



A Guide for Employers

Ministry of Labour & Human Rights Tribunal Claims

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PENINSULA



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Peninsula is an employer resource for HR and employment advice, offering guidance to small- and medium-sized businesses. For over three decades, we have supported over 50,000 businesses worldwide, across every sector and industry.

Our clients benefit from immediate access to unlimited 24/7 employment advice, legal expenses insurance, on-site HR audits, a suite of employer documents and templates, online employee management tools, and legislation updates, all of which are custom-tailored to your business. Simply put, Peninsula is an affordable alternative solution to having your own in-house human resources team. We're here to help you, anytime.

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Who is this guide for?

The essential guide for HR and employment topics dedicated to small business owners.

If you are a business owner or employer, this guide is for you.

The content is designed to address employment-related topics and provides basic information and answers to frequently asked questions.

Use this guide as a reference point for:

- Employer need-to-knows
- HR best practices
- Employment-related facts
- Legislation updates

If you require help to apply this information to your particular situation, please contact Peninsula to speak with our expert HR and employment advisors. Our dedicated employer's advice line is a complimentary service that's available 24/7 at **1(833) 247-3651**.

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Ministry of Labour Claims & Human Rights Tribunal Processes

This employer guide explores the basics of Ministry of Labour claims and the processes of the Human Rights Tribunal of Ontario (HRTO). As a small business owner, use this resource to avoid common pitfalls.

In Ontario, there are two bodies that deal with disputes regarding employment rights between employee and employer. The **Ministry of Labour (MOL)** is responsible for dealing with complaints where it is claimed the employer has not followed the **Employment Standards Act (ESA)**. The **Human Rights Tribunal of Ontario (HRTO)** is responsible for handling complaints where it is claimed the employer has violated the Human Rights Code.

An employee who submits a claim to the MOL is claiming that the minimum employment standards set by the ESA, 2000, have not been met by their employer. If an employee believes they have experienced discrimination or harassment under the Human Rights Code, the HRTO is responsible for investigating and resolving the claim.

This guide is a useful resource to help you understand the claims process and procedure, should you have to deal with a complaint filed by your employee.

Understanding Ministry of Labour Claims, as an Employer

General Procedure

If you're an employer covered under the Employment Standards Act (ESA), 2000, your employee is able to file a claim with the Ministry of Labour where there is reason to believe that you are not complying to the law.

Take a look at the general procedure:

- 1 **Filing the Claim:** employee complete a basic online form to the Ministry of Labour;
- 2 **The Claim is Received:** employer is informed that a claim has been made, with indication of which area(s) of the Act the claim relates to
- 3 **Assignment:** an Employment Standards Officer (ESO) is assigned to the claim;
- 4 **Settlement:** a settlement is encouraged; however, this is not required;
- 5 **Investigation is Complete:** the ESO completes the investigation and determines if the employer has in fact, violated the ESA;
- 6 **Appeals Process:** both parties have the opportunity to appeal the decision, within 30 days.

When an Employee Cannot File a Claim

There are two situations when an employee who is covered by the ESA cannot file a claim:

- 1 When your employee is represented by a trade union; or
- 2 When your employee has filed a claim in a court of law.

The Implications of a Claim Against an Employer

As an employer, if you receive notice that a claim has been issued against your company, this can take a lot of time away from focusing on your business. If the investigation is concluded that the ESA was violated, the Employment Standards Officer will enforce the Act. This can consist of monies paid to the employee, with additional fines payable to the Ministry of Labour.

There is no cap on the amount of monies ordered to be paid to the employee and the MOL.

The Ministry of Labour encourages employers to resolve any claims prior to it being assigned to an officer. This may be attempted by issuing any outstanding payments or agreeing to a settlement. Depending on the claim and the relationship with your employee, this can be difficult to achieve. In the 2014-2015 year only 14% of claims were settled at this stage.

In some cases, the investigation of a claim can take months depending on the complexities of the claim. A quick resolution may be important to you in order to prevent stress and time spent on the investigation.



Concluding an Investigation

If it is determined that the ESA has been violated, you will often be given the opportunity to pay the amount owed without an order being issued. If you do not comply, the Employment Standards Officer (ESO) will issue an order, which includes a 10% administrative fee. In addition to orders to pay the claimant money, the ESO may also issue monetary penalties for each contravention of the Act. These are often \$250 per contravention.

In the process of reaching a settlement, if deemed appropriate, mediation may be offered to both parties. This is completed by a negotiator from the Ministry of Labour who will go back and forth between parties until an agreement has been reached. If an agreement is not reached, then a final decision will be made by the Ministry.

Applications for Review

Both you and your employee are entitled to apply for a review of any order by an ESO to the Ontario Labour Relations Board (OLRB). The application for review must be made in writing to the OLRB within 30 days after the outcome decision is shared with both parties.

Application for review is only accepted if the ESO did not complete the investigation correctly. Such situations include that a decision is based on incorrect information; both parties were not given the opportunity to provide evidence; or evidence was ignored. If the application for review is accepted, a Labour Relations Officer is assigned to work with both parties to attempt to settle the case. If the parties do not settle, it will be referred to a hearing, which is likely scheduled 4 months after the settlement meeting. If the review reaches a hearing, the OLRB is required to give each party full opportunity to present their evidence and make submissions. This is run similarly to that of a trial. The OLRB may amend, rescind, or affirm the order or issue a new order.



Understanding Human Rights Tribunals, as an Employer

The Ontario Human Rights Commission (OHRC)

The Ontario Human Rights Code is a provincial law that establishes equal rights and opportunities, and freedom from discrimination.

Under the Human Rights Code:

- Every person has the right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender, identity, gender expression, age, record of offences, marital status, family status, or disability.
- Every person who is an employee has the right to freedom from harassment in the workplace by the employer or agent of the employer, or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender, identity, gender expression, age, record of offences, marital status, family status, or disability.

If an employee believes they have experienced discrimination or harassment under the Human Rights Code, the Human Rights Tribunal of Ontario (HRTO) is responsible for investigating and resolving the claim.

Why is this different from the Employment Standards Act and the Ministry of Labour?

The Ministry of Labour is responsible for investigating claims where the Employment Standard Act has been breached. This includes topics such as payment of wages, vacation allowance, and over-time pay. The HRTO deals with claims that specifically break the Human Rights Code. These claims made by employees are submitted to relevant bodies.

The types of complaints filed by employees relate to ESA breaches, or harassment and discrimination. Typically, complaints about breaches under the ESA are decided first and any claim with the HRTO is postponed until the ESA has been settled or resolved.

General Procedure

As an employer, you are responsible for stopping and addressing discrimination. You are also responsible for ensuring the personal safety of employees in cases of harassment. In the event that your employee brings forward a complaint, here is the general procedure:

- 1 Employee submits a claim;
- 2 Employer completes a response form;
- 3 The application is accepted or dismissed;
- 4 If accepted, mediation is offered to both parties;
- 5 A hearing is scheduled; and then,
- 6 A decision is reached.

When Your Employee Files a Claim

Here's what employers need to know about the claims process.

Time Limit

A claim needs to be filed within one year of when the alleged discrimination happened. If the discrimination happens more than once, the claim should be submitted within one year of the last event. The HRTTO will hear a late application if it is believed that the delay occurred in good faith and will not cause substantial harm (prejudice) to the other parties.

Employer Responsibilities

If you're an employer (respondent) receiving a claim, you have 35 days to file a response to the allegations in the application. It is important to answer all questions on the form because you may not be given an opportunity to participate further in the process and still be responsible for complying with any order to pay compensation.\

Mediation

If on the merits of the application, the HRTTO deems an investigation is appropriate, both parties will be given the opportunity to express willingness to participate in mediation. This is typically scheduled 5 months from the date that both parties agree to. Mediation is run similarly to the process led by the Ministry of Labour and acts as an alternative and more preferred way to find a resolution. From here, if a resolution is not reached then a hearing will be scheduled.

Hearings

If both parties are not willing to participate in mediation, then a hearing will be scheduled within 6 months from the date of the application.

The hearing at the Tribunal is a chance for the employee to prove the claims made in the application and to ask for a remedy.

The ultimate standard of proof is the civil standard, which is on a balance of probabilities or "more likely than not". This is in comparison to the standard of proof that applies in criminal cases, which is guilt beyond a reasonable doubt.

A tribunal member or adjudicator will lead the day of the hearing, giving both parties the opportunity to present statements, evidence and witnesses. Both parties may be cross-examined during the hearing.

When Your Employee Files a Claim

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Reaching a Decision

Most decisions are not reached on the day of the hearing and can take several months for a verdict to be received in writing. Both parties will be sent a letter, detailing the decision with full details on the Tribunal's reasoning. With this, the Tribunal may also order several remedies, including monetary payments.

Awards

The record for the largest ever award in Canada is over \$400,000. However, more typically, if the claimant does win at tribunal, the range of award is between \$500 to \$15,000.





Summary

Ministry of Labour Claims and Human Rights Tribunal Processes

As an employer, it is important to know your obligations under the Employment Standards Act. This will allow you to operate your business with confidence, knowing that you are taking the right steps to prevent a claim.

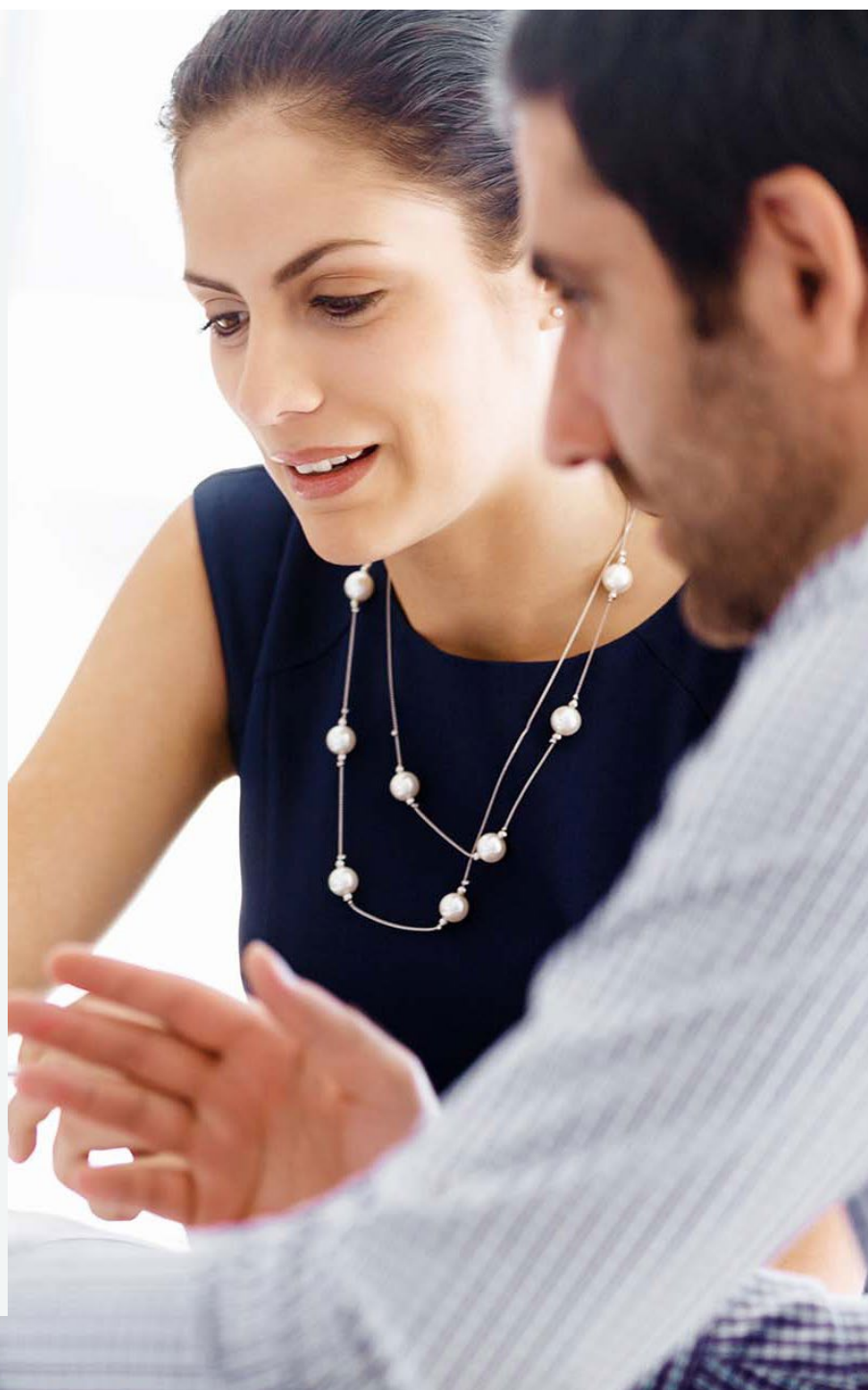
More than this, it is important to understand how to prevent and resolve human rights issues in the workplace. Remember, as an employer, you are responsible for stopping and addressing discrimination, and ensuring the personal safety of employees in cases of harassment.

Learn More

If you have questions about the Ministry of Labour or the Human Rights Tribunal of Ontario, contact Peninsula. We are dedicated to providing small business owners with HR support. Call us today.

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