacists:

There may be circumstances in which employees have jobs that require them to do more than one type of work and there are different rates of pay for the different kinds of work.

Bill 148 would amend section 22 of the ESA to establish a rule for calculating overtime pay for employees who have two or more regular rates for work performed for the same employer. For ease of administration, overtime pay of one and one-half times would be based on the regular rate for the type of work performed during the overtime hour(s), not on a blended pay rate, if an employee has more than one position.

For example, if an employee spent three hours of overtime performing work that had an hourly rate of \$15.00/hour and two hours of overtime performing work that an hourly rate of \$12.00/hour, then the employee's overtime pay would be: \$67.50 ($1\frac{1}{2} \times \15.00×3 hours) plus \$36 ($1\frac{1}{2} \times \12.00×2 hours), for a total of \$103.50.

(c) Part IX: Minimum Wage

Part IX of the ESA (sections 23 to 23.1) establishes the minimum wage.

Minimum wage is the lowest wage rate an employer can pay an employee. Most employees are eligible for minimum wage, whether they are full-time, part-time, casual employees, or are paid an hourly rate, commission, piece rate, flat rate or salary.

Compliance with the minimum wage requirements is determined on a pay period basis.

On October 1, 2017, the general minimum wage increased to \$11.60 per hour.

In addition to the general minimum wage, there are special minimum wage rates for students, liquor servers, hunting and fishing guides, and homeworkers, though these do not have application for the purposes of pharmacists.

The minimum wage rates are subject to annual indexation based on the rate of inflation. If that rate is changed, the new rate will be published on or before April 1 and will come into effect on October 1.

Example for Calculating Minimum Wage:

- One week, Julia works 37.5 hours. She is paid on a weekly basis.
- The minimum wage applicable to Julia is \$11.60 per hour.
- Since compliance with the minimum wage requirements is based on pay periods, Julia must be paid at least \$435 (37.5 hours × \$11.60 per hour = \$435) in this work week (prior to deductions).
- Note that eating periods are not included when counting how many hours an employee works in a week.

Bill 148 Proposals Relevant to Pharmacists:

Bill 148 proposes new increases to the general and special minimum wages.

Bill 148 proposes to increase the general minimum wage to \$14.00/hour on January 1, 2018 and to \$15.00/hour on January 1, 2019.

The Bill proposes to resume annual adjustments to the minimum wage based on inflation in October 2019. The Minister would be required to mandate a review of the minimum wage before October 1, 2024 and every 5 years thereafter.

(d) Part X: Public Holidays

Part X of the ESA (sections 24 to 32) establishes minimum standards regarding public holidays and public holiday pay.

Public holidays are common pause days that are associated with religious or historic observances of significance to the community. The ESA gives employees the right to take public holidays off work to participate in community observances and benefit from the rest associated with the day.

Ontario has nine public holidays:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Boxing Day (December 26)

Most employees who qualify are entitled to take these days off work and be paid public holiday pay. Alternatively, the employee can agree with the employer in writing to work on the holiday and be paid:

- Public holiday pay plus premium pay for all hours worked on the public holiday and not receive another day off (called a "substitute" holiday); or
- Be paid their regular wages for all hours worked on the public holiday and receive another substitute holiday for which they must be paid public holiday pay.

While some employers give their employees a holiday on Easter Sunday, Easter Monday, the first Monday in August, or Remembrance Day, the employer is not required to do so under the ESA.

Qualifying for Public Holiday Entitlements:

Generally, employees qualify for the public holiday entitlement unless they:

- Fail without reasonable cause to work all of their last regularly scheduled day of work before the public holiday or all of their first regularly scheduled day of work after the public holiday (this is called the “Last and First Rule”); or
- Fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.

Note: Most employees who fail to qualify for the public holiday entitlement are still entitled to be paid premium pay for every hour they work on the holiday.

Qualified employees can be full time, part time, permanent or on term contract. It does not matter how recently they were hired, or how many days they worked before the public holiday.

(a) The “Last and First Rule”:

The “last regularly scheduled day of work before the public holiday” and the “first regularly scheduled day of work after the public holiday” do not have to be the days right before and right after the holiday.

For example, an employee might not be scheduled to work the day right before or after the holiday. As long as the employee works all of his or her last regularly scheduled shift before the holiday and all of the first one after it, or has reasonable cause for not working either of those days, he or she meets this qualifying criterion.

(b) Reasonable Cause:

An employee is generally considered to have “reasonable cause” for missing work when something beyond his or her control prevents the employee from working. Employees are responsible for showing that they had reasonable cause for staying away from work. If they can do so, they still qualify for public holiday entitlements.

Public Holiday Pay:

The amount of public holiday pay to which an employee is entitled is all of the regular wages earned by the employee in the four work weeks before the work week with the public holiday plus all of the vacation pay payable to the employee with respect to the four work weeks before the work week with the public holiday, divided by 20.

Regular wages does not include any overtime or premium pay payable to an employee.

In some circumstances, vacation pay may need to be included in the calculation of public holiday pay. There are special considerations when an employee is on leave or layoff during a public holiday. For examples regarding how to calculate public holiday pay, see the Ministry of Labour’s Guide to the ESA, available at <https://www.ontario.ca/document/your-guide-employment-standards-act>.

Premium Pay:

Premium pay is 1½ times an employee's regular rate of pay. If an employee is entitled to receive premium pay for work on a public holiday, he or she must be paid 1½ times his or her regular rate of pay for each hour worked.

Substitute Holiday:

As noted above, a substitute holiday is another working day off work that is designated to replace a public holiday. Employees are entitled to be paid public holiday pay for a substitute holiday.

A substitute holiday must be scheduled for a day that is no later than three months after the public holiday for which it was earned, or, if the employee has agreed in writing, the substitute day off can be scheduled up to 12 months after the public holiday.

Entitlements for Public Holidays:

Entitlements for public holidays vary depending on such things as whether the holiday falls on a working day or a non-working day and whether the employee works on the holiday. The different entitlements are set out below.

(a) When a Public Holiday Falls on a Working Day but the Employee Does Not Work:

- Most employees have the right to get the public holiday off and get paid public holiday pay.

(b) When a Public Holiday Falls on an Employee's Non-Working Day or During an Employee's Vacation:

- When a public holiday falls on a day that is not ordinarily a working day for an employee, or during the employee's vacation, the employee is entitled to either:
 - A substitute holiday off with public holiday pay; or
 - Public holiday pay for the public holiday, if the employee agrees to this in writing (in this case, the employee will not be given a substitute day off).

(c) When an Employee Who Qualifies for the Day Off Has Agreed in Writing to Work on a Public Holiday:

- Most employees have the right to get the public holiday off and get paid public holiday pay. However, if an employee agrees in writing to work on the public holiday, there are two options:
 - The employee is entitled to receive regular wages for all hours worked on the public holiday, plus a substitute day off work with public holiday pay; or

- If the employee agrees in writing, he or she is entitled to public holiday pay for the public holiday plus premium pay for all hours worked on the public holiday. In this case, the employee will not be given a substitute day off.

(d) When an Employee Agrees to Work on a Public Holiday but Fails to Do So:

- If an employee has agreed in writing to work on the public holiday but does not do so -- and does not have reasonable cause for not having done so -- the employee has no right to public holiday pay or to a substitute day off with pay.
- However, if the employee has reasonable cause for not working the public holiday, then entitlements will depend on which of the two options below the employee chose in exchange for agreeing to work on the public holiday:
 - If the employee had agreed in writing to work on the public holiday for regular wages plus a substitute day off with public holiday pay, the employee is entitled to a substitute day off work with public holiday pay; or
 - If the employee had agreed in writing to work on the public holiday for public holiday pay plus premium pay for each hour worked, he or she is entitled to be paid public holiday pay for the holiday. The employee is not entitled to receive any premium pay because he or she did not perform any work on the holiday.

(e) When an Employee Works Only Some of the Hours He or She Agreed to Work on a Public Holiday:

- If an employee has agreed in writing to work on the public holiday but works only some of the hours he or she agreed to work, and does not have reasonable cause for failing to work all of the hours, the employee is only entitled to receive premium pay for each hour worked on the holiday. The employee has no right to public holiday pay or a substitute day off work.

Special Rules for Certain Industries:

Special rules apply to employees who work in the following types of businesses:

- Hotels, motels and tourist resorts;
- Restaurants and taverns;
- Hospitals and nursing homes; and
- Continuous operations (which are operations, or parts of operations, that do not stop or close more than once a week – such as an oil refinery, alarm-monitoring company or a drug store that is open around the clock).

An employee who works in any of these businesses can be required to work on a public holiday without his or her agreement, but only if the holiday falls on a day that the employee would normally work and the employee is not on vacation.

If an employee is required to work, he or she is entitled to the employer's choice of either:

- His or her regular rate for the hours worked on the public holiday, plus a substitute day off work with public holiday pay; or
- Public holiday pay plus premium pay for each hour worked.

An employee in any of these businesses who is required to work on a public holiday that falls on their ordinary working day but fails to do so, with reasonable cause, is entitled to the employer's choice of either:

- A substitute holiday with public holiday pay; or
- Public holiday pay for the holiday.

An employee in any of these businesses who is required to work on a public holiday that falls on their ordinary working day but who fails, with reasonable cause, to work some of the hours he or she was required to work on the holiday is entitled to the employer's choice of either:

- His or her regular rate for each hour worked on the holiday plus a substitute holiday with public holiday pay; or
- Public holiday pay for the holiday plus premium pay for each hour worked.

An employee in any of these businesses who is required to work on a public holiday that falls on their ordinary working day but who fails, without reasonable cause, to work part or all of the public holiday is only entitled to receive premium pay for each hour worked on the holiday (if any). The employee has no right to public holiday pay or a substitute day off work.

Note that the employer's ability to require employees to work on a public holiday is subject to the employee's right to take a day off for purposes of religious observance under Ontario's *Human Rights Code*, and to the terms of the employee's employment contract.

Note also that certain retail workers who work in continuous operations (e.g., a 24-hour convenience store) have the right to refuse to work on a public holiday because of the special rules that apply to some retail workers. Further information is set out below.

Public Holidays and Retail Workers:

A retail business is a business that sells goods or services to the public.

Most employees of a retail business have the right to refuse to work on a public holiday even if the employee does not qualify for the public holiday.

If an employee has agreed in writing to work on a public holiday, the employee can later decline to work on that day by giving the employer at least 48 hours' notice before the employee's work on the public holiday was to begin.

Where the public holiday falls on a day that would ordinarily be a working day, most retail employees qualify for the public holiday off work with public holiday pay.

Where the public holiday falls on a day that would not ordinarily be a working day, or the employee is on vacation, most retail employees qualify for a substitute day off with public holiday pay.

In some cases, retail employees may also have the right to refuse work on Sundays. More detailed information regarding Retail Workers can be found in the Ministry of Labour's Guide to the ESA, available at <https://www.ontario.ca/document/your-guide-employment-standards-act>.

Overtime Calculations When an Employee Receives Premium Pay:

Any hours worked on a public holiday that are compensated with premium pay are not included when determining whether an employee has worked any overtime hours.

If Employment Ends:

Sometimes an employee's job comes to an end before the employee can take a substitute holiday with public holiday pay that he or she has earned. In this case, the employer must pay the employee's public holiday pay at the same time it pays the employee's final wages. This is so regardless of the reason the job came to an end, whether it is because the employee quit, was fired for good reason, or for some other reason.

Bill 148 Proposals Relevant to Pharmacists:

The current formula for public holiday pay is a pro-rated amount of an employee's daily wages based on a five-day work week over a four-week period.

Bill 148 would simplify the formula for calculating public holiday pay, with the result that employees would be entitled to receive their average regular daily wage as public holiday pay. This calculation is based on the total amount of regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that period. In addition, "vacation pay payable" would no longer be included in the formula for public holiday pay.

If an employee is on Personal Emergency Leave or on vacation during the relevant period, the calculation would apply to the pay period before the start of that leave or vacation.

For new employees whose employment commenced after the pay period immediately preceding the public holiday, the calculation would be an average of the regular wages earned in the pay period that includes the public holiday.

Bill 148 would also require employers to give employees who are entitled to a substitute holiday a written statement setting out certain information.

(e) Part XI: Vacation with Pay

Part XI of the ESA (sections 33 to 41.1) establishes minimum standards with respect to vacation time and vacation pay. The right to a paid vacation is intended to provide employees with a minimum block of time off each year for rest and recreation without the loss of wages.

Vacation Time and Vacation Pay:

The employment standard regarding vacation has two components: vacation time and vacation pay.

Employees are entitled to two weeks of vacation time after each 12-month vacation entitlement year. Ordinarily, a vacation entitlement year is a recurring 12-month period beginning on the date of hire. Where the employer has established an alternative vacation entitlement year that begins on a date other than the date of hire, the employee is also entitled to a pro-rated amount of vacation time for the period (called a “stub period”) that precedes the alternative vacation entitlement year.

Vacation pay must be at least four per cent of the “gross” wages (excluding any vacation pay) earned in the 12-month vacation entitlement year or stub period (where that applies).

An employee’s contract of employment or a collective agreement may provide a greater right or benefit with respect to vacation time and/or pay.

An employee who does not complete either the full vacation entitlement year or the stub period (if any) does not qualify for vacation time under the ESA. However, employees earn vacation pay as they earn wages. So if an employee works even just one hour, he or she is still entitled to at least four percent of the hour’s wages as vacation pay.

The vacation entitlement year and stub period will include time the employee spends away from work because of:

- Layoff;
- Sickness or injury;
- ESA leaves of absence; and
- Any other approved leaves (i.e. where there is no break in the employment relationship).

Vacation Time:

Employees earn a minimum of two weeks of vacation time upon completion of every 12-month vacation entitlement year. The ESA does not provide for any increases to the two-week vacation

time entitlement based on length of employment although a contract of employment or collective agreement might do so.

If the vacation entitlement year is a standard vacation entitlement year, the employee will be entitled to a minimum of two weeks of vacation time after the 12 months following his or her date of hire and after each 12-month period thereafter.

If an employer establishes an alternative vacation entitlement year, the employee will be entitled to a minimum of two weeks of vacation time after each alternative vacation entitlement year but will also be entitled to a pro-rated amount of vacation time for the stub period preceding the start of the first alternative vacation entitlement year.

The vacation time earned with respect to a completed vacation entitlement year or a stub period must be taken within 10 months following the completion of the vacation entitlement year or stub period. The employer has the right to schedule vacation as well as an obligation to ensure the vacation time is scheduled and taken before the end of that ten-month period.

An employee can give up some or all of his or her earned vacation time with the employer's written agreement and the approval of the Director of Employment Standards. This approval does not affect an employer's obligation to pay the employee vacation pay; employees may give up vacation time, but not the right to vacation pay.

Vacation Pay:

Employees must receive a minimum of four per cent of the gross "wages" (excluding vacation pay) they earned in the 12 month vacation entitlement year or stub period for which the vacation is being given.

If an employee's contract or collective agreement provides a better vacation benefit than the minimum required, the employee may be entitled to a higher percentage of his or her gross earnings for vacation pay. For example, an employee might be entitled under his or her contract to three weeks' vacation, with six per cent of gross earnings for vacation pay.

The gross "wages" on which vacation pay is calculated include:

- Regular earnings, including commissions;
- Bonuses and gifts that are non-discretionary or are related to hours of work;
- Overtime pay;
- Public holiday pay;
- Termination pay; and
- Allowances for room and board.

But do not include:

- Vacation pay paid out or earned but not yet paid;
- Tips and gratuities;
- Discretionary bonuses and gifts that are not related to hours of work, production or efficiency (e.g. a Christmas bonus unrelated to performance);
- Expenses and traveling allowances;
- Living allowances;
- Contributions made by an employer to a benefit plan and payments from a benefit plan (e.g. sick pay) that an employee is entitled to;
- Federal employment insurance benefits; and
- Severance pay.

When to Pay Vacation Pay:

In most cases, the vacation pay earned during a completed vacation entitlement year or stub period must be paid to an employee in a lump sum sometime before he or she takes the vacation time earned. For information regarding four exceptions to the rule, see the Ministry of Labour's Guide to the ESA, available at <https://www.ontario.ca/document/your-guide-employment-standards-act>.

When Vacation Periods Overlap with Public Holidays:

A public holiday could fall during an employee's vacation period. In that case, the day remains a vacation day for the employee, and if the employee qualifies for the public holiday, the employee is entitled to one of the following:

- The employee can have a substitute day off work with public holiday pay. This must be taken within three months of the public holiday or, if the employee agrees in writing, within 12 months of the public holiday; or
- The employer can pay public holiday pay for that day without giving the employee a substitute day off work, if the employee agrees in writing.

Employees may also agree in writing to work on a public holiday that falls while they are on vacation.

Vacation and Leaves of Absence:

Because there is no break in the employment relationship during a period of pregnancy, parental, personal emergency, family caregiver, family medical, critically ill child care, organ donor, reservist or crime-related child death or disappearance leave, the time on leave counts toward the completion of a vacation entitlement year or stub period. For example, an employee

on leave for all or only part of a vacation entitlement year would have earned a full two weeks of vacation time at the end of the vacation entitlement year. The vacation pay earned during that vacation entitlement year would be a minimum of 4% of any wages actually earned during the year.

An employee who is on a pregnancy, parental, personal emergency, family caregiver, family medical, critically ill child care, organ donor, reservist or crime-related child death or disappearance leave has the right to defer taking her or his vacation entitlement until the leave of absence expires (or until some later date if the employer and employee agree). This is the case even if the employee's contract of employment states that the employee is not allowed to defer taking vacation or restricts an employee's ability to do so.

This means that an employee who is on a leave of absence under the ESA will not lose any vacation time or vacation pay because he or she is on a leave. It also ensures that an employee does not have to choose between taking less than his or her full leave entitlement and losing some or all of his or her vacation pay or vacation time.

An employee who has the right to defer vacation until the expiry of a leave of absence may forego his or her right to take vacation time, with the agreement of the employer and the approval of the Director of Employment Standards, Ministry of Labour. However, an employee cannot forego his or her right to be paid vacation pay.

Where an employee's contract provides that "paid vacation" is earned through active service (e.g. 1.5 paid vacation days for each month of service or 3 weeks paid vacation for each year of service) an employee on leave may not earn either vacation time and/or pay while on leave. However, at the end of the vacation entitlement year or stub period, the employer must ensure the employee receives the greater of what was in fact earned under the contract and the minimum vacation time, and vacation pay, he or she would have earned under the ESA.

When Employment Ends:

When employment ends (for example, when an employee quits or his or her employment is terminated), an employee is entitled to be paid the vacation pay that she has earned and that has not yet been paid out. In some cases this would include vacation pay earned during a previous vacation entitlement year or stub period as well as the vacation pay earned during the current vacation entitlement year or stub period. Vacation pay is also payable on termination pay but not on severance pay.

The unpaid vacation pay must be paid either within seven days of the employment ending or on what would have been the employee's next pay day, whichever is later.

Bill 148 Proposals Relevant to Pharmacists:

The ESA currently provides employees with two weeks of vacation time. Bill 148 would increase vacation time from two weeks to three weeks for employees who have five years of service with the same employer.

The ESA currently provides pay requirements for employees who are entitled to two weeks of vacation time. Bill 148 would include pay requirements for employees that are entitled to three weeks of vacation time.

(f) Personal Emergency Leave

Section 50 of the ESA provides employees the right to take up to 10 days of unpaid job-protected leave each calendar year due to illness, injury and certain other emergencies and urgent matters. This is known as personal emergency leave.

Regularly Employ 50 or More Employees:

Only employees who work for employers that regularly employ at least 50 employees are eligible for personal emergency leave. When determining whether the 50-employee threshold has been met, all employees of the employer are counted. It is the number of employees that is counted, not the number of “full-time equivalents.” Part-timers and casual employees are all included as one employee each in the count.

When a single employer has multiple locations, all employees employed at each location in Ontario are to be counted together.

Reasons for Which an Unpaid Personal Emergency Leave May Be Taken:

An employee who is entitled to personal emergency leave can take up to 10 days of unpaid leave due to:

- Personal illness, injury or medical emergency; or
- Death, illness, injury, medical emergency or urgent matter relating to the following family members:
 - A spouse (includes both married and unmarried couples);
 - A parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse;
 - The spouse of the employee's child;
 - A brother or sister of the employee; and
 - A relative of the employee who is dependent on the employee for care or assistance.

Illness, Injury or Medical Emergency:

All illnesses, injuries and medical emergencies of the employee or of a specified family member, as listed above, will qualify an employee for personal emergency leave. It does not matter whether the illness, injury or medical emergency was caused by the employee's own actions or by external factors beyond the employee's control. For example, an employee who sprained his knee while showing off to his friends when waterskiing would still be entitled to personal emergency leave, even though the injury was a result of his own carelessness.

Generally, employees are entitled to take personal emergency leave for pre-planned (elective) surgery. Although such surgery is scheduled ahead of time (and therefore not a medical “emergency”), surgeries performed because of an illness or injury will entitle an employee to personal emergency leave.

Employees are not entitled to personal emergency leave for medically unnecessary cosmetic surgery unrelated to an illness or injury.

Urgent Matter:

An employee is eligible for personal emergency leave because of the death, illness, injury or medical emergency of, or an “urgent matter” concerning, a specified family member, as listed above. An urgent matter is an event that is unplanned or out of the employee’s control, and raises the possibility of serious negative consequences, including emotional harm, if not responded to.

Examples of an “urgent matter”:

- The employee’s babysitter calls in sick.
- The house of the employee’s elderly parent is broken into, and the parent is very upset and needs the employee’s help to deal with the situation.
- The employee has an appointment to meet with his or her child’s counsellor to discuss behavioural problems at school. The appointment could not be scheduled outside the employee’s working hours.

Examples of events that do not qualify as an urgent matter:

- An employee wants to leave work early to watch his daughter’s track meet.
- An employee wants the day off in order to attend at her sister’s wedding as a bridesmaid.

Interaction between Personal Emergency Leave and Contracts that Provide Paid Sick Leave or Bereavement Leave:

If a contract (which includes a collective agreement) provides a greater right or benefit than the personal emergency leave standard in the ESA, then the terms of the contract apply instead of the personal emergency leave provisions of the ESA.

If the contract does not provide a greater right or benefit than the personal emergency leave standard in the ESA, the personal emergency leave provisions of the ESA will apply to the employee. The ministry will not get involved in determining how the leave provisions of the contract are applied.

For example, a contract only provides three paid personal sick days and three paid bereavement leave days per year. It does not provide job-protected time off for any other

reason. This contract does not provide a greater right or benefit than the ESA's personal emergency leave provisions. This means that the employee will be entitled to 10 unpaid days of personal emergency leave per calendar year for any of the reasons listed in the ESA. If the employee takes 10 days of personal emergency leave for personal illness, the employee will have used up the entitlement under the ESA. Questions of whether any of those absences must be paid, and whether those absences draw down against the three paid sick leave days under the contract are not matters the ministry gets involved in answering.

Interaction Between Personal Emergency Leave, Family Caregiver Leave, Family Medical Leave, Critically Ill Child Care Leave, and Crime-related Child Death or Disappearance Leave:

Personal emergency leave, family caregiver leave, family medical leave, critically ill child care leave, and crime-related child death or disappearance leave are different types of leaves. The purposes of the leaves, their length, the individuals with respect to whom they can be taken, and eligibility criteria vary.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

Length of Personal Emergency Leave:

Employees are entitled to up to 10 full days of personal emergency leave every calendar year, whether they are employed on a full time or part time basis.

There is no pro-rating of the 10-day entitlement. An employee who begins work part way through a calendar year is still entitled to 10 emergency days during the remainder of that year.

Employees cannot carry over unused personal emergency leave days to the next calendar year. The 10 days of personal emergency leave do not have to be taken consecutively. Employees can take personal emergency leave in part days, full days, or in periods of more than one day. If an employee takes only part of a day as personal emergency leave, the employer can count it as a full day of leave.

Example: Part-day personal emergency leave

- Kevin's employer regularly employs at least 50 employees. Kevin's daughter is sick and her doctor has scheduled some tests at the hospital. Kevin tells his employer that he has to be away from work in the morning to take his daughter for tests.
- Kevin has the right to be on personal emergency leave for the half-day needed to take his daughter for the tests. His employer does not have to count the absence as a full day of leave but can if it wishes. Because Kevin only needed half of the day, he did not have the right to take the entire day off as personal emergency leave even if his employer counted the half-day absence as a full day of leave.

- The employer can only count the half-day absence as a full day of leave for the purpose of determining whether Kevin's 10 day entitlement has been used up. For example, the employer still has to pay Kevin for the half day that he worked, and has to include the hours worked for the purpose of determining whether Kevin has worked overtime or has reached his daily or weekly limit on hours of work.

Notice Requirements:

Generally, an employee must inform the employer before starting the leave that he or she will be taking a personal emergency leave of absence.

If an employee has to begin a personal emergency leave before notifying the employer, the employee must inform the employer as soon as possible after starting it. Notice does not have to be given in writing. Oral notice is sufficient.

While an employee is required to tell the employer in advance that he or she is taking a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take personal emergency leave if the employee fails to do so. An employer may discipline an employee who does not properly inform the employer, but only if the reason for the discipline is the failure to properly notify the employer and not in any way because the employee took the leave.

Proof of Entitlement:

An employer may require an employee to provide evidence reasonable in the circumstances that he or she is eligible for a personal emergency leave of absence. What will be reasonable in the circumstances will depend on all of the facts of any given situation, such as the duration of the leave, whether there is a pattern of absences, whether any evidence is available, and the cost of the evidence.

Medical Notes where the Employee Was Away Because of Personal Illness, Injury or Medical Emergency:

If the circumstances are such that it is reasonable for the employer to require the employee to provide a doctor's note, 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 certificate.

Employers are not allowed to require information about the diagnosis or treatment of the medical condition of the employee.

Medical Notes Where the Employee Was Away Because of the Illness, Injury or Medical Emergency of a Specified Relative:

The employer is not allowed to require a medical note in respect of the relative, nor can the employee be required to give details of the medical condition of the relative. The employer may only require the employee to disclose the name of the relative and his or her relationship to the employee, and to state that the absence was required because of the relative's injury, illness or medical emergency.

Rights During Leave:

Employees who take personal emergency leave are entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any other way an employee who takes or plans on taking a personal emergency leave. See "Rights for Employees Taking Pregnancy and Parental Leaves" in the Pregnancy and Parental Leave chapter of the Ministry of Labour's Guide to the ESA, available at <https://www.ontario.ca/document/your-guide-employment-standards-act>.

Bill 148 Proposals Relevant to Pharmacists:

Several significant changes to personal emergency leave are proposed in Bill 148.

Bill 148 would provide personal emergency leave to all employees, not just employees of employers who regularly employ 50 or more employees.

Two of the 10 personal emergency leave days would have to be paid days. The paid days would have to be taken before any unpaid days of personal emergency leave in a calendar year.

An employee would need to be employed for one week or longer to be entitled to paid days. Employees with less than one week would be entitled to only unpaid days (8 days) of personal emergency leave, until they reach one week or longer of employment.

The two paid personal emergency days would be based on the wages the employee would have earned had they not taken the leave. In circumstances where an employee receives performance-related wages such as commissions, any hourly rate would be based on the number of hours the employee would have worked had they not taken the leave.

If the paid day of personal emergency leave is taken on a public holiday, the employee would not be entitled to premium pay. If the paid day of leave is taken on a day or at a time when overtime pay or a shift premium would be payable, the employee would not be entitled to the overtime pay or shift premium.

Employers would retain the right to require evidence of entitlement to the 10 days of leave, but would not be permitted to require a certificate from a qualified health practitioner.

III. New Parts to the ESA Proposed in Bill 148 that would Apply to Pharmacists

Bill 148 proposes a number of changes to minimum employment standards that fall within Parts of the ESA that already apply to pharmacists. For example, under Part XIV, Leaves of Absence, Bill 148 proposes to split the current Crime-Related Child Death or Disappearance Leave into two separate leaves: Child Death Leave and Crime-Related Child Disappearance Leave. A new leave, Domestic or Sexual Violence Leave, is also proposed. Changes proposed in Bill 148 that concern standards that fall within Parts of the ESA that already apply to pharmacists are not set out in this document.

Bill 148 is currently in Second Reading Debate. More information about the Bill and its status is available on the Legislative Assembly website at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=4963.

In addition to the changes already described in the Guide, Bill 148 would introduce two new Parts to the ESA that would apply to pharmacists if the Bill becomes law. These Parts are:

- Requests for Changes to Schedule or Work Location – New Part VII.1 of the ESA; and
- Scheduling – New Part VII.2 of the ESA.

The new Parts are described below.

(a) New Part VII.1 of the ESA

Bill 148 proposes to add a new Part VII.1 (Requests for Changes to Schedule or Work Location) to the ESA. Employees would have the ability to request changes to their schedule or work location after they have been employed for at least three months. Employers who receive these requests would be required to discuss them with the employee and either grant them or provide reasons for denial.

(b) New Part VII.2 of the ESA

Proposed Part VII.2 (Scheduling) would establish minimum standards regarding scheduling. These provisions would come into force on January 1, 2019.

Three Hour Rule:

An employee who regularly works more than three hours a day and is required to report to work but works less than three hours, despite being available to work longer, is entitled to be paid a minimum of three hours' pay at the employee's regular rate. There would be an exception where an employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work.

Minimum Pay for Being On Call:

An employee would be entitled to a minimum of three hours' pay at the employee's regular rate where the employee is either on call to work and is not required to work, or is required to work but works less than three hours, despite being available to work longer. An employee's entitlement would be limited to three hours' pay during a twenty-four hour period, beginning at the start of the first time during that period that the employee is on call (even if the employee is on call multiple times during those twenty-four hours). There would be transitional provisions for collective agreements that are in effect on January 1, 2019. A collective agreement provision that addresses payment for being on call would prevail over the on-call provisions in the ESA where there is a conflict between the provisions. The collective agreement provision would prevail until the earlier of the expiry of that collective agreement or January 1, 2020.

Right to Refuse:

An employee would have the right to refuse requests or demands to work or to be on call on a day that the employee is not scheduled to work or to be on call, if the request or demand is made with less than 96 hours' notice of the shift. The right to refuse would not apply if the employer's request or demand to work is to deal with an emergency, to remedy or reduce a threat to public safety, or for other reasons prescribed in a regulation. An employee would be required to provide the employer with notice of the refusal as soon as possible. There would be transitional provisions for collective agreements that are in effect on January 1, 2019. A collective agreement provision that addresses an employee's ability to refuse the employer's request or demand to perform work or be on call would prevail over the right to refuse provisions

in the ESA where there is a conflict between the provisions. The collective agreement provision would prevail until the earlier of the expiry of that collective agreement or January 1, 2020.

Cancellation of Shift:

An employee would be entitled to pay for three hours of work at the employee's regular rate in the event of cancellation of a scheduled shift or an on call shift within 48 hours before the shift was to begin. There would be an exception where an employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work. There would also be an exception if the nature of the employee's work is weather-dependent and the employer is unable to provide work for the employee for weather-related reasons, or where the employer is unable to provide work for such other reasons prescribed in a regulation. There would be transitional provisions for collective agreements that are in effect on January 1, 2019. A collective agreement provision that addresses payment when the employer cancels the employee's scheduled day of work or on call period would prevail over the cancellation provisions in the ESA where there is a conflict between the provisions. The collective agreement provision would prevail until the earlier of the expiry of that collective agreement or January 1, 2020.

Limit on Entitlement:

An employee's entitlement under this new Part VII.2 in respect of one scheduled day of work or on call period would be limited to the employee's regular rate for three hours of work. This would prevent "double-dipping".

Tab 3

Ministry of Labour Policy Framework – Guiding Principles, Conditions and Criteria:

The basic premise behind the ESA is that all employees and employers, with limited exceptions, should be covered by the Act. As a result, a strong rationale is needed to exempt employees from the protections of the ESA. Doing so means that a particular group of workers will no longer have protections that are considered to be minimum standards in employment.

Exemptions also affect the competitive positions of employers – not only in the industries where they apply, but in other industries that compete for labour, capital and other resources with these sectors.

Despite the foregoing, there are situations where a standard cannot be applied to a particular industry or occupation for reasons that warrant an exemption from the ESA. In some cases exemptions are necessary for the optimal performance of the labour market and economy, and can contribute to social goals.

With the above considerations in mind, a rigorous process must be used to determine whether a reduction in fundamental employment protections is justified. The Ministry of Labour's established conditions applicable to industry or occupational exemptions are set out below. The conditions are consistent with the principle – supported by previous governments and the Special Advisors in the Changing Workplaces Review – that exemptions may be granted only in exceptional circumstances.

Governing Conditions and Criteria:

First, the occupation or industry must meet Core Condition A and/or Core Condition B.

Core Condition A: The nature of work in an industry is such that it is impractical for a minimum standard to apply. Applying the standard would preclude a particular type of work from being done at all or would significantly alter its output. The work could not continue to exist in anything close to its present form.

"Nature" of the work relates to the characteristics of the work itself. It does not relate to the quantity of work produced by a given number of employees. The relevant question is whether applying a minimum standard would hamper the viability of the tasks being performed?

Core Condition B: Employers in an industry do not control working conditions that are relevant to the standard.

Second, if one or both of the Core Conditions is met, a further Supplementary Condition must be met.

Supplementary Condition: The work provides a social, labour market or economic contribution that argues for its continued existence in its present form, even in the absence of one or more minimum standards applying to it.

Third, consideration must be given to two other factors before an exemption is granted or maintained:

1. The employee group to whom the exemption or special rule would apply be readily identifiable, to prevent confusion and misapplication of the exemption/special rule.
2. Both employees and employers in the industry agree that a special rule or exemption is desirable.

Tab 4

Questions for Discussion: Pharmacists

Having reviewed the *Guide to the ESA and Bill 148* and the *Ministry of Labour Policy Framework*, please consider and respond to the questions outlined below.

In addressing the questions below, please keep in mind that the Ministry of Labour is seeking information regarding pharmacists who are employees, not independent contractors.

Hours of Work, Eating Periods and Overtime:

1. How many hours do pharmacists typically work on a daily and weekly basis? If the response depends on the employment setting (e.g. a hospital, a retail drug store, etc.), please identify these differences.
2. What factors drive pharmacists' scheduled hours of work?
 - For example, how do professional standards and legislative requirements, employer scheduling practices, and client needs bear on pharmacists' scheduled hours of work?
3. To what extent do or can pharmacists structure their own hours of work?
4. How closely is a pharmacist's performance or productivity linked to the number of hours spent working?
5. How much of the work performed by pharmacists takes place away from their employer's place of business and/or away from supervision by their employer?
6. To what extent do the duties of pharmacists' work regularly include the need to deal with unpredictable events, circumstances or demands arising from one or more of the following:
 - Client needs;
 - Workplace staffing;
 - Product perishability;
 - The nature of technology; and/or
 - The nature of the work process.
7. To what extent is continuity of involvement by a single pharmacist required because of discretionary decision-making expertise or authority?
8. If pharmacists were subject to the hours of work, eating period and/or overtime requirements of the ESA, would the nature of the work performed by pharmacists change?
 - For example, would certain parts of the work performed by pharmacists be precluded altogether? Would the output of certain pharmacists be significantly

altered? Would the work in its present form be fundamentally changed? Please elaborate.

9. The hours of work requirements of the ESA recognize the importance of work-life balance and mental health, and health and safety. How do pharmacists achieve this balance in light of the profession's current exemptions? Are there any specific concerns which the Ministry of Labour should be aware of that are related to the profession's current hours of work exemption in the ESA? (*Please note that all employers, regardless of any ESA exemption or special rule, are still required to abide by Ontario's occupational health and safety laws.)
10. What proportion of pharmacists work in remote workplaces that create challenges in transporting them to the worksite? Please elaborate.

Minimum Wage:

11. If pharmacists were subject to the minimum wage requirements of the ESA, would the nature of the work performed by pharmacists change? If so, please elaborate.

Public Holidays:

12. Does the nature of the work associated with the practice of pharmacy prevent its businesses from closing on public holidays?
13. To what extent would employers who employ pharmacists have difficulty securing adequate staffing on a public holiday if the public holiday provisions of the ESA applied to pharmacists?

Vacation with Pay:

14. To what extent would employers who employ pharmacists be affected if the vacation pay provisions of the ESA applied to pharmacists?

Personal Emergency Leave:

15. Are there circumstances in which exercising the entitlement to personal emergency leave under the ESA would constitute a breach of professional standards for a pharmacist? If so, please identify and explain these circumstances, with reference to any applicable regulatory or code of conduct/practice requirements.

Miscellaneous:

16. Is there any additional information about the profession that you wish to provide that may be relevant to the Ministry of Labour's exemptions review process with respect to pharmacists?

Notice to Consultation Participants

Submissions and comments provided are part of a public consultation process to solicit views on reforms to Ontario's employment and labour law regime that may be recommended to protect workers and support business in the context of changing workplaces. This process may involve the Ministry of Labour publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period, including relevant regulatory bodies for professionals. Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Further, if you, as an individual, do not want your identity to be made public, you should not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission, such as found in a cover letter, will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

Personal information collected during this consultation is under the authority of the [Employment Standards Act, 2000](#) and the [Labour Relations Act, 1995](#), and is in compliance with subsection 38(2) of the Freedom of Information and Protection of Privacy Act.

If you have any questions regarding the collection of personal information as a result of this consultation you may contact the Ministry's Freedom of Information Office, 400 University Avenue, 10th Floor, Toronto, Ontario, M7A 1T7, or by calling 416-326-7786.