

Vacations and Vacation Pay

March 2011

Part 2, Division 6 of the *Employment Standards Code (Code)* sets the general rules for vacations and vacation pay.

There is no qualifying period of employment before an employee is entitled to vacations and vacation pay. However, the following employees are exempt from receiving annual vacations and vacation pay:

- licensed or registered salespersons of real estate and securities;
- commission salespersons who solicit orders principally outside the place of business of their employer. Route salespersons are not exempt;
- farm employees;
- extras in a film or video production; and
- licensed insurance salespersons who are paid entirely by commission income.

Basic vacation entitlement

The entitlement to vacations and vacation pay are intended to ensure that employees annually have a rest from work without loss of income.

The basic entitlement to annual vacations is as follows:

- 2 weeks after each of the first 4 years of employment, and
- 3 weeks after 5 consecutive years of employment and each year of employment after that.

Therefore, employees are entitled to take two weeks' vacation in each year from the second to the fifth year of employment, and each year after the fifth anniversary they are entitled to three weeks' paid vacation.

Note: Employees are entitled to **both** vacation time and vacation pay.

An employer can establish a common anniversary date for vacation purposes. However, an employee must not lose any entitlement to vacation time or pay as a result of the introduction of a common anniversary date.

Vacations must be taken sometime in the 12 months after the employee becomes entitled to the vacation.

Vacations must be given in one unbroken period unless the employee requests to take their vacations in shorter periods. This is permissible so long as those periods are at least one day long.

If a mutually acceptable time for the employee's vacation cannot be found, the employer can decide on the time. However, the employee must receive at least two weeks' notice in writing of the start date of their vacation. The employee must take their vacation at that time.

If vacation pay has not previously been paid out and the employee requests it, it must be paid at least one day before the employee's vacation. In any event, vacation pay must be given to the employee no later than the next regular pay day after the vacation begins.

How vacation pay is calculated

If the employee is paid by monthly salary, they receive their regular rate of pay for the time of their vacation. All other employees receive vacation pay as a percentage of wages for the year for which vacation was given.

- "Wages," in addition to its normal definition, includes any previously paid vacation pay, but does not include overtime earnings, general holiday pay, pay in lieu of a notice of termination, an unearned bonus, tips and gratuities, or expenses and allowances.
- "Year for which vacation is given" refers to the year immediately before the employee becomes entitled to the vacation.

For those not paid a monthly salary, vacation pay is calculated as follows:

- In the first four years of employment, minimum vacation pay is 4 per cent of wages earned.
- In the fifth and subsequent years, minimum vacation pay is 6 per cent of wages earned.

Vacation pay when employment is terminated

If employment is terminated before an employee completes 12 months of employment, the employer must pay 4 per cent of the employee's wages earned during the period of employment.

If employment is terminated after an employee has completed at least 12 months of employment, the employer must pay:

- The unpaid vacation entitlements for the previous year; plus
- Either 4 or 6 per cent of wages in the current year, depending on the length of employment.

Where proper termination notice is given, or notice is required to be given by the employer, vacation pay must be paid within three days of termination.

Where neither the employer nor employee are required to give termination notice, vacation pay must be paid within 10 days.

If an employee quits without giving proper termination notice, the employer must pay vacation pay to the employee within 10 days after the date on which the notice would have expired if it had been given.

Some common questions

1. Do part-time employees qualify for vacation and vacation pay?

Yes.

2. If the employee is paid by the month, how is vacation pay calculated for each week?

The employee's monthly wage is divided by 4 1/3.

3. Can an employer pay vacation pay on each pay cheque?

Yes.

4. Upon employee request, can vacation with pay be given prior to completing a full 12 months of employment?

Yes, if the employer agrees.

5. Are construction employees entitled to scheduled vacation time off?

No. However, all construction employees must be paid vacation pay equal to 6 per cent of their wages. For more information on vacation pay for construction employees, see the "Construction Industry" Fact Sheet at <http://employment.alberta.ca/esfactsheets>.

6. What if a general holiday falls within an employee's annual vacation?

If qualified for the general holiday, the employee is entitled to take off either the first scheduled working day after their vacation, or in agreement with the employer, another day before the next annual vacation, that would otherwise have been a work day for the employee.

7. If employees have been paid vacation pay but not given vacation time, can they choose not to take vacation time?

No. Employers must give, and employees must take, the vacation time to which they are entitled. Where employees have already been paid vacation pay, this time off will be without pay.

8. Does a change of ownership affect an employee's vacation time entitlement?

No. The previous owner may pay all vacation money accumulated up to the date of transfer of ownership, but the two or three week vacation period would still have to be granted by the new owner.

9. If the employer, by agreement, provides vacation pay benefits greater than required by the Code, can Employment Standards enforce this?

Yes.

10. Are employees paid by the month, entitled to vacation time and pay?

Yes. All employees, irrespective of how they are paid, are entitled to vacations and vacation pay. Vacation pay for employees paid by the month is calculated by dividing their monthly wage by 4 1/3.

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