Vacation time and pay rules in Ontario

A guide for Canadian employers and payers on complying with employment standards rules on vacation time and pay

2 weeks × 138 days ÷ 52.14 weeks = 5.29 vacation days

2 × 79 days ÷ 365 days × 5 days = 2.16 vacation days

2 × 5.25 days × 0.066 = 0.69 vacation days

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Part A: Introduction

Overview

This guide focuses on the employment standards requirements in Ontario related to employee vacations, including both the requirement to provide employees with time away from work and the requirement to provide earned vacation pay.

The employment standard requirements to provide employees with vacation time and vacation pay are quite complex. Most of this complexity stems directly from the different ways that employers and employees have devised for earning and taking vacations and vacation pay. For example, while employees accrue vacation pay during each pay period, it’s also often paid out each pay period, based directly on each period’s vacationable earnings. Most employees take their vacations after they earn the right to this time. However, employers sometimes allow employees to take vacation time before they earn the right. Mostly, vacation time is taken in blocks of one, two or more weeks, although it’s also common for employers to allow employees to take their vacation time in individual days.

The purpose of this guide is to explain these arrangements and the related employment standard requirements in as clear and easy-to-understand a manner as is possible.

This guide only applies where Ontario has jurisdiction over the employment relationship. This guide applies to time spent working within the boundaries of Ontario, although the Ontario government also claims jurisdiction where time spent working outside the province is a continuation of work inside the province.

The requirements described in this guide come from the following Ontario legislation:

- Employment Standards Act, 2000
- Regulation 285/01, Exemptions, Special Rules and Establishment of Minimum Wage and
- Regulation 291/01, Terms and Conditions of Employment in Defined Industries — Women’s Coat and Suit Industry and Women’s Dress and Sportswear Industry

Reading this guide, you and your colleagues will learn:

- Which employees are not covered by the requirements described in this guide
- How employees earn the right to vacation time
- When vacation time that has been earned must be given to employees
- How taking single vacation days affects the vacation time owing
- The earnings which must be included in the calculation of vacation pay
- When vacation pay must be paid
- How vacations affect other employment standards, such as overtime and statutory holidays
- The failure to comply with the requirements described in this guide

It’s important to emphasize that the material in this guide describes the legally enforceable employment standards. These are the minimums that employers must provide to employees. However, there is nothing that stops employers from providing vacation time or pay that exceeds the requirements described here.

Some of the employment standards provide exceptions where employees agree. In Ontario, employees may give such consent in a collective agreement, which is binding on all employees covered by the collective agreement, just as if they
had each individually agreed to it. For example, even though a minority of employees may have voted against ratifying a collective agreement, the terms of that collective agreement still apply to employees in that minority.

This guide was written by Alan McEwen. Alan’s involvement in payroll spans over 20 years. As a practitioner, he has implemented and managed outsourced payroll operations for both large and small employers. This includes founding Outsourcing Canadian Payroll Inc., which grew to 40 customers in Canada, the US and the UK within two years of its founding in 2001. As a consultant, he has worked with many organizations, public and private, on human resources/payroll process re-engineering, strategic systems decisions and forensic payroll audits.

As a public speaker, Alan has provided payroll training in a variety of formats, from short sessions at conferences and trade shows, to one-day training sessions and college-based professional certification courses. Alan’s writings have appeared in all of the major publications read by Canadian payroll professionals. He has also held volunteer and staff positions with the Canadian Payroll Association, on its Federal and Provincial Government Relations Committees, its Board of Governors and at its National Office in Toronto. Since 2004, Alan has sat on the Board of Referees in the Niagara region, an administrative panel that hears appeals from decisions of the Employment Insurance Commission.

Alan has also spent much of the last 20 years working on payroll software. This includes assisting several major software vendors in adapting their payroll software to Canadian requirements. Twice in this period, Alan has developed sophisticated Canadian payroll software for use in outsourcing or by large and complex employers. The latest version of Alan’s software can reprocess payrolls retroactively in a web-based, multi-country, multi-language and multi-currency environment.

This guide was reviewed by the employment law experts at Stringer LLP, Management Lawyers (formerly Stringer Brisbin Humphrey), the legal editors for The Human Resources Advisor — Ontario Edition and Accessibility Standards PolicyPro. For over 45 years, Stringer LLP has represented and advised employers in all areas of employment, labour and human resources law.
Part B: Legal requirements

Exempt employees

The requirements described in this guide apply to all employees subject to the Ontario employment standards, unless they are included in one of the exceptions discussed below.

There are two classes of employees for whom some or all of the requirements described in this guide do not apply:

• Employees for whom none of the Ontario employment standards apply
• Employees subject to other Ontario employment standards, but for whom none of the requirements described in this guide apply

These classes of employees are based on the kind of work they do. Sometimes employees might have more than one role in an organization, and some of the work they do might be subject to the requirements described in this guide, while other work they do might not. In other words, it might not be an employee as a whole that is exempt from these requirements. Whether or not an employee is exempt rests on the work done, and the work done at some times might exempt an employee from the requirements described here, while the work done at other times might subject the employee to these requirements.

Example: Charlotte is a teacher with a public school board. Sometimes, she is asked to fill-in on a short-term basis as the vice-principal in the school where she teaches. As a teacher, Charlotte is not covered by the vacation time or pay requirements described in this guide. However, when she works as a vice-principal, these requirements do apply: Charlotte has to be given vacation time and pay that at least meet these requirements.

No employment standards apply

Some employments are not covered by any Ontario employment standards, in other words, not covered by any part of the Act. This is true even if the employer is subject to Ontario employment standards for other employees. Employees whose employers are exempt from all Ontario employment standards include:

• Employees of consulates and embassies of foreign nations
• Secondary school, university or college students in work-study programs
• Employment in a community participation project under Ontario Works
• Inmates of any form of a federal or provincial correctional facility, including alternative sentencing or rehabilitation programs
• Political, religious, judicial or trade union office holders, including members of administrative tribunals
• Directors of a corporation
• Police officers

For the employees listed above, employers are not required to meet any of the requirements described in this guide. The exemption above for corporate directors applies to their employment by the corporation, not to their joint liability with the corporation for unpaid wages and vacation pay. See the forthcoming Owners, officers and directors guide in this series for more information.

None of the vacation time or pay standards apply

By contrast, some employees may be covered by some Ontario employment standards, yet not be covered by others. Such employees not covered by any of the vacation time or pay requirements described in this guide (in addition to those listed above), are: