

No Free Trials: Ontario Employees Need To Be Paid For Trial Periods



Let's say someone has applied for a job at your business, and the best way for you to assess their suitability for the job is not through reading their resume or conducting an interview, but by observing them while they actually do the job they have applied for. So, you ask them to come in for one or two "trial shifts", in lieu of an interview, to see if they're a good fit.

Does this "trial period" count as work, and does the candidate need to be paid? Recent changes to the Ontario [Employment Standards Act, 2000](#) ("ESA") say yes. It's true what they say: nothing in life is free.

Workers Who Perform Work During a Trial Period Are Employees

Under the ESA, the definition of "employee" includes a person who:

- performs work for an employer for wages
- supplies services to an employer for wages
- receives training from an employer, if the skill they're being trained on is a skill used by the employer's employees
- is a homemaker
- was an employee

On March 21, 2024, the Ontario's [Working For Workers Four Act](#) expanded and clarified the meaning of "training" to include work performed during a trial period for an employer, if the skills being assessed during the trial period are skills used by the employer's employees.

This means that hours worked during any "trial period" must be counted as work time, and therefore employees need to be paid for that time. Employees who perform work as a "trial period", even if they aren't hired on afterwards, need to be paid minimum wage, vacation pay, overtime pay, provided with meal times and breaks and all other relevant requirements under the ESA.

Takeaways for Employers

The recent changes to the ESA make it clear: trial periods are not a free pass to test potential employees without compensation. If you're considering implementing a trial period to assess a candidate's fit for a role, it's essential to treat this time as paid work. Here are the key takeaways:

1. **Pay for All Work:** Any hours worked during a trial period must be compensated at least at the minimum wage, and all applicable entitlements under the ESA, such as vacation pay and overtime, must be provided.
2. **Provide Standard Employment Conditions:** During the trial period, candidates are entitled to the same breaks, meal times, and working conditions as any other employee. Treat them as if they were fully hired from day one.
3. **Review and Update Policies:** Ensure your hiring and onboarding practices reflect these changes. Any practice of unpaid trial periods is now out of compliance with Ontario law.
4. **Clear Communication:** Make sure candidates understand that trial periods are part of the hiring process and that they will be compensated for their time. This transparency builds trust and ensures legal compliance.

By adhering to these updated ESA requirements, you not only stay on the right side of the law but also foster a fair and transparent workplace culture that respects the value of every worker's time.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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