

Court or the Ministry of Labour?

You have a number of different options you can choose to make a legal claim against your boss; it is important that you choose the right one for your situation. This factsheet provides basic information about those options, but leaves out some details and is not legal advice.

The three main options are:

ONTARIO MINISTRY OF LABOUR

A government complaint process.

- Free.
- You can start a Ministry of Labour complaint online or by mail.
- A government employee called an Employment Standards Officer (or “ESO”) will review the documents, talk to you and your boss and may hold an informal hearing.
- The ESO may try and get you and your employer to agree to a voluntary settlement.
- If no settlement is possible, the ESO will decide whether you are owed any money and can order your boss to pay it.

SMALL CLAIMS COURT

A court for smaller claims.

- A Small Claims Court claim takes much more time and money than a Ministry of Labour complaint, but sometimes it is possible you can win more.
- A settlement meeting takes place first to see if you and your employer can agree on an amount to be paid to you without going to court.
- Approximately 80% of cases are settled. If there is no settlement, your case would be decided by a Judge in court.

SUPERIOR COURT

The regular court for claims in Ontario.

- Generally only for cases over \$25,000.
- A lawyer is highly recommended.

Union? If you are in a union this guide does not apply to you – speak to your union rep for more info.

Federal employee? If you work in a federally regulated workplace (e.g. banking, trucking between provinces, the federal government, etc.) this guide does not apply to you – call the Federal Labour Program at 1-800-641-4049.

HOW DO I CHOOSE?

You might choose the Ministry of Labour if:

- Your case is simple and straightforward (because it is the cheapest, easiest option); or
- There is a real chance that you might lose your case (there is no penalty for losing at the Ministry of Labour).

You might choose Small Claims Court if:

- You are suddenly fired after working for many years (to get “wrongful dismissal” pay);
- You are owed more than \$10,000; or
- You are truly an independent contractor (independent contractors can only sue in court).

You might choose Superior Court if:

- You are owed more than \$25,000 and have a strong case.

ALERT

You can only sue for your unpaid wages or wrongful dismissal in one place – either at the Ministry of Labour or in Court. You cannot go to the Ministry of Labour for unpaid wages and Small Claims Court for wrongful dismissal.

WHAT ARE THE DIFFERENCES BETWEEN THE OPTIONS

Lawyer/ paralegal

You usually do not need a lawyer for a Ministry of Labour complaint; it is helpful to have one in Small Claims Court; and a lawyer is practically necessary for Superior Court. It also depends on how complicated your case is.

Penalty for losing

If you lose or withdraw a claim in Court you usually have to pay a penalty to the other side. Generally, you will have to pay most of the other side's legal costs (i.e. what the other side paid its lawyer).

This penalty applies to Small Claims Court and in Superior Court, but the penalties are lower in Small Claims Court. You do not have to pay penalties in a Ministry of Labour complaint.

Court fees

These are fees you must pay to start a claim or take certain steps. You will have to pay between \$75 and \$400 in court fees in Small Claims Court or Superior Court. A Ministry of Labour complaint is completely free.

Maximum money awards

For a Ministry of Labour complaint the most you can win is \$10,000. For Small Claims Court the maximum is \$25,000. There is no limit in Superior Court.

Time

It can take a long time to win a claim and actually get paid. A Ministry of Labour complaint might take 9 months to a year; a Small Claims Court lawsuit might take 9 months to 2 years; and a Superior Court lawsuit could take 1 to 4 years. It could take even longer if either side appeals the first decision, or if your former boss refuses to pay you even after you win the lawsuit.

Effort

It can take a lot of time and effort to make a claim against your employer. The Ministry of Labour process is the easiest (e.g. you can start a complaint online). Small Claims Court is more complicated (e.g. special forms and rules), Superior Court requires help from a lawyer or paralegal.

Getting paid

Even if you win your case, your previous employer still might not pay you. This is usually only a problem if the company you worked for is small or has financial problems. If you win a Ministry of Labour complaint, the Ministry will try to make your boss pay you, usually by hiring a collection agency to collect from your former boss. If you win in Small Claims Court or Superior Court you will have to take legal steps on your own to make your boss pay, which can take more time and money.

Time limits

You must start a complaint within certain time limits. Lawyers call these time limits "limitation periods." The time limits for Small Claims Court and Superior Court (generally 2 years) are longer than the time limits for the Ministry of Labour (generally 6 months, but sometimes extended to one year). For more details, speak to a lawyer or call the Workers' Action Centre for information.

Wrongful dismissal

If you are fired unfairly (i.e. without good reason or any notice) you can usually win more in Small Claims or Superior Court compared to the Ministry of Labour, especially if you worked for that employer for many years. At the Ministry of Labour, you can get termination pay but you can't get wrongful dismissal pay.

Termination pay is generally one week of pay for every year you worked; wrongful dismissal awards can be approximately two to five weeks pay for every year you worked, but depends on each individual case. Speak to a lawyer for more information.

Independent contractor

If you are an "independent contractor" you cannot start a Ministry of Labour complaint – you must start a claim in Small Claims Court or Superior Court. See our "Are you an Independent Contractor or Employee" Factsheet for more information on the difference between an independent contractor and an employee. Some employers try to wrongly classify workers as independent contractors to avoid paying basic entitlements under the law.

THE OPTIONS – A SUMMARY CHART

	Ministry of Labour	Small Claims Court	Superior Court
Lawyer: Do I need a lawyer or paralegal?	No. But a lawyer will be helpful if your case is complicated.	Maybe – it is always better to have a lawyer in Small Claims Court, but many people go without one.	A lawyer is highly recommended.
Cost penalty for losing: Do I have to pay a penalty if I lose? (i.e. Pay for the other side's legal costs)	No.	Yes, but the penalty is usually ¹ capped at 15% of the amount you are asking for.	Yes, the amount depends on how much work the other side's lawyer has had to do and has charged their client (your boss).
Court fees: How much does it cost?	Free.	\$75 to start, \$100 for a hearing date - up to \$400 in other fees.	\$181 to start, \$127 for a motion, etc.
Max money award: What is the most I can win?	\$10,000 maximum.	\$25,000 maximum.	No limit.
Time: How long will it take?	Approximately 9 months, more if appealed.	1-2 years (approx.).	1-4 years (approx.).
Effort: How much of my time and effort will this take?	You can start a complaint over the internet (or by mail), the system is more informal and meant for people without lawyers.	Significant effort unless you can hire a lawyer or paralegal. There are complicated rules and procedures you have to follow.	Very difficult unless you can hire a lawyer or paralegal.
Time limits: When do I have to make a claim?	Generally, within six months (sometimes a year). ²	Generally within two years. ³	
Wrongful dismissal: Can I sue for wrongful dismissal?	No, you can only sue for termination pay and for severance pay if you fit the criteria.	Yes, you can sue for wrongful dismissal, which is usually more than termination pay.	
Independent contractor: Can I make a claim if I am an independent contractor?	No, you must be an "employee".	Yes, you can be an "employee" or an "independent contractor".	
Collection: Who will make sure I actually get paid after I win my case?	The Ministry of Labour will try to make your former boss pay.	You will have to take to take special legal steps if you boss refuses to pay after you win your case – this can take time and money.	

¹ You might need to pay more than the 15% maximum penalty.

Examples:

- 1) you do something unreasonable and waste the other side's time,
- 2) the other side has high expenses, such as photocopies, or witness-related costs.

² This is very important. You may want to speak to a lawyer for more information.

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PROTECT YOURSELF

Filing a claim at the Ministry of Labour or taking your boss to court will take a lot of time and effort. It is important that you collect as many details as possible to explain and prove your case.

Collect all the details you have, write them up if you are able to and put them in order to prepare for the next steps.

If you are still working, write down all the details you may need to file your complaint. This includes keeping a diary of dates and times you worked and anyone who worked with you.

Call the Workers' Action Centre and come to an information session to help you decide which option to choose.

Supports and Resources

Workers' Action Centre

Call us for more information on your rights at work.
416-531-0778 or www.workersactioncentre.org

Ministry of Labour

To find out more about filing a claim for unpaid wages call
1-800-531-5551 or go to www.labour.gov.on.ca

Small Claims Court

In Toronto call 416-326-3554 or to find your local Small Claims court go to www.attorneygeneral.jus.gov.on.ca

Law Society Referral Service

They will provide you with the name of a lawyer or licensed paralegal who will provide a free consultation of up to 30 minutes to help you determine your rights and options.
Call 1-800-268-8326.

WORKERS' ACTION CENTRE

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