

# On the Job

*For Manitoba's Tourism and Hospitality Employers*

*discover*  
TOURISM

[www.discovertourism.ca](http://www.discovertourism.ca)

**MTEC**

MANITOBA TOURISM  
EDUCATION COUNCIL

[www.mtec.mb.ca](http://www.mtec.mb.ca)

The biggest challenge any employer faces is how to get employees to stay – especially your best employees. As important as recruitment and training efforts are to build and maintain a competent staff, even more critical is keeping skilled workers once you have them.

## Retention planning focuses on:

- understanding why employees stay with or leave organizations, and
- using that information to put into place a range of strategies to ensure employees' needs and expectations are met.

Becoming an employer of choice puts your organization in an excellent position to attract and retain top quality personnel.

## Why is retention so important?

There are two main reasons:

- the cost of employee turnover, and
- loss of key competencies (human capital).

## Potential Costs of an Exiting Employee

Separation Costs	
• Time for exit interview	• Job postings
• Administrative processing	• Recruitment activities
• Payment of benefits to exiting employee	• Administrative processing
• Diminished productivity/ morale of remaining personnel	• Interviews
• Business down-time or payment of overtime to cover for departed employee	• Employee selection
• Employee orientation Training	

Care has been taken to acknowledge copyright material. We welcome any information that will enable us to correct, in subsequent editions, any inaccurate or omitted credit.

No liability is assumed with respect to the information contained herein.

Version 010

Print run April 2009



Manitoba Tourism Education Council (MTEC)

Unit 100 – 1534 Gamble Place

Winnipeg, Manitoba R3T 1N6

Phone: (204) 957 7437 Fax: (204) 956 1700

Website: [www.mtec.mb.ca](http://www.mtec.mb.ca)

OUTSIDE WINNIPEG CALL TOLL FREE: 1 (800) 820 MTEC (6832)

# ON THE JOB RETAIN YOUR BEST

## How can you retain YOUR best performers?

Large Hotel – 50 employees

- Offer promotion opportunities.
- Use performance-based compensation.
- Acknowledge performance! Post “employee of the month” pictures.
- Offer training such as courses for professional certification.
- Allow flexibility in work hours by offering choice of shifts.

Local Bed & Breakfast – 3 employees

- Offer new challenges and responsibilities.
- Offer gift certificate from local store.
- Offer coaching for new skills.
- Offer family discounts for staying at Bed & Breakfast.
- Award performance bonus for exceptional performance.

# ON THE JOB PERFORMANCE MANAGEMENT

Good performance management communicates performance goals to employees, ensures ongoing feedback, fosters learning and development and encourages employees to consider future career opportunities within your organization.

A performance management system can include:

## 1. Objectives and a Performance Plan

A performance plan should include objectives, goals and performance standards relevant to the job and acceptable to the employee. These will determine how the employee's performance will be judged to be successful. Objectives should be:

- **Specific:** Objectives are clear to the employee and manager so both share the same understanding of what is to be achieved and the standards used to evaluate performance.
- **Measurable:** Objectives and standards can be objectively observed and measured.
- **Achievable:** Objectives are attainable yet provide challenge.
- **Realistic:** The objectives are within the realm of control of the employee.
- **Time Bound:** Objectives have a clearly defined timeline.

## 2. Competencies or Skill Dimensions for Performance

The skills or competencies required can be based on emergent National Occupational Standards. These can be used to identify training needs to close skill gaps, support continuous improvement or achieve a career goal.

## 3. Identification/Assessment of Career Development Potential, Directions and Opportunities

This component is often included to identify training and development to be successful in the current position or to achieve an identified career path.

## 4. Recognition of Employee Performance

A program that recognizes employees' efforts and achievements and contributes to increased job satisfaction and motivation at work.

### Performance Feedback

Feedback on employee performance typically comes from supervisors or managers, but feedback from other sources is valuable too, and can include:

- Supervisor/Manager
- Self
- Peers/Colleagues
- Clients/Customers
- Subordinates

## **A Quick Guide to Employment Standards**

### **Who is covered by the Employment Standards laws in Manitoba?**

Most employees in Manitoba fall under provincial jurisdiction. The legislation covers employees, people who are employed by employers to do work. Independent contractors are not employees and the legislation does not apply to them.

Parts of legislation do not apply to; agriculture workers, baby sitters, professionals, part-time domestic workers, family members employed in family businesses, some provincial civil servants and temporary election workers. Some employees work in industries that are regulated by the federal rather than the provincial government. These employees are not affected by Manitoba's employment standards legislation.

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

Effective April 1, 2008 the minimum wage is \$8.50 per hour.

On May 1, 2009 the minimum wage will increase to \$8.75 per hour.

On October 1, 2009 the minimum wage will increase to \$9.00 per hour.

### **Can employers provide more than what the legislation sets as minimum standards?**

Yes, the legislation sets only the minimum workplace standards that must be respected. Many employers provide more benefits, or pay higher wages.

### **Can a contract offer benefits that are lower than employment standards?**

No, employers and employees cannot agree to work for less than the minimum standard, whether they have a contract or not. There are some situations where employers and employees can agree to different provisions, but they can never agree to less than the minimum standards.

### **Are the standards different for part-time employees?**

No, the amount employees' work does not change their rights. Some of the standards, such as vacation pay and general holiday pay, are based on a percentage of earnings. Therefore part-time employees may not earn as much

as full-time, but they are still entitled to the benefit.

## **Are self-employed people covered by The Employment Standards Code?**

Some are. Although many people are called self-employed or independent contractors they may not be when it comes to employment standards. Determining if a person is an employee or a independent contractor can be very complex. Signing a document that states a person is an independent contractor does not make it so. It is the nature of the relationship between both parties that determines if someone is truly an independent contractor.

Contact the Employment Standards Branch for more details. Independent contractors are not covered by employment standards legislation.

## **Are people employed in agriculture covered by employment standards legislation?**

Yes, Effective June 30, 2008 many employees working in agriculture are covered by employment standards legislation. Employees working on a farm owned by a family member are excluded from most standards. Other employees working in agriculture are covered by most standards. There are some exceptions regarding general holidays, wages for reporting for work and overtime. Please see the [fact sheets on agriculture](#) for more details.

## **Do young people have the same rights as other employees?**

Yes, young people have the same rights and the same obligations. They are entitled to vacation pay, overtime, minimum wage, general holiday pay and all other rights under The Employment Standards Code. The website at [www.manitoba.ca/labour/standards](http://www.manitoba.ca/labour/standards) has information on employee and employer rights and responsibilities.

## **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.

## **Are there restrictions on where and when young people can work?**

Yes. People under 18 years old are not allowed to work alone between the hours of 11:00 p.m. and 6:00 a.m. They are also not allowed to work in the following industries:

- forestry
- saw or pulp mills
- confined spaces
- underground in mines or on the face of open pit quarries
- asbestos abatement and removal

Employees under 16 years old are not allowed to work between the hours of 11:00 p.m. and 6:00 a.m. or work:

- on a construction site
- in the industrial or manufacturing processes

- drilling or servicing rigs
- on scaffolds or swing stages
- pruning, repairing, maintaining, or removing of trees

## **How often can young people work?**

During a school week, employees under 16 years old can only work 20 hours or less. During vacations like Christmas and summer, it may be possible to work more. There may also be restrictions on employment permits about when young people can work.

## **How do I apply for an 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, the school principal and the employer. The completed form can be taken, mailed, or faxed to the nearest Employment Standards Branch office.

## **What happens to the permit if the job changes?**

The permit specifies the job duties the applicant is approved to do. In some cases, job duties or hours of work may change after the employment begins. Either the worker or the employer must call the Employment Standards Branch to update the information on the permit.

Because permits are approved for a specific job with a specific employer, employees looking for a new job with a new employer; must apply for a new permit, even if the job tasks and hours do not change.

## **Can young people work alone?**

People under 18 years old cannot work alone between 11:00 p.m. and 6:00 a.m. . People under 16 years of age can not work at all between 11:00 p.m. and 6:00 a.m.

Workplace safety and health legislation requires all employers who have employees working alone to have a clear plan that ensures employees' safety. This is needed whenever an employee is asked to work alone, not just at night.

People under 16 years of age may be asked to work alone at times. Usually, the employment permit has special instructions about working alone. Anyone with concerns about working alone, or someone they know working alone, should contact both the Employment Standards Branch and the Workplace Safety and Health Branch to discuss the situation.

## **Should employees get pay statement with their wages?**

Employers must give all employees written pay statements when they are paid wages. Pay statements are sometimes referred to as pay stubs.

## What must pay statements show?

Pay statements must show:

- the regular wage and the number of regular hours worked in the pay period
- the overtime wage and any overtime hours worked in the pay period
- all deductions from wages, with a date and reason for each deduction
- the total amount of wages paid to the employee

## Who must keep records?

Employers must keep records of their employees, the hours they work and the wages paid. Although it is not a requirement, it is strongly suggested that employees also keep records of when they work and what they have been paid.

## 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 hours of work and overtime, 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

## Can employers take any deductions from employees wages?

Employers can deduct:

- statutory deductions
- 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
- 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 is a direct benefit to employees?**

Examples of deductions that directly benefit employees can include: health or insurance packages, social funds, voluntary purchases of goods or services from the employer and some types of educational expenses. Expenses that are required by employers that do not benefit employees directly, must be paid by the employers.

## **Can employers deduct the costs of a uniform, or require employees to buy uniforms?**

No, uniforms are a direct benefit to employers. Employers cannot make employees buy uniforms.

## **What is considered a uniform?**

A uniform is a form of dress that is unique to a business. Uniforms are identified with the employers logo or symbol, name or colours; making it of no practical use outside of that workplace. Employees often have no choice in style, colour or supplier. Employers can require items of clothing, in specific colours be worn, as long as employees can reasonably use them elsewhere.

## **Can employers have a dress code?**

Employers can establish a dress code, require certain types of clothing and establish standards for the look of employees while they are working. For example, a restaurant can require all serving employees to wear a clean pressed white shirt and black pants while working.

The clothing required by a dress code cannot be specific to an employer. When deciding whose responsibility the cost of clothing is (employees' or employers'), the main issue is the amount of choice employees have in choosing where and what to buy. The more choice, the more likely it is part of a dress code and not a uniform. Clothing with a logo, or a certain design or style normally identified with a company, or that must be bought from employers, are likely uniforms and must be paid for by employers.

## **Who pays for damages to company vehicles, valuable equipment or other losses?**

Employers may not deduct wages to cover any costs for faulty work, poor quality work, loss of customers, cash shortages or damages to their property. This includes: the cost of car accidents and parking tickets involving company vehicles; dishes broken by employees, customers leaving without paying, etc.

Employers have the right to sue employees who caused the damages in criminal or civil court. If a court issues an order of repayment, the employers can then garnish the wages of that employee.

See the [Deductions](#) page for more details about what cannot be deducted from employees wages.

## **What are the standard hours of work?**

Standard hours of work are the hours employees work for their regular wage. It is usually 40 hours in a week and eight hours in a day. 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.

## **Who controls scheduling?**

Employers make or approve work schedules. Sometimes employers involve employees in schedule decisions, but are not required to do so.

## **Do Employers need to provide transportation to or from work?**

When an employer's place of business and an employee's residence are located within the boundaries of a city or town, the employer must provide the employee with adequate transportation between the residence and the work place when the employee's hours of work begin or end after 12 midnight and before 6:00 a.m. The only exception is if the employee is a police officer.

## **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 the overtime wage.

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.

## **When are employees entitled to breaks?**

Employees are entitled to a 30 minute unpaid break after completing five hours of work. They are entitled to a second meal break after completing a second, five-hour work period.

Employees are also entitled to at least one day of rest per week.

For more information on breaks and a day of rest see the [Hours of work and breaks](#) page

## **Are employees entitled to a day off?**

Yes, employees are entitled to have 24 hours off without pay in each week. There are some exceptions, please [call Employment Standards](#) if you have questions.

## **Can employers change employees schedules?**

Yes, employers make schedules that suit their businesses and can change work schedules at any time. This includes deciding to close on a certain day, or reduce the number of hours they are open each week.

## **Can employees change schedules?**

Employers control schedules. Some employers allow employees to switch shifts with co-workers or change schedules. For workplaces that do not allow this, schedule changes must be discussed with the employers.

## **Do employers need to pay overtime when schedules have been changed?**

If employees work overtime, they must be paid overtime wages. Employers cannot refuse to pay overtime because the overtime resulted from a switched shift. Employers who allow employees to switch shifts may set a policy that prevents employees from changing shifts in a way means other employees must work overtime.

## **Can employers change schedules even after shifts have started?**

Employers can ask employees to end their shifts, or start additional ones. As of April 30, 2007, employees generally must be paid for the length of their shifts or for three hours, whichever is less, once they have reported for work. More information can be found on the [Wages for reporting for work](#) 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	<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	8		43	40	<b>3</b>

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

Yes, employers and employees can agree, to bank overtime if they agree in writing. 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.

## Do salaried employees receive overtime?

Yes, employees who are paid by salary are entitled to overtime. For salaries, an hourly wage may be calculated to determine the overtime pay per hour.

For example: employees who earn a salary of \$400 per week and are expected to work a 40-hour week are paid \$10 per hour for the standard hours. If they work overtime, they are paid 1 ½ times their regular wages. In this case, \$15 per hour.

## 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.

## **Overtime exclusions**

Employees who substantially control their hours of work and earn more than twice the Manitoba average industrial wage may be exempt from the hours of work and overtime provisions. More information can be found on the [Overtime exemption – workers who substantially control their hours of work](#) page.

Employees who primarily perform management functions may be exempt from the hours of work and overtime provisions. This does not necessarily include all employees who are called managers or supervisors. More information can be found on the [Overtime exemption – workers who perform management functions primarily](#) page.

## **Who is exempt from overtime and hours of work under this provision?**

Employees who perform management functions primarily are exempt from overtime under this provision. Management functions affect the control and direction of a business. A key factor is the amount of independent judgment and discretion employees have when operating the business. The more discretion and authority employees have to make business decisions, the more likely it is they are performing management functions primarily.

For example in a franchise business where all of the major decisions on staff, budget and marketing are made at the corporate office, employees might not be considered to be performing management functions primarily.

## **Are employees called "manager" or "supervisor" exempt from overtime and hours of work?**

Job titles have no impact on whether an employee is exempt or not. The determining factor is the role the person plays in the organization. The more independent authority and discretion employees have, the more likely they perform management functions primarily.

## **Who is exempt from overtime and hours of work under this provision?**

Employees who have substantial control over their hours of work and earn a regular annual income of at least two times the Manitoba average industrial wage are exempt from overtime. Both criteria are required for an employee to be exempt from overtime.

## **What is the Manitoba average industrial wage?**

Employment Standards will announce the Manitoba average industrial wage in June of each year. It is calculated using information available from Statistics Canada for the previous year. In 2007, the Manitoba average industrial wage was \$36,491.00. Therefore, to qualify for this exemption from after June 1, 2008 an employee must have a regular annual wage greater than \$72,982.00 per year.

## **How is substantial control over hours of work defined?**

Most employees are told by the employer when they are required to work, what days they will work, the hours

they will work. Although these employees can request changes to their schedules, they do not have the final say if the request would be allowed. Most employees do not have substantial control over their hours of work.

Other employees have the ability to organize their work schedule to suit the needs of themselves and clients. They may need to check in with their employer occasionally, but the employer generally doesn't set the schedule or control their day-to-day activities. These employees would generally have "substantial control over their hours of work."

## **Do both criteria need to be met to be exempt from overtime?**

Yes, to be exempt from overtime, employees must have substantial control over their hours of work and earn an annual regular wage of greater than twice the Manitoba industrial average wage.

## **Overtime for incentive-based pay plans**

Most employees who work more than eight hours in a day and 40 hours in a week are entitled to overtime. This includes employees who are paid either entirely or partly by incentive pay. Overtime for an employee paid by incentive is calculated based on an average hourly wage. More information on how to calculate overtime for incentive based pay plans can be found on the [Overtime – Incentive Pay Workers](#) page.

## **How is overtime pay calculated for employees who are paid by incentive?**

For incentive pay, calculating overtime is a two-step process:

- Calculate the hourly wage.
- Calculate the regular and overtime pay.

To calculate the hourly wage, the incentive pay is divided by the total 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.

Overtime hours are those worked over the standard hours. In most cases, they are the hours worked after eight hours in a day and 40 hours in a week. The [Overtime](#) page provides more details on how to determine overtime hours.

In each pay period, employees must be paid their hourly wage for all standard hours they worked and their overtime wage, which is 1 ½ the hourly wage, for all overtime hours they worked.

## **What is incentive pay?**

In some workplaces, employees are paid based on how productive they are rather than the number of hours they work. Common examples include commission salespeople, flat-rate mechanics and pieceworkers.

## **Are employees still entitled to minimum wage for all hours worked?**

Yes, employees are entitled to at least minimum wage in each pay period and cannot agree to work for less. The [Minimum wage](#) page has more information.

## 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 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.

## Does the employer 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.

## Are there programs to pay employees while on leave?

Yes, the federal government provides programs through Employment Insurance (EI) to cover this type of leave. Please check with your local EI office or call 1-800-206-7218 for details.

## What happens when the leave ends?

Employees must be allowed to return to their job, or a comparable job with the same or greater benefits and pay, when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

## **What if the employees' job is no longer available?**

Generally, a comparable position with the same pay and benefits must be offered. In special circumstances, employers may not have a position available for reasons completely unrelated to the leave. For example, if employers shut down part of their operations and reduce their workforce based on a seniority system, employees who are on unpaid leave would not necessarily be protected from losing their jobs.

Employers must show that the leave has no impact on the decision to lay off or terminate the employment.

## **Who qualifies for maternity leave?**

Employees, who have worked with the same employer for at least seven consecutive months and are expecting to give birth to a child, are entitled to take maternity leave.

## **Who qualifies for parental leave?**

Employees who have worked with the same employer for at least seven consecutive months and have become a parent by birth or adoption are entitled to the leave.

## **How long is family leave?**

The legislation provides three unpaid days per year as family leave. Many employers give greater benefits than those provided for in the legislation, such as more days off or paid leave.

## **Who qualifies for compassionate care leave?**

Employees who have worked with the same employer for at least 30 days qualify for this leave. Employees must provide a certificate from a doctor indicating that a family member has a serious medical condition, has a significant risk of death in the next 26 weeks and needs care and support.

## **Who can take bereavement leave?**

Anyone employed for at least 30 days with the same employer is entitled to this leave.

## **Are employees paid while on bereavement leave?**

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

## **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.

## **When are employees paid their vacation pay?**

Employers decide when vacation pay is to be paid. However, it must be paid no later than the last day of work before the vacation and within 10 months of earning it.

## **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.

## **When can employees take their vacation?**

Employees are eligible for vacation once they have completed one year of work and must take their vacation within 10 months of it being earned. Employees and their employers can agree on when vacation will be taken.

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

## **Can vacation be used as notice of termination?**

Vacation cannot be used as notice of termination. Employees are entitled to all outstanding vacation pay when their employment ends.

## **What are the general holidays in Manitoba?**

There are eight general holidays throughout the year:

- New Year's Day
- Louis Riel Day (3<sup>rd</sup> 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.

## **Are Easter, the August Civic Holiday, Remembrance Day and Boxing Day holidays?**

Easter Sunday, the August Civic holiday, and Boxing Day are not general holidays. Employees who do not work those days do not have to be paid.

Although Remembrance Day is not a general holiday, there are restrictions for operating businesses and special requirements for paying employees who work that day. See the [Remembrance Day](#) page for more details.

## **How is general holiday pay calculated?**

General holiday pay is five percent of an employees 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 if an employee worked 8 hours a day, 5 days a week at \$10 per hour, for the previous 28 days, 5% would equal \$1600 times five per cent, or \$80 for the general holiday.

## **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 because they are ill.

## **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.

## **What if employment ends in the four weeks before a general holiday?**

If employees end the employment before a general holiday there is no entitlement to general holiday pay for that holiday.

If employers end the employment before a general holiday, employees are entitled to general holiday pay of five per cent of total wages, excluding overtime wages but including wages in lieu of notice, for the four-week period immediately before the holiday. The general holiday pay must be paid with the last wages, no later than 10 days after the employment ended.

## **Can a retail business be open on Sundays?**

A retail business that operates with fewer than four employees can be open on Sundays. Municipalities can pass a bylaw to allow Sunday and holiday shopping at larger retail businesses within their communities.

## **Are there restrictions on when stores can be open in communities?**

In communities like Brandon and Winnipeg that have passed a Sunday shopping bylaw, retail businesses can be open between 12:00 p.m. and 6:00 p.m. on Sundays, Louis Riel Day, Victoria Day and Thanksgiving Day.

## **Can retail stores be open on General Holidays?**

In communities with a Sunday and Holiday shopping by-law retail stores can be open Sunday shopping hours on Louis Riel Day, Victoria Day and Thanksgiving Day.

Most retail businesses cannot be open on New Years Day, Good Friday, Easter Sunday, Canada Day, Labour Day or Christmas Day.

Remembrance Day is not a holiday. Retail stores cannot be open between 9:00 a.m. and 1:00 p.m. on Remembrance Day. More information is available on the [Remembrance Day](#) page.

## **What is termination of employment?**

Common expressions for termination of employment include:

- fired
- quit
- let go
- discharged
- dismissed
- permanently laid off
- terminated

## **Do employees need to give notice of termination?**

Yes, employees who have worked for an employer more than 30 days but less than one year, must give at least one weeks 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.

## **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
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 10 years	six weeks
at least 10 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.

## **Is there a no-notice period?**

In the first 30 days of employment the legislation states that employers and employees have the right to end the working relationship without notice.

## **Can employers have notice policies for their businesses that are different from the legislation?**

No. Effective April 30, 2007, employers cannot have alternate notice policies. A notice policy set under the previous legislation is not valid. The only exclusion is a unionized workplace, where a collective agreement has a probationary period that is one year or less.

## **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.

## **Can employers keep employees' wages if employees terminate without notice?**

No. Effective April 30, 2007, employers cannot keep wages from employees who quit without notice. Employers must pay employees all earned wages within 10 days of the last day of work.

## **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

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.

## **Do employers need to have just cause to terminate employees?**

Under employment standards legislation employers and employees can terminate employment at any time, for any reason if they provide notice of termination. Just cause may be relevant in a civil action, but The Employment Standards Code does not require a reason for a termination.

## **Do notice provisions cover construction?**

No, employees who work in the construction industry are excluded from notice of termination requirements. For more information, see the [Construction industry](#) page.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: January 8, 2009

## **Canada Day – Monday, July 2, 2007**

### **When is Canada Day?**

Canada Day is normally July 1, however when July 1 is a Sunday, Canada Day is July 2.

### **Is Canada Day a General Holiday?**

Yes, Canada Day is a General Holiday, for more information on how employees are paid on Canada Day please see our General Holiday Fact Sheet

### **Can retail businesses be open on Monday July 2, 2007?**

No, most retail businesses must be closed on Monday July 2, 2007.

Retail businesses that regularly operate with four or less people (including the owner) can be open on Canada Day.

Also:

- Restaurants;
- Pharmacies;
- Laundromats
- Boat and Motor vehicle rental, repair and servicing shops
- Places of educational, recreational or amusement purposes,
- tourism and recreational facilities including summer and winter resorts, and;

other retail businesses where the only good sold or offered for sale are:

- nursery stock, flowers, garden supplies and accessories
- fresh fruit and vegetables
- gasoline, motor oil and related goods or services for use in the operation of a motor vehicle

Can be open on Canada Day

### **Can other businesses operate on July 2, 2007?**

Yes, retail business is restricted on Canada Day, but other industries can operate. The regular general holiday rules apply. Please see the [General Holiday fact sheet](#) for more details.

## **Can retail businesses operate on Sunday July 1, 2007?**

Sunday, July 1, 2007 is not a holiday; therefore retail businesses in municipalities with a Sunday shopping bylaw can be open like other Sundays and employees who work that day are paid as they would be normally.

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

Telephone: 204-945-3352 or Toll free in Manitoba 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 information is intended as a guide only and is not a legal opinion. For complete information refer to the *Employment Standards Code* or other relevant legislation or contact us for more details.

Date Published: September 19, 2007

## Changes to Termination of Employment in 2007 (New)

There are many changes to the Employment Standards Code that affect termination of employment and notice of termination. The new legislation introduces the concept of graduated notice and removes the employers ability to change the notice policy for their operation. This page discusses only the areas that have changed, more information can be found on the [Termination of employment](#) page.

### 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.

### Do employees need to give notice of termination?

Yes, employees who have worked for an employer more than 30 days but less than one year, must give at least one weeks 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.

### Is there a no-notice period?

In the first 30 days of employment the legislation states that employers and employees have the right to end the working relationship without notice.

### 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
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 10 years	six weeks
at least 10 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.

## **How is a period of employment calculated?**

In most cases, it is the length of time from when employees start with employers, until the day the employment ends.

In situations where employees leave an employer for a short period of time and return to work for the same employer later, the employment is considered continuous when the break is less than two months, or if the job is seasonal and repeats year after year.

## **Do parental leaves or other leaves of absence affect notice?**

No, employment is considered continuous during statutory leaves like parental, maternity or compassionate care leave. It is also considered continuous during non-statutory leaves, like an educational leave, if the leave was approved by the employer.

## **Do notice provisions cover construction?**

No, employees who work in the construction industry are excluded from notice of termination requirements. For more information, see the [Construction industry](#) page.

## **Can employers keep employees' wages if employees terminate without notice?**

No. Effective April 30, 2007, employers cannot keep wages from employees who quit without notice. Employers must pay employees all earned wages within 10 days of the last day of work.

## **Can employers have notice policies for their businesses that are different from the legislation?**

No. Effective April 30, 2007, employers cannot have alternate notice policies. A notice policy set under the previous legislation is not valid. The only exclusion is a unionized workplace, where a collective agreement has a probationary period that is one year or less.

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

Telephone: 204-945-3352 or Toll free in Manitoba 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 information is intended as a guide only and is not a legal opinion. For complete information refer to the *Employment Standards Code* or other relevant legislation or contact us for more details.





## 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 come 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 Standard Provision	Workers employment by agricultural companies that provide services to farms	Farm workers in climate controlled facilities	Farm workers, employed on a farms 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?**

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. 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 hours of work and overtime, 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

## **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?**

Effective April 1, 2008 the minimum wage is \$8.50 per hour.

On May 1, 2009 the minimum wage will increase to \$8.75 per hour.

On October 1, 2009 the minimum wage will increase to \$9.00 per hour.

## Do employees need to give notice of termination?

Yes, employees who have worked for an employer more than 30 days but less than one year, must give at least one weeks 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.

## 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
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 10 years	six weeks
at least 10 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.

## 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?

In the first 30 days of employment the legislation states that employers and employees have the right to end the working relationship without notice.

## 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

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 an 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, 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

Maternity Leave            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 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.

## Can employers take any deductions from employees wages?

Employers can deduct:

- statutory deductions
- 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
- 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

## **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 Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: January 8, 2009



## Standards for employees of Agricultural Service Providers

On June 30, 2008 changes made to the Employment Standards Code regarding employees working in agriculture come into effect. Different standards apply depending on the type of employment. This fact sheet provides information regarding employees who for business that provide services in the agriculture industry.

### 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 Standard Provision	Workers employment by agricultural companies that provide services to farms	Farm workers in climate controlled facilities	Farm workers, employed on a farms 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 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.

## **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 hours of work and overtime, 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

## **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?**

Effective April 1, 2008 the minimum wage is \$8.50 per hour.

On May 1, 2009 the minimum wage will increase to \$8.75 per hour.

On October 1, 2009 the minimum wage will increase to \$9.00 per hour.

## **Do employees need to give notice of termination?**

Yes, employees who have worked for an employer more than 30 days but less than one year, must give at least one weeks 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.

## **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
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 10 years	six weeks
at least 10 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.

## **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?**

In the first 30 days of employment the legislation states that employers and employees have the right to end the working relationship without notice.

## **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

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 an 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, 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 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.

## Can employers take any deductions from employees wages?

Employers can deduct:

- statutory deductions
- 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
- 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 (3<sup>rd</sup> 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 employees 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 if an employee worked 8 hours a day, 5 days a week at \$10 per hour, for the previous 28 days, 5% would equal \$1600 times five per cent, or \$80 for the general holiday.

## **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 because they are ill.

## **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 40 hours in a week and eight hours in a day. 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	<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	8		43	40	<b>3</b>

## 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 the overtime wage.

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.

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

Yes, employers and employees can agree, to bank overtime if they agree in writing. 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?**

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 employer applies providing the rational 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 work day, 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 Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: January 8, 2009

## Averaging Permits Information

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. Employers must also ensure their employees get an appropriate break and weekly day of rest. 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, the weekly hours, the work break or the weekly day of rest. The agreement of a significant majority of the affected employees is usually required.

### How do I Apply?

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 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.

### Are there restrictions on who can apply?

No, but consideration will only be given to workplaces that meet the legislated criteria and have proposed a set schedule or schedule cycle. Permits are not generally given to individual employee schedules or to accommodate "flex-time". Permits are also not given to workplaces where the majority of employees disagree with the proposal.

There are some industries that have different standard hours of work outlined in legislation. You can find more information regarding overtime on our [Overtime Fact Sheet](#).

### Do employees have a choice about the proposed schedule?

The opinion of the affected employees' must be considered. In most cases, a significant majority of employees must agree in writing to the proposal before it will be considered. Employees with questions about their rights should call Employment Standards. If a permit is approved, the employer may require the minority of employees, who did not agree, to work the new schedule.

### What constitutes "employees' agreement"?

Applications for averaging the standards hours of work and varying the break period must include the written opinion of the affected employees. The document must clearly show that the employees knew what they were agreeing to and understood they have a choice. See the sample [Employees Written Agreement](#) page for more

information.

## **Are employees entitled to see the permit and know the terms and conditions?**

Yes. Permits must be posted at the workplace at all times, in a place where employees have access to see it. Employers who do not post the permit, or restrict access to it, risk having the permit canceled or denied.

## **Do employees working under a permit receive overtime?**

Yes. Employers who ask or allow employees to work longer than the hours allowed in the permit must pay these employees 1 ½ times their regular hourly wage for each hour worked during overtime. Overtime does not apply when the employer schedules within the terms of the permit.

For example: a permit allows an employee to work a maximum of 10 hours per day, 50 hours per week and 80 hours in a two-week period. If the employee is asked, or allowed, to work more than 10 hours in a day they are owed overtime pay (1 ½ times their regular hourly wage) for the extra hours. If the employee works more than 50 hours in a week or more than 80 hours in two weeks, they are also owed overtime pay.

## **When can the new schedule begin?**

New Schedules can begin once a permit is received and posted. Before that the standard hours of work remain eight hours a day and 40 hours a week, and hours worked beyond this are overtime.

The schedule can remain in effect until the permit expires. To maintain a continuous schedule, employers must get a new permit before the old permit expires. Each application needs the written support of the current employees. Employers who do not apply for a new permit must return to the standards hours of work in the Employment Standards Code, or pay overtime for longer hours.

## **What factors will Employment Standards consider in reviewing the application?**

To approve a permit, Employment Standards must be satisfied that the new schedule is similar to what is usual for that industry, does not increase risks in the workplace, and benefits the affected employees. Repeat violations of the Employment Standards Code can also result in the denial of a permit.

Factors affecting averaging and work break applications:

- industry custom or practice
- opinion of a significant majority of the affected employees
- safety, health and welfare of the public and employees
- employers history of compliance or non-compliance with the Code

Factors affecting weekly day of rest applications:

- undue hardship or severe loss to the employer
- realities of the benefit to employees, such as in remote locations

- restricting a business that operates only part of the year

## What is an averaging permit?

The standard hours of work are forty (40) hours in a week and eight (8) hours in a day. Hours worked above these are overtime. Employers may apply to increase the daily hours in a 40-hour work week or to average the hours across a longer period such as 80 hours in a two-week period, 120 hours in a three-week period, 240 hours in a six-week period, and so on.

## What is a work break order?

The Code provides employees with a 30 minute work break after five consecutive hours of work. During this time the employee is free from duties and responsibilities. Employers may apply to reduce or eliminate this break with employee agreement, if they can demonstrate a need, and a benefit to the affected employees.

## What is a weekly day of rest order?

The Code provides employees with a weekly rest period of not less than 24 consecutive hours. Employers may apply to have their workplace exempt in order to change the timing of the rest period and lengthen the number of consecutive work days. The number of days of rest employees are entitled to at the end of the work period is still equal to one per week.

## Employees' Survey for Written Agreement

To constitute a valid written employee agreement/opinion, the document must clearly show that the employees knew what they were agreeing to and understood they have a choice.

The document must contain:

1. The proposed terms to which the employees are agreeing, on the same page as the signature(s).
2. A list of employees that will be affected by the schedule change.
3. Each affected employees signature, either agreeing or disagreeing with the proposal.
4. Explanation for any employees unavailable to sign, such as those on leave.
5. Contact information for the employees to contact the Employment Standards Branch with questions or concerns. The phone number is 204-945-3352, or 1-800-821-4307 (toll free in Manitoba). E-mail [employmentstandards@gov.mb.ca](mailto:employmentstandards@gov.mb.ca)

Below is a sample of what an employees agreement sheet might look like.

*We would like you to consider the request of COMPANY XYZ to apply to the Employment Standards Branch for a permit seeking certain exemptions from the provisions of The Employment Standards Code. Please review the proposed terms and sign your opinion to the proposed application below.*

*Proposal: (clearly state all terms related to new schedule)*

*(example) Employees in the sifting department will work 10 hours per day (from 8:00 a.m. to 6:00 p.m.), 50 hours*

per week, 80 hours in a two-week cycle, without overtime pay. Employees will receive one 15-minute break at 10:00 a.m., one 30-minute break at noon, and a second 15-minute break at 3:00 p.m. Overtime will be paid after 10 hours per day, 50 hours per week, and 80 hours in a two-week period.

If you have any questions or concerns about this proposal that COMPANY XYZ is unable to address, you may call the Employment Standards Branch at (204) 945-3352 or 1-800-821-4307 (toll free in Manitoba).

Please sign below to indicate your support or disagreement with the proposal.

<i>Employee</i>	<i>Signature</i>	<i>Date</i>	<i>Agree</i>	<i>Disagree</i>
Albert Einstein				
Bob Newhart				
Carmen Electra				
Davie Jones				
Ed Asner				
Frankie Avalon				
Gina Lollobrigida				

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Bereavement Leave**

Bereavement leave allows employees unpaid time off to deal with the death of a family member, without fear of job loss.

### **How long can employees be off on bereavement leave?**

Employees are allowed up to three days as bereavement leave for the death of a family member.

### **Who can take bereavement leave?**

Anyone employed for at least 30 days with the same employer is entitled to this leave.

### **Are employees paid while on bereavement leave?**

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

### **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. The definition also includes those who are not related, but are considered a family member.

### **What must employees who take bereavement leave tell their employer?**

Employees must tell their employer, as soon as possible, which days they will need off. Employers can request reasonable verification that the leave is needed.

### **What is reasonable verification?**

An employer's request for reasonable verification will be different in every situation. For example, an obituary from a local newspaper could reasonably verify the need for this leave.

## **Can employees take part of a day as bereavement leave?**

When an employee takes a leave the employer may consider the employee off for the entire day. Employers and employees can make arrangements for part days of leave, but there is no obligation for the employer to accommodate part days.

## **Can employees be fired or laid off because they take bereavement leave?**

No. Employers cannot terminate or lay off employees solely because they took a leave.

## **What happens when the leave ends?**

Employees must be allowed to return to their job. Employers must not discriminate or attempt to punish employees for taking a leave.

## **Can employers give paid leave or more time off?**

Yes. Employers can, and often will, give greater benefits than those provided for in the legislation. Many employers provide more days or will pay employees for their leave. This is allowed under the legislation.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Compassionate Care Leave**

Compassionate care leave gives employees the opportunity to take unpaid leave to care for or support a critically ill family member who has a significant risk of death.

### **What is the difference between compassionate care leave and family leave?**

Compassionate care leave provides employees the opportunity to assist a family member who is critically ill and requires care and support for several weeks.

Family leave is a short leave to take care of the needs of the employees family or a personal illness.

### **Who qualifies for compassionate care leave?**

Employees who have worked with the same employer for at least 30 days qualify for this leave. Employees must provide a certificate from a doctor indicating that a family member has a serious medical condition, has a significant risk of death in the next 26 weeks and needs care and support.

### **How long is the leave?**

The leave is up to eight weeks. Employees can take the leave to care for and support a family member without the fear of job loss. Employees can take the leave in one or two periods. Each period must be at least one week long.

### **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. The definition also includes those who are not related, but are considered a family member.

### **Does the employer 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.

## **Are there programs to pay employees while on leave?**

Yes, the federal government provides programs through Employment Insurance (EI) to cover this type of leave. Please check with your local EI office or call 1-800-206-7218 for details.

## **How do employees start the leave?**

The need for this type of leave is unpredictable. Generally, employees must give one pay period of notice before the leave. They must provide their employer with a doctor's certificate as soon as possible.

## **What if an employee cannot give notice?**

Employees are still entitled to compassionate care leave even if they are unable to give notice.

## **What happens when the leave ends?**

Employees must be allowed to return to their job, or a comparable job with the same or greater benefits and pay, when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

## **What if employees want to end the leave early?**

Employees who wish to return to work before their leave has ended must give their employer 48 hours' notice that they are returning to work.

## **What if the employees' job is no longer available?**

Generally, a comparable position with the same pay and benefits must be offered. In special circumstances, employers may not have a position available for reasons completely unrelated to the leave. For example, if employers shut down part of their operations and reduce their workforce based on a seniority system, employees who are on unpaid leave would not necessarily be protected from losing their jobs.

Employers must show that the leave has no impact on the decision to lay off or terminate the employment.

## **What if employers refuse to bring employees back to work?**

An employee who believes they were terminated because they took or requested leave may file a claim with the Employment Standards Branch. Employers who do not allow employees to return to work after a leave may be ordered to pay compensation, and in some cases reinstate them to their jobs.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## Deductions from Wages

Employers are responsible for paying employees regularly and for all hours worked. Sometimes one or the other will want money deducted from an employees pay. There are restrictions regarding what employers are allowed to deduct from wages.

### How are employees' wages protected?

- 1). Under the legislation, employees are entitled to be paid all wages earned.
- 2). Employees must be paid at least minimum wage, and may not agree to work for less.
- 3). Deductions from employees wages must directly and clearly benefit 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
- 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

### Can employers take any deductions from employees wages?

Employers can deduct:

- statutory deductions
- 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 is a direct benefit to employees?**

Examples of deductions that directly benefit employees can include: health or insurance packages, social funds, voluntary purchases of goods or services from the employer and some types of educational expenses. Expenses that are required by employers that do not benefit employees directly, must be paid by the employers.

## **Can employees opt out of a group benefit plan or social fund?**

No, group benefits or services that employers may provide as a condition of employment are allowed because they directly benefit employees as a whole. It is an employees choice whether to use the benefit that is provided.

## **Can the cost of tools be deducted from wages?**

Some employees may want to buy tools from their employers. The tools may even be a condition of employment, which employees must have for that workplace. Common examples are automotive mechanics and construction workers. Employers can make the tools a condition of employment and can deduct the cost from employees wages only if the tool:

- remains the property of the employee
- is not unique to this particular employer
- is available for purchase from different suppliers
- can reasonably be expected to be used at different employers in the same occupation
- is voluntarily bought from the employer instead of another supplier

## **Can the cost of personal safety equipment be deducted from wages or made a condition of employment?**

No, workplace safety and health legislation states any equipment, device or clothing required to be worn to help with rescue or to provide protection from health and safety hazards at a workplace must be provided and paid for by employers. There are exceptions for safety headwear and some safety footwear. Contact The Workplace Safety and Health Branch at 200 – 401 York Avenue, Winnipeg, MB, R3C 0P8 for more information.

Safety equipment is a direct benefit to employers so the cost cannot be deducted from employees' wages.

## **Can employers deduct the costs of a uniform, or require employees to buy uniforms?**

No, uniforms are a direct benefit to employers. Employers cannot make employees buy uniforms.

## **What is considered a uniform?**

A uniform is a form of dress that is unique to a business. Uniforms are identified with the employers logo or symbol, name or colours; making it of no practical use outside of that workplace. Employees often have no choice in style, colour or supplier. Employers can require items of clothing, in specific colours be worn, as long as employees can reasonably use them elsewhere.

## **Can employers have a dress code?**

Employers can establish a dress code, require certain types of clothing and establish standards for the look of employees while they are working. For example, a restaurant can require all serving employees to wear a clean pressed white shirt and black pants while working.

The clothing required by a dress code cannot be specific to an employer. When deciding whose responsibility the cost of clothing is (employees' or employers'), the main issue is the amount of choice employees have in choosing where and what to buy. The more choice, the more likely it is part of a dress code and not a uniform. Clothing with a logo, or a certain design or style normally identified with a company, or that must be bought from employers, are likely uniforms and must be paid for by employers.

## **Can employers require special clothing?**

Employers can reasonably expect employees to provide some special clothing that is common in the industry. Similar to tools, special clothing must be useful with other employers. It may be specific to the job, but not to the employer. As with tools, employees must have choices about where and what to buy. The clothing cannot have a logo or other markings that make it useful only for one employer, and the clothing must remain the property of the employee.

For example: nurses may wear a certain type of loose fitting clothing. It identifies them as nurses, and is usually required for the job. Employers can expect these employees to have this outfit, and would not have to provide or pay for it unless they require a logo or emblem that identifies the company.

## **Can employers deduct the cost of cleaning special clothing or uniforms?**

Employers can provide a service, such as laundry or dry cleaning, and ask employees for payment if the service directly benefits employees. In most cases, employees must each have the choice to use the service, or not.

## **Can employers deduct payroll errors or advances from employees' wages?**

Employers may take deductions from pay cheques to balance an earlier wage overpayment or to recover a cash advance. It is the duty of both employees and employers to check for payroll errors. Corrections must be made as soon as the employer knows of them. Failing to deal with the mistake immediately could be considered agreeing to a new wage.

Cash advances are a direct benefit to employees. Employers may recover advances from wages. They cannot recover interest, service charges, or any other fees for this service, nor can they charge any fees for cashing employees' cheques.

## **How long can a deduction for a payroll error or advance continue to be taken from employees pay cheques?**

The amount that can be deducted on each paycheque is limited by *The Garnishment Act*. Deductions can continue until the overpayment or advance is repaid.

## **Who pays for damages to company vehicles, valuable equipment or other losses?**

Employers may not deduct wages to cover any costs for faulty work, poor quality work, loss of customers, cash shortages or damages to their property. This includes: the cost of car accidents and parking tickets involving company vehicles; dishes broken by employees, customers leaving without paying, etc.

Employers have the right to sue employees who caused the damages in criminal or civil court. If a court issues an order of repayment, the employers can then garnish the wages of that employee.

See the [Deductions](#) page for more details about what cannot be deducted from employees wages.

## **Can employers deduct the cost of traffic tickets?**

Employers can deduct the minimum amount payable for a photo radar ticket or a red light camera ticket, if the employee committed the offence and has agreed in writing to pay the ticket.

Employers can not deduct for parking tickets or other violations. They also can not deduct for vehicle damage or insurance deductible.

## **What if employees authorized the deduction?**

Employees can only authorize deductions where there is a direct benefit to them. Regardless of authorization, any deduction from wages that does not benefit employees will not be allowed.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: November 26, 2008

## **Family Leave**

Family leave allows employees unpaid time off, to deal with family responsibilities or personal illness, without fear of job loss.

### **What is the difference between compassionate care leave and family leave?**

Compassionate care leave provides employees the opportunity to assist a family member who is critically ill and requires care and support for several weeks.

Family leave is a short leave to take care of the needs of the employees family or a personal illness.

### **How long is family leave?**

The legislation provides three unpaid days per year as family leave. Many employers give greater benefits than those provided for in the legislation, such as more days off or paid leave.

### **Who can take family leave?**

All employees employed for at least 30 days with the same employer are entitled to this leave.

### **Are employees paid while on family 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 do, give greater benefits than those provided for in the legislation.

### **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. The definition also includes those who are not related, but are considered a family member.

### **When can employees take family leave?**

Employees can take family leave to deal with personal illness or the needs of their family. In some situations, this

can be arranged in advance, but in others, that is not possible.

Employees must provide their employer with as much notice as reasonable and practical. They must also provide reasonable verification that the leave is necessary, if requested by the employer.

### **What is considered reasonable verification?**

Employees are entitled to the leave to deal with family responsibilities or personal illness. What may be required as verification will be different from case to case. For example, a doctor's note may be needed in some cases, but not in others. The intent is to reasonably confirm that the employee is dealing with their needs or the needs of their family during the leave.

### **Can employees who do not take any family leave this year, use six days next year?**

No. Each year employees are eligible for three days of leave but it does not carry over to future years.

### **Can employees take part of a day as family leave?**

When an employee takes a leave, the employer may consider the employee off for the entire day. Employers and employees can make arrangements for part days of leave, but there is no obligation for the employer to accommodate part days.

### **Can employees be terminated or laid off because they take family leave?**

No, employers cannot terminate or lay off employees solely because they took a leave.

### **What happens when the leave ends?**

Employees must be allowed to return to their job. Employers must not discriminate or attempt to punish employees for taking a leave.

### **Can employers give paid leave or more time off?**

Yes. Employers can, and often will, give greater benefits than those provided for in the legislation. Many employers provide more days or will pay employees for their leave. This is allowed under the legislation.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Filing a Claim**

The Employment Standards Code establishes the rights and responsibilities of most employees and employers in Manitoba. Employers and employees are often able to resolve disputes by calling the Employment Standards Branch office or searching the Employment Standards Branch website for information. If employers and employees still disagree on what employees should be paid, a claim may be filed with the Employment Standards Branch. As a neutral third-party, branch staff can investigate and make a decision on what is owed.

### **What can employees do if they believe they are owed wages?**

Employees should first discuss their concerns with their employers. There may have been a mistake or the employer may not realize there is a problem. If there is still a disagreement, employees contact the Employment Standards Branch for more information, or for information on filing a claim.

### **Do employers and employees have to file claims if they contact Employment Standards Branch?**

Anyone can call the Employment Standards Branch to get more information. Employment standards officers will answer questions and offer help understanding the rights and responsibilities in the workplace. This is not a formal investigation.

### **When can employees file claims?**

Employees who believe their employers did not pay them correctly, can file a claim with the Employment Standards Branch. Claims must be filed within six months of the last day of work or when the incident happened. Employment standards staff can only investigate and collect up to six months of unpaid and overtime wages and up to 22 months for vacations and general holiday pay.

### **What if workplaces are unionized?**

Workplaces with unions have specific rules for resolving disagreements. In unionized workplaces, employees should contact their union representatives to find out the proper way to resolve employment standards concerns.

### **How do employees file claims?**

The [Claim form](#) is available on the Internet, or from any Employment Standards Branch office. The Employment Standards Branch will also mail, e-mail or fax claim forms on request. Employment standards officers contact both employers and employees to gather more information, as soon as claims are received.

## **Are appointments needed to file claims?**

Claims can be filed any time during office hours. Completed forms can be brought to an Employment Standards Branch office in person, or faxed or mailed to the office. The office address and fax number are on the forms.

## **Are claims confidential?**

Talking to Employment Standards officers on the general inquiry line is confidential. Once a claim is filed, officers must investigate and must speak to anyone who has information about the claim, including the employer. That is the only way officers can make proper decisions.

## **How long before employees are contacted after filing a claim?**

When claims are received by Employment Standards Branch for investigation, officers phone the employers and employees to get more information. Sometimes it can take several weeks for investigations to begin. It depends on the number claims the Employment Standards Branch is processing at the time.

## **How long before decisions are made?**

In some cases, the claims are settled as soon as employees and employers get correct information. Many claims are closed in only a few weeks. Other claims are more complicated and can take months or years to complete.

## **What happens if complaints aren't settled by cooperation, education and information?**

Employment Standards Branch officers can order employers to provide records needed for an investigation. Once investigations are complete, officers can either order employers to pay wages or dismiss claims if they find that no wages are owed. Employers can pay the wages voluntarily at any time. However, if employers are ordered to pay wages, Employment Standards Branch administration fees are added to the payment order.

## **What if employees or employers disagree with officers' decisions?**

Employers or employees can appeal payment of wages or dismissal orders to the Manitoba Labour Board. Employers who wish to appeal an order must send a written request to Employment Standards within seven days of the order and provide a deposit for the full amount of the order. Employees who wish to appeal an order must also do so in writing within seven days of receiving the order but are not required to provide a deposit.

At this point in investigation, employment standards officers also provide employers and employees with complete information about appealing a decision, and will answer any questions

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## General Holidays

General holidays are sometimes referred to as statutory holidays or stat holidays. They are days recognized by legislation as holidays. Employees either have this day off with pay, or, if they work, are paid differently.

### What are the general holidays in Manitoba?

There are eight general holidays throughout the year:

- New Year's Day
- Louis Riel Day (3<sup>rd</sup> 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.

### Are Easter, the August Civic Holiday, Remembrance Day and Boxing Day holidays?

Easter Sunday, the August Civic holiday, and Boxing Day are not general holidays. Employees who do not work those days do not have to be paid.

Although Remembrance Day is not a general holiday, there are restrictions for operating businesses and special requirements for paying employees who work that day. See the [Remembrance Day](#) page for more details.

### Can retail stores be open on General Holidays?

In communities with a Sunday and Holiday shopping by-law retail stores can be open Sunday shopping hours on Louis Riel Day, Victoria Day and Thanksgiving Day.

Most retail businesses cannot be open on New Years Day, Good Friday, Easter Sunday, Canada Day, Labour Day or Christmas Day.

Remembrance Day is not a holiday. Retail stores cannot be open between 9:00 a.m. and 1:00 p.m. on Remembrance Day. More information is available on the [Remembrance Day](#) page.

## 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 if an employee worked 8 hours a day, 5 days a week at \$10 per hour, for the previous 28 days, 5% would equal \$1600 times five per cent, or \$80 for the general holiday.

## Is there an exception for the construction industry?

Yes, in the construction industry employees are entitled to general holiday pay, but it is calculated as a percentage of their regular wages. It is often paid on every cheque instead of on the holiday. For more information see the [Construction industry](#) page.

## 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 because they are ill.

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

No, how long an employee has worked 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.

## 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 all employers need to pay 1 1/2 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. The exception is for employers operating a gas station, hospital, hotel, restaurant, place of amusement, continuously operating plant, or a seasonal industry (excluding construction) or those employing domestic workers.

These employers can pay regular wages for work on the holiday if they provide another day off with general holiday pay, within the next 30 days. If employers and employees agree, the day off may be taken sometime before the employees' next annual vacation.

## How are employees who are paid by incentive pay paid for a general holiday they do not work?

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

## How are employees who are paid by incentive pay, paid if they work on a 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 five percent of their earnings in the four-week period before the holiday. This includes employees who are paid by incentive.

To calculate the wage rate that an incentive paid employee is entitled, use the formula to calculate overtime wages. First calculate the hourly wage. Then calculate the regular pay and overtime pay for working on the general holiday.

To calculate the hourly wage, the incentive pay is divided by the total 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 a commission salesperson paid once a week. In this pay period he/she earns \$800 commission, worked 32 hours of standard time and 6 hours on the general holiday.

To calculate the hourly wage use the formula:

Earnings	= Hourly Wage	or	\$800	= \$21.05
Total Hours			38	

The salesperson worked 32 standard hours. The hourly wage (\$21.05) times the standard hours (32) equals the regular pay for the period (\$673.60).

The wage for working on the general holiday is the hourly wage (\$21.05) times 1½ (\$31.58). This wage (\$31.58), times the hours worked on the general holiday (6), equals the pay for working on the general holiday (\$189.48).

The total is the regular pay (\$673.60) plus the pay for working on the general holiday (\$189.48) plus the 5% of the regular earnings in the 28 days before the holiday

## **What is incentive pay?**

In some workplaces, employees are paid based on how productive they are rather than the number of hours they work. Common examples include commission salespeople, flat-rate mechanics and pieceworkers.

## **What if the general holiday is on a weekend?**

When a general holiday falls on a Saturday or Sunday that is not a regular work day, the next regular work day becomes the general holiday.

## **What if the general holiday is a day the employee does not normally work?**

In some cases, employees might not normally work on certain days of the week. When a general holiday falls on one of those days, employers must give employees another day off, with general holiday pay, before their next annual vacation, or at a time they both agree on.

For example: When a general holiday falls on a Monday and employees normally don't work on Mondays, the employees must receive another work day off before their next vacation, and receive general holiday pay.

## **What if the employment ends before the alternate day off for the general holiday is taken?**

If the employment ends before the day off is taken, employers must pay the holiday pay within 10 days of the employment ending. This pay cannot be used as part of a notice period.

## **What if employment ends in the four weeks before a general holiday?**

If employees end the employment before a general holiday there is no entitlement to general holiday pay for that holiday.

If employers end the employment before a general holiday, employees are entitled to general holiday pay of five per cent of total wages, excluding overtime wages but including wages in lieu of notice, for the four-week period immediately before the holiday. The general holiday pay must be paid with the last wages, no later than 10 days after the employment ended.

## **How does a general holiday affect an employees' rights to have a weekly day of rest or to get paid for overtime?**

A general holiday does not affect the requirement to pay overtime wages or substitute for a weekly day of rest. For both overtime and a weekly day of rest, the wages paid as general holiday pay are considered hours worked.

## **How do general holidays affect vacations and vacation pay?**

When a general holiday falls during a vacation period, an additional day off with pay is to be given. General holiday pay is considered wages earned when calculating annual vacation pay. For more information, see the [Vacations and vacation pay](#) page.

## **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 work day, and December 27 would be deemed a general holiday.

## **When is Canada Day?**

Canada Day is normally July 1, however when July 1 is a Sunday, Canada Day is July 2.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Hours of Work and Breaks**

### **What are the standard hours of work?**

Employers can require employees to work up to eight hours in a day and 40 hours in a week as standard hours of work.

Employees who work more than the standard hours are entitled to overtime pay for them.

### **Who controls scheduling?**

Employers make or approve work schedules. Sometimes employers involve employees in schedule decisions, but are not required to do so.

### **Can employers change employees schedules?**

Yes, employers make schedules that suit their businesses and can change work schedules at any time. This includes deciding to close on a certain day, or reduce the number of hours they are open each week.

### **Can employees change schedules?**

Employers control schedules. Some employers allow employees to switch shifts with co-workers or change schedules. For workplaces that do not allow this, schedule changes must be discussed with the employers.

### **Do employers need to pay overtime when schedules have been changed?**

If employees work overtime, they must be paid overtime wages. Employers cannot refuse to pay overtime because the overtime resulted from a switched shift. Employers who allow employees to switch shifts may set a policy that prevents employees from changing shifts in a way means other employees must work overtime.

### **Can employers change schedules even after shifts have started?**

Employers can ask employees to end their shifts, or start additional ones. As of April 30, 2007, employees generally must be paid for the length of their shifts or for three hours, whichever is less, once they have reported for work. More information can be found on the [Wages for reporting for work](#) page.

## **Do employees need permission to take bereavement or family leave?**

No, employees must provide employers with as much notice as possible when taking these leaves, but they do not need employers permission. Employees may take three unpaid days off, each year, to deal with the family needs. They may also have three unpaid days off to deal with the death of a family member. More information about these unpaid leaves can be found on the [Family leave](#) or [Bereavement leave](#) pages.

## **How long can employees work without a break?**

Employees must receive a 30 minute unpaid break after every five hours of work. This is the only break required. Many employers will provide coffee breaks, cigarette breaks or other meal breaks. These are allowed as a benefit, but they are not required.

## **What is considered a break?**

Employees are on their own time during breaks. Employees must be free of all responsibility and be able to leave the workplace during their breaks.

## **Must employees be paid for their breaks?**

Employers do not need to pay for break periods, however they may choose to do so.

## **Can employers be excluded from the break requirement?**

Yes, until April 30, 2007, employers can apply to the Manitoba Labour Board for a meal break variance. After April 30, 2007, they must apply to the Employment Standards Branch. Both the board and the branch will look at the circumstances of the employer and the opinions of the employees when considering a meal break variance. Unionized workplaces may have different provisions for work breaks.

## **Are breaks included when calculating overtime?**

Breaks are not included in overtime calculations. For example: employees who work from 9:00 a.m. to 5:30 p.m. with 30 minutes for lunch, have worked an eight-hour day. Keeping accurate records will show when employees have worked and when they are on breaks.

## **Do employees get a day off each week?**

Most employees are entitled to a rest period of not less than 24 consecutive hours each week. Domestic and residential care workers must receive at least 36 consecutive hours of rest, when they are not required to perform work, each week. Employees can choose not to take the day off if there is work available from the employer.

## **Are employees entitled to the same day off each week?**

No, scheduling is the employer's responsibility. The weekly day of rest does not need to be the same day each week.

## **Are employees paid for the day of rest?**

No. Employers are not required to pay wages for a weekly day of rest.

## **Can employers apply to be excluded from the weekly day of rest?**

Employers can apply to the Manitoba Labour Board until April 30, 2007, and to the Employment Standards Branch after April 30, 2007, for a variance to exclude them from the weekly day of rest. Employers need to show that a day of rest:

- is an undue hardship to the employer
- is of little or no benefit to the employees because the remote location of the business
- unduly restricts the operation of the business that operates only part of the year
- causes severe loss to the business owing to the circumstances in which it operates

## **Who is excluded from a weekly day of rest?**

Security personnel, caretakers and power engineers who live in the buildings where they work are not required to have a weekly day of rest. Employees working during a declared emergency or employees who perform management functions primarily are also excluded.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **ICI Wage Schedules 2008–2010**

### **What types of construction activities are included in the industrial, commercial and institutional sector?**

The industrial, commercial, and institutional sector (ICI) is defined by The Construction Industry Wages Act. It includes most industrial, commercial and institutional construction projects in Manitoba and is often called the building construction sector.

Activities under the ICI sector must take place onsite and include building, decorating, removing and relocating of buildings or other structures other than houses.

Employers and employees who need information about their individual situations should see the [ICI wage schedule](#) page or contact the Employment Standards Branch directly.

### **What construction activities are excluded from the ICI sector?**

The following construction activities are specifically excluded:

- house building
- onsite maintenance, redecorating, renovating, remodelling and repair of an ICI building or other structure that does not require a blueprint or a structural or architectural change.
- prefabrication of structures away from the building site.
- regular maintenance and repair of buildings, which is paid by the owner, tenant or occupant
- construction of farm buildings

### **What are the hours of work and overtime rules for the ICI sector?**

The standard hours of work are 10 hours per day and 40 hours per week. All additional hours are overtime and must be paid at the overtime rate. More information on calculating the regular and overtime hours can be found on the Overtime page

Before 2006, different trade classifications and areas in Manitoba had different hours of work and overtime standards. The standards are now the same for all employees working in the industrial, commercial and institutional construction sector.

## Integrated province-wide wage schedule for 2009 and beyond

Effective June 1, 2009, all industrial, commercial and institutional (ICI) construction projects will follow the same province-wide minimum wage schedule. This eliminates the need for a rural wage schedule. No matter where a structure is built in Manitoba, the same wage schedule will apply.

The term **major building project** is still used to distinguish ICI projects from heavy construction projects.

## Removal of floor coverer and insulator (heat and frost) trainee classifications

Floor covering installer and insulator (heat and frost) have become designated trades under *The Apprenticeship and Trades Qualifications Act*. The rates for trainees in these classifications have been removed. The apprentice wage rates and ratios established under that act now apply instead.

## Louis Riel Day

The third Monday in February is Louis Riel Day, a new general holiday for Manitobans. Employees in the construction industry are entitled to one and one-half times their regular wage for hours worked on Louis Riel Day.

In the construction sector, employees are paid four per cent of their regular and vacation wages as general holiday pay. This amount already compensates employees for Louis Riel Day and the other general holidays. Employees who do not work on Louis Riel Day do not receive additional pay.

## Manitoba Industrial, Commercial and Institutional Construction Sector Minimum Wage Schedules

<i>Occupation Classifications</i>	<i>June 1, 2008</i> Winnipeg Area and Major Building Construction Projects	<i>June 1, 2008</i> Outside Winnipeg Area	<i>June 1, 2009</i> Integrated Province-Wide	<i>Jan. 1, 2010</i> Integrated Province-Wide
asbestos				
• trainee 2 (1201–2400)	\$20.10	\$19.50	\$20.70	\$21.50
• trainee 1 (0–1200)	\$16.10	\$15.60	\$16.60	\$17.20
	\$12.05	\$11.70	\$12.40	\$12.90
boilermaker	\$26.60	\$25.80	\$27.40	\$28.50
bricklayer	\$27.70	\$26.90	\$29.55	\$31.00
carpenter	\$25.25	\$24.50	\$26.00	\$27.00
concrete finisher	\$21.80	\$21.15	\$22.45	\$23.35
cons. electrician	\$29.85	\$28.95	\$30.70	\$31.95

crane & hoisting					
a. mobile crane	\$26.00	\$24.20	\$27.50	\$29.00	
b. tower crane	\$29.00	\$26.15	\$31.50	\$33.00	
c. boom truck	\$21.65	\$21.00	\$22.30	\$23.15	
elevator constructor	\$30.90	\$30.00	\$31.85	\$33.12	
• trainee 2 (1201–2400)	\$24.75 \$18.20	\$24.00 \$18.00	\$25.50 \$18.75	\$26.50 \$19.55	
• trainee 1 (0–1200)					
floor coverer	\$23.20	\$22.50	\$23.90	\$24.85	
glazier	\$24.10	\$23.40	\$24.85	\$25.80	
industrial mechanic	\$27.50	\$26.70	\$28.35	\$29.50	
insulator	\$23.80	\$23.10	\$24.50	\$25.50	
ironworker:					
a. structural steel	\$27.70	\$26.90	\$28.55	\$29.70	
b. reinforcing iron	\$24.05	\$23.35	\$24.80	\$25.75	
c. miscellaneous/ornamental	\$27.30	\$26.49	\$28.12	\$29.25	
specialty labour skilled tradesperson (assisting bricklayer)					
• trainee 2 (1201–2400)	\$20.45 \$16.35	\$19.85 \$15.88	\$21.05 \$16.85	\$21.89 \$17.50	
• trainee 1 (0–1200)	\$12.30	\$11.91	\$12.65	\$13.15	
general labourer	\$19.50	\$18.90	\$20.09	\$20.89	
• trainee 2 (1201–2400)	\$15.60 \$11.70	\$15.12 \$11.34	\$16.05 \$12.05	\$16.70 \$12.50	
• trainee 1 (0–1200)					
construction worker	\$12.60	\$12.20	\$12.95	\$13.50	
interior systems/lather	\$24.00	\$22.25	\$24.75	\$26.00	
marble, tile, terazzo	\$21.95	\$21.30	\$22.25	\$22.25	
• trainee 2 (1201–2400)	\$17.55 \$13.20	\$17.04 \$12.78	\$17.80 \$13.35	\$17.80 \$13.35	
• trainee 1 (0–1200)					
painter/decorator	\$22.00	\$21.35	\$22.90	\$23.80	
plasterer	\$23.00	\$22.30	\$23.70	\$24.65	
• trainee 2 (1201–2400)	\$18.40 \$13.80	\$17.84 \$13.38	\$19.00 \$14.25	\$19.70 \$14.75	
• trainee 1 (0–1200)					
plumber	\$29.45	\$28.60	\$30.35	\$31.60	

pre-fab erector				
• trainee 2	\$24.00	\$24.00	\$24.75	\$25.70
(1201-2400)	\$19.20	\$19.20	\$19.80	\$20.55
• trainee 1 (0-1200)	\$14.40	\$14.40	\$14.85	\$15.45
refrigeration & air conditioning	\$28.65	\$27.80	\$29.50	\$30.70
roofer	\$23.85	\$23.15	\$24.60	\$25.60
sheeter/decker				
• trainee 2	\$26.75	\$25.95	\$27.55	\$28.65
(1201-2400)	\$21.40	\$20.76	\$22.05	\$22.95
• trainee 1 (0-1200)	\$16.05	\$15.57	\$16.55	\$17.20
sheet metal worker	\$30.40	\$29.50	\$31.31	\$32.56
sprinkler/pipefitter	\$32.00	\$31.05	\$32.95	\$34.25
steamfitter/pipefitter	\$29.50	\$28.60	\$30.35	\$31.60
scaffolder				
• trainee 2	\$25.25	\$24.50	\$26.00	\$27.05
(1201-2400)	\$20.20	\$19.60	\$20.80	\$21.65
• trainee 1 (0-1200)	\$15.15	\$14.70	\$15.60	\$16.25

## For more information contact the Employment Standards Branch:

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice

Date Published: May 5, 2008

## What is the Labour Board?

Many people confuse the provincial Employment Standards Branch and the Manitoba Labour Board. The Employment Standards Branch enforces minimum standards and investigates disagreements between employers and employees about them. The Manitoba Labour Board adjudicates decisions made by the Employment Standards Branch, and gives employers and employees a chance to present evidence at a hearing.

## Who answers questions about things like wages, hours of work, holidays, or terminating employment?

The Employment Standards Branch, can answer your questions. It investigates complaints and gives employers and employees information about minimum standards like general holidays, vacations, hours of work, leaves of absence, terminations and the minimum wage. The Employment Standards Branch is a neutral party required to enforce the legislation without taking sides.

## What is the Manitoba Labour Board?

The Manitoba Labour Board is a special three-person board (tribunal), separate from the Employment Standards Branch. It's powers are like those of a judge or court, which re-hears disagreements that could not be resolved by the Employment Standards Branch. *The Employment Standards Code* is one of several acts the board administers.

## How do employees and employers file a complaint?

Employees and employers should first discuss the issue to see if it can be settled without an Employment Standards investigation. Either party can call the branch to get more information or explanation about an issue.

If employers or employees cannot settle a matter, and believe their rights are being violated, it is best to speak with the Employment Standards Branch, and perhaps file a claim. A complaint form must be filled out and sent to the branch to begin an investigation. Forms are available from any Employment Standards Office, or online at the [Claim form](#) page. More information can be found on the [Filing a claim](#) page.

## How are complaints investigated?

Employment standards officers investigate the complaints. Both the employee and the employer involved are generally contacted to gather information. After investigating, the Employment Standards Branch officer determines if the legislation has been followed.

## How are complaints resolved?

Officers try to settle complaints by explaining the legislation to employers and employees. Often the parties involved voluntarily agree, once they understand the legislation. If the matter is not settled this way, or is too complicated, there will be an investigation and the Employment Standards Branch will order the payment of any owed wages and an administration fee.

## Can an order be appealed?

Yes; either party named in an order has the right to appeal. An appeal must be made within seven days of receiving an order. Employers who appeal, must include a deposit equal to the wage amount owing.

A request must be made in writing to have the matter heard by the Manitoba Labour Board. It must include detailed reasons for the appeal. Send the request to the director of the Employment Standards Branch by the appropriate date.

## For more information contact the Employment Standards Branch:

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Louis Riel Day**

Manitoba's 8th General Holiday is Louis Riel Day. It falls on the third Monday in February each year. The first Louis Riel Day is February 18, 2008

### **Is Louis Riel Day a General Holiday?**

Yes, Louis Riel Day is Manitoba's 8th General Holiday. The other general Holidays are: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day and Christmas Day.

### **When is the first Louis Riel Day?**

The first Louis Riel Day is February 18, 2008.

### **How is general holiday pay calculated?**

General holiday pay is five percent of an employees 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 if an employee worked 8 hours a day, 5 days a week at \$10 per hour, for the previous 28 days, 5% would equal \$1600 times five per cent, or \$80 for the general holiday.

### **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 because they are ill.

## **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 all employers need to pay 1 1/2 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. The exception is for employers operating a gas station, hospital, hotel, restaurant, place of amusement, continuously operating plant, or a seasonal industry (excluding construction) or those employing domestic workers.

These employers can pay regular wages for work on the holiday if they provide another day off with general holiday pay, within the next 30 days. If employers and employees agree, the day off may be taken sometime before the employees' next annual vacation.

## **Are retail businesses allowed to be open on Louis Riel Day?**

Yes, in communities with a Sunday and Holiday shopping by-law retail stores can be open Sunday shopping hours (12:00 pm to 6:00 pm) on Louis Riel Day. This is the same as Victoria Day and Thanksgiving Day.

## **Is Louis Riel Day a General Holiday for everyone?**

Louis Riel Day is a General Holiday for all employees who work in a provincially regulated business. Louis Riel Day does not affect employees who work for businesses regulated by the federal government.

## **Who is covered by federal jurisdiction?**

Approximately 10 per cent of employees in Manitoba fall under federal jurisdiction. They work in industries such as:

- railways, highway transport, trucking, pipelines, ferries, tunnels, bridges, canals, telephone and cable systems
- all extra-provincial shipping and services connected with such shipping,
- air transport, aircraft, airports, and aerodomes
- radio and television broadcasting
- banks (except credit unions and trust companies)
- flour, feed and seed cleaning mills, feed warehouses, grain elevators and uranium mining and processing
- federal Crown corporations or agencies of the Crown, such as the Canadian Broadcasting Corporation and the St. Lawrence Seaway Authority

The laws affecting federally regulated industries are quite different from provincial employment standards. People unsure of which jurisdiction affects them should contact either The Employment Standards Branch or the federal government.

## **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.

## **Where can I find more information on what employees should be paid for General Holidays like Louis Riel Day?**

Most employees will receive pay for Louis Riel Day whether they work or not. You can find more information on payment for General Holidays on our [General Holiday Fact Sheet](#) on our web site.

## **How did Louis Riel Day get its name?**

Schools in the province were asked to submit one name that would be of relevance to Manitoba and reference citizenship, history, culture, the arts, sports or a significant individual. 11 schools submitted the name "Louis Riel Day".

## **Who was Louis Riel?**

A passionate Métis leader, Louis Riel was the driving force behind Manitoba becoming Canada's fifth province. Louis Riel's dream of a province that embraces all cultures is still shared by Manitobans today as we strive to build a society that honours and respects all people.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Maternity Leave**

Maternity leave gives expectant mothers the opportunity to take unpaid leave from work, without the fear of job loss.

### **What is the difference between maternity leave and parental leave?**

Maternity leave is an unpaid leave, taken near the end of a pregnancy or immediately afterwards.

Parental leave is taken by fathers and mothers to care for a child after birth or adoption.

### **Who qualifies for maternity leave?**

Employees, who have worked with the same employer for at least seven consecutive months and are expecting to give birth to a child, are entitled to take maternity leave.

### **How long is maternity leave?**

The leave is up to 17 weeks long.

### **Does the employer 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.

### **Are there programs to pay employees while on leave?**

Yes, the federal government provides programs through Employment Insurance (EI) to cover this type of leave. Please check with your local EI office or call 1-800-206-7218 for details.

### **When can an employee start her maternity leave?**

Maternity leave can begin up to 17 weeks before the expected date of the birth.

## **When must employees end maternity leave?**

Generally, the leave will end 17 weeks after it began. The latest that a leave can last is 17 weeks after the birth.

## **What if employees have started their leave and the birth is after the expected due date?**

Employees are entitled to more maternity leave equal to the number of days between the expected date and the birth. For example, if the birth is 14 days after the estimated date of delivery, the mother would receive an additional 14 days of maternity leave.

## **How do employees start the maternity leave?**

Employees requesting maternity leave must give their employers at least four weeks' written notice before the leave. They must also provide a medical certificate indicating the estimated date of delivery.

## **What if employees do not give the required notice?**

Expectant mothers are still entitled to maternity leave if they fail to give four weeks written notice. Within two weeks of stopping work, employers must receive a medical certificate stating the expected date of delivery and noting any dates employees were unable to work because of the pregnancy in the 17 weeks before the expected date of birth. This time missed from work can be included in the maternity leave.

## **What happens when maternity leave ends?**

At the end of maternity leave, employees may take parental leave. Mothers must take maternity and parental leave one after the other. They cannot take their maternity leave, return to work, and then take the parental leave.

## **How do employees start parental leave after maternity leave?**

Employee wanting to take parental leave must give employers notice in writing at least four weeks before the leave. More information can be found on the [Parental leave](#) page.

## **What if employees want to end the leave early?**

Employees who want to return to work before their leave has ended must give their employers notice, in writing, at least one pay period before returning to work.

## **What if the employees' job is no longer available?**

Generally, a comparable position with the same pay and benefits must be offered. In special circumstances, employers may not have a position available for reasons completely unrelated to the leave. For example, if employers shut down part of their operations and reduce their workforce based on a seniority system, employees

who are on unpaid leave would not necessarily be protected from losing their jobs.

Employers must show that the leave has no impact on the decision to lay off or terminate the employment.

## **What if employers refuse to bring employees back to work?**

An employee who believes they were terminated because they took or requested leave may file a claim with the Employment Standards Branch. Employers who do not allow employees to return to work after a leave may be ordered to pay compensation, and in some cases reinstate them to their jobs.

## **How does an unpaid leave affect vacations?**

During a legislated or approved leave of absence from work, employment is considered continuous. Therefore, an employee is still considered employed, though not earning wages. The leave does not affect employees right to take vacation time; it only affects the amount of vacation wages earned. See the [Vacations and Vacation Pay](#) page for details on earning and paying vacation.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Minimum Rights and Responsibilities**

The Employment Standards Code establishes the rights and responsibilities of most employees and employers in Manitoba. Although this legislation does not address all workplace situations, it outlines some basic rules employers and employees must follow.

### **What are employment standards?**

The Employment Standards Code and The Construction Industry Wages Act set the minimum standards for workplaces that fall under provincial jurisdiction. These laws help all Manitobans by setting a basic level of rights and responsibilities that employees and employers must maintain in the employment relationship.

### **Who is protected by employment standards?**

Employment standards help balance the interests and needs of both employers and employees. Many of these protections and benefits improve working conditions for employees who do not have the bargaining power of unions or employee groups. This legislation also creates a level playing field for employers and ensures they all meet basic standards when directing their employees.

### **Can employers provide more than what the legislation sets as minimum standards?**

Yes, the legislation sets only the minimum workplace standards that must be respected. Many employers provide more benefits.

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

The minimum wage is \$8.00 per hour. It will increase to \$8.50 on April 1, 2008.

Minimum wage is different in the construction industry depending on the occupation. For more information, see the [Construction industry](#) page.

### **When must employees be paid?**

Employees must be paid at least semi-monthly (twice a month) and within 10 days of the end of a pay period.

## **When are employees entitled to breaks?**

Employees are entitled to a 30 minute unpaid break after completing five hours of work. They are entitled to a second meal break after completing a second, five-hour work period.

Employees are also entitled to at least one day of rest per week.

For more information on breaks and a day of rest see the [Hours of work and breaks](#) page

## **Are employees entitled to a day off?**

Yes, employees are entitled to have 24 hours off without pay in each week. Employees can choose not to take the day off, if their employers offer extra work.

## **Are there exceptions to the weekly day of rest and breaks?**

Yes, employers can apply to the Employment Standards Branch to eliminate breaks or a weekly day of rest.

## **Do Employers need to provide transportation to or from work?**

When an employer's place of business and an employee's residence are located within the boundaries of a city or town, the employer must provide the employee with adequate transportation between the residence and the work place when the employee's hours of work begin or end after 12 midnight and before 6:00 a.m. The only exception is if the employee is a police officer.

## **What are the standard hours of work?**

Standard hours of work are the hours employees work for their regular wage. It is usually 40 hours in a week and eight hours in a day. Hours worked over standard hours are overtime hours, and need to be paid at 1 ½ times the regular wage. More information on the standard hours of work can be found on the [Overtime](#) page.

## **Are there industries where the standard hours of work are different?**

In some industries, like construction or landscaping, the standard hours of work are different. More information can be found on the [construction industry](#) page.

In some circumstances, employers can apply to change the standard hours of work. This is sometimes called averaging – where there is an increase in the number of hours that can be worked in each day or in each week but it still averages 40 hours per week.

## **Can a contract offer benefits that are lower than employment standards?**

No, employers and employees cannot agree to work for less than the minimum standard, whether they have a contract or not. There are some situations where employers and employees can agree to different provisions, but

they can never agree to less than the minimum standards.

## **Are the standards different for part-time employees?**

No, the amount employees' work does not change their rights. Some of the standards, such as vacation pay and general holiday pay, are based on a percentage of earnings. Therefore part-time employees may not earn as much as full-time, but they are still entitled to the benefit.

## **What can employees do if they believe they have not been paid correctly?**

Employees with concerns about their wages or who believe their employers might be violating a minimum standard should contact the Employment Standards Branch. Employees can file a claim with an officer who will investigate the situation. See the [Filing a claim](#) page for more details.

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

Telephone: 204-945-3352 or Toll free in Manitoba 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 information is intended as a guide only and is not a legal opinion. For complete information refer to the *Employment Standards Code* or other relevant legislation or contact us for more details.

Date Published: November 23, 2007

## **What is Minimum Wage?**

The minimum wage is the lowest amount, per hour, that employees must be paid by their employers for work in Manitoba.

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

Effective April 1, 2008 the minimum wage is \$8.50 per hour.

On May 1, 2009 the minimum wage will increase to \$8.75 per hour.

On October 1, 2009 the minimum wage will increase to \$9.00 per hour.

### **When do employers need to give employees a raise?**

Employers decide if and when employees receive pay raises. There is no requirement for employers to give employees a raise, regardless of how long employees have worked for them.

Employees must be paid minimum wage. When minimum wage increases, some employees' wages will go up, to ensure they are making the new minimum wage.

### **Must everyone earn at least minimum wage?**

Yes, all employees must receive minimum wage unless they are not covered by provincial employment standards or are excluded from the legislation. Excluded employees are usually those working in domestic service for less than 12 hours a week, or those in a federal or provincial government-sponsored training program. For more information on employees in domestic service or nannies, see the [Domestic workers and live-in nannies](#) page.

### **Does minimum wage apply in construction?**

The minimum wage applies in residential construction and building maintenance. There are separate minimum wage rules for the heavy construction sector and the industrial, commercial and institutional (ICI) construction sector. More information on the construction industry can be found on these pages: [Construction industry](#), [Heavy wage schedule](#) and [ICI wage schedule](#).

### **Does minimum wage apply to students and part-time employees?**

The minimum wage applies equally to all employees regardless of age or the number of hours they work. There are restrictions on the type of work people under 18 years of age can do. See the [Young workers](#) page for more

information.

## **Does minimum wage apply to employees paid by incentive?**

Yes, employees who are paid incentives, like commission salespeople or flat rate mechanics, must earn at least minimum wage in each pay period. Employers must top up or add wages when an employee has not earned at least minimum wage in each pay period.

## **Are employees, who are paid minimum wage, entitled to overtime?**

Employees who earn minimum wage and work overtime are entitled to be paid at 1 ½ times their wages. More information on calculating overtime can be found on the [overtime](#) page.

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

Employees must be paid at least semi-monthly (twice a month) and within 10 days of the end of a pay period.

## **Must the length of shifts be at least a certain amount of time?**

No, employers control schedules and can set shifts that are best for their businesses. Sometimes very short shifts are needed. Once employees report to work, there are some protections for cancelling or shortening shifts. See the [Wages for reporting for work](#) page for more details.

## **Can employers deduct the costs of employees room and meals from wages?**

Deductions for room and meals can be deducted if employees actually receive the meals and occupy the rooms. These deductions cannot take an employee below minimum wage in a pay period by more than \$1 for each meal and \$7 per week for the room. More information can be found on the [Deductions](#) page.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: January 8, 2009

## Overtime

The standard hours of work are generally eight hours in a day and 40 hours in a week. Work beyond the standard hours is overtime. Employees who work overtime are entitled to be paid 1 ½ times their regular wage for the hours worked during overtime. Overtime must be authorized by employers.

### What are the standard hours of work?

Standard hours of work are the maximum number of hours employees may be required to work at regular wage. In most cases, it is eight hours in a day and 40 hours in a week. Hours worked over the standard hours are considered overtime hours.

### 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	<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	8		43	40	<b>3</b>

### 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 the overtime wage.

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.

## **Can employers require employees who normally work less than 40 hours a week to work more hours without paying overtime?**

Yes, overtime is normally only calculated after eight hours in a day or 40 hours in a week. Employers control scheduling and can change schedules if they wish.

For example, an employer who has employees that normally work a seven hour day and a 35 hour week, could require the employees to work an additional hour each day without paying overtime.

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

Yes, employers and employees can agree, to bank overtime if they agree in writing. 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.

## **What if the banked time off is not taken?**

Employees must take the banked time off within three months. If the time is not taken within three months, employers must pay out the overtime wages, at 1 ½ times the regular wage for each hour of overtime worked.

## **How does overtime affect payment for vacations and general holidays?**

General holiday pay and vacation pay are calculated as a percentage of total earnings. Overtime pay is normally not included in the calculation. There is an exception when these wages are banked and taken as time off: they are then included in the calculation for general holiday pay and vacation pay.

## **Do salaried employees receive overtime?**

Yes, employees who are paid by salary are entitled to overtime. For salaries, an hourly wage may be calculated to determine the overtime pay per hour.

For example: employees who earn a salary of \$400 per week and are expected to work a 40-hour week are paid \$10 per hour for the standard hours. If they work overtime, they are paid 1 ½ times their regular wages. In this case, \$15 per hour.

## **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.

## **Do employees who are paid by commission receive overtime?**

Yes, employees who are paid by an incentive plan, such as commission are entitled to receive overtime pay. Employees earning incentive pay are entitled to at least minimum wage and the correct overtime pay for any overtime hours worked.

As of April 30, 2007, employees who are paid on an incentive plan are entitled to overtime based on their average hourly wage, instead of minimum wage. See the [Incentive-based overtime](#) page for more information.

## **Are there employees who are not entitled to overtime?**

As of April 30, 2007 there are some groups of employees who are not entitled to overtime. Employees who perform management functions primarily and employees who substantially control the hours of work and earn twice the Manitoba average industrial wage are excluded from standard hours of work and overtime. More information can be found on those pages.

## **Are there exceptions to the standard hours of work?**

There are exceptions, which include:

- areas of the construction industry
- companies with collective agreements containing different hours
- companies with a variance order from the Manitoba Labour Board or the Employment Standards Branch
- the landscaping business

## **What are the standard hours of work for the construction or a landscaping business?**

The standard hours of work for the construction industry are established in The Construction Industry Wages Act. Information can be found on the [ICI wage schedule](#) and [Heavy wage schedule](#) pages

For employees working in the landscaping business, the standard hours are varied from April 15 to November 30 each year. During that period, the standard hours are 10 hours a day, 50 hours a week and 2,080 hours a year.

## **What is a landscaping business?**

Landscaping businesses involve construction or maintenance of a landscape, including lawn cutting, fertilizing, applying sod and controlling weeds. They do not include the maintenance or cleaning of parking lots or snow removal, or working with inventory or customers at a gardening/ landscaping retail outlet.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Overtime Exemptions – Workers who substantially control their hours of work**

Most employees are entitled to be paid 1 1/2 times their wages for hours worked beyond eight hours in a day or for hours worked beyond 40 hours in a week. An employee is only entitled to overtime for work that is requested, acknowledged or authorized by the employer. In some cases, employees are not entitled to overtime wages because they have substantial control over their hours of work and earn at least twice the Manitoba average industrial wage.

### **Who is exempt from overtime and hours of work under this provision?**

Employees who have substantial control over their hours of work and earn a regular annual income of at least two times the Manitoba average industrial wage are exempt from overtime. Both criteria are required for an employee to be exempt from overtime.

### **What is the Manitoba average industrial wage?**

Employment Standards will announce the Manitoba average industrial wage in June of each year. It is calculated using information available from Statistics Canada for the previous year. In 2007, the Manitoba average industrial wage was \$36,491.00. Therefore, to qualify for this exemption from after June 1, 2008 an employee must have a regular annual wage greater than \$72,982.00 per year.

### **Will this apply to employees paid by the hour or the week?**

Yes, regardless of how employees are paid, if they earn more than twice the Manitoba average industrial wage per year they meet the earning criteria. This also applies to employees who receive a base salary that is under the required level, but receive production bonuses or commissions that would raise their earnings above the required level.

In any case, employees also need to have substantial control over their hours of work.

### **How is substantial control over hours of work defined?**

Most employees are told by the employer when they are required to work, what days they will work, the hours they will work. Although these employees can request changes to their schedules, they do not have the final say if the request would be allowed. Most employees do not have substantial control over their hours of work.

Other employees have the ability to organize their work schedule to suit the needs of themselves and clients. They may need to check in with their employer occasionally, but the employer generally doesn't set the schedule or

control their day-to-day activities. These employees would generally have "substantial control over their hours of work."

## **Who determines if employees have substantial control of the hours of work?**

The employer is responsible for establishing the terms and conditions of employment. If an employer believes that this exclusion applies to their employees, they must be able to show that the employee has substantial control over the hours of work.

Each work relationship is different. If an employee can choose to work or not work at their discretion, might have substantial control of their hours of work. When trying to determine if an employee has substantial control over the hours of work the employer should consider the entire working relationship.

## **Some employees establish their schedule based on their clients availability, not when the rest of the office works. Would they have substantial control over the hours of work?**

Many factors affect if employees controls their hours of work. When employees work is not as important as the flexibility to adjust a schedule without the need for approval from employers.

## **Do both criteria need to be met to be exempt from overtime?**

Yes, to be exempt from overtime, employees must have substantial control over their hours of work and earn an annual regular wage of greater than twice the Manitoba industrial average wage.

## **An employee only worked part of the year, making \$40,000 in five months. They control their own hours; does this provision apply to them?**

Generally, all employees are entitled to overtime. If an employer wants to use this exemption to exclude an employee from overtime, they must be able to show how the employee meets both criteria. The best way to show an employee has met the income threshold is their past performance.

If a full year of work has not been completed it would be up to the employer to show that the employee would meet the threshold. In the example an employee who earns \$40,000 in five months would be on pace to earn \$96,000 a year. The employer may be able to show that this was likely and the employee would have earned more than the threshold.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## Overtime for Incentive Pay

Overtime pay is calculated using 1 1/2 times the hourly wage for overtime hours. Incentive pay is based on productivity, not on an hourly wage.

Employees paid by the hour, week or month either know, or can calculate their hourly wage before they begin working. For incentive pay, the hourly wage is not known until the work is done or the pay period is finished

### What is incentive pay?

In some workplaces, employees are paid based on how productive they are rather than the number of hours they work. Common examples include commission salespeople, flat-rate mechanics and pieceworkers.

### How is overtime pay calculated for employees who are paid by incentive?

For incentive pay, calculating overtime is a two-step process:

- Calculate the hourly wage.
- Calculate the regular and overtime pay.

To calculate the hourly wage, the incentive pay is divided by the total 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.

Overtime hours are those worked over the standard hours. In most cases, they are the hours worked after eight hours in a day and 40 hours in a week. The [Overtime](#) page provides more details on how to determine overtime hours.

In each pay period, employees must be paid their hourly wage for all standard hours they worked and their overtime wage, which is 1 1/2 the hourly wage, for all overtime hours they worked.

### How are employees who are paid commission only, paid for overtime?

To calculate overtime for commission employees, establish the hourly wage for the pay period, determine their standard and overtime hours worked in the pay period and calculate the wages.

For example: a commission salesperson paid once a week. In this pay period he/she earns \$1000 commission and work 50 hours.

To calculate the hourly wage use the formula:

$$\frac{\text{Earnings}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$1,000}{50} = \$20$$

The salesperson works 40 standard hours and 10 overtime hours. The hourly wage (\$20) times the standard hours (40) equals the regular pay for the period (\$800).

The overtime wage is the hourly wage (\$20) times 1 ½ (\$30). The overtime wage (\$30), times the overtime hours (10), equals the overtime pay for the period (\$300).

The total is the regular pay (\$800) plus the overtime pay (\$300) for a total of \$1100.

Since the salesperson has already earned \$1,000 in incentive pay, the top up for the overtime would be \$100.

## How are employees who are paid a flat rate (like many mechanics and automobile repair technicians) paid for overtime?

To calculate overtime for employees paid a flat rate, establish the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period and calculate the wages.

For example: a mechanic is paid once a week. He/she earns \$40 for each brake job completed. In this pay period, the mechanic does 30 brake jobs and actually works 47 hours, 40 regular hours and 7 overtime hours. The total pay for the 30 brake jobs is \$1,200.

To calculate the hourly wage use the formula:

$$\frac{\text{Earnings}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$1200}{47} = \$25.53$$

The mechanic worked 40 standard hours and seven overtime hours. The hourly wage (\$25.53) times the standard hours (40) equals the regular pay for the pay period (\$1,021.20).

The overtime wage is the hourly wage (\$25.53) times 1 ½ (\$38.31). The overtime wage (\$38.31) times the overtime hours (seven) equals the overtime pay for the period (\$268.17).

The total is the regular pay (\$1,021.20), plus the overtime pay (\$268.17), for a total of \$1,289.37.

Since the mechanic has already earned \$1,200 in incentive pay, the top up for the overtime would be \$89.37.

## How are employees paid for piece work, (like sewing machine operators), paid for overtime?

To calculate overtime for employees paid by the piece, determine the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period and calculate the wages.

For example: a sewing machine operator is paid once a week. He/she earns \$.50 for each pocket sewn. In the pay period, the employee sews 1,000 pockets, for a total pay of \$500 and works 45 hours.

To calculate the hourly wage use the formula:

$$\frac{\text{Earnings}}{\text{Total Hours}} = \text{Hourly Wage} \quad \text{or} \quad \frac{\$500}{45} = \$11.11$$

The employee works 40 standard hours and five overtime hours. The hourly wage (\$11.11) times the standard hours (40) equals the regular pay in the period (\$444.40).

The overtime wage is the hourly wage (\$11.11) times 1 ½ (\$16.67). The overtime wage (\$16.67), times the overtime hours (five) equals the overtime pay for the period (\$83.35).

The total is the regular pay (\$444.40), plus the overtime pay (\$83.35), for a total of \$527.75.

Since the operator has already earned \$500 in incentive pay, the top up for the overtime would be \$27.75.

## **How are employees whose productivity can be measured every hour paid for overtime?**

In some cases, employers are able to measure exactly how productive employees are during the overtime hours. In the piece work example, where employees are paid \$.50 for each pocket sewn, the employer could show how many pockets were sewn during regular hours and how many pockets were sewn during overtime.

Employers can choose to calculate the hourly wage over the pay period as shown in the previous examples, or they may pay 1 ½ times the piece rate for work done in overtime hours. In this example, the employer could simply pay \$.75 for each pocket sewn in the overtime rather than calculate the hourly wage for the pay period.

## **How are employees who earn a salary or wage and incentive pay paid for overtime?**

There are two ways to calculate overtime for employees who earn a salary or wage, and incentive pay.

1. If the salary or wage is more than twice the minimum wage, the overtime wage is only the salary or wage. The incentive pay is not used to calculate the hourly wage
2. If the salary or wage is less than twice the minimum wage, the overtime wage is calculated separately for the wage or salary and for the incentive pay. Then the two are added together.

## **How are employees who are paid at least twice the minimum wage as a base and incentive pay, paid for overtime?**

To calculate overtime for employees paid a base wage greater than twice the minimum wage, use only the base salary or wage.

For example: a miner is paid a base wage of \$25 per hour and incentive pay for the amount the mine produces in

the period. The base wage is more than twice the minimum wage, so for each hour of overtime the miner is paid 1 ½ times the base wage (\$25). This equals an overtime wage of \$37.50 for each hour of overtime. The incentive pay is not included in the calculation.

## **How are employees, who are paid a salary or wage less than twice the minimum wage, paid for overtime?**

To calculate the overtime rate for employees who are paid a base salary or wage less than twice the minimum wage and incentive pay, establish the hourly wage for the pay period, determine the standard and overtime hours worked in the pay period and calculate the wages.

For example: a salesperson is paid \$10 per hour and a sales commission. In this pay period, he/she works 40 standard hours, two hours overtime and earns \$80 in commission. The wage this salesperson makes is less than twice the minimum wage, so the hourly wage is calculated separately for both the base wage and the incentive pay; then the two are added together.

The base wage is \$10 per hour. If the employee had been paid on salary, an hourly wage is first calculated then used for overtime.

To calculate the hourly rate for the incentive pay, use the formula:

$$\frac{\textit{Earnings}}{\textit{Total Hours}} = \textit{Hourly Wage} \quad \textit{or} \quad \frac{\$80}{42} = \$1.91$$

Adding the base wage (\$10) and the incentive wage (\$1.91) provides a total hourly wage of \$11.91.

The employee works 40 regular hours and two overtime hours. The hourly wage (\$11.91), times the standard hours (40), equals the regular wage for the pay period (\$476.40).

The overtime wage is the hourly wage (\$11.91) times 1 ½ (\$17.87). The overtime wage (\$17.97), times the overtime hours (two), equals the overtime pay for the pay period (\$35.74).

The total is the regular wage (\$476.40) plus the overtime wage (\$35.74) for a total of \$512.14.

Since the salesperson has already earned \$420 in wages and \$80 in incentive pay, the top up for the overtime would be \$12.14.

## **Must employers calculate the hourly wage in every pay period for each employee that works overtime?**

Yes; the hourly wage will often change in every pay period, since it depends on the productivity in that period and the number of hours worked. The hourly wage does not need to be calculated for employees who have not worked overtime hours in a pay period.

## **Are employees still entitled to minimum wage for all hours worked?**

Yes, employees are entitled to at least minimum wage in each pay period and cannot agree to work for less. The [Minimum wage](#) page has more information.

## **How is overtime calculated if incentive pay is not paid at the time of production or sale, but at some later date?**

Overtime is calculated based on the hours worked and the wages paid in each pay period. To calculate overtime, the wages paid in a pay period are averaged over the hours worked in that pay period, regardless of when the production actually occurred.

## **How do other incentives like bonuses and profit sharing affect the calculation of overtime pay?**

Incentives that are tied to the productivity of employees are considered part of the wage when calculating overtime. Incentives that are discretionary bonuses, which are not tied to employees' productivity in any way, are not considered part of the wage in calculating overtime.

## **Is there a time when overtime would not be considered?**

There are exceptions to the overtime rules for some employees. See the pages on [employees who generally perform management functions](#) or [employees who have substantial control over their hours of work and earn twice the industrial average wage](#). There are also situations when the hours of work can be varied or averaged, contact the Employment Standards Branch for details.

## **How are employees who are paid by incentive pay paid for a general holiday they do not work?**

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

## **How are employees who are paid by incentive pay, paid if they work on a 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 five percent of their earnings in the four-week period before the holiday. This includes employees who are paid by incentive.

To calculate the wage rate that an incentive paid employee is entitled, use the formula to calculate overtime wages. First calculate the hourly wage. Then calculate the regular pay and overtime pay for working on the general holiday.

To calculate the hourly wage, the incentive pay is divided by the total 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 a commission salesperson paid once a week. In this pay period he/she earns \$800 commission, worked 32 hours of standard time and 6 hours on the general holiday.

To calculate the hourly wage use the formula:

Earnings	= Hourly Wage	or	\$800	= \$21.05
Total Hours			38	

The salesperson worked 32 standard hours. The hourly wage (\$21.05) times the standard hours (32) equals the regular pay for the period (\$673.60).

The wage for working on the general holiday is the hourly wage (\$21.05) times 1½ (\$31.58). This wage (\$31.58), times the hours worked on the general holiday (6), equals the pay for working on the general holiday (\$189.48).

The total is the regular pay (\$673.60) plus the pay for working on the general holiday (\$189.48) plus the 5% of the regular earnings in the 28 days before the holiday

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Overtime Exemptions – Workers who perform management functions primarily**

Most employees are entitled to be paid 1 1/2 times their wage for hours worked beyond eight hours in a day or for hours worked beyond 40 hours in a week. An employee is only entitled to overtime for work that is requested, acknowledged or authorized by the employer. In some cases, employees are not entitled to overtime wages because they perform management functions primarily. This fact sheet explains this exclusion.

### **Who is exempt from overtime and hours of work under this provision?**

Employees who perform management functions primarily are exempt from overtime under this provision. Management functions affect the control and direction of a business. A key factor is the amount of independent judgment and discretion employees have when operating the business. The more discretion and authority employees have to make business decisions, the more likely it is they are performing management functions primarily.

For example in a franchise business where all of the major decisions on staff, budget and marketing are made at the corporate office, employees might not be considered to be performing management functions primarily.

### **What do discretion and authority mean?**

The issue is how much independence the employee has when making decisions. Employees with the power to make a final decision on most issues would have significant discretion and authority. Employees who need to get approval from someone else, such as a general manager or a board of directors, have less. The more decisions employees can make without needing approval, the more discretion and authority they have. The more discretion and authority an employee has the more likely they perform management functions primarily.

For example a retail store manager who can hire additional employees or fire employees without consulting anyone else in the organization, or who is given a budget for marketing, but can make decisions on how those dollars are spent, has substantial discretion and authority and would likely perform management functions primarily.

### **Are employees called "manager" or "supervisor" exempt from overtime and hours of work?**

Job titles have no impact on whether an employee is exempt or not. The determining factor is the role the person plays in the organization. The more independent authority and discretion employees have, the more likely they perform management functions primarily.

## **Are employees who supervise other employees exempt from hours of work and overtime?**

It depends, but not likely. Supervisory duties alone are not primarily management functions. To determine if employees perform management functions primarily all of their job duties must be examined. An issue that must be investigated is who makes the final decision on things like terminations and discipline. Many supervisors make recommendations on these issues but someone with more authority in the company makes the final decision. Generally, supervisors would not perform management functions primarily.

## **Who determines if employees primarily performs management functions?**

If employers wish to exclude employees from overtime they must be able to show how the employees perform management functions primarily.

## **Are managers who take direction from a board of directors exempt from hours of work and overtime?**

It depends on the level of authority the managers are given and their independent discretion to make decisions affecting the business. Many questions need to be investigated including: how active the board of directors is in the day-to-day operation of the business, how involved they are in monitoring expenditures, and whether the manager has the authority to interpret and implement board policies and procedures.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Parental Leave**

Parental leave gives parents the opportunity to take an unpaid leave from work, to care for a new child in their family, without the fear of job loss.

### **What is the difference between maternity leave and parental leave?**

Maternity leave is an unpaid leave, taken near the end of a pregnancy or immediately afterwards.

Parental leave is taken by fathers and mothers to care for a child after birth or adoption.

### **Who qualifies for parental leave?**

Employees who have worked with the same employer for at least seven consecutive months and have become a parent by birth or adoption are entitled to the leave.

### **How long is parental leave?**

Parental leave is up to 37 weeks long and must be taken in one continuous period.

### **Does the employer 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.

### **Are there programs to pay employees while on leave?**

Yes, the federal government provides programs through Employment Insurance (EI) to cover this type of leave. Please check with your local EI office or call 1-800-206-7218 for details.

### **How does an employee start parental leave?**

Parental leave can begin up to one year after the birth or adoption of a child. Employees who have taken maternity leave and also wish to take parental leave, must do so immediately following the maternity leave, unless the employer agrees to a different arrangement.

Employees requesting parental leave must give the employer at least four weeks' written notice before the leave.

## **What if employees don't give notice?**

Employees are still entitled to parental leave if they do not give four weeks' written notice. If an employee does not give notice, the leave can be shortened by the amount of notice not given. For example, an employee who only gives two weeks' written notice would only be entitled to 35 weeks' leave.

## **What happens when the leave ends?**

Employees must be allowed to return to their job, or a comparable job with the same or greater benefits and pay, when they return from leave. Employers may not discriminate or attempt to punish employees for taking a leave.

## **What if employees want to end the leave early?**

Employees who want to return to work before their leave has ended must give their employers notice, in writing, at least one pay period before returning to work.

## **What if the employees' job is no longer available?**

Generally, a comparable position with the same pay and benefits must be offered. In special circumstances, employers may not have a position available for reasons completely unrelated to the leave. For example, if employers shut down part of their operations and reduce their workforce based on a seniority system, employees who are on unpaid leave would not necessarily be protected from losing their jobs.

Employers must show that the leave has no impact on the decision to lay off or terminate the employment.

## **What if employers refuse to bring employees back to work?**

An employee who believes they were terminated because they took or requested leave may file a claim with the Employment Standards Branch. Employers who do not allow employees to return to work after a leave may be ordered to pay compensation, and in some cases reinstate them to their jobs.

## **How does an unpaid leave affect vacations?**

During a legislated or approved leave of absence from work, employment is considered continuous. Therefore, an employee is still considered employed, though not earning wages. The leave does not affect employees right to take vacation time; it only affects the amount of vacation wages earned. See the [Vacations and Vacation Pay](#) page for details on earning and paying vacation.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## Remembrance Day

Remembrance Day gives the people of Manitoba the opportunity to pay tribute to the memory of those who have died, cherish those who have suffered injury, and recognize those who dedicate themselves to the protection of freedom and human dignity.

It is a day for Manitobans to remember those who fought in the two world wars, the Korean War, the Gulf War and ongoing international peacekeeping activities.

### Who is allowed to work on Remembrance Day?

Most industries in Manitoba are not allowed to operate on November 11. Exceptions include:

- hospital employees
- hotel and restaurant employees
- police, firefighters, security officers
- power engineers, janitors
- child care, home care and domestic workers
- workers who do emergency repairs
- workers who supply heat, gas, light, electrical services or water
- workers who transport goods or passengers on railways, aircrafts, motor vehicles, (including vehicle rental agencies)
- workers caring for perishable products or live animals, (including animal hospitals)
- workers in dairy or milk processing plants
- bakery workers, for baking only
- employees in continuous operation businesses, (except a retail business)
- workers in meat packing plants (some restrictions)
- employees in registered brokerage houses who do business for clients on stock exchanges outside Manitoba
- workers conducting commemorative or religious services
- employees at newspapers, telecommunication carriers, television or radio stations and cable companies
- workers in the farming industry

### Are restaurants and hotels allowed to be open on Remembrance Day?

Yes, restaurants and hotels are allowed to be open on Remembrance Day. A restaurant includes street vendors, kiosks, coffee shops, patios and indoor restaurants. This type of business is not restricted on Remembrance Day.

## **Are retail stores and services allowed to be open?**

Retail businesses may operate on Remembrance Day but cannot be open between 9:00 a.m. and 1:00 p.m.

## **What is a retail business?**

Most businesses that sell goods or services are considered retail businesses. This includes trades people and employees of or professional services, rental companies, arenas and businesses charging admission to performances such as movies, concerts, theatre, exhibits and sporting events.

## **Can any retail business be open between 9:00 a.m. and 1:00 p.m.?**

No, all retail businesses must be closed unless they sell or provide:

- prepared meals or goods and services connected to living accommodations
- professional health services
- veterinary services
- drugs, medicines, surgical appliances, or infant formula
- gasoline, motor oil, or related products
- vehicle parts or services for emergency repairs only

## **When November 11 falls on a Sunday, what rules do stores need to follow on Remembrance Day?**

When Remembrance Day is a Sunday retail businesses must follow both the Remembrance Day legislation and the Sunday Shopping legislation. Therefore in communities that allow Sunday shopping, retail businesses may be open between 1:00 pm and 6:00 pm on Remembrance Day.

## **Are performances allowed?**

Yes, performances such as theatre, concerts, sporting events and movies are allowed on Remembrance Day except between 9:00 a.m. and 1:00 p.m.. They cannot be produced, prepared, or conducted between 9:00 a.m. and 1:00 p.m. unless they are directly related to a Remembrance Day commemorative or religious service.

## **Are employees who do not work on Remembrance Day entitled to be paid?**

No, while it is a common practice for employers to pay employees who do not work on Remembrance Day, they are not required to.

## **When employees work on Remembrance Day what are they paid?**

Although Remembrance Day is not a general holiday, the calculation to pay an employee who works on Remembrance Day is the same as for general holidays. Employees who work must be paid 1 1/2 times their regular wage for all hours worked, plus 5% of their earnings in the 28 days before Remembrance Day. Further information on calculating a regular days pay can be found on the [General holiday](#) page.

## **Is there a minimum employees must be paid for working on Remembrance Day?**

Employees who work are entitled to be paid for at least half of a regular work day, at 1 1/2 times their wages. For example, employees who normally work an eight-hour day, but work two hours on Remembrance Day, would be paid four hours at 1 1/2 times their wage, plus a regular day of pay (eight hours).

## **Are employees in all industries paid 1 1/2 times their wages for hours worked on Remembrance Day?**

When employees work on Remembrance Day their pay must be calculated in the same way as on a general holiday. In some industries such as gas stations, hospitals, hotels, restaurants, places of amusement, continuously operating plants, seasonal industries (excluding construction) and domestic service can receive another day off with pay instead of 1 1/2 times the wages earned that day. See the [General holidays](#) page for details.

## **Can employers substitute another day for Remembrance Day?**

No, Remembrance Day is November 11 and the rules apply for that day. If employers wish to treat Remembrance Day as a General Holiday and provide an additional day off they can, but they are not required to do so.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: October 6, 2008

## **Sunday and Holiday Shopping**

### **Can a retail business be open on Sundays?**

A retail business that operates with fewer than four employees can be open on Sundays. Municipalities can pass a bylaw to allow Sunday and holiday shopping at larger retail businesses within their communities.

### **Are there restrictions on when stores can be open in communities?**

In communities like Brandon and Winnipeg that have passed a Sunday shopping bylaw, retail businesses can be open between 12:00 p.m. and 6:00 p.m. on Sundays, Louis Riel Day, Victoria Day and Thanksgiving Day.

### **Can retail stores be open on General Holidays?**

In communities with a Sunday and Holiday shopping by-law retail stores can be open Sunday shopping hours on Louis Riel Day, Victoria Day and Thanksgiving Day.

Most retail businesses cannot be open on New Years Day, Good Friday, Easter Sunday, Canada Day, Labour Day or Christmas Day.

Remembrance Day is not a holiday. Retail stores cannot be open between 9:00 a.m. and 1:00 p.m. on Remembrance Day. More information is available on the [Remembrance Day](#) page.

### **Do communities that have a bylaw require all stores to open?**

No, business owners decide whether to open on holidays or Sundays. In communities with a bylaw, business are allowed to open, but are not forced to.

### **Which communities have Sunday shopping bylaws?**

Many communities (Brandon, Portage la Prairie, Thompson and Winnipeg) have bylaws that allow Sunday shopping. Contact your municipal office or town hall for bylaws in your community.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## Termination of Employment

Employers or employees can decide to end an employment relationship at any time. In most cases, the legislation requires that the person ending the employment give notice.

### What is termination of employment?

Common expressions for termination of employment include:

- fired
- quit
- let go
- discharged
- dismissed
- permanently laid off
- terminated

### Is a layoff the same as termination?

A layoff is a temporary break in employment, where employees are likely to return to work. Employees who are permanently laid off have been terminated. Employers do not need to provide notice to employees that they are being laid off. However, if the layoff is longer than eight weeks in a 16-week period, the layoff becomes a termination and notice is required.

### Do employees need to give notice of termination?

Yes, employees who have worked for an employer more than 30 days but less than one year, must give at least one weeks 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.

## 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
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 10 years	six weeks
at least 10 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.

## What is a period of employment?

The length of time from when an employee starts with an employer, until the day the employment ends.

The period of employment also includes periods of temporary interruption in employment such as a layoff, an unpaid leave, seasonal employment and when an employee returns to work for the same employer after a break of less than two months.

## 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.

## Can employers keep employees' wages if employees terminate without notice?

No. Effective April 30, 2007, employers cannot keep wages from employees who quit without notice. Employers must pay employees all earned wages within 10 days of the last day of work.

## Is there a no-notice period?

In the first 30 days of employment the legislation states that employers and employees have the right to end the working relationship without notice.

## Can employers have notice policies for their businesses that are different from the legislation?

No. Effective April 30, 2007, employers cannot have alternate notice policies. A notice policy set under the previous legislation is not valid. The only exclusion is a unionized workplace, where a collective agreement has a

probationary period that is one year or less.

## 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

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.

## Do employers need to have just cause to terminate employees?

Under employment standards legislation employers and employees can terminate employment at any time, for any reason if they provide notice of termination. Just cause may be relevant in a civil action, but The Employment Standards Code does not require a reason for a termination.

## Do other laws affect termination?

Yes; human rights, workplace safety and health and collective bargaining legislation all have provisions that prevent discrimination and offer some job protection. Contact these organizations directly to see if they apply in your situation. More information can be found on the [Other government agencies](#) page. There is also civil law covering employment and a lawyer should be consulted about civil law affecting employment.

## Do notice provisions cover construction?

No, employees who work in the construction industry are excluded from notice of termination requirements. For more information, see the [Construction industry](#) page.

## How much notice must employers give to terminate a large group of employees?

Employer who intend to terminate a group of 50 or more employees within four weeks must provide more notice than for an individual termination.

Number of Employees	Notice Required
50 to 100	10 weeks
101 to 299	14 weeks

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## A Summary of Unpaid Leave Options

The Employment Standards Code provides a variety of options to allow employees time to deal with the demands of modern families without the risk of losing their job because of the leave.

### 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.

### Who is eligible for the leave?

All leave options have specific requirements. Pages for each leave option provide more detail. They can be found on our website, or an Employment Standards office. Generally, employees must work for the same employer for the qualifying period and provide reasonable notice.

Employers can request reasonable verification of the need for the leave.

## **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. The definition also includes those who are not related, but are considered a family member.

## **Can employees be terminated while on a statutory unpaid leave?**

No. Employers cannot terminate or lay off employees solely because they have requested a leave.

## **Does the employer 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.

## **Are there programs to pay employees while on leave?**

Yes, the federal government provides programs through Employment Insurance (EI) to cover this type of leave. Please check with your local EI office or call 1-800-206-7218 for details.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Vacations and Vacation Pay**

Employees who have worked for the same employer for a full year are entitled to two weeks of paid vacation. When employees complete their fifth year of work with an employer, they are entitled to three weeks vacation.

### **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.

### **Can employers give more vacation?**

Yes, employers can and often do give employees more vacation than is required by Employment Standards. The minimum amount of vacation employers can provide does not increase beyond 3 weeks of vacation after 5 years of service, employers can choose to provide more if they wish.

### **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.

### **What is included in gross wages for vacation pay?**

Gross wages include all regular wages and any general holiday pay. Regular wages include hours paid as commission, salary, hourly, bonuses tied to productivity and any other wages paid as compensation for the regular hours of work.

Overtime wages, wages in lieu of notice and the previous year's vacation wages are not included.

### **When are employees paid their vacation pay?**

Employers decide when vacation pay is to be paid. However, it must be paid no later than the last day of work before the vacation and within 10 months of earning it.

## **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.

## **When can employees take their vacation?**

Employees are eligible for vacation once they have completed one year of work and must take their vacation within 10 months of it being earned. Employees and their employers can agree on when vacation will be taken.

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

## **What if a general holiday falls during employees vacations?**

Employees would normally receive another day of vacation, and receive general holiday wages for the day of the general holiday. See the [General holiday](#) page for more information.

## **How do unpaid leaves affect vacations and vacation pay?**

During a legislated or approved leave, employment is considered continuous. Employees are still employed, but not earning wages while on the leave. Employees who return from leave are entitled to their full vacation time, so employees with less than five years of service would still be entitled to two weeks off.

Vacation pay for employees who have taken a leave remains the same as for other employees— four per cent of gross wages for two weeks vacation and six per cent for those who have earned three weeks vacation. The amount they earn as vacation pay may be lower than it would have been otherwise, if they were not earning wages while on their leave.

While on leave, employees are still employed. The time they are away on leave does count toward their years of service when determining how much vacation they are entitled to. See the page on [Unpaid leaves](#) for more general information or the pages on [Maternity leave](#), [Parental leave](#) and [Compassionate care leave](#) for more specific details.

## **What if employment ends before employees take their vacation?**

When employment ends, employees must be paid all of the vacation pay that has been earned. Employees begin earning vacation from their first day of work. This includes the situation where an employee has not yet completed one year of service.

## **Can vacation be used as notice of termination?**

Vacation cannot be used as notice of termination. Employees are entitled to all outstanding vacation pay when their employment ends.

## **How are years of service determined for seasonal employees?**

Employees who work in a seasonal industry and return to work with the same employer each season, have continuous service for vacations. Each consecutive season they return adds one more year of service to their total. Once employees complete their fifth season with an employer, they are entitled to three weeks vacation and vacation wages of six per cent.

## **Can employers establish a common anniversary date for earning vacation, for all employees?**

Employers can choose to have a common anniversary date, so all their employees receive their new vacation entitlements at the same time. All employees earn vacation pay from their first day of work. New employees will receive the portion they earned between the day they started and the common anniversary date. For example: if an employer establishes July 1 as the common anniversary and new employees starts work on January 1, new employees will have worked ½ a year on the common anniversary date. They must receive ½ of their vacation, normally one week) and four per cent of their earnings until July 1 as vacation pay.

## **Can employers offer more vacation?**

Employers can, and often will, give vacation and benefits that are greater than the legislation. They may not give less vacation or pay than the legislation states.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008

## **Wage for reporting for work**

Sometimes employees are scheduled to work a shift and then the shift is cancelled or shortened. In other situations employees are called in to work when they were not scheduled. Employees who report for work are paid for at least three hours work, or their full shift, whichever is less.

### **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.

### **Employees are scheduled to work five hours, but are sent home when they arrive at work. Are they paid for this shift?**

Yes. The employees must receive three hours of pay at their regular wage for reporting for work.

### **Employees are scheduled to work five hours later this week, but the schedule changes and they are no longer working that shift. Are they paid for the shift?**

No. Reporting pay only applies when employees report to work when requested or scheduled. When employees know or should know that a shift is canceled or changed, they are not entitled to reporting pay.

### **If a shift is scheduled for two hours, does this mean employees must be paid for three hours?**

No. Employers can schedule shifts of less than three hours and pay employees for the hours scheduled.

## **Employees report for their two-hour shift, but are sent home after an hour because business was slow. What are they paid?**

The employees are paid for their scheduled shift, which was two hours.

## **Employees are scheduled to work eight hours, but are sent home after five hours. What are they paid?**

Since the employees worked more than the three hour minimum for reporting pay, they are paid for the five hours worked.

## **Is being "on-call" considered when calculating wages for reporting for work?**

Yes, each time an employee is asked to report for work, this section applies. Employers can establish a schedule of how long a call will be. For example, an employer may "schedule" the length of a call to be 1 hour. The employee and the employer both know that for each call the employee will be paid for 1 hour of work. The call might take 15 minutes, or it might take the entire hour, either way the employee is paid for 1 hour.

If the calls regularly take longer than 1 hour the employee should be paid for the time spent working, or for 3 hours, whichever is greater.

## **Employees were supposed to have the day off, but are asked to come into work for one hour. What are they paid?**

The employees are paid for one hour. Reporting pay protects employees from unknown changes after they report to work. In this case, the employees knew before reporting how long the shift would be, and agreed to come in. They are paid for the hours worked.

## **Employees are scheduled to work a six-hour day, but are asked to stay for an extra hour. Does reporting pay apply?**

No. Since the shift is longer than three hours, and the employees worked more than three hours, reporting pay does not apply. The employees are paid for the hours worked. If the extra hours make the shift longer than eight hours in a day or more than 40 hours in a week, overtime will likely apply. Please see the [Overtime](#) page for more details.

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

Phone: 204-945-3352; or toll free in Manitoba 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*, or contact the Employment Standards Branch to ask for advice.

Date Published: September 30, 2008





