

UNDOCUMENTED?

NO STATUS? NO WORK PERMIT?

You Have Rights at Work

Even if you don't have a valid immigration paper or status, or you are working without the proper permits, you still have rights under the law. Many of us who are undocumented fear deportation if we speak out when there are problems at work. But there are ways to protect ourselves and fight for our unpaid wages and other benefits.

What is Undocumented?

You are undocumented if your visitor, worker, student or live-in caregiver visa has expired and you have not followed all of the terms and conditions on your visa, or if you made a refugee claim that was denied and your Pre-Removal Risk Assessment (PRRA) was also denied. You can also be engaged in undocumented work if you have valid immigration status, or 'implied status' in Canada but are working at a place your work permit does not allow you to.

Employment Standards in Ontario - Our Basic Rights at Work

Employment Standards are the laws in Ontario that cover non-unionized workers. Every province has its own set of laws. The Ministry of Labour is the provincial government body that enforces the laws that cover workers in this province. This is where workers can file claims to get their unpaid wages. Regardless of an employee's citizenship or immigration status, in Canada you are covered by the law and are able to file a claim. Please refer to S.W.E.A.C's "Know Your Rights" factsheet for more information about your basic rights at work.

Human Rights

You have the right to a workplace that is free from discrimination and harassment under the Human Rights Code regardless of your immigration status. Please refer to S.W.E.A.C's "Human Rights in Ontario" factsheet for more information about Human Rights and how to file a claim with the Human Rights Tribunal.

Can I file a Human Rights complaint if I am undocumented?

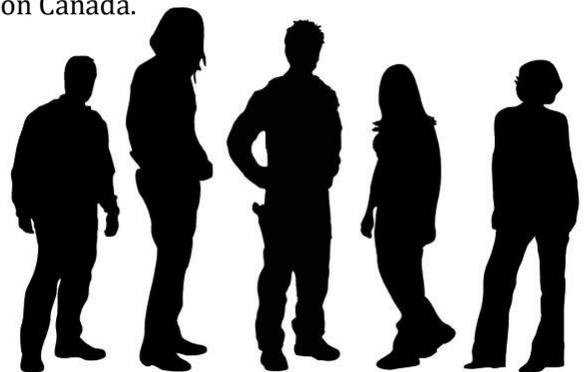
Yes. You have the right to file an application at the Human Rights Tribunal of Ontario. However, it could be risky to show up to a meeting with your employer if you believe they will contact Citizenship and Immigration Canada. It is possible to ask for special permission to attend your meetings by video conferencing — not in person. Permission is granted on a case-by-case basis only by each adjudicator. For free legal advice on human rights issues call the Human Rights Legal Support Centre at 1-866-625-5179.

Injured at Work?

Most workers who get hurt or sick because of their job can get worker' compensation benefits. The Workplace Safety and Insurance Board (WSIB) is the government body that runs the worker' compensation system. It does not matter if the workplace injury was your fault. If you were hurt at work, WSIB can:

- ◇ Help you return to a job you can do safely;
- ◇ Pay for healthcare that you need to treat the injury; and
- ◇ Pay you if you cannot work because of your injury.

WSIB can pay benefits to people even if they don't have a work permit or are non-status. WSIB does not normally ask about immigration status or report status to Citizenship and Immigration Canada.



Fighting for Your Wages

Is filing a claim at the Ministry of Labour safe?

The Ministry of Labour is not supposed to share information with the federal authorities. Many undocumented workers file successful claims at the Ministry of Labour every year. Often, they do this with the support of a legal clinic or S.W.E.A.C.

Filing a claim is easy, but you may be asked to show up to a meeting where your employer will be present. This could be risky if you think your employer will call the authorities because they know where you will be at a specific time and place. With support, you may be able to have that meeting by phone.

I am leaving Canada. Can I still file a claim at the Ministry of Labour?

Yes. It is important that you file your claim before you leave. You should leave your personal contact information with the Ministry of Labour so they can call or email you when you are out of the country. The Ministry can still make your employer pay and can send you any money they collect even if you are no longer in Canada.

Can I fight for wages from work I did not report on my Permanent Residency (PR) application?

Yes. Often workers, namely live-in caregivers, continue to work between valid permits while waiting for their Labour Market Opinion (LMO). You should definitely be paid for this work. However, fighting for those wages becomes complicated because technically you are in violation of your work permit by working while it is not valid. This will cause problems with your PR application if you did not record those hours on it and immigration finds out. It is important to get advice before you take any steps to obtain your wages; call S.W.E.A.C for support.

See our "Protect Yourself" section at the back of this factsheet for more tips on filing a claim safely or call us as soon as possible for more support.

Income Supports

Employment Insurance (EI)

Employment Insurance benefits are paid out by the Federal government. Usually, both an employer and an employee pay into the EI fund. When a worker loses their job, they may qualify for benefits for a specific number of weeks if enough hours are worked.

If you are working for cash and no deductions were made, you will have a harder time accessing EI.

Even if your work permit is no longer valid because it only allowed you to work for your former employer, you may still be able to qualify for EI benefits. You may also qualify if you are laid off but still have a valid work permit while you are looking for a new job.

If you've never had a valid work permit it is risky to apply for EI and you will likely not qualify for benefits. Give S.W.E.A.C a call before you apply.

Social Assistance (Welfare)

If you have very low income or no income at all you may qualify for social assistance (or Ontario Works) or what many people call "welfare".

If you are in the process of regularizing your status, you may be eligible for welfare while you are waiting. Immigration may contact social assistance if your claim is denied; this may result in your social assistance stopping suddenly. If there is a deportation order against you, it will be reported to social assistance and they may cut you off.

If you are cut off due to your immigration status you can appeal this decision and continue to receive benefits during the appeal process. Also, many people are legally entitled to social assistance even though their refugee claim has been denied.

Sahra came to Ontario to help out her brother and his new family. Despite her work visa being expired she was able to get a job at a factory and has been working there for the past three months. Sahra noticed on her paystub that she did not receive overtime for all the extra hours she put in during the past two weeks at work. When Sahra asked her boss about her unpaid wages they said that she was not entitled because she did not have the appropriate work documentation and that if she mentioned the unpaid wages again, her boss would report her to Immigration Canada.

If a situation similar to this has happened to you call S.W.E.A.C for information and help!

Protect Yourself

The greatest risk in fighting for unpaid wages or filing a complaint against your employer as an undocumented worker is that your employer may retaliate against you. This means they could threaten to take action against you or call immigration to try and get you deported. It is illegal for an employer to fire or penalize any worker for speaking out about violations at work. However, it can be more difficult to stop them from calling immigration and reporting you. Any action that you take to assert your rights and obtain your unpaid wages should be well thought through with the support of an advocate. Here are some basic tips to protect yourself when you are working:

- Your employer does not need to know your address. You can use another address if you do not feel safe providing this information.
- Addresses that you use on your government forms may be shared with your employer and could be accessed by Federal authorities. At the same time, you may want to use an address where you can collect your mail.
- Be aware of deadlines, you must file within certain dates.
- Keep a diary of information and details relating to hours worked and wages received.
- Get the license plate number of your employer. Collect as much information on your boss as possible. It will make it easier to track them down if they do not pay you.
- Get the numbers of supportive co-workers. They may be helpful later if you need any additional information.
- Be sure to only share your status details with people you trust.

Get Support

You deserve to live with justice and dignity. There are many undocumented people who are organizing for justice and many groups who will support you. You may need support navigating a complicated system in a crises or urgent situation. Contact the Sudbury Workers Education and Advocacy Centre for support. Every call is completely confidential.

The Sudbury Workers Education and Advocacy Centre

Call us for more detailed information about Employment Standards, Human Rights, and the Ministry of Labour. S.W.E.A.C is committed to improving the lives and working conditions of all people in low wage and unstable employment.

109 Elm Street, Suite 209
Sudbury, Ontario P3E 1T4
705-470-2173, toll free: 1-800-470-2173
helpline@sudburyworkerscentre.ca
www.sudburyworkersecentre.ca

Migrant Workers Alliance for Change

Migrant workers are sometimes engaged in undocumented work, or may choose to stay undocumented in Canada after their permits have expired. The Migrant Workers Alliance for Change can support you.

coordinator@migrantworkersalliance.org and visit www.migrantworkersalliance.org to get more resources.

The Industrial Accident Victim's Group of Ontario

IAVGO works with injured migrant workers and workers without status. If you have an accident at work, call them at 416-924-6477 or toll free at 1-877-230-6311 or you can call WSIB directly at 1-800-387-0750.

Sudbury Community Legal Clinic

Free legal support.
1-800-697-8719

Funded by
Finance e par

