



ESA Exemptions Toolkit: Homemakers, Domestic Workers and Residential Care Workers

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Tab 1

Review of Special Rules and Exemptions under the Employment Standards Act, 2000: Homemakers, Domestic Workers and Residential Care Workers

On May 30, 2017, the Government of Ontario announced that there would be a review of the regulatory exemptions and special rules under the *Employment Standards Act, 2000* (ESA). The first phase of this review is now underway.

The Ministry of Labour is seeking input on the current exemptions that apply to homemakers, domestic workers and residential care workers. The Ministry invites feedback from all interested stakeholders on the impact of the special rules and exemptions.

Other exemptions and special rules being examined in this phase of the review are as follows:

- Managerial and Supervisory Employees
- Residential Building Superintendents, Janitors and Caretakers
- Information Technology Professionals
- Pharmacists
- Architects

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

- ***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 2** provides an overview of the conditions and criteria that the Ministry uses in its analyses. These conditions and criteria will be applied to homemakers, domestic workers and residential care workers in this exemptions review.
- ***Questions for Discussion:*** The document at **Tab 3** contains the questions that you should respond to through the Regulatory Registry website. 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 homemakers, domestic workers and residential care workers.

Who Is Covered by the ESA Exemptions Applicable to Homemakers, Domestic Workers and Residential Care Workers?

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

Note: A wide variety of occupations may engage in work that is similar to homemakers, domestic workers and/or residential care workers, but under a different occupational title. For example, personal support workers or developmental services workers may engage in work that is similar to work performed by homemakers, even if the ESA exemptions and special rules have not been applied to them.

As a result, the fact that an employee is not referred to as a homemaker, domestic worker or residential care worker does not necessarily mean that their work falls outside the scope of these occupational groups under the ESA. At the same time, the fact that an employee has the title of “homemaker”, “domestic worker” or “residential care worker” does not necessarily mean that the exemptions and special rules will automatically apply. The employee’s actual job duties need to be assessed.

As set out below, there are certain similarities in the work performed by homemakers, domestic workers and residential care workers. However, these occupations are treated differently under the ESA based on certain distinctions such as:

- who employs them (e.g. a business or private householder);
- where they work (e.g. in a facility setting or in a private household);
- whether they live-in or live-out outside of the workplace; and
- to whom they provide services.

Homemakers:

A “homemaker” under the ESA refers to a person employed by a person other than a householder to perform homemaking services for a householder or member of a household in the householder’s private residence.

- In order to be considered a homemaker under the ESA, the employee must be employed by “a person other than a householder”.
- A householder is someone who owns or rents the home where the homemaking work is done.
- Since a homemaker is employed by someone other than a householder, a homemaker’s employer is likely a business or agency that contracts with householders to have an employee of the business come into their house to perform homemaking services.
 - For example, a homemaker would be employed by a housecleaning company to attend at the homes of the company’s clients (the householders) to provide housecleaning services. Because the homemaker’s employer is someone other than the householder, the homemaker does not work at the employer’s own premises.
- Homemakers must perform homemaking services in the householder’s private residence. If the employee performs homemaking services in a non-private institution, they will not be considered a homemaker under the ESA. For example, cleaners in retirement homes are not “homemakers”.

There is no definition of “homemaking services” within the ESA. The Employment Standards Program uses the definition contained in a regulation under the *Homemakers and Nurses Service Act* for the purposes of the ESA. Under that regulation, “homemaking services” means housekeeping services including:

- the care of a child or children,
- meal planning, marketing and the preparation of nourishing meals, and the preparation of special diets where required,
- light, heavy and seasonal cleaning,
- light laundry, ironing and essential mending of clothing,
- personal care, including assistance in walking, climbing or descending stairs, getting into or out of bed, eating, dressing, bathing and other matters of personal hygiene,
- simple bedside care, where required, under the direction of a physician or nurse, but not including nursing services, and
- training and instruction in household management and the care of children.

Domestic Workers:

A domestic worker is defined by ESA regulation as “a person who is employed by a householder to perform services in the household or to provide care, supervision or personal assistance to children, senior or disabled members of the household, but does not include a sitter who provides care, supervision or personal assistance to children on an occasional, short-term basis.”

In contrast to homemakers, domestic workers are employed directly by householders. If the householder hired the worker through an agency, he or she is still a domestic worker if the householder employs the worker and the householder was just using the agency as a “head-hunter”.

Like homemakers, domestic workers are hired to work in a private home. An employee will fall under the definition of domestic worker if they provide “services in the household”. Although “services in the household” is not defined in the ESA, it includes such functions as cleaning, dusting, vacuuming, laundry and the preparation of meals.

An employee will also fall under the definition of domestic worker if he or she provides care, supervision or personal assistance to a child of the householder. This would include a nanny who has received formal training in child care as well as a sitter who has had no formal training. (Note that a sitter who provides care on an occasional, short-term basis is not covered under the definition of domestic worker. For example, a teenager who occasionally babysits on weekend evenings for a neighbour would not fall under this definition).

Finally, an employee may also fall under the definition of domestic worker if they provide care, assistance, supervision or protection to a person who, because of advanced age or physical or mental disability, cannot care for his or her own needs. The services could include household work related to the care of the person (for example, meal preparation, bed-making, etc.). Once again, the worker must be employed by the householder and be attending to the needs of a member of the employer's household. As a result, someone employed to provide personal care to a resident in a nursing home would not be a domestic worker.

Residential Care Workers:

A residential care worker is defined by ESA regulation as “a person who is employed to supervise and care for children or developmentally handicapped persons in a family-type residential dwelling or cottage and who resides in the dwelling or cottage during work periods, but does not include a foster parent.”

Note: The *Ontarians With Disabilities Act, 2001* amended the Ontario *Human Rights Code* by replacing the word “handicap” in the Code with the word “disability”. The ESA definition of “residential care worker” still uses the term “handicap”. This document uses the out-dated language for consistency with the legislation.

In order to be a residential care worker, the employee must:

- supervise and care for children or developmentally handicapped persons;
- work in a family-type residential dwelling or cottage (only work in a residential care facility that is designed to provide a home-like atmosphere is covered; work in an institution, such as a hospital, is not covered); and
- reside in the dwelling or cottage during work periods.

The words “supervise” and “care” are broad terms and include all activities involved in looking after children and developmentally handicapped persons: preparing meals, feeding, cleaning, organizing play activities, and so on. A number of the duties performed by a residential care worker may be similar to those performed by a homemaker or a domestic worker.

The exemptions and special rules for residential care workers were intended to cover workers responsible for the supervision and care of children or adults with developmental disabilities during the patients'/residents' sleeping and eating periods, as well as during entertainment and recreational periods inside or outside the home.

What ESA Exemptions are Applicable to Homemakers, Domestic Workers and Residential Care Workers?

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.

The exemptions and special rules that apply to homemakers, domestic workers and residential care workers as set out in O. Reg. 285/01 are summarized in the chart below:

ESA Standard	Homemaker	Domestic Worker	Residential Care Worker
Minimum Wage	Special Rule applies. <u>Special Rule:</u> Homemakers are entitled to be paid the minimum wage for all hours worked up to a maximum of 12 hours in a day (even if the employee works more than 12 hours).	Special Rules applies. <u>Special Rule:</u> If the householder provides room or board to the domestic worker, certain amounts are deemed to have been paid as wages for the purposes of determining whether the	Special Rule applies. <u>Special Rule:</u> Residential care workers' regular rate of pay must be equal to at least the minimum wage. However, for each day of work they are entitled to be paid only for <u>the lesser of</u>

ESA Standard	Homemaker	Domestic Worker	Residential Care Worker
	<p>In other words, a homemaker is entitled to be paid for no more than 12 of the hours that he or she works.</p>	<p>minimum wage has been paid to the employee.</p> <p>The following rates can be counted as wages:</p> <ul style="list-style-type: none"> ○ For a private room, \$31.7 a /week ○ For a non-private room, \$0 ○ For board, \$2.55 a meal to a maximum of \$53.55 a week ○ For both room and board, \$85.25 a week if the room is private and \$53.55 if the room is not private. <p>To be deemed wages, the room must be:</p> <ul style="list-style-type: none"> ○ reasonably furnished and reasonably fit for human habitation; ○ supplied with clean bed linen and towels; and ○ reasonably accessible to proper toilet and wash-basin facilities. <p>Room or board can only count towards wages where the domestic worker has received the meals or occupied the room.</p>	<p>their actual hours of work and 12 hours.</p> <p>In other words, a residential care worker is entitled to be paid for no more than 12 of the hours that he or she works.</p> <p>An employee is entitled to be paid at least the minimum wage for up to 15 hours of work per day if the employee:</p> <ul style="list-style-type: none"> • works more than 12 hours in a day; • has kept accurate records of the hours worked; and • provides the records to the employer before the next pay day after the pay day for the period in which the hours were worked.
Hours of Work (daily and weekly/bi-weekly limits on hours of work)	<p>Exempt if the conditions of the Special Rule on minimum wage are met.</p> <p>Homemakers are not covered by the hours of work provisions of the ESA if they are paid the minimum wage for hours worked in a day to a maximum of 12.</p>	Covered	Exempt. Residential care workers are not covered by the daily and weekly limits on hours of work.
Daily Rest Periods	Exempt if the conditions of the Special Rule on minimum wage are met.	Covered	Exempt. Residential care workers are not covered by the daily rest period rule.

ESA Standard	Homemaker	Domestic Worker	Residential Care Worker
	Homemakers are not covered by the daily rest period provisions of the ESA if they are paid the minimum wage for hours worked in a day to a maximum of 12.		
Time off Between Shifts	Exempt if the conditions of the Special Rule on minimum wage are met. Homemakers are not covered by the time off between shifts provisions of the ESA if they are paid the minimum wage for hours worked in a day to a maximum of 12.	Covered	Exempt. Residential care workers are not covered by the time off between shifts rule.
Weekly/Bi-Weekly Rest Periods	Exempt if the conditions of the Special Rule on minimum wage are met. Homemakers are not covered by the weekly/bi-weekly rest period provisions of the ESA if they are paid the minimum wage for hours worked in a day to a maximum of 12.	Covered	<p>Special Rule applies.</p> <p><u>Special Rule:</u> Residential care workers are entitled to at least 36 hours free from work each work week (a "free period"). These hours must be consecutive unless the employee consents to another arrangement.</p> <p>If a residential care worker consents to work during the free period:</p> <ul style="list-style-type: none"> • the employer must pay at least one and one-half times the employee's regular rate for the time spent working, or • the time must be added to one of the next eight 36-hour periods of free time.
Eating Periods	Exempt if the conditions of the Special Rule on minimum wage are met. Homemakers are not covered by the eating period provisions of the ESA if they	Covered	Exempt. Residential care workers are not entitled to an eating period.

ESA Standard	Homemaker	Domestic Worker	Residential Care Worker
	are paid the minimum wage for hours worked in a day to a maximum of 12.		
Overtime Pay	Exempt if the conditions of the Special Rule on minimum wage are met. Homemakers are not entitled to overtime pay if they are paid the minimum wage for hours worked in a day to a maximum of 12.	Covered	Exempt. Residential care workers are not entitled to overtime pay.
Records of Hours Worked	Exempt if the conditions of the Special Rule on minimum wage are met. The employer is not required to keep a record of daily or weekly hours worked by a homemaker if the homemaker is paid the minimum wage for hours worked in a day to a maximum of 12.	Covered	Exempt. Employers are not required to keep a record of a residential care worker's hours of work.
When Work is Deemed to Have Been Performed	Covered. However, see the Special Rule on minimum wage.	Covered	<p>Special Rule applies.</p> <p><u>Special rule:</u> Time that a residential care worker spends at the workplace eating, sleeping, resting or attending to his or her own affairs is not counted as hours of work, even if the employee is on call during that time.</p> <p>Further, time that a residential care worker has free from any duties at the facility by agreement with the employer is not counted as hours of work, even if the employee remains at the facility during that time.</p>
Other		The householder must provide the domestic worker with the following information in writing:	

ESA Standard	Homemaker	Domestic Worker	Residential Care Worker
		<ul style="list-style-type: none"> • The regular hours of work, with starting and finishing times; and • The hourly rate of pay. 	

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.

For the special rules and exemptions regarding homemakers, see section 11 of O. Reg. 285/01.

For the special rules and exemptions regarding domestic workers, see section 19 of O. Reg. 285/01.

For the special rules and exemptions regarding residential care workers, see sections 20 to 23 of O. Reg. 285/01.

Prior Rationales for the ESA Exemptions and Background Information:

During the Changing Workplaces Review, Special Advisors Murray and Mitchell recommended that existing exemptions should be reviewed. During the review, the advisors received some submissions with respect to the existing exemptions applicable to homemakers, domestic workers and residential care workers. The Interim and Final Reports are available online at <https://www.labour.gov.on.ca/english/about/workplace>.

Homemakers:

Since at least 1976, homemakers have had exemptions from various standards under the ESA.

The original rationale for the exemptions seems to be based on the fact that homemakers do not work at their employer's premises (they work at the private residences of the employer's clients). As a result, the employer has little ability to monitor the employees' hours of work and it may be difficult to use transitional methods (such as timesheets) to effectively monitor working hours. The strength of this rationale, particularly in light of technological developments, may be open to challenge. For example, it is likely that homemaker employers have some awareness of homemakers' working hours, as they are generally aware of employees' assignments and the tasks that they need to perform for clients.

The ESA's definition of "homemaker" and exemptions appear to be unique within Canada. In other jurisdictions that have exemptions for comparable occupations, these generally cover employees in live-in caregiver situations where the employer is the householder, not a third party who sends employees to provide homemaking services at clients' private residences on a non-live-in basis.

Domestic Workers:

Since at least 2003, domestic workers have been subject to special rules under the ESA concerning the minimum wage. The exemption of domestic workers from these standards recognizes that the worker often receives partial remuneration through room and board.

Several other Canadian jurisdictions define a category similar to a domestic worker, each with slightly different responsibilities that seem closer to Ontario's concepts of "homemaker" and "residential care worker". In Nova Scotia, the closest comparator occupational group is not covered by the relevant employment standards legislation. In Alberta, domestic workers are exempt from maximum hours of work and overtime pay, but they are entitled to the minimum wage, eating periods and rest periods.

Residential Care Workers:

The exemptions and special rules for "residential care workers" in O. Reg. 285/01 have been in place since at least 1982.

At the time of the creation of this exemption, the government was implementing a de-institutionalization policy. This involved moving children and developmentally disabled adults out of large institutions and, in as many cases as possible, placing them in the community in home-like settings, preferably in a family-type group home.

The definition of "residential care worker" was meant to be narrow and apply only to those homes where the parent-model (i.e. continuity of supervision by the same person) was central to the well-being of the person being cared for. The "live-in" aspect of the position is also an important element in defining this model of care and in defining this category of worker.

As noted by the Special Advisors in the Interim Report, the residential care workers exemption has been identified as potentially outdated and perhaps irrelevant. The strict definition of this type of worker reflects the intent in the 1980s – that the exemptions and special rules be narrowly applied to a specifically defined worker, serving a specifically defined client. The specific scenario that this regulation once applied to may no longer exist.

Notice to Consultation Participants

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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

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 3

Questions for Discussion: Homemakers, Domestic Workers and Residential Care Workers

Your responses to the questions below will assist the Ministry of Labour as it conducts its review of ESA exemptions applicable to homemakers, domestic workers and residential care workers.

Before responding, we recommend that you consider the *Ministry of Labour Policy Framework*. If you have questions about different employment standards under the ESA (such as hours of work and rest periods, overtime pay, etc.) you can review *Your Guide to the Employment Standards Act*, available on the Ministry of Labour's [website](#). These documents contain additional background information that may help you prepare your answers.

In addressing the questions below, please keep in mind that the Ministry of Labour is seeking information regarding homemakers, domestic workers and residential care workers who are employees. There are separate questions for employees and employers. Employee and employer representatives should answer the set of questions that is most appropriate for them, with any modifications as needed.

Questions for Employees

About Your Work:

1. What is your job title?
2. Are you employed by a householder (such as a homeowner or a tenant of a residential property) or a business that assigns you to work at a particular location or locations?
3. What kind of work do you perform? What are your duties and responsibilities?
 - For example, do you provide care for children, perform cleaning services, prepare meals, provide personal or bedside care, etc.?
4. What kind of training and/or qualifications do you have? Are formal training and/or qualifications a requirement of your job?
 - Examples of formal training include a requirement that you hold a college certificate or diploma in personal support work or early learning and child care.

Your Clients

5. Who are you providing services to? In other words, who are your clients?
6. What are the needs of your clients?
 - For example, do they require assistance with housekeeping, meal preparation, personal care, etc.?
7. Do your clients require the ongoing involvement of a single care worker (e.g. the same person(s) providing care over time)?

- If so, please explain what kind of ongoing care is required by your clients and why the same person(s) must provide care.
 - If your clients do not require ongoing care by the same care worker(s), does your work location and/or client base change regularly? Please explain.
8. How much of your work regularly includes the need to deal with unpredictable events, circumstances or demands arising from client needs or workplace staffing?
- For example, does your job require you to stay at work to address a client's needs until the issues are resolved, even if you have to stay past the scheduled end of your shift? If so, please explain what kinds of client needs would keep you at work past the scheduled end of your shift. How often does this occur?
 - For example, do you need to be present for long hours to deal with the unpredictable attendance of other employees (e.g. if another employee does not arrive for work, are you required to stay until another employee can be found to cover the shift)? Please explain why this occurs and how often.

Work Location

9. Where do you work?
- For example, do you work in a facility, a private household, etc.?
10. Do you live where you work?

Hours of Work

11. Do you work shifts? If so, how long are your shifts?
12. If you provide live-in services and/or care, please describe the hours that you work.
13. What kind of relief (time off from work) do you have?
14. Do you take meal breaks? If so, when do you take them (e.g. according to a set schedule, as you are able, etc.)? Where do you take meal breaks?
15. How much of your work takes place away from the supervision of your employer?

Miscellaneous:

16. Are you represented by a union?
17. Is there any additional information about your work that may be relevant to the Ministry of Labour's exemptions review process? If so, please explain.

Questions for Employers

1. What is the job title of your employee(s)?
2. What kind of employer are you?
 - For example, are you a homeowner, tenant, business that contracts with private individuals to provide cleaning, personal care and/or other services, etc.?
3. What kind of work does your employee(s) perform? What are their duties and responsibilities?
 - For example, does your employee(s) provide care for children, perform cleaning services, prepare meals, provide personal or bedside care, etc.?
4. What kind of training and/or qualifications do you require your employee(s) to have?
 - Examples of formal training include a requirement that the employee hold a college certificate or diploma in personal support work or early learning and child care.

The Clients

5. If you are a householder, what are your needs or the needs of the member of the household you have retained services for? If you are a business owner, what are the needs of your clients?
 - For example, is your employee(s) providing assistance with housekeeping, meal preparation, personal care, etc.?
6. Do you, the member of your household you have retained services for, or your clients require the ongoing involvement of a single care worker (e.g. the same person(s) providing care over time)?
 - If so, please explain what kind of ongoing care is required and why care by the same care worker(s) is required.
 - If ongoing care by the same care worker(s) is not required, does the employee(s) providing services to you, the member of your household or your clients change regularly? Please explain.
7. How much of the work performed by your employee(s) regularly includes the need to deal with unpredictable events, circumstances or demands arising from client needs or workplace staffing?
 - For example, do your needs, the needs of the member of your household you retained services for or the needs of your clients require your employee(s) to stay at work until the issues are resolved, even if it requires the employee(s) to stay past the end of a scheduled shift? If so, please explain what kinds of issues would keep your employee(s) at work. How often does this occur?

- For example, does your employee(s) need to be present for long hours to deal with the unpredictable attendance of other employees (e.g. if another employee does not arrive for work, would the other employee be required to stay until the shift is covered)? Please explain why this occurs and how often.

Work Location

8. Where does your employee(s) perform their work?
 - For example, does the employee(s) work in a facility, a private household, etc.?
9. Does your employee(s) live where they work?

Hours of Work

10. Does your employee(s) work shifts? If so, how long are the shifts?
11. If your employee(s) provide live-in services and/or care, please describe the hours that they work.
12. What kind of relief (time off from work) does your employee(s) have?
13. Does your employee(s) take meal breaks? If so, when are meal breaks taken (e.g. according to a set schedule, as they are able, etc.)? Where are the meal breaks taken?
14. How much direct supervision do you have over your employee(s)? Please explain.

Miscellaneous:

15. Are your employees represented by a union?
16. Is there any additional information about the work performed by your employee(s) that may be relevant to the Ministry of Labour's exemptions review process? If so, please explain.

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