

## Standards for employees working on a farm in the primary production of agricultural products.

On June 30, 2008 changes made to *The Employment Standards Code* regarding employees working in agriculture came into effect. Different standards apply depending on the type of employment. This fact sheet provides information regarding employees who work on a farm in the primary production of agricultural products.

### Employment Standards in Agriculture at a glance

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

Employment Standards Provision	Workers employment by agricultural companies that provide services to farms	Farm workers in climate controlled facilities	Farm workers, employed on a farm, by a farmer	Farm workers employed by family members
Equal wages	yes	yes	yes	yes
Payment of wages	yes	yes	yes	yes
Employment records	yes	yes	yes	yes
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

## **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

## **Does this include family members working on a farm owned by someone in the family?**

No, the legislation excludes family members working on a farm owned by a member of the family. 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.

## **Who are considered family members?**

Family is defined very broadly for Employment Standards purposes. Children, stepchildren, parents, grandparents, spouses, common law spouses, brothers, sisters, step-brothers, step-sisters, aunts, uncles, nieces and nephews are all considered family members. The definition also includes those who are not related, but are considered a family member.

## **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.

## **What about employees who spend one season in climate controlled facilities, and the rest of the year working both indoors and outside?**

The question that must be asked is what was the employee hired to do? If they are hired to work a combination of outside on the farm and inside a climate controlled facility, they would not be entitled to protections regarding overtime, hours of work, general holidays or wages for reporting to work.

For example: an employee of a vegetable farm, who works outside tending to the crop for part of the year, and then works in a climate controlled facility during the winter for grading, packaging and shipping, would not be employed all or substantially all of their time in a climate controlled facility.

## **How often must employees be paid?**

Employees must be paid at least 2 times per month. They must be paid within 10 days of the end of a pay period.

## **What records are employers required to maintain?**

Employers must keep records for all employees that show:

- name, address, date of birth and occupation
- date the employee starts work
- regular wage and overtime wage when employment starts, the dates of changes to the wage and the new wage
- regular and overtime hours of work, recorded separately and daily
- dates wages are paid and the amount paid on each date;
- deductions from wages, dates and reasons for each deduction
- dates of time off taken instead of overtime wages
- dates each general holiday is taken
- dates and wages paid for hours worked or required to be worked on a general holiday;
- start dates of annual vacations, dates work resumes, period of employment in which it is earned, amount of vacation allowance paid and date paid
- amount of outstanding vacation allowance paid upon termination, and payment date
- copies of documents on maternity leave, parental leave, compassionate care leave or other leaves, including dates and number of days taken as leave
- dates of termination of the employment

Employment Standards requires employers to keep these records for at least 3 years. It is important to note that other agencies, such as the Canada Revenue Agency, may require employers to keep different types of records, for different lengths of time.

## **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.

## **What is the minimum wage?**

On October 1, 2011 the minimum wage became \$10.00 per hour for most industries.

## Do employees need to give notice of termination?

Yes. The amount of notice depends on how long they've been employed by the same employer:

at least 30 days but less than one year	one week
at least one year	two weeks

## Do employers need to give notice of termination?

Yes. The amount of notice depends on how long employees have worked for the same employer:

at least thirty days but less than one year	one week
at least one year and less than three years	two weeks
at least three years and less than five years	four weeks
at least five years and less than ten years	six weeks
at least ten years	eight weeks

Employers can either allow the employee to work out this notice period, or pay wages in lieu of notice, for the same number of weeks, or a combination of both.

## How much notice of termination must employers give to their employees?

The amount of notice employers must provide employees depends on the length of time that employee has worked for them.

Period of employment	Notice period
at least thirty days but less than one year	one week
at least one year and less than three years	two weeks
at least three years and less than five years	four weeks
at least five years and less than ten years	six weeks
at least ten years	eight weeks

Employers can still either allow the employee to work out this notice period, or pay wages in lieu of notice, for the same number of weeks, or a combination of both.

## **Can employers pay wages instead of providing notice of termination?**

Yes, employers can either allow employees to work out the notice period, or pay wages in lieu of notice. Employers can also allow employees to work part of the notice and pay wages in lieu of notice for the remainder.

## **Is there a period when no notice is needed?**

Yes, employers and employees do not need to give notice when the employee has worked less than 30 days. Employers are not allowed to extend or change this period, unless it is negotiated in a collective agreement with a union.

## **Are there situations when employers or employees do not need to give notice of termination?**

The following are some cases where notice of termination is not required:

- when employment is for a specific length of time or a specific task or job
- if the employee has substantial control over whether they accept shifts or not and are not penalized by employers for choosing not to work
- when the employer can prove just cause, see [Just Cause](#) fact sheet
- when employees are placed on a temporary layoff
- if the employer acts in a manner that is improper or violent toward the employee
- when the employee works in the construction industry

\*\*\*Employers must consider each situation on a case by case basis when deciding to provide a notice period to an employee.\*\*\*

## **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 that 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?**

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 termination. Therefore, if an employee worked for the same employer for 6 seasons, and in the middle of the seventh season was terminated they would be entitled to notice or

pay in lieu of notice of six weeks.

## **How old must a person be to work?**

Generally, children under 12 years old are only allowed to work for an employer in exceptional circumstances. Employees under 16 years old must have a permit from the Employment Standards Branch before they can work.

## **How do I apply for a Child Employment Permit?**

An application form can be found on the web site at [www.manitoba.ca/labour/standards/forms.html](http://www.manitoba.ca/labour/standards/forms.html) or by contacting the Employment Standards Branch. The application requires information from the applicant, a parent/guardian and the employer. The completed form can be taken, mailed, or faxed to the nearest Employment Standards Branch office.

## **How long is a vacation?**

After completing one year with an employer employees must receive two weeks of vacation. After completing their fifth year of work with the same employer, employees must receive three weeks of vacation.

## **What are employees paid while on vacation?**

Vacation pay is calculated based on the earnings in the previous year. For each week of vacation, employees earn two per cent of their gross wages as vacation pay. For example: employees who earn two weeks of vacation receive four per cent of their gross wages as vacation pay. Employees with three weeks vacation receive six per cent of their gross wages as vacation pay.

## **Can employers pay vacation pay on every pay cheque?**

Employers may pay vacation pay on every pay cheque. Employees are still entitled to take time off as vacation, but do not receive any additional vacation pay while they are off, because it has already been paid on each cheque.

## **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 are entitled to a 30 minute unpaid break after 5 hours of work. The employee must be free from duties while on their break. Some employees choose to work through the break period, employers should be clear that an employee can take an unpaid break if they wish after working for 5 hours. If the employer and employee agree that the employee will work through the break, the employee must be paid for the time worked.

## How often must employers provide a day of rest?

Employees are entitled to one day of rest each week. The week is a seven day period, so an employee could work up to 12 days in a row without a day of rest. Employees can choose to work, instead of taking their day of rest if requested to do so by their employers; however they must be given a day of rest if they wish.

There is no requirement for the day of rest to be scheduled. If employees are unable to work one day of the week because of weather, that day would be their weekly day of rest.

## What types of leave are available to employees?

There are eight unpaid leave options for employees

<i>Type of leave</i>	<i>Length of leave</i>	<i>Purpose of leave</i>
<u>Maternity Leave</u>	17 weeks	for an employee expecting to give birth to a child
<u>Parental Leave</u>	37 weeks	for parents to care for their new child
<u>Family Leave</u>	3 days	for an employee to deal with family responsibilities or personal illness
<u>Compassionate Care Leave</u>	8 weeks	for an employee to care for a very ill family member
<u>Leave for Organ Donation</u>	13 weeks	for an employee to donate an organ or tissue
<u>Bereavement Leave</u>	3 days	for an employee to deal with the death of a family member
<u>Leave for Reservists</u>	When needed for service	For an employee in the Canadian Forces Reserve who needs time to serve
<u>Leave for Citizenship Ceremony</u>	4 hours	For a new Canadian to receive their certificate of citizenship

## **How long must employees work before they qualify for the leave?**

For Family Leave, Bereavement Leave, Leave for Organ Donation, Compassionate Care Leave and Leave for a Citizenship Ceremony, employees must work for the same employer for 30 days to qualify for leave. For Reservist, Maternity and Parental leave, employees must work for the same employer for seven consecutive months to qualify for leave.

## **Does the employer need to pay during the leave?**

No, the legislation only requires employers to provide time off and allow employees to return to their job when the leave has ended. Employers are not required to pay wages during the leave. Employers can, and often will, give greater benefits than those provided for in the legislation.

## **What can be deducted from employees' wages?**

Employers can correct payroll errors, recover cash advances, and make any deduction required by provincial or federal law (statutory deductions). In addition employees can agree to pay for things they consider a direct benefit, like meals or purchases from the employer.

## **What types of things cannot be deducted from employees wages?**

Employers cannot charge interest or fees for cashing cheques or providing payroll advances. Employers cannot recover business expenses from the wages of employees. For example an employer cannot deduct for cash or inventory shortages, uniforms, or damages.

## **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 that 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?**

Generally employers control all scheduling in the workplace. They determine when employees should work and how often they should work. Often the scheduling is done in co-operation with the employees, but ultimately it is the employer's decision. Since employers control scheduling, they also control the weekly day of rest and when

employees receive breaks.

## **Does an employee decide when they are going on vacation?**

The employer controls scheduling, and this includes 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 the employee and employer can not agree when the employee will take their vacation, the employer can tell the employee when they will take their vacation. The employer must provide at least 15 days notice of when the employee will take their vacation. When an employer tells an employee when their vacation will be, that vacation can not be shorter than one week.

## **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.

## **For more information contact the Employment Standards Branch:**

Phone: 204-945-3352; or toll free in Canada 1-800-821-4307

Fax: 204-948-3046

E-mail: [employmentstandards@gov.mb.ca](mailto:employmentstandards@gov.mb.ca)

Website: [www.manitoba.ca/labour/standards](http://www.manitoba.ca/labour/standards)

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including *The Employment Standards Code* and *The Worker Recruitment and Protection Act*, or contact the Employment Standards Branch to ask for advice.

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