

In Canada, certain positions are exempt from the Employment Standards Act (ESA) for various reasons. As a rule, anyone who is governed by their own body is probably exempt from ESA; they can also be high-level managers and executives. This includes self-regulated professions such as Optometrists, Pharmacists, Real Estate Agents, Doctors, Lawyers, Accountants, independent contractors and more.

Here are some common reasons why certain positions may be exempt:

Executive or managerial positions. The ESA may exempt certain executive, and managerial positions from some of its provisions. These positions typically have greater control over their working conditions, including their hours of work and wages.

Professional positions. Certain professional positions, such as lawyers or doctors, may be exempt from certain provisions of the ESA because these positions typically have higher levels of education, specialized skills, and higher salaries.

Commission-based sales positions. Some sales positions may be exempt from the ESA because they are compensated primarily on a commission basis, and the amount of their pay is directly tied to their performance.

Certain industries. Certain industries, such as agriculture or fishing, may be exempt from certain provisions of the ESA because of the unique nature of their work and the need for flexibility in scheduling and working hours.

Unionized positions. If an employee is covered by a collective bargaining agreement (CBA) with a union, the CBA may provide for exemptions from ESA.

It's important to note that just because a position is exempt from the ESA does not mean that it is exempt from all employment laws. Other legislation, such as human rights laws, health and safety laws, and privacy laws, still apply to all positions, regardless of whether they are exempt from the ESA or not.

What does this mean for the employer?

Employee contracts become more important than ever. Contracts can trump ESA. While ESA is used as a baseline for labour law and guided by case law, if disputes arise, what is written and agreed upon in the contract can overpower ESA. (Providing it does not go against basic Human Rights.)

What does this mean for the employee?

Knowing whether you fall under a governing body or are under ESA can be confusing. When in doubt, connect with your HR department or reach out to ESA directly for clarification. Reading carefully over the contract signed at the beginning of your employment agreement and asking any clarifying questions will help set you up for success and help avoid any potential misunderstandings.

What steps should you take now?

Reviewing employee contracts, specifically for those that are ESA exempt. Be certain that important information, like vacation, terminations and other information driven by ESA, is clearly written and agreed upon in the contract. This helps ensure all employees are treated fairly. It will set up employers for success in any worse-case scenarios.