

Frequently Asked Questions 700 – 799

Can employers give more vacation?

For each week of vacation, employees earn 2% of their gross wages. Under *The Employment Standards Code*, the minimum amount of vacation does not increase beyond 3 weeks of vacation after 5 years of service. Employers can, and often do, give employees more vacation than is required by law.

How is general holiday pay calculated for employees who are paid by incentive for a general holiday on which they do not work?

Like other types of pay, employees who earn incentive pay are entitled to 5% of the total wages (including incentive pay) in the 4-week period before the holiday.

How is general holiday pay calculated for employees paid by incentive if they work the general holiday?

Most employees who work on a general holiday are entitled to 1½ times their regular wage rate for hours worked on a general holiday in addition to the general holiday pay of 5% of their earnings in the four-week period before the holiday. This includes employees who are paid by incentive.

To calculate the wages to which an incentive paid employee is entitled, first calculate the hourly wage by dividing the incentive pay by the total number of hours worked in the pay period. The hourly wage usually changes in each pay period since it depends on the pay earned and the number of hours worked.

For example, in this pay period, a commission salesperson paid once a week, earns \$800 commission, worked 32 hours of standard time and 8 hours on the general holiday.

$$\begin{array}{l} \text{Commissions} \\ \text{Total Hours} \end{array} = \text{Hourly Wage} \quad \text{or} \quad \begin{array}{l} \$800 \\ 40 \end{array} = \$20/\text{hour}$$

The hourly wage is then multiplied by the regular hours worked:

$$\text{Hourly Wage} \times \text{Regular Hours Worked} = \$20 \times 32 = \$640$$

To calculate wages for working on the general holiday, multiply the hourly wage by 1 ½ times:

$$\text{Hourly Wage} \times 1.5 = \text{Overtime Wage} = \$20 \times 1.5 = \$30$$

This amount is then multiplied by the number of hours worked on the general holiday. In this example, the salesperson earned:

$$\text{Wages for working on the general holiday} \times \text{Hours worked on general holiday} = \$30 \times 8 = \$240$$

Add the regular wages and the wages for working on the general holiday together to calculate the total amount the salesperson earned during the pay period.

$$\$640 + \$240 = \$880$$

Since the salesperson already earned \$800 in this pay period, the employer pays an additional \$80 to account for the hours worked that have not yet been paid, plus the 5% of the regular earnings in the 28 days before the holiday.

Do employees have to work a certain length of time before they qualify for general holiday pay?

No. The length of time employees work for an employer does not affect the requirement to pay general holiday pay.

For example, if an employee started to work for the employer one day before the general holiday, the employee would be entitled to 5% of the wages earned on that day as general holiday pay.

Employment Standards in Agriculture at a glance

The chart below lists the most common Employment Standards provisions and to whom they apply in agriculture:

<i>Employment Standards Provision</i>	<i>Workers Employed by Agricultural Companies that Provide Services to Farms</i>	<i>Farm Workers in Climate Controlled Facilities</i>	<i>Farm Workers, Employed on a Farm, by a Farmer</i>	<i>Farm Workers Employed by Family Members</i>
Equal Wages	Yes	Yes	Yes	Yes
Payment of Wages	Yes	Yes	Yes	Yes
	Yes	Yes	Yes	Yes

Employment Records				
Minimum Wage	Yes	Yes	Yes	No
Termination Notice	Yes	Yes	Yes	No
Child Employment	Yes	Yes	Yes	No
Vacations	Yes	Yes	Yes	No
Weekly Day of Rest	Yes	Yes	Yes	No
Work Breaks	Yes	Yes	Yes	No
Unpaid Leaves	Yes	Yes	Yes	No
Restrictions on Deductions from Pay	Yes	Yes	Yes	No
Hours of Work and Overtime	Yes	Yes	No	No
Reporting Pay	Yes	Yes	No	No
General Holidays	Yes	Yes	No	No

Issues for all employees in Agriculture

Before the recent changes to the legislation all employees in agriculture had protection in relation to their promised rate of pay, when wages were required to be paid, the records their employers were required to keep and equal wages. These protections apply to all workers in agriculture, including family members working on a farms owned by a member of their family.

How often must employees be paid?

Employees must be paid at least twice a month, within 10 working days of the end of a pay period. If the employment is terminated, employees must be paid within 10 working days from the date of termination.

What are the rules regarding equal pay?

Generally, employers determine the wage rate for their employees. Employers can not have separate wage schedules for male and female employees if the kind or quality of work and the amount of work required and done by the employees is the same or substantially the same.

Issues for farm workers employed on a farm

Effective June 30, 2008 employment standards protections have been expanded to cover employees working on a farm directly in the production of agricultural products. In addition to the protections listed above, these workers now have protections related to: minimum wage; ending employment; young employees; vacations; work breaks and weekly day of rest; unpaid leaves and restrictions on deductions from wages.

Does the legislation apply to family members working on a farm owned by someone in the family?

No. The legislation excludes family members who work on a farm owned by a member of the family from most parts of *The Employment Standards Code*. The employer must still keep records, pay what was promised, and follow the rules regarding equal wages for men and women, however, the rest of the minimum standards do not apply.

Are employers required to give notice to seasonal employees?

It depends. Employers are not required to provide notice of termination at the end of the season if the employees are told when they are hired the position is subject to seasonal layoffs and the job will end at the end of the season. However, if an employee is terminated before the end of the season, the appropriate notice would apply. Employers are not under any obligation to rehire an employee who was released at the end of the season.

How is the period of employment calculated in regard to termination for seasonal employees?

Employment in a seasonal industry is deemed to be continuous if employees return to work with the same employer each season. Each consecutive season they return adds one more year of service. Seasonal employees who are terminated before the end of the season are entitled to notice of termination based on their number of consecutive seasons with the employer.

How is the period of employment calculated in regard to vacation for seasonal employees?

Employees who are laid off at the end of the season and are rehired at the beginning of the next season are considered to have continuous employment for vacation. Therefore, an employee is entitled to 2 weeks vacation and 4% of their wages as vacation pay after the first four seasons and is entitled to 3 weeks of vacation and 6% of their wages as vacation pay once they have completed 5 seasons with the employer.

How often must employees receive a break?

Employees must be given a 30 minute unpaid break after every five consecutive hours of work. Many employers provide additional coffee breaks, cigarette breaks, or other meal breaks. These are a benefit, but are not required.

How often must employers provide a day of rest?

Most employees are entitled to a rest period of no less than 24 consecutive hours each week. In practice, this means employees could work up to 12 days in a row in a two week period if the days of rest occur at the beginning of the first week and the end of the second week.

Employer Flexibility

The Employment Standards Code establishes the minimum standards for employees and employers in the workplace. The legislation does consider that a degree of flexibility is required in the workplace and employers need to be able to administer the wages and benefits they provide in a way that makes sense for them.

Generally employers and employees can agree to terms and conditions of employment, provided they do not go below the protections in *The Employment Standards Code*.

The following sections provide information on employer rights and flexibility in the workplace that allow employers to manage their operations.

Who controls scheduling of the hours of work?

Within the standard hours of work, employers control scheduling. They make or approve work schedules that suit their business needs, and can change work schedules at any time. Sometimes employers involve employees in decisions about scheduling, but are not required to do so.

Does an employee decide when they are going on vacation?

The employer controls scheduling within standard hours of work, including when an employee will take their vacation. Operational needs may require that employees take their vacation during slow periods. The employer and employee often discuss when an employee wants to take vacation, but in the end it is the employers decision.

If an employer and employee cannot agree on when the vacation will be taken, the employer sets the vacation date. The employer must give the employee 15 days notice before the vacation is to be taken, and cannot divide the vacation into periods shorter than one week. Employers can choose to schedule their employees' vacations as part of an annual shut down.

Changing the standard hours of work for overtime

Employers are responsible for scheduling employees, according to the standard hours of work (8 hours in a day and 40 hours in a week). Work beyond these hours is overtime. When the needs of the business cannot be accommodated within these standards, employers may apply to Employment Standards for a permit to modify the daily hours or the weekly hours. For Employment Standards to consider a permit, the agreement of a significant majority of the affected employees is usually required.

For example, an employer can apply to extend the work day to 10 hours before paying overtime, or they could apply for a permit that would allow the employer to average the hours over a 4 week period to better meet the needs of their business.

Can employees and employers choose to use a different day as a general holiday?

Employers may substitute another day for a general holiday for the purposes of general holiday pay and wages for hours worked on the day:

- Under a collective (union) agreement, or
- With the written agreement of a majority of the employees. This does not need to be approved by Employment Standards but the employer should keep a copy of the agreement.

The substituted day must be within 12 months of the general holiday.

While retail businesses have the option to substitute, some must not be open on Canada Day (July 1), New Year's Day, Good Friday, Easter Sunday, Labour Day or Christmas Day. These businesses can be open Sunday shopping hours on Louis Riel Day, Victoria Day and Thanksgiving Day if there is a by-law in place. See next question for further details.

Is there flexibility in non-monetary issues like breaks and weekly day of rest?

Yes. The employer does control scheduling and has some flexibility regarding when employees take their break or get a day off. Some employees do not want to take their breaks or, especially in seasonal industries, want to work on their day off if there is work available. When employees, if requested by the employer, choose to work through their breaks, or do not take a day off, they must be paid properly. Employers should discuss the importance of the rest period and breaks with their employee, and should they still wish to work through the break clearly determine how it will effect their pay.

Who is covered by *The Employment Standards Code*?

Employees are covered by *The Employment Standards Code* unless they are specifically excluded. Some types of employees working in agriculture are excluded from some standards.

Who was excluded from *The Employment Standards Code*?

Before June 30, 2008 employees in agriculture were excluded from most of *The Employment Standards Code*. These employees have always had some protections including being paid their promised wages, no discrimination in wage rates between men and women doing the same amount and type of work, and their employers had to keep records.

As of June 30 , 2008 who is covered by *The Employment Standards Code*?

Under *The Employment Standards Code* there are four broad categories of workers in agriculture. Different provisions apply to each of these categories.

Employees employed by agriculture companies that provide services to farms and farmers are covered by all provisions of *The Employment Standards Code*. These are employees who work for individuals or companies that do not own the farm where the work is being done.

Similarly **Employees who work in climate controlled facilities** are also covered by all of the provisions of *The Employment Standards Code*.

Employees who work on a farm in the primary production of agricultural products on that farm are covered by most of the provisions of *The Employment Standards Code*, but are excluded from reporting pay, general holiday and overtime provisions.

Employees who work on a farm that is owned by a member of their family are excluded from the same provisions of *The Employment Standards Code* as they were before June 30, 2008. For them the legislation is exactly the same.

What are agriculture companies that provide services to farms and farmers?

Employees who work for an agricultural company that provides services to farms and farmers are covered by all provisions of *The Employment Standards Code*. These are businesses that provide services to farms, but do not own the farms where the work is being done. This includes businesses that provide services like custom combining, chicken catching crews, manure removal, or other services in the agriculture industry.

What are climate–controlled facilities where all or substantially all of the employee's work is performed?

This covers employees who normally work in one or more climate–controlled facilities. Examples would include

some mushroom plants, poultry facilities, hog barns, or greenhouses.

If all, or substantially all, of the employee's work is performed in climate-controlled facilities, like some hog barns or greenhouses, they are covered by *The Employment Standards Code*, even if they work outside for part of their duties.

This is different from an employee who works on a mixed farm where part of the duties may occur in climate controlled facilities but other tasks are outside. This employee is excluded from overtime, general holidays, and reporting pay because their work is not all or substantially all in a climate-controlled facility.

The effect of weather and climate on the work is a factor when considering if an employee is covered for general holidays, reporting pay, hours of work, and overtime. Employers operating climate-controlled facilities are less dependent on the weather when scheduling their employees hours of work.

Employees hired to work in climate-controlled facilities are covered by all the provisions of *The Employment Standards Code*.

Are farm workers covered by the Employment Standards Code?

Yes. General farm workers who work on a farm directly in the production of agricultural products are covered by *The Employment Standards Code*, but only for specific provisions. General farm workers must be paid according to *The Employment Standards Code* in regards to:

- Minimum Wage
- Deductions from Wages
- Ending Employment
- Vacations and Vacation Pay
- Unpaid Leave
- Work Breaks and a Day of Rest
- Child Employment
- Equal Pay
- Employment Records

What about farms owned by a family farm corporation?

Employees of a family farm corporation are considered to be working for their family if the corporation is controlled by one or more members of the employees family.

Where can I find more information about specific provisions that apply in agriculture?

The [Employment Standards website](#) has information on most Employment Standards issues. [A Guide to](#)

Employment Standards in Agriculture provides an overview of the major issues, and how they apply to agriculture workers.

When do the changes regarding employees working in agriculture come into effect?

The new regulations regarding agriculture workers came into effect June 30, 2008.

Is Louis Riel Day a general holiday for unionized workers?

Yes, even when collective agreements do not mention Louis Riel Day, it is a general holiday for all employees who work in a provincially regulated industry. Louis Riel Day is a minimum standard and collective agreements can not have provisions that are less than any minimum standard.

What are agriculture companies that provide services to farms and farmers?

These are businesses that provide services to farms, but do not own the farms where the work is being done. This includes businesses that provide services like custom combining, chicken catching crews, manure removal or other services in the agriculture industry. Employees of this type of employer are covered by all provisions of the Employment Standards Code. The limited exclusion of farm workers is for employees who work on one farm, for one employer (farmer) who owns that farm, directly in the production of agricultural products.

What are climate controlled facilities where all or substantially all the employee's work is performed?

This covers employees who normally work in one or more climate controlled facilities. Examples would include some mushroom plants, poultry facilities, hog barns or greenhouses.

What an employee is hired to do is a determining factor when considering if all or substantially all of the employees work is performed in climate controlled facilities. If an employee is hired to work in a climate controlled facility like some hog barns or greenhouses they are covered by the employment standards code, even if they work outside for part of their duties.

This is different than an employee who is hired to work on a mixed farm where part of the duties may occur in climate controlled facilities but other tasks are outside. That employee is excluded from overtime, general holidays and reporting pay because they do not do substantially all of their work in a climate controlled facility.

The way weather and climate effect the job someone is hired to do can be a factor when considering if an employee is covered or excluded from general holidays, reporting pay, hours of work and overtime. Employers operating climate controlled facilities are less dependant on the weather and therefore are better able to schedule the hours worked by their employees.

Employees hired to work in these conditions are covered by all the provisions of the Employment Standards Code.

Issues for employees working substantially or entirely in climate-controlled facilities or in the agricultural services sector.

Recent changes to *The Employment Standards Code* have provided employees working on a farm, primarily in the production of agricultural products working substantially or entirely in climate-controlled facilities, with the full protection of *The Employment Standards Code*. Further, employees who work in the agricultural services such as custom combining, chicken catching, or manure removal also have the full protection of *The Employment Standards Code*. In addition to the protections listed above, they have further protections related to general holidays, reporting pay, and hours of work/overtime.

Date Published: May 19, 2016