

# Agricultural Employees Protection Act, 2002

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## Factsheet

FACTSHEET 19-001 AGDEX 823 JANUARY 2019  
(replaces OMAFRA Factsheet 03-045 of the same name)

- The *Agricultural Employees Protection Act, 2002* (AEPA), came into force on June 17, 2003.
- If you own a farm or work on a farm you should know about the AEPA.
- You can view, download and print a copy of the Act by visiting e-laws at [ontario.ca/laws](http://ontario.ca/laws).

### WHAT IS THE PURPOSE OF THE AGRICULTURAL EMPLOYEES PROTECTION ACT, 2002?

The AEPA protects the rights of agricultural employees to associate. It also recognizes certain rights of employers and the unique characteristics of agricultural production.

Section 1 of the AEPA states its purpose as follows:

The purpose of this Act is to protect the rights of agricultural employees while having regard to the unique characteristics of agriculture, including, but not limited to, its seasonal nature, its sensitivity to time and climate, the perishability of agricultural products and the need to protect animal and plant life.

### WHO IS COVERED BY THE AEPA?

The AEPA applies to agricultural employees and employers who are excluded from the *Labour Relations Act, 1995*.

The AEPA and the *Labour Relations Act, 1995*, both use the same definition of “agriculture” as follows:

“agriculture” includes farming in all its branches, including dairying, beekeeping, aquaculture, the raising of livestock including non-traditional livestock, fur-bearing animals and poultry, the production, cultivation, growing and harvesting of agricultural commodities, including eggs, maple products, mushrooms, tobacco and ornamental horticulture, and any practices performed as an integral part of an agricultural operation, but does not include anything that was not or would not have been determined to be agriculture under section 2 of the predecessor to the *Labour Relations Act, 1995*, as it read on June 22, 1994.

### WHO IS CONSIDERED AN EMPLOYER UNDER THE AEPA?

A person who owns or operates a farm that fits the above definition of “agriculture” and who employs agricultural employees, is considered an employer. A manager or supervisor of agricultural employees may also be considered an employer for the purposes of the AEPA.

The AEPA defines “employer” to mean the employer of an agricultural employee, and “any other person who, acting on behalf of the employer, has control or direction of, or is directly or indirectly responsible for, the employment of the employee.” So a manager or supervisor who has control or direction of the employment of an employee, or is directly or indirectly responsible for an employee’s employment, is considered an employer and subject to the rights and obligations of an employer under the AEPA.

## **WHICH RIGHTS OF AGRICULTURAL EMPLOYEES ARE PROTECTED UNDER THE AEPA?**

The AEPA protects the following rights of agricultural employees:

- The right to form or join an employees' association.
- The right to participate in the lawful activities of an employees' association.
- The right to assemble.
- The right to make representations to their employers, through an employees' association, respecting the terms and conditions of their employment.
- The right to protection against interference, coercion and discrimination in the exercise of their rights.

## **WHAT KIND OF ORGANIZATION IS CONSIDERED AN "EMPLOYEES' ASSOCIATION" UNDER THE AEPA?**

The AEPA provides that agricultural employees may form and join employees' associations of their choice.

The AEPA defines "employees' association" as "an association of (agricultural) employees formed for the purpose of acting in concert."

The AEPA does not place any restrictions on an employee's choice of employees' association. An employees' association could be a group of agricultural employees from one workplace or could be organized on some other basis (for instance, a group of agricultural employees from a particular area, or who work in a particular agricultural sector). An employees' association could also be a union or a branch of a union that is comprised of agricultural employees.

The AEPA does not give any right of exclusive representation to employees' associations. Employees from the same workplace can choose to form or join different employees' associations.

## **WHAT RIGHTS OF REPRESENTATION ARE PROTECTED UNDER THE AEPA?**

The AEPA requires that an employer give an employees' association a reasonable opportunity to make representations respecting the terms and conditions of employment of the association's members who are employed by that employer.

An employees' association may make representations to an employer orally or in writing and may use a person who is not a member of the association to make the association's representations.

## **WHAT ARE AN EMPLOYER'S OBLIGATIONS IN RELATION TO REPRESENTATIONS MADE BY AN EMPLOYEES' ASSOCIATION?**

The AEPA requires that an employer listen to the representations if made orally. If the representations are made in writing, the AEPA requires the employer to read them and give the employees' association written acknowledgement.

## **WHAT IS A REASONABLE OPPORTUNITY TO MAKE REPRESENTATIONS?**

The AEPA provides guidance on what constitutes a reasonable opportunity to make submissions to an employer. It states that the following considerations are some (but not all) of the considerations that are relevant:

- The timing of the representations relative to planting and harvesting times.
- The timing of the representations relative to concerns that may arise in running an agricultural operation, including, but not limited to, weather, animal health, safety and plant health.
- Frequency and repetitiveness of the representations.

## **ARE THERE ANY LIMITS ON THE RIGHTS TO ASSEMBLY THAT ARE PROTECTED UNDER THE AEPA?**

The AEPA contains provisions that clarify the intent of the AEPA regarding the protections it provides for assembly rights.

Section 4 of the AEPA clarifies that nothing in the AEPA gives anyone any new right to enter on, occupy or use private property, except to the extent that a person is granted an order for access to farm property under Section 7 of the AEPA.

Section 3 of the AEPA clarifies that nothing in it authorizes anyone to try during working hours at a workplace, to persuade an agricultural employee to belong or refrain from belonging to an employees' association.

## **WHAT ARE ACCESS ORDERS UNDER SECTION 7 OF THE AEPA?**

The AEPA provides a process for applying for access to farm property where agricultural employees reside for the purpose of forming employees' associations or recruiting members.

Section 7 of the AEPA says that where employees live on property owned by their employer, or on property where access is controlled by the employer, any person may apply to the Agriculture, Food and Rural Affairs Appeal Tribunal for access to the property for the purpose of attempting to persuade the employees to join an employees' association.

After holding a hearing into the application, the Tribunal may make an order for access if the Tribunal is satisfied that access is necessary to effectively communicate with employees for the purpose of forming an employees' association or recruiting members. The Tribunal may attach terms and conditions to an access order.

The AEPA requires the Tribunal, when making an access order, to ensure that the access does not unduly interfere with normal agricultural practices, agricultural practices that are innovative or experimental, human or animal health and safety, plant health, planting, growing and harvesting, bio-security needs, or privacy or property rights.

## **HOW DOES THE AEPA PROTECT AGAINST INTERFERENCE, COERCION AND DISCRIMINATION?**

Sections 8, 9 and 10 of the AEPA provide protections against interference, coercion and discrimination related to the exercise of rights under the AEPA:

- Section 8 prohibits interference with employees' associations.
- Section 9 prohibits employers from intimidating or discriminating against a person because of the person's involvement in an employees' association or their exercise of any rights under the AEPA.
- Section 10 prohibits the use of intimidation or coercion in connection with membership in an employees' association or an employers' organization or with the exercise of any right under the AEPA.

Contraventions of these sections, as with contraventions of other parts of the AEPA, may be the basis for a complaint to the Agriculture, Food and Rural Affairs Appeal Tribunal.

## **WHO CAN MAKE A COMPLAINT TO THE TRIBUNAL?**

Any employee, employee association, employer, employer organization or other person or entity directly involved in an activity related to the exercise of a right under the AEPA may file a written complaint with the Tribunal alleging that there has been a contravention of the Act.

## **HOW DOES THE TRIBUNAL DEAL WITH COMPLAINTS?**

The AEPA requires that the Tribunal hold a hearing before making a decision concerning a complaint.

## **WHO ARE THE PARTIES TO A COMPLAINT PROCEEDING (HEARING)?**

The parties are the person who filed the complaint, the person who is alleged to have contravened the AEPA and any other person that the Tribunal specifies as a party.

## **WHAT POWERS DOES THE TRIBUNAL HAVE IN A COMPLAINT PROCEEDING?**

If the Tribunal is satisfied after a hearing that a person has acted contrary to the AEPA, the Tribunal shall determine what, if anything, that person must do or refrain from doing with respect to the contravention.

Some of the types of orders that the Tribunal may make include:

- an order that the contravening party cease doing the act(s) complained of
- an order directing the contravening party to rectify the act(s) complained of
- an order for the contravening party to reinstate or hire the employee or person concerned, with or without compensation, or an order to compensate the employee instead of reinstatement
- an order for the payment of interest where the Tribunal considers it just

## **WHO CONDUCTS TRIBUNAL HEARINGS UNDER THE AEPA?**

AEPA proceedings (access applications and complaints) can only be heard by members of a special roster of the Tribunal who are appointed for this purpose.

## **IS THERE AN APPEAL FROM TRIBUNAL DECISIONS UNDER THE AEPA?**

No. Tribunal decisions under the AEPA are final and binding .

## **WHERE CAN ONE OBTAIN MORE INFORMATION ABOUT THE TRIBUNAL'S POWERS AND PROCEDURES UNDER THE AEPA?**

For more information about the Tribunal's powers and procedures, please contact the Tribunal at (519) 826-3433.

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Published by the Ontario Ministry of Agriculture, Food and Rural Affairs

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ISSN 1198-712X

Également disponible en français (Fiche technique 19-002)

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