

Standards for employees in Climate Controlled Facilities

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 in a climate controlled facility.

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 employee's 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*.

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.

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.

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.

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

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, 2009 the minimum wage became \$9.00 per hour for most industries.

Do employees need to give notice of termination?

Yes, employees who have been employed by an employer for at least 30 calendar days but less than one year, must give at least one week's notice before the last day they plan to work. After employees have completed one full year with the same employer, at least two weeks notice is required.

Do employers need to give notice of termination?

Yes, when employers wish to terminate employees they must give notice of termination or pay wages equal to what would normally be earned during the notice. This is often called wages in lieu of notice. The notice period varies depending how long employees have worked for the same employer.

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 no-notice period?

When the period of employment has been less than 30 days the legislation states that employers and employees have the right to end the working relationship without notice, may be longer with a collective (union) agreement.

Are there times employers and employees do not need to give notice of termination?

There are some cases where employers or employees, do not need to give notice of termination:

- when employment is for a specific length of time or a specific task or job

- when it is only casual employment and the employees have substantial control over whether they accept shifts or not and are not penalized by employers for choosing not to work
- employees act in a manner that constitutes wilful misconduct, disobedience or wilful neglect of duty and the behaviour is not condoned by the employer
- if employees act in a manner that is violent in the workplace or is dishonest in the course of employment
- when employees are placed on a temporary layoff
- If the employer acts in a manner that is improper or violent toward the employee

Employers who want to terminate employees without notice must note that the exemptions can be complex and each case needs to be examined individually to determine if notice is required.

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 or by contacting the Employment Standards Branch. The application requires information from the applicant, a parent/guardian, the school principal 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 six unpaid leave options for employees

<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>Bereavement Leave</u>	3 days	for an employee to deal with the death of a family member
<u>Reservist Leave</u>	When needed for service	For an employee in the Canadian Forces Reserve who needs time to serve

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

For Family Leave, Bereavement Leave and Compassionate Care Leave, 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 deduct:

- statutory deductions (i.e. EI, Tax, CPP)
- court orders or garnishments
- charges for board, lodging and meals as permitted under *The Employment Standards Code*
- recovery of pay advances and corrections of payroll errors
- the minimum amount payable by the employer for a red light or photo radar ticket with the employees written permission for each infraction
- any other deduction agreed to by employees as long as it directly benefits the employees

What types of things cannot be deducted from employees wages?

Employers cannot deduct the costs of:

- vehicle, equipment and tool repair or loss
- breakage or other damages
- faulty work or poor quality work
- Theft, including dine-and-dash incidents
- cash shortages

- inventory shortages
- most safety equipment
- uniforms and special clothing required by employers
- business supplies
- interest charges or other fees for cash advances or cashing cheques
- education expenses that only benefit the employer
- any other deductions that are of no direct benefit to the employees

What are the general holidays in Manitoba?

There are eight general holidays throughout the year:

- New Year's Day
- Louis Riel Day (3rd Monday in February)
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

Most employees are paid general holiday pay for these days whether they work or not.

How is general holiday pay calculated?

General holiday pay is five percent of an employee's total wages in the four-week period immediately before the holiday. Overtime should not be included in this calculation.

For a part-time employee, this amounts to a percentage of his/her regular day of pay. For example: a part-time employee may work about 25 hours each week at \$10 per hour, but his/her schedule is different each day. In the four weeks before the holiday, he/she earned \$1,000. General holiday pay is \$1,000 times five per cent, or \$50.

For an employee that works the same number of hours, every day, five days a week, the five per cent calculation will equal his/her regular day of pay. For example: an employee worked 8 hours a day, 5 days a week at \$10 per hour, for the previous 28 days, he/she earned \$1,600. General holiday pay is \$1,600 times five per cent, or \$80.

Do all employees receive general holiday pay?

All employees receive general holiday pay unless:

- They are absent from work on a general holiday that is normally a workday and they are expected to work.
- They are absent from work, without permission, on their last scheduled workday before the holiday or their first scheduled workday after the holiday, unless they are absent without the employer's consent.

What if employees work on the general holiday?

Employees who work on a general holiday are normally entitled to 1 ½ times their regular rate of pay for the hours worked. In addition they also receive their general holiday pay.

Do seasonal employers, or those running a continuously operating plant need to pay 1 ½ times the regular wage for work on a general holiday?

At most workplaces, employers must pay employees who work on a general holiday their general holiday pay, plus 1 ½ times their wage for the hours worked on that day.

There is an exception for employers operating a continuously operating plant or a seasonal business. They can instead allow the employee to work the general holiday, and pay them for their regular hours worked, if they provide another day off, with general holiday pay within the next 30 days. The employer and employee can agree to a longer period before the employee's next annual vacation if they wish.

How much are employees paid for reporting to work?

Employees who work for three hours or more are paid their regular wage for all hours worked.

Employees scheduled to work three hours or more but work less than three hours are paid for three hours at their regular wage.

Employees scheduled to work less than three hours and who work their scheduled hours are paid their regular wage for all hours worked.

Employees scheduled to work less than three hours and who work less than their scheduled hours are entitled to their regular wage for the full scheduled hours.

What are the standard hours of work?

Standard hours of work are the hours employees work for their regular wage. It is usually eight hours in a day and forty hours in a week. Hours worked over standard hours are overtime hours, and need to be paid at 1 ½ times the regular wage. There are exceptions in some construction industries, or by collective agreement or averaging permit. More information on the standard hours of work can be found on the [Overtime](#) page.

What are employees paid for overtime?

Employers who ask or allow employees to work longer than the standard hours of work must pay these employees 1 ½ times their regular hourly wage for each hour worked during overtime.

How are overtime hours determined?

Overtime is determined by the number of hours worked in a day and the number of hours worked in a week. Days where overtime hours are worked are shown in bold:

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total	Regular	Overtime
	8	8	8	8	8	8	48	40	8
	8	6	6	8	10		38	36	2
	10	6	10	6	10		42	36	6
7	6	8	7	7	8		43	40	3

Who decides when overtime will be worked?

Employers control scheduling in the workplace. Employees cannot work overtime without the knowledge or permission of their employers. If employers ask, allow or acknowledge the overtime work, it must be paid at 1½ times their regular wage rate.

Employees and employers can agree as part of the terms of employment, that a certain amount of overtime is required. Except in declared emergencies, overtime is voluntary or by agreement.

More information can be found on the [Overtime](#) page.

Can employees bank overtime and take time off later?

Yes, employers and employees can agree in writing, to bank overtime. The agreement must include the time off at 1 ½ times the number of overtime hours worked. For each hour of overtime worked, employees get 1 ½ hours off work with regular pay. Employers must schedule this time during regular hours.

The banked time must be taken within three months of being earned, unless the Director of the Employment Standards Branch authorizes a longer period. Employees have earned the overtime wages once the hours have been worked, and can ask to be paid out at any time.

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.

Can a salary include some overtime?

Yes, employers and employees can agree on a salary that includes a specific amount of overtime. Agreements should be made before any overtime is worked. The agreement must clearly identify what the employees are paid for working more than the agreed standard hours. Written agreements can save future disagreements.

For example: employees who earn a salary of \$550 per week and are expected to work a 50-hour week are paid \$10 per hour for the standard hours (40) and \$15 for each hour of overtime (10). If the employees work more than 50 hours, they are paid the overtime rate of \$15 per hour.

Changing the Standard Hours of Work for Overtime

Employers are responsible for scheduling employees, according to the standard hours of work (eight 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 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. For Employment Standards to consider a permit, the agreement of a significant majority of the affected employees is usually required.

How do I apply for a permit?

An application form can be found on the web site at www.manitoba.ca/labour/standards/forms.html or by contacting the Employment Standards Branch. The employer applies providing the rationale and information about the workplace environment and proof of the employees agreement with the proposal. The completed form can be taken, mailed or faxed to the nearest Employment Standards Branch office.

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

Yes, sometimes employers and employees would rather move a general holiday to a different day. The employer, with the written agreement of the majority of the employees, or by their collective (union) agreement can choose to substitute a different day in the place of a general holiday. For example, an employer and the employees could choose to substitute December 27 for Victoria Day. In this example Victoria Day would become a regular workday, and December 27 would be deemed a general holiday.

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

Website: 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.

Date Published: March 19, 2010