

# Annual Vacation

The *Employment Standards Act* provides that employees are entitled to take time off for annual vacation and to be paid vacation pay.

## Eligibility

Employees who are employed for five calendar days or less are not entitled to be paid annual vacation pay. Vacation pay for farm workers who are paid a piece-rate for harvesting is included in the piece rates. All other employees earn vacation pay on all wages earned from the first day of employment.

After being employed for 12 months, an employee becomes entitled to receive an annual vacation.

If an employer agrees to give an employee more vacation or vacation pay than the Act requires, the Employment Standards Branch can enforce this agreement.

An employer cannot reduce an employee's annual vacation or vacation pay because the employee was paid a bonus or sick pay or was previously given a vacation longer than the minimum.

## Annual vacation entitlement

During the first year of employment, an employee earns vacation time to be taken in the second year of employment. After completing twelve months of employment, an employee has earned two weeks of annual vacation to be taken in the following year. This means that starting in the second year, an employee is entitled to take the vacation earned in the year before.

After completing five years of employment, an employee becomes entitled to three weeks of annual vacation.

An employee is entitled to take his or her annual vacation within twelve months after it is earned.

An employee may make a written request for an annual vacation before becoming entitled to one. If the employer agrees, this vacation time taken "in advance" reduces the amount of vacation time remaining when the employee becomes entitled to a vacation.

## Scheduling vacations

An employer must schedule an employee's annual vacation in periods of one or more weeks unless the employee requests a shorter period.

An employer has the right to schedule vacations according to business requirements as long as the employer ensures that an employee receives a vacation within twelve months after becoming entitled to it.

If a statutory holiday occurs during a vacation, an employee who qualifies for the statutory holiday is entitled to be paid statutory holiday pay for that day. The employee, however, is not entitled to an additional day off.

The Act does not permit an employee to forego an annual vacation and only receive the vacation pay.

Employers are required to ensure that employees:

- Take time off for their annual vacation; and
- Receive their vacation pay.

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## Vacation pay

When an employee takes an annual vacation earned in the previous year of employment, the employer must pay vacation pay of at least four per cent of all wages paid to the employee in that previous year.

Any vacation pay received by an employee becomes part of the total wages paid in that year.

Vacation pay is payable at least seven days before the start of the annual vacation.

If agreed to in writing by the employer and the employee, vacation pay may be paid on every cheque.

After the employee completes five years of employment, the employer must pay vacation pay of at least six per cent of all wages earned in the previous year.

Upon termination of employment, an employee must be paid all outstanding vacation pay with the final paycheque.

## Employer Records

The employer's payroll records must indicate the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing.

The amount of vacation pay paid must be indicated on the employee's pay statement.

## Leaves and jury duty

The length of service of an employee on an approved leave under the Act is deemed to be uninterrupted for the purposes of calculating annual vacation entitlement.

## Sale or transfer of a business

The sale, lease or transfer of a business does not affect the length of service of an employee who was still employed by the business at the time of the disposition.

## Commission sales

Employees who are paid by commission must take annual vacation and receive vacation pay the same as other employees. Vacation pay cannot be incorporated into the commission rate. Commissions which become payable during an employee's annual vacation do not become vacation pay. Vacation pay must be paid on all commissions earned.

## Examples:

1. Robyn starts a new job on March 1, 2008. She completes her first year of work on February 28, 2009 and becomes entitled to take an annual vacation. Her employer must grant Robyn a vacation no later than February 28, 2010.

When Robyn takes a two week vacation in July 2009, her employer pays her 4% of her gross earnings from the period March 1, 2008 – February 28, 2009 for vacation pay. Since Robyn is not working during those two weeks, she does not receive any regular wages. This vacation pay amount becomes part of her gross wages for the year from March 1, 2009 – February 28, 2010.

2. Sam quits his job after working for three months. His final paycheque includes 4% vacation pay on all wages earned from his first day of employment.
3. Sue starts work on July 2, 2008. On January 31, 2009 she makes a written request to take a vacation "in advance". The employer agrees. Sue takes one week off in March of 2009. Her first year of employment ends on July 1, 2009, and she becomes eligible to take the vacation she earned in that year. Sue has one week of vacation left to take.

