

# Employment Standards

Rights and responsibilities at work

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## General Holidays and General Holiday Pay

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Part 2, Division 5 of the *Employment Standards Code (Code)* provides the general requirements and entitlement to general holidays and general holiday pay.

Part 4 of the *Employment Standards Regulation (Regulation)* creates a different regime for general holidays and general holiday pay for construction employees.

### Definition of terms

#### Average Daily Wage

Average daily wage is defined as:

- For employees who have been employed by the same employer for 9 work weeks or more immediately preceding a general holiday, the employee's daily wage averaged over the days worked during the 9 weeks; or
- For employees who have been employed by the same employer for less than 9 work weeks immediately preceding a general holiday, the employee's daily wage averaged over the days worked during the employee's employment with the employer.

#### Daily wage

This means the wage of an employee on a normal work day.

#### Hours of work

A period of time during which an employee works for an employer, and time off with pay instead of overtime pay provided by an employer and taken by an employee.

#### Wage rate

This means the hourly rate of pay for wages.

## **Work day**

This means a 24-hour period ending at midnight or a 24-hour period as established by the consistent practice of an employer.

## **Work week**

This means the period between midnight on a Saturday and midnight on the following Saturday, or seven consecutive days as established by the consistent practice of an employer.

## **Recognized general holidays in Alberta**

The *Code* lists nine official general holidays (statutory holidays). These are:

- New Year's Day (January 1)
- Alberta Family Day (Third Monday in February)
- Good Friday (Friday before Easter)
- Victoria Day (Monday before May 25)
- Canada Day (July 1, except when it falls on a Sunday, then it is July 2)
- Labour Day (First Monday in September)
- Thanksgiving Day (Second Monday in October)
- Remembrance Day (November 11), and
- Christmas Day (December 25).

The *Code* allows an employer and its employees by agreement to designate any other day as a general holiday. An employer who wishes to designate any other day as a general holiday may do so under the *Code*. For example, Boxing Day (December 26), Easter Monday (First Monday following Easter), and Heritage Day (First Monday in August) are not recognized general holidays. However, an employer may designate any of these days as general holidays if it wishes. If an employer designates one of these days as a general holiday, all rules pertaining to general holiday pay will apply.

## **Eligibility for general holiday pay**

Employees who have worked for the employer for at least 30 working days or more in the 12 months (year) before the general holiday are eligible for general holiday pay.

## When employees may not be entitled to general holiday pay

An employee is not entitled to holiday pay when the employee:

- does not work on a general holiday when required or scheduled to do so, or
- is absent from employment, without consent of the employer, on the employee's last regular working day preceding or first regular working day following the general holiday

However, employees are eligible if they have the employer's permission to be absent on the regular work days before and after the general holiday.

## Employees exempted from general holidays and general holiday pay

Employees who are employed in the following professions and occupations are exempt from general holidays and general holiday pay:

- automobile, recreational vehicle, truck, bus, manufactured home, farm machinery heavy-duty construction and road equipment salespersons;
- registered or licensed salespersons selling investments, stocks or bonds;
- authorized salespersons of real estate and salespersons who sell homes for the builder of those homes;
- licensed insurance salespersons who are paid entirely by commission income;
- salespersons, other than route salespersons, who solicit orders principally outside the employer's place of business and are paid in whole or in part by commission;
- farm workers;
- extras in a film or video production;
- counsellors or instructors at an educational or recreational camp that is operated on a charitable or not-for-profit basis for: children, handicapped individuals, or religious purposes; and
- salespersons who are at least 16 years old and are engaged in direct selling for licensed direct sellers.

## Paying employees general holiday pay

The following rules apply to how employees should be paid during general holidays.

### Eligible employee not working on a normal work day

If a general holiday falls on a day that is normally a work day for an employee and if the employee **does not** work on that general holiday, the employer must pay the employee general holiday pay of an amount that is at least the average daily wage for the employee.

### **Eligible employee working on a normal work day**

If a general holiday falls on a day that is normally a work day for an employee and if the employee works on that general holiday, the employer must pay general holiday pay in accordance with either of these options:

- Pay the employee an amount that is at least the average daily wage of the employee, **plus** pay an amount that is at least 1.5 times the employee's wage rate for each hour of work that the employee worked on the day of the general holiday.

#### **OR**

- Pay the employee an amount that is at least the employee's wage rate on each hour of work that the employee worked on a the day of the general holiday, **plus** provide the employee with one day of holiday no later than the employee's next annual vacation and general holiday pay of an amount that is at least the employee's average daily wage. See section 29 of the *Code*.

Note: The replacement holiday must be a day on which the employee is normally scheduled to work.

### **Eligible employee working on an unscheduled work day**

If an employee works on a general holiday that falls on a day that is not a normal work day for the employee and the employee works on that general holiday, the employer must pay the employee general holiday pay of an amount that is at least 1.5 times the employee's wage rate for each hour worked on the day of the general holiday.

### **Eligible employee not normally scheduled to work on the general holiday - Does not work**

If an employee who is not normally scheduled to work on the general holiday **does not** work, the employee is not entitled to receive pay for the holiday nor another day off with pay.

### **Ineligible employee working on the general holiday**

Employee is entitled to be paid at his or her regular rate of pay for all hours worked.

### **Ineligible employee not working on the general holiday**

Employee is not entitled to receive pay for the holiday nor another day off with pay.

## Employees who work irregular schedules

If employees work an irregular schedule and there is doubt about whether the holiday is a day on which the employee is normally scheduled to work, **the doubt is to be resolved as follows:**

- If during at least five of the last nine weeks, the employee regularly worked on the day of the week that the general holiday falls, the holiday is to be considered a day that would normally have been a workday for the employee.

## Payment of general holiday pay for construction workers

Due to the nature of the employment and work in the construction industry, construction employees are not usually given general holidays off with pay. Part 4 of the Regulation creates special rules for construction workers intended to provide a benefit equal to that of employees in other industries who are given a day off with pay for each general holiday:

- there is no qualifying period of employment for construction employees to be entitled to general holiday pay.
- construction employees are not entitled to premium pay for working on general holidays, or to these days off with pay. However, all construction employees must be paid general holiday pay.
- both full-time and part-time construction employees are entitled to general holiday pay equal to 3.6 per cent of the employee's wages.
- general holiday pay must be paid to construction employees:
  - on or before December 31 of each year;
  - on termination of employment; or
  - with each pay cheque.

## Paying general holiday pay to employees paid by commission or other incentive pay plans

Employees who are paid by commission or other incentive pay are entitled to the average daily wage plus 1.5 times the hourly wage when they work on general holidays.

To calculate the hourly wage for an employee paid by commission or incentive pay, determine whether the employee is paid entirely by commission or incentive pay, or if they also earn a salary:

- If an employee is paid **entirely** on commission or other incentive-based remuneration, then, for the purpose of calculating pay for time worked on a general holiday, the employee's wage rate is deemed to be the minimum wage.
- If an employee is paid **partly** by salary and partly by commission or other incentive-based pay, then, for the purpose of calculating pay for time worked on a general holiday, the employee's wage rate is based on the salary component of the wages, if the salary component is greater than the minimum wage. If the salary component is less than the minimum wage, then the salary component is deemed to be the minimum wage.

## General holiday during vacation

If there is a general holiday during an employee's annual paid vacation, and it falls on a day they would normally have worked, the paid vacation is extended by one day. Or the employer can agree to give the employee a different day off with pay before their next annual vacation.

## Effect of general holiday on overtime calculation

When an employee works on a general holiday and is paid general holiday pay of at least 1.5 times the employee's wage rate for each hour worked, the hours worked are not included for the purpose of calculating any entitlement to overtime pay for the work week in which the general holiday occurs.

## Some common questions

### 1. Are part-time employees entitled to general holiday pay?

Yes, part-time employees are entitled to general holiday pay unless employed in one of the occupations exempted from general holiday and general holiday pay, or if they are ineligible or not entitled to it.

### 2. How is the average daily wage calculated?

The average daily wage is calculated by adding the regular wages earned during the nine weeks before the week in which the general holiday occurs, and dividing by the number of days worked in that period.

### 3. If an employee is not entitled to general holiday pay, but is required to work on the general holiday, what pay is the employee entitled to?

The day is treated as any other normal working day. The employee is paid his or her normal wages and, if applicable, overtime.

### 4. If an employee's employment is terminated prior to receiving a replacement holiday with pay, what must be paid to the employee?

If the employer terminates the employment, the employee must receive:

- an average daily wage, **plus**
- 1.5 times the regular wage rate for all hours worked on the general holiday less any money previously paid for wages and overtime on the general holiday.

However, if the employee quits, the employee is entitled to be paid the average daily wage for each general holiday deferred and still untaken.

**5. If an eligible employee is paid by commission or other incentive pay plan and does not work on the general holiday, what must the employee be paid?**

The average daily wage, which is the regular wages earned during the nine weeks preceding the week in which the general holiday occurs, divided by the number of days worked in that period.

**6. What are some of the examples of incentive pay plans?**

Incentive pay plans include commission and other plans such as flat rate, mileage or piecework compensation.

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### General holiday pay flow chart

