

Nannies and Employment Law in Ontario

Yes, Nannies are Employees

In Ontario, a nanny is considered an employee for all employment law purposes, and the person hiring the nanny has the legal responsibilities of an employer¹. Nannies are therefore entitled to the same basic employment rights as other Ontario employees.

Under the *Employment Standards Act* ("ESA"), nannies fall into the legislated category of "domestic worker", defined as follows:

"domestic worker" means 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;²

Domestic workers have the same employment rights whether they work part-time or full-time, and whether they live in or out of their

employer's home. A sitter who provides occasional, short-term care, supervision or personal assistance to children is not considered a domestic worker. Someone employed by an agency to work in a private home is also not considered a domestic worker.

Householders are required to provide domestic workers with written particulars of their employment terms, such as the regular hours of work (including starting and finishing times), and the hourly rate of pay.³

As domestic workers under the ESA, nannies are entitled to all of the following:

- minimum wage
- regular payment of wages
- hours of work protections
- overtime pay
- vacation with pay
- public holidays
- pregnancy and parental leave
- family medical leave
- personal emergency leave



Peter C. Straszynski
Partner, Employment & Labour

PHONE
416 777 5447

EMAIL
pstraszynski@torkinmanes.com

Peter Straszynski is a partner in our Employment & Labour Group. He assists employers with all of their labour and employment issues, from the hiring to the post-termination stages of employment, in both the union and non-union settings.

- declared emergency leave
- organ donor leave
- reservist leave
- termination notice and or pay in lieu of notice
- severance pay
- equal pay for equal work

Minimum Wage

Nannies are generally entitled to Ontario's general minimum wage. If the nanny is a student under the age of 18 who works under 28 hours a week during school or during a school holiday, he or she is entitled to the (lower) student minimum wage.

Termination

Like all employees in Ontario, nannies whose employment is terminated without cause are entitled to notice of termination or pay instead. Each case must be determined on its own facts. Factors important in the assessment of a nanny's entitlements on termination include: the minimum notice or pay required by the *ESA*; whether there is an enforceable

written contract that determines termination entitlements; and in the absence of a written termination clause, the "common law" entitlement to "reasonable notice" or pay instead.

Written Contracts

The employment relationship is formed as soon as the nanny is hired. Where there is an employment relationship, there exists an employment "contract", whether or not there is a contract in writing.

Employers can benefit from using a written contract, specifying the terms and conditions of the employment relationship and limiting entitlements on termination. Employers must be very careful, however, not to create terms that fail to meet minimum standards under the *ESA*. Failure to meet minimum standards may render the entire contract unenforceable.

Taxes

Employers are required to withhold taxes as well as Canada Pension Plan and Employment Insurance

premiums from the nanny's pay and match those contributions. To do so the employer must apply to Revenue Canada for a Business Number and provide information about the nanny, including his or her Social Insurance Number, full name, and address. The Revenue Canada Payroll Calculator can assist to figure out how much to remit monthly.

Workplace Safety & Insurance

Employers of nannies who work more than 24 hours a week are expected to register with and pay insurance premiums to the Workplace Safety and Insurance Board ("WSIB") insurance premiums. Employers can register at www.wsib.on.ca and follow the links for online registration.

Immigration

The Live-in Caregiver Program permits nannies from abroad to serve as domestic workers for two years with the option to apply for permanent residence after the qualifying period.

¹ *Employment Standards Act, 2000*, S.O. 2000, CHAPTER 41 at s. 1(1) defines "employee" as "(b) a person who supplies services to an employer for wages. Note that nannies are not considered "homeworkers" under (d) because homeworkers do paid work out of their own homes for employer as opposed to work in a private home directly for the person who owns or rents the home. Nannies are also not independent contractors.

² O Reg 285/01 at s. 1.

³ O Reg 285/01 at s. 19(1).