




INFORMATION REPORT

TO:	Mayor and Members City Council
COMMITTEE DATE:	February 22, 2023
SUBJECT/REPORT NO:	Obligations under Employment Standards Act (HUR23004) (City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

COUNCIL DIRECTION

At Council's January 25, 2023 meeting, Human Resources staff were directed to report back on Council's obligations under the *Employment Standards Act, 2000* (ESA) regarding the length of meetings and appropriate breaks during meetings.

Staff were directed to report back to Council at the same time as Council considers the motion to amend By-law 21-021, a By-law to govern the proceedings of Council and Committees of Council.

INFORMATION

The *Employment Standards Act, 2000* (ESA) sets minimum standards for most workplaces in Ontario, including hours of work, rest periods and eating periods.

Eating periods

Employers are required to provide eating periods to employees, but they are not required to provide other types of breaks. 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

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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

Employers are not required to give employees "coffee" breaks or any other kind of break.

Rest Periods

An employee cannot be required to work more than eight (8) hours in a day or the number of hours in their regular work day if their regular hours are more than eight (8). However, this does not apply if the total time worked on both shifts is thirteen (13) hours or less. Also, an employer must provide eleven (11) consecutive hours of rest in a twenty-four (24) hour period and eight (8) hours off between shifts.

For example, if an employee starts at 8:30 am each day and agrees to work beyond their regular work day, they can't work beyond 9:30 pm if they are required to report at 8:30 am the next day. This is because an employer is required to provide eleven (11) consecutive hours of rest in a twenty-four (24) hour period.

An employee cannot be required to work more than eight (8) hours a day or their established regular workday or forty-eight (48) hours a week without a written agreement.

The ESA also requires weekly rest periods free from work. Employees must receive at least twenty-four (24) consecutive hours off work in each work week or forty-eight (48) hours off in every period of two consecutive work weeks.

Overtime

An Employer must pay overtime pay of 1½ times the regular rate of pay if an employee works more than 44 hours in a week. Employers and non-union employees can agree in writing to average work hours over two, three or four weeks to determine overtime pay. For unionized employees, the parties can agree to overtime averaging agreements in the collective agreements.

Exemptions of Elected Officials and Managers/Supervisors

Under the ESA, there are exemptions to the minimum standards. Holders of elected offices in organizations, including trade unions, are exempt from the ESA pursuant to s. 3(5) paragraph 9. This provision reflects the common law position that elected officers in an organization, such as school board trustees, are not employees.

In addition, Managers and Supervisors are exempt from the following ESA rules as set out in O. Reg. 285/01:

- daily or weekly limits on hours of work
- daily rest periods (different than eating period)
- time off between shifts
- weekly/bi-weekly rest periods
- overtime pay

Managers and Supervisors are not exempt from the eating period provision. 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.

Collective Agreements

Although the summary above provides a review of minimums prescribed under the ESA, there may be circumstances where staff attending council meetings are represented by bargaining units who have better or “greater than” provisions in their collective agreements than are particularized in the ESA. In areas where deviation from the ESA is contemplated through “written agreement”, in a unionized environment this is usually achieved through the bargaining units either through language in the Collective Agreement or Letters of Understanding.

APPENDICES AND SCHEDULES ATTACHED

N/A