

## 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 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*.

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

If employees are hired to work partly outside on the farm and partly inside a climate-controlled facility, they would not be entitled to minimum standards regarding overtime, hours of work, general holidays, or wages for reporting to work.

An example of this is 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.

## **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.

## **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 whom the employee considers to be like a close relative.

## **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 employee's 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 records are employers required to maintain?**

Employers must keep records for all employees that show:

- Name, address, date of birth, and occupation
- The date the employment started
- The regular wage and overtime wage at the start of employment and whenever the wage rate changes
- The regular and overtime hours of work, recorded separately and daily
- Date wages are paid and the amount paid on each date
- Deductions from wages, and the reason for each deduction
- If applicable, overtime that is banked with the written agreement of the employee and employer and the dates the employee takes the banked time off with pay
- The dates on which general holidays are taken
- The employee's hours of work on a general holiday and the wages paid

- Start and end dates of annual vacations, the period of employment in which the vacation is earned, and the date and amount of vacation wages paid
- The amount of any outstanding vacation wages when the employment ends and the date this is paid to the employee
- 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
- Copies of work schedules

If an employee is paid a monthly or annual salary, it can be divided into an hourly wage for record keeping purposes. Regular hours of work are not required to be recorded if they do not vary on a daily basis, but any overtime or other changes should be recorded.

## 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
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?

Minimum wage is \$11.90 per hour effective October 1, 2020.

## Do employees need to give notice of termination?

Yes. The amount of notice depends on how long the employee has been employed by the same employer:

<i>Period of Employment</i>	<i>Notice Period</i>
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 the employee has worked for the same employer.

<i>Period of employment</i>	<i>Notice period</i>
At least 30 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.

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

Employers can pay the amount of wages employees would otherwise have received had they worked out the notice period (often called wages in lieu of notice). Employers can also allow employees to work for part of the notice period and pay wages in lieu of notice for the remainder.

Employees who work the same hours every week receive their regular earnings for wages in lieu of notice. For employees who work varying hours every week, wages in lieu are based on the average of the earnings for regular weekly hours worked over the last 6 month period. Vacation wages and overtime wages are not added to wages paid in lieu of notice.

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

Yes. Employers and employees do not need to give notice of termination when the employee has been employed for 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 employees are placed on a temporary layoff period of no more than 8 weeks in a 16 week period. There are additional considerations for determining the layoff period for temporary help employees. See [Temporary Help Agency](#) fact sheet.
- When the employee works in the construction industry
- When the employer can prove just cause, see [Just Cause](#) fact sheet
- When employment is for a specific length of time or a specific task or job
- When the employee has substantial control over whether or not to accept work and is not penalized by the employer for choosing not to work, except for temporary help employees who are entitled to notice if they regularly work more than 12 hours per week
- If the employer acts in a manner that is improper or violent toward the employee
- Under *The Elections Act*, election workers can be terminated for specific reasons by the person who appointed them. The worker can appeal to the Legislative Assembly

Employers must consider each situation on a case by case basis if deciding not 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 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.

## **At what age can young people start working?**

All young people 13, 14 or 15 years of age must complete the Young Worker Readiness Certificate Course, and obtain a Certificate of Completion that is signed by their parent/guardian before they can work.

## **What additional restrictions apply to young people who are 13 years old?**

Young people who are 13 years of age cannot prepare food if they need to use dangerous tools or machinery such as deep fryers, slicers, grills, or knives. They can still work in food preparation areas doing tasks like washing dishes, mixing salads, or filling drink orders.

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

Employees must receive at least two weeks of vacation after each of the first four years of employment. After completing 5 years of work with the same employer, employees must receive a minimum of 3 weeks of vacation.

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

Vacation pay is calculated based on the gross earnings in the previous year. Employees who are entitled to two weeks of vacation receive 4% of their gross wages as vacation pay and employees with three weeks' vacation

receive 6%.

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

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

## **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.

## **What leaves are available to employees?**

There are 12 leaves employees may take without fear of losing their job. They are:

- Maternity Leave
- Parental Leave
- Family Leave
- Bereavement Leave
- Compassionate Care Leave
- Long-Term Leave for Serious Injury or Illness

- Interpersonal Violence Leave
- Citizenship Leave
- Leave Related to Death or Disappearance of a Child
- Reservist Leave
- Leave for Organ Donation
- Public Health Emergency Leave

## **Who is eligible for the leave and how to qualify?**

All employees are eligible if they meet the qualifying period of employment for the leave.

Each leave has various lengths of time an employee must be employed before they can qualify to take a leave. For all leaves, employees must be employed by an employer for a certain length of time before they can take a leave.

All leaves have specific requirements that must be met for an employee to be able to take the leave. For more information on a specific leave, see the fact sheets on our website or contact Employment Standards.

## **Do employees get paid when on leave?**

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

However, other federal programs may provide income replacement. Employees should contact the federal government to find out what types of leaves have income replacement.

The only exception under *The Employment Standards Code* where an employer is required to pay a portion of a leave is under the Domestic Violence Leave.

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

The general rule is employers can only make deductions from wages when these are:

- Required by law (i.e. statutory deductions)
- For something for which employees agree to pay and is of a direct benefit to them, or
- To compensate for any cash advances or payroll errors.

Examples of what can be deducted from employees' wages include:

- Pay Advances



- ◆ Employees and employers should agree on how and when to repay the money when the advance is given, such as paying in regular instalments or in one lump sum. However, no interest, service charges, or any other fees related to the advance may be deducted.
- ◆ If employers and the employees cannot agree on how and when the cash advance will be paid back, employers can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
- Payroll Error Corrections
  - ◆ Employers can correct any payroll errors as soon the employee or employer notices them. Employees and employers should agree on how and when to make the correction, such as paying in regular instalments or in one lump sum.
  - ◆ If employers and the employees cannot agree on how and when the payroll error will be corrected, employers can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
- Cost of Tools
  - ◆ Employers can only deduct the amount agreed to by employees and only if: a) the tools remain the property of employees; b) are not unique to the particular employer; c) are available for purchase from different suppliers; d) can reasonably be expected to be used at different employers in the same occupation; e) are voluntarily bought from the employer instead of another supplier.
  - ◆ If the employer and employee cannot agree on how and when the employee will reimburse the employer for the cost of the tools, the employer can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
  - ◆ Employers cannot deduct the cost for tools that are required by law.
- Photo Radar Tickets or Red Light Camera Tickets
  - ◆ Employers may deduct the minimum amount payable if employees give written consent to do so.
- Cost of Courses and Training
  - ◆ Only sometimes. Employers cannot charge an employee for a course that has no value to them outside of the workplace. This includes most mandatory employer-specific courses. Employers may deduct the cost for all or part of a course or training that directly benefits their employees if they voluntarily attend and agree to pay.
- Cost of Room and Board
  - ◆ With employees' consent, employers can charge for room and board if employees have no other practical options for obtaining meals and lodging. The amount employers are allowed to deduct cannot reduce employees' earnings below minimum wage for the pay period by more than \$7 per week for the room and by more than \$1 for each meal.

## **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.

Unauthorized deductions include:

- Fees to cash cheques
- Cost of damage to company property and vehicles (i.e. insurance deductible, parking tickets, or other violations, with the exception of photo radar ticket or a red light camera tickets)
- Cost of lost, stolen or broken tools, equipment, products, or faulty service
- Cost of cash or inventory shortages, dine & dashes, or drive offs
- Cost of personal safety equipment

- ◆ Safety equipment is an employer’s responsibility. There are exceptions for safety headwear and some safety footwear. Contact The Workplace Safety and Health Branch at 204-945-3446 or visit their website safemanitoba.com for more information.
- Cost of a uniform

## 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
- July 1
- Labour Day
- Thanksgiving Day
- Christmas Day

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

<i>General Holiday</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>
New Year's Day	January 1	January 1	January 1
Louis Riel Day	February 17	February 15	February 21
Good Friday	April 10	April 2	April 15
Victoria Day	May 18	May 24	May 23
July 1	July 1	July 1	July 1
Labour Day	September 7	September 6	September 5
Thanksgiving Day	October 12	October 11	October 10
Christmas Day	December 25	December 25	December 25

## How is general holiday pay calculated?

Employees who consistently work the same number of hours get one regular work day’s pay as general holiday pay.

- For example, an employee who always works 8 hours a day, 40 hours a week, would get their regular wages for 8 hours as general holiday pay.

For employees whose hours of work or wages vary, general holiday pay is calculated at 5% of the gross wages (not including overtime) in the 4 week period immediately before the holiday.

- For example: an employee who works varying hours each day, and earned \$1200 in the 4 weeks before the holiday, is entitled to general holiday pay of \$60 ie.  $\$1200 \times 5\% = \$60$

## **Do all employees receive general holiday pay?**

All employees receive general holiday pay unless:

- They are scheduled to work on a general holiday, but are absent without the employer's permission.
- They are absent without the employer's permission from their last scheduled workday before the holiday, or their first scheduled workday after the holiday.

Election officials, enumerators and any other temporary person appointed under *The Elections Act* are not entitled to general holiday pay.

## **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 on the day in addition to their general holiday pay.

## **Do all agricultural businesses need to pay 1 ½ times the regular wage for work on a general holiday?**

There is an exception for employers operating a continuously operating business, a climate-controlled agricultural business, or a seasonal business.

These types of businesses can pay 1 ½ times the regular wage for hours worked on the general holiday, **or** can instead allow the employee to work the general holiday and pay them regular wages for their 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?**

When an employer decides to cancel shifts or to send employees home early, those scheduled to work more than 3 hours, and

- Work less than 3 hours, must be paid for at least 3 hours
- Work more than 3 hours, must be paid for all hours worked

If employees are scheduled to work less than 3 hours, they must be paid for their entire scheduled shift.

The following table explains what an employee is entitled to be paid if the employer cancels or cuts the shift short. When employees are notified of the change in schedule before reporting to work, they are not entitled to reporting pay.

<b>Scheduled to work</b>	<b>Actually worked</b>	<b>Must be paid for</b>
3 hours or more	Less than 3 hours	3 hours
<i>Example: 4 hours</i>	<i>Half an hour</i>	<i>3 hours</i>
<b>Scheduled to work</b>	<b>Actually worked</b>	<b>Must be paid for</b>
Less than 3 hours	Less than scheduled hours	Entire scheduled shift
<i>Example 2.5 hours</i>	<i>Half an hour</i>	<i>2.5 hours</i>

## What are the standard hours of work?

Standard hours of work are 40 hours a week and 8 hours a day. Employees are entitled to their regular wage rate for work during these hours. If employees work more than the standard hours in a week or in a day, this is overtime and must be paid at the overtime rate.

## What is the overtime wage rate?

Employees are paid 1 ½ times their regular hourly wage for each hour (or part of an hour) worked during overtime.

## How are overtime hours determined?

Overtime is determined by the number of hours employees work in a day and in a week. Any hours worked over 8 hours in a day or 40 hours in a week are overtime.

Below are some examples of how to calculate overtime. 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	<b>8</b>	48	40	<b>8</b>
	8	6	6	8	<b>10</b>		38	36	<b>2</b>
	<b>10</b>	6	<b>10</b>	6	<b>10</b>		42	36	<b>6</b>
7	6	8	7	7	<b>8</b>		43	40	<b>3</b>

## Who decides when overtime will be worked?

Employees cannot work overtime without the knowledge or permission of their employers. Employees must be paid at 1½ times their regular wage rate if employers ask, allow, or acknowledge the overtime.

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

## Can employees bank overtime and take time off later?

Yes. Employers and employees can agree in writing to bank overtime. The agreement must follow these rules:

- For each hour of overtime worked, 1 ½ hours of time is banked, which is paid at the regular wage rate when the employee takes the time-off;
- Employers must schedule time-off during the employee's regular hours;
- Employers must provide the time-off within three months of it being earned, unless Employment Standards authorizes a longer period.

## 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 employer's 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.

## 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 and must clearly identify wages for working more than the standard hours. Clearly written agreements can save future disagreements.

For example: An employee earns a salary of \$700 per week and is expected to work a 50-hour week. This agreement means the employee is working 40 regular hours and 10 hours of overtime each week as part of the salary. To calculate an hourly wage rate for the salary, the overtime hours are first converted to standard (regular) hours by multiplying them by 1 ½.

In this example

$10 \text{ overtime hours} \times 1.5 = 15 \text{ regular hours}$

These are then added to the regular hours:

$40 \text{ regular hours} + 15 \text{ regular hours} = 55 \text{ regular hours}$

The hourly wage an employee should be paid for regular hours worked is then calculated by dividing the salary by the total number of regular hours:

$\$700 \text{ salary} \div 55 \text{ regular hours worked} = \$12.73/\text{hour}$

For the overtime hours worked, the employee must be paid at 1 ½ times this hourly wage:

$\$12.73/\text{hour} \times 1.5 = \$19.10 \text{ overtime wage}$

If the employee works more than the agreed 50 hours, the employee must be paid at the overtime wage for those hours.

## 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.

## **How do I apply for a permit?**

Download applications forms from [www.manitoba.ca/labour/standards/forms.html](http://www.manitoba.ca/labour/standards/forms.html) or by calling Employment Standards. The completed application can be dropped off, mailed or faxed to the nearest Employment Standards office.

More information can be found on the [Averaging Permits](#) fact sheet.

## **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.

## **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 Employment Standards:**

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

Fax: 204-948-3046

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, The Construction Industry Wages Act , The Worker Recruitment and Protection Act, or contact Employment Standards.

**Available in alternate formats  
upon request.**

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