

# Understanding Your Farm Worker ESA Exemptions In Ontario



Are you an Ontario farmer employer navigating the complexity of the special farm worker rules? This is the first of a few posts that will walk through the main employment law issues to consider for your agricultural employees.

In Ontario, the *Employment Standards Act, 2000* (“ESA”) sets out the minimum standards for most employees, but there are specific exemptions for farm workers. These exemptions recognize the unique demands of agricultural work, which often require flexibility due to seasonal and weather-related factors.

Here’s an overview of the key exemptions that farm employers should be aware of.

## **1. Hours of Work, Eating Periods and Overtime Pay**

One of the most significant exemptions for farm workers under the ESA relates to hours of work and overtime. Unlike other employees, farm workers are not subject to the standard rules for hours of work, daily and weekly rest periods, or overtime pay. This means that farm employers are not required to provide overtime pay after 44 hours of work per week or follow the 8-hour workday rule. Farm workers can work longer hours without being entitled to overtime pay, which is critical for handling the demands of planting and harvest seasons.

## **2. Minimum Wage**

Farm workers who are paid on a piecework basis—where they are compensated based on the amount of produce they pick or tasks they complete—are exempt from Ontario’s general minimum wage. However, if farm workers are paid by the hour, they must receive at least the general minimum wage, which ensures a basic level of compensation. This exemption acknowledges the variability in farm work output, especially during peak seasons.

## **3. Public Holidays**

Under the ESA, farm workers are generally not entitled to public holiday benefits. This means they do not have the right to take public holidays off with pay, nor do they receive additional public holiday pay if they work on these days. Given the nature of farming, where work often can’t be paused for holidays, this exemption provides the flexibility needed in the agricultural sector.

## 4. Vacation with Pay

Farm workers are not entitled to vacation time and vacation pay under the ESA.

### Special Considerations for Specific Groups

**Harvesters:** Farm workers who harvest fruit, vegetables, or tobacco have additional protections under the ESA. Many of the above exemptions that more broadly apply to farm workers do not apply to workers in these groups. For farm workers who also perform harvesting, special ratios are applied to determine a specific worker's eligibility for farm worker exemptions.

**Foreign Agricultural Workers:** While also subject to many of these exemptions, foreign workers' employment is often governed by additional agreements, such as the Seasonal Agricultural Worker Program (SAWP) and the Employment Protection for Foreign Nationals Act (EPFNA), which may provide further protections.

**Fishers, Flower Growers, or Sod Workers:** less exclusively, there are specific exemptions for certain industries that mirror the exemptions applicable to the farming industry.

### Conclusion

The exemptions under the ESA are designed to meet the unique needs of the agricultural sector in Ontario. Understanding these exemptions is crucial for farm employers to ensure both compliance and fair treatment.

*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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