

**EMPLOYMENT
STANDARDS
IN
NEWFOUNDLAND
AND LABRADOR**



**Department of Human Resources,
Labour and Employment
Labour Relations Agency**

2007

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INTRODUCTION

The Labour Standards Act is designed to provide fundamental protection to individual workers, and create a “level playing field” for employers in the labour market by establishing standard employment practices. The *Labour Standards Act* requires that all employers establish conditions of employment that meet at least the legislated minimum standards in areas such as hours of work, minimum wage, leave entitlements, termination of employment, paid public holidays, vacation, etc. The minimum employment standards for the Province of Newfoundland and Labrador are outlined in this booklet.

This booklet has been prepared with a view to answering the most commonly asked questions on the practical application of the *Labour Standards Act, R.S.N.L. 1990 c L-2, as amended*. It is meant as a ready reference for general information only. The reader is encouraged to contact the Labour Standards Division, at any of the numbers listed at the back of this booklet, for clarification on any of the topics presented or to ensure that the content is current.

It is important to note that the legislation does not prohibit terms and conditions of employment that are more beneficial than those set out in the Act. Should employer practices or the terms of a collective agreement provide greater employment benefits, then those terms and conditions will govern the employment relationship.

Readers should be aware that the *Labour Standards Act* applies only in circumstances where a person is employed under a contract of service. A contract of service provides the employer with the right of control and direction of the manner and method by which the employee carries out duties. The legislation requires that upon hire, every employee receive a statement from their employer which outlines basic terms and conditions of employment such as the hours of work, rate of pay, vacation entitlements and procedures and termination date, if hired for a fixed term.

EMPLOYMENT STATEMENT**
SAMPLE

Date: _____

Employee Name: _____

Telephone Number: _____

Address: _____

The following conditions will apply to your employment with

Company Name and Address

due to take effect on _____:

Rate of pay \$_____ per hour

OR

Rate of commission \$_____ per week or month

Anticipated hours of work _____/week

Vacation pay included in wages yes _____ no _____

Termination date (if fixed term contract)

Signature of Employee

Signature of Employer

Dated

Dated

** The employment statement provides employees with the terms and conditions of employment and should be given to the employee at the start of employment and at any time those terms and conditions are changed.

FOR FURTHER INFORMATION

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 St. John's, NL

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 Labour Relations Agency
 Department of Human Resources, Labour and Employment
 P.O. Box 2006
 7th Floor
 Sir Richard Squires Building
 Mount Bernard Avenue
 Corner Brook, NL
 A2H 6J8
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View the Labour Standards legislation online at:
www.hrle.gov.nl.ca/lra/legislation.htm

BENEFIT ELIGIBILITY

The minimum standards of employment outlined in this publication apply to all employees regardless of the number of hours worked each week. The legislation does not differentiate between full-time and part-time employees. The application of some of the provisions depend, in some cases, on the length of time an employee has been employed. Time qualifiers for benefits are shown below and more particularly outlined in the respective sections of this booklet.

<u>BENEFIT</u>	<u>QUALIFIERS</u>	<u>ENTITLEMENT</u>
Paid Public Holidays *New Year's *Good Friday *Memorial/Canada Day *Labour Day *Remembrance Day *Christmas Day	<p><u>If holiday worked</u> no qualifiers</p> <p><u>If holiday not worked</u></p> <p>(a) Must have been employed for at least 30 days.</p> <p>(b) Work the scheduled shifts before and after the holiday.</p>	<p>Pay at twice regular rate or another day off with pay within 30 days or additional vacation day - employees choice.</p> <p>Employee receives a day's pay at their regular rate.</p> <p>If a holiday falls on the employee's normal day off, they receive the next work day off with pay or another day which the employee and employer agree on.</p>
Bereavement Leave	Employed for at least 30 days.	1 day off with pay and 2 days without pay.

<u>BENEFIT</u>	<u>QUALIFIERS</u>	<u>ENTITLEMENT</u>
Sick/Family Responsibility Leave Pregnancy Leave	On the death of spouse, a child, a grandchild, the mother or father, a brother or sister, a grandparent or a mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law of the employee.	2 days without pay.
	Employed for less than thirty days on the death of a relative referred to above.	7 days unpaid leave per year.
	Employed for at least thirty days with the same employer. Employed for at least 20 consecutive weeks with the same employer. Employee to give 2 weeks written notice to the employer together with a medical certificate. Leave cannot start earlier than 17 weeks before	17 weeks unpaid leave. Upon return to work, be placed in same or similar position with same duties, benefits and wages.

Q. Other than relatives or family members, are there other individuals for whom an employee may take compassionate care leave?

- A. Yes, an employee may take compassionate care leave to care for an individual with a serious medical condition who, although not related to the employee by blood, adoption, marriage, or common-law partnership, considers the employee to be like a close relative.

Q. Do I have to take all 8 weeks at one time?

- A. No, the Leave may be broken up but it must be taken in minimum blocks of one week.

Q. How do I access Compassionate Care Leave?

- A. You should give your employer at least two weeks written notice before the leave is to begin. This notice should indicate the length of leave you intend to take. At least two weeks written notice should also be provided for any change to the intended length of leave. A medical certificate from a legally qualified medical practitioner should be provided stating that the family member has a serious medical condition with a significant risk of death within 26 weeks from the date the certificate is issued, or the day the leave began, if leave began before the certificate was issued.

Q. What happens when I want to return to work?

- A. An employer must reinstate an employee with terms and conditions of employment that are not less beneficial than those that subsisted before the leave began.

COMPASSIONATE CARE LEAVE

Q. What is compassionate care leave?

A. Compassionate Care Leave may enable an employee to receive up to eight (8) weeks of unpaid leave to provide care to a family member who has a serious medical condition and a significant risk of death within a specified 26 week period.

Q. Who can take Compassionate Care Leave?

A. Employees under provincial jurisdiction and employed with the same employer for 30 days qualify for compassionate care leave.

Q. For which of my family members may I take compassionate care leave?

A. An employee may take compassionate care leave to care for any of the following family members of the employee: child, wife/husband or co-habating partner, parent or step-parent, common-law partner of your father or mother, siblings, step-siblings, grandparents or step-grandparents, grandchildren and their spouse or common-law partner, "in-laws" (including father, mother, son, daughter, brother and sister) either married or common-law, aunts, uncles, nephews/nieces and their spouses or common-law partners, current or former wards, and current or former guardians and their spouse or common-law partner.

Q. For which of my spouse's or common-law partner's family members may I take compassionate care leave?

A. An employee may take compassionate care leave to care for any of the following family members of the employee's spouse or common-law partner: child, father/mother either married or common-law, siblings, step siblings, grandparents, grandchildren, son-in-law, and daughter-in-law either married or common-law, aunt, uncle, nephew, niece, current or former foster parents and current or former wards.

<u>BENEFIT</u>	<u>QUALIFIERS</u>	<u>ENTITLEMENT</u>
Adoption Leave	the expected birth date. Employee to give employer 4 weeks notice of the date on which they intend to return to work.	17 weeks unpaid leave. Upon return to work, be placed in same or similar position with same duties, benefits and wages.
Parental Leave	Employed at least 20 consecutive weeks with the same employer. Employee to give 2 weeks written notice to employer of intent to take leave. Employee to give 4 weeks written notice of the date on which they intend to return to work.	35 weeks unpaid leave. Upon return to work, be placed in same or similar position with same duties, benefits and wages.

<u>BENEFIT</u>	<u>QUALIFIERS</u>	<u>ENTITLEMENT</u>
Vacation Pay	<p>Parental Leave has to be taken within 35 weeks of the birth or the child coming into the custody for the first time.</p> <p>Employee must be employed for at least 5 days</p>	<p>4% of gross income. Vacation pay to be paid within 1 week of the termination of the employment or the day immediately before beginning vacation.</p>
Vacation Time	<p>Employed 12 months and worked 90% of their regular hours in the preceding 12 months</p> <p>15 years continuous employment with the same employer.</p>	<p>2 weeks annual vacation and 4% of gross earnings during the 12 month period as vacation pay.</p> <p>3 weeks annual vacation and 6% of gross earnings during the 12 month period as vacation pay.</p>

SICK/FAMILY RESPONSIBILITY LEAVE

Q. Who is entitled to sick/family responsibility leave?

A. An employee who has been employed with the same employer for a continuous period of 30 days is entitled to 7 days unpaid Sick or Family Responsibility Leave in a year.

Q. Does the employee have to provide a note to the employer for sick leave?

A. An employee must provide a note to his employer signed by a qualified medical practitioner if on sick leave for three consecutive days or more.

Q. Does the employee have to provide a note to the employer for family responsibility leave?

A. An employee must provide a written statement outlining the nature of the family responsibility leave where the employee is absent from work for 3 consecutive days or more.

EMPLOYMENT OF CHILDREN

The Labour Standards Act places some restriction on the employment of children under the age of 16. An employer is prohibited from employing a child who is under 16 in employment that is likely to be unwholesome or harmful to the child's health or normal development, or if it is going to hamper the child's attendance at school.

Additionally, an employer shall not employ a child under 16 to work:

- a) for more than 8 hours a day
- b) for more than 3 hours on a school day
- c) on a day for a period that, when added to the time required for attendance at school on that day, totals more than 8 hours
- d) between 10 p.m. of one day and 7 a.m of the following day
- e) in circumstances that would prevent the child from obtaining a rest period of at least 12 consecutive hours a day
- f) in occupations that are prescribed as hazardous
- g) an employer shall not employ a child under age 14 unless the work is prescribed in the regulations under the Act.
- h) an employer shall not employ a child while a strike by employees or a lockout of employees by the employer is in progress.

Before employing a person under the age of 16, an employer must obtain the written consent of the parent or guardian. This consent must be kept as part of the record of employment and the age shall be specified in the written consent.

<u>BENEFIT</u>	<u>QUALIFIERS</u>	<u>ENTITLEMENT</u>
Notice of Termination of Employment (N.B.: some exceptions such as construction industry)	Employed less than 3 months.	No notice required.
	Employed 3 months or more but less than 2 years.	1 week written notice or 1 weeks pay in lieu of notice.
	Employed 2 years or more but less than 5 years.	2 weeks written notice or 2 weeks pay in lieu of notice.
	Employed 5 years or more but less than 10 years.	3 weeks written notice or 3 weeks pay in lieu of notice.
	Employed 10 years or more but less than 15 years.	4 weeks written notice or 4 weeks pay in lieu of notice.
	Employed 15 years or more.	6 weeks written notice or 6 weeks pay in lieu of notice.
	Compassionate Care Leave	Employed by the same employer for at least 30 days.

HOURS OF WORK

The standard working hours per week may be prescribed in regulations by the Lieutenant-Governor in Council. The present regulation sets a 40 hour week. Time worked in excess of those hours are overtime hours and must be paid at a rate of not less than one and one half times the minimum wage rate.

The overtime provisions do not apply to agricultural employees.

Day of Rest

Employees must be granted 24 consecutive hours off work in each week of employment. Where possible, the day off should be a Sunday. There are exceptions in the case of:

- (a) employees in undertakings excluded by regulation. (The present regulation provides for the exclusion of employees covered by collective agreements, employees employed in a remote area and crew members of ferry boats).
- (b) employees of employers exempted by the Minister of Human Resources, Labour and Employment
- (c) employees engaged in emergency work.

Meal Break

Except where regulation provides otherwise, employees are entitled to a one hour rest period immediately following each 5 consecutive working hours. (The present regulation provides for the exclusion of employees covered by collective agreements or written contracts of service as per Section 24(2)).

BEREAVEMENT LEAVE

Q. Who is entitled to Bereavement Leave?

- A. An employee who has been employed with the same employer for a continuous period of at least 30 days shall be given 3 days Bereavement Leave consisting of 1 day paid leave and 2 days unpaid leave. Bereavement Leave must be provided in the event of the death of the spouse, a child, a grandchild, the mother or father, a brother or sister, a grandparent or a mother-in-law, father-in-law, sister-in-law or brother-in-law, son-in-law or daughter-in-law, of the employee.

If an employee has been employed for less than 30 days, then the employee is entitled to two days of unpaid leave.

An employer shall not dismiss an employee or give a notice of dismissal to an employee because he/she is off on Bereavement Leave.

ADOPTION LEAVE

Q. Who is entitled to Adoption Leave?

- A. An employee who has been employed by the employer for at least 20 consecutive weeks.

Q. How much notice of their intention to take Adoption Leave must an employee give?

- A. Two weeks notice in writing or if the child comes into their custody sooner than expected, written notice of having taken Adoption Leave within two weeks of having stopped work.

Q. How long can Adoption Leave last?

- A. Up to 17 weeks of unpaid leave.

Q. Are adoptive parents entitled to Parental Leave?

- A. Adoptive parents are entitled to 35 weeks Parental Leave.

Q. What if I wish to return to work earlier?

- A. The employee must give his or her employer at least 4 weeks written notice of the date they will be returning to work.

Q. What effect does my being off on adoption leave have on my entitlement to vacation and other benefits under The Labour Standards Act?

- A. The period of time spent on adoption leave is "time out" when it comes to the accumulation of time for the purposes of vacation entitlement, notice of termination of employment or other benefits under the Act.

Q. Does my employer have to hold my job for me?

- A. Upon your return to work, you should be placed in the same or similar position with duties, benefits and wages that you had prior to taking Adoption Leave.

Q. What is a work week?

- A. A work week is a period of 7 continuous days used by the employer or, if the employer doesn't designate a week, a period of 7 continuous days beginning after midnight on a Saturday.

Q. What is the current minimum wage?

- A. Effective January 1, 2007, the minimum wage increased to \$7.00 per hour. Effective October 1, 2007, the minimum wage will increase to \$7.50 per hour. Effective April 1, 2008, the minimum wage will increase to \$8.00 per hour.

Q. When is overtime to be paid and what is the overtime rate?

- A. Overtime is to be paid on any hours worked in excess of 40 per week. The minimum overtime rate is one and one half times the minimum wage rate. Effective January 1, 2007, the minimum wage was \$7.00 per hour, therefore the minimum overtime wage then became \$10.50 per hour - based on 1 ½ times \$7.00. Effective October 1, 2007, the minimum overtime wage will become \$11.25 per hour - based on 1 ½ times \$7.50. Effective April 1, 2008, the minimum overtime wage will become \$12.00 per hour - based on 1 ½ times \$8.00.

Q. Can overtime be "banked"?

- A. An employee may receive 1.5 hours of paid time off work for each hour of overtime worked instead of overtime pay when an employee and employer agree to do so.

The following conditions also apply:

- the time off shall be taken within three months of the date the overtime is earned unless the employer and employee agree to extend the time period;
- payment or time off must be finalized within 12 months of the date the overtime is earned.

If the employment ends before the time off is taken, the employer shall pay the employee for all overtime hours worked within seven

Q. If co-workers want to switch shifts, what impact may this have on overtime payments?

A. If an employer approves a written request from one or more employees and this change results in affected employee(s) working more than 40 hours in a week, the employer is not required to pay overtime to the employees involved.

Q. What happens if an employee is called in to work and isn't required to work at least 3 hours?

A. The employer shall either let the employee work at least 3 hours or pay the employee for any unworked portion of the 3 hours at the minimum wage rate or the minimum overtime wage rate, whichever is appropriate.

Q. What is an employee who is scheduled to work 2 hours a day entitled to in the form of wages?

A. An employee scheduled to work 2 hours must be paid only for the 2 hours worked.

Q. Can the employee be scheduled to work 3 separate two-hour shifts in the same day?

A. Yes. That employee would be entitled to 6 hours pay for such scheduled shifts.

Q. If an employee reports for a previously scheduled 8 - hour shift and finds the shift cancelled, what payment are they entitled to receive?

A. If they report for any shift of 3 hours or more and it is cancelled, they must receive payment for 3 hours.

Q. Is the employee entitled to receive a day off each week?

A. Employees are entitled to receive at least 24 consecutive hours off during each week.

Q. Does my employer have to hold my job for me?

A. Upon your return to work, you should be placed in the same or similar position with the same duties, benefits and wages that you had prior to taking Parental Leave.

Q. What effect does my being off on parental leave have on my entitlement to vacation and other benefits under the Labour Standards Act?

A. The period of time spent on parental leave is "time out" when it comes to the accumulation of time for the purposes of vacation entitlement, notice of termination of employment and other benefits under the Act.

PARENTAL LEAVE

Q. Who is eligible for Parental Leave?

A. An employee who has been employed by the same employer for at least 20 consecutive weeks before becoming the parent of a child or before having a child come into the employee's care and custody for the first time.

Q. When does Parental Leave have to be taken?

A. Parental Leave must begin within 35 weeks of the birth of the child or when the child comes into the care and custody of the parent for the first time.

Q. Can I take Pregnancy Leave, go back to work for a time and then take Parental Leave?

A. No. Where an employee takes Pregnancy Leave the Parental Leave must begin when the Pregnancy Leave ends unless the child has not come into the care of the parent for the first time.

Q. What is the maximum amount of Parental Leave?

A. The maximum Parental Leave provided by the Act is 35 weeks of unpaid leave.

Q. How much notice do I have to give my employer of my intention to take Parental Leave?

A. At least 2 weeks written notice of the date the leave is to begin.

Q. What if I wish to return to work before the end of the 35 weeks?

A. You should give your employer at least 4 weeks written notice of the date you intend to return to work.

Q. How many hours a day (24 hour period) can an employee be required to work?

A. Except in the case of an emergency that constitutes an imminent hazard to life or property, an employer shall permit an employee to take and an employee shall take not less than 8 consecutive hours off work in each unbroken 24 hour period of employment. This 8 hours is in addition to the breaks required during the work day (see next question).

Q. How many breaks or meal periods are the employees entitled to receive?

A. Subject to some exceptions in the Regulations, an employer shall permit an employee to take an unbroken rest period of 1 hour following each consecutive 5 hours of employment. Different rest periods may be established through a written employer/employee contract or a collective agreement. Unless the employer maintains the right of direction and control during a rest period, the employee does not have to be paid during his/her break.

Q. Are employees required to be paid for attending meetings or duties that cannot be completed during their "normal" work day?

A. Employees are required to be paid for time they spend at the workplace at the employers request. Examples of when employees should be paid are:

- (i) Attending a meeting that may be scheduled before the work day begins or at the end of the work day and requires mandatory attendance.
- (ii) Staying beyond the scheduled shift to conclude business such as closing cash, general cleaning, locking up, etc.
- (iii) Attending training requested by the employer.

PAYMENT OF WAGES

The employer must pay employees not less frequently than half monthly. All wages owing must be paid within 7 days of the end of the pay period.

The employer must pay the wages at the place of employment during regular working hours; or at the employee's normal residence by mail or personal delivery; or by deposit into the employee's bank account. These monies must be paid in lawful currency of Canada, or by cheque or money order, or, providing the employee is in agreement, by direct deposit into an account of a bank chosen by the employee.

In the event that a business closes while wages remain outstanding, affected employees should contact the Labour Standards Division immediately.

Q. Can deductions be made from employee's wages for cash shortages, bad cheques, charge cards, uniforms, etc.?

A. The employer cannot deduct these charges from wages.

Q. If an employee damages an employer's product, property, or has an outstanding account with the employer, can the employer recover his loss by deducting from the employee's wages.

A. No, the employer can only deduct sums established at law. Therefore, if an employee owes the employer for any of the above, the employer will have to take alternate measures to recover the sums that are owed.

Q. When does it begin?

A. Not earlier than 17 weeks before the expected birth date.

Q. What leave entitlement is there in the event of miscarriage or still birth?

A. The employee is entitled to 17 weeks after pregnancy leave began or the day that is 6 weeks after the still birth or miscarriage, whichever is later.

Q. Must I give written notice to my employer if I intend to return to work prior to the maximum time allowed for pregnancy leave or leave after miscarriage/still birth?

A. Yes, 4 weeks written notice must be given before you return to work.

Q. What effect does my being off on unpaid leave have on my entitlement to vacation and other benefits under The Labour Standards Act?

A. The periods of time spent on unpaid leave are "time out" when it comes to the accumulation of time for the purposes of vacation entitlement and notice of termination of employment, etc.

Q. Does my employer have to hold my job for me?

A. You should, upon your return to work, be placed in the same or similar position with the same duties, benefits and wages that you had prior to taking Pregnancy Leave.

Q. When must an employee whose employment has been terminated be paid any wages they are owed?

- A. Within 1 week from the date of termination, an employee must be paid:
- a) all wages owing;
 - b) all vacation pay owing; and
 - c) pay in lieu of notice, if applicable.

Q. What is pay in lieu of notice?

- A. Pay in lieu of notice is the payment of the employee's normal wages if the appropriate written notice (depending on the employee's years of service) is not given upon termination.

Q. May the vacation period form part of the notice period?

- A. Unless both parties agree, the employer shall not require, nor shall the employee take, vacation as the notice period.

PREGNANCY LEAVE

Q. Who is eligible for Pregnancy Leave?

- A. A pregnant employee who has been employed by the same employer for at least 20 consecutive weeks.

Q. How much notice of their intention to take Pregnancy Leave must an employee give to their employer?

- A. At least two weeks written notice must be given. As well, the employee must provide the employer with a certificate from a medical practitioner stating the estimated birth date.

Q. How long can Pregnancy Leave last?

- A. Up to 17 weeks of unpaid leave.

PAYROLL ADMINISTRATION/RECORDS

Q. Are employers required to issue a statement of earnings each pay day?

- A. Yes, and it should contain the following information:
- a) the start/end dates of the pay period
 - b) the rates of wages and number of hours worked at each rate during the period
 - c) the gross amount of wages earned for the pay period
 - d) the amount and purpose of each deduction made from the gross wages
 - e) the net amount of wages to which the employee is entitled for the pay period.
 - f) if applicable, the amount of vacation pay included in the wages for the pay period.

Q. What can be deducted from wages?

- A. Income Tax, Canadian Pension Plan contributions, E.I. contributions, overpayment of wages, deductions for a group benefit plan that the employee is participating in, savings plan deductions, overpayment on unused portions of travel advances and rental charges when the employee occupies the employer's premises, as well as sums established at law.

Q. Record of Employment, T-4 Slips & Employment Insurance Questions.

- A. All questions concerning Record of Employment (separation slip/lay-off slip) should be directed to the nearest Service Canada Centre.

All questions about T-4 slips and Employment Insurance contributions should be directed to the nearest Canada Revenue Agency - CRA.

Q. What payroll records must be kept by an employer?

- A. Every employer must keep payroll records for each employee showing the following:
- a) name, address and birth date of the employee
 - b) date of the start of the employment and the dates of a temporary lay-off or termination
 - c) rate of wages, number of hours worked in each day, the amount paid showing all deductions made from wages paid
 - d) the date of annual vacation and the amount of vacation pay paid
 - e) the dates on which each 24 hour rest period is given.

The employer is required to keep these records for a period of 4 years from the date of the last entry.

Q. If an employee is temporarily laid-off and the lay off exceeds 13 weeks in a consecutive 20 week period, what is the employees status under the Act?

- A. At the expiry of 13 weeks of "lay-off", the employment is terminated.

Q. What additional notice or pay in lieu of notice is the employee entitled to in these circumstances?

- A. At the time of the original "lay-off" the employee should have received one to six weeks notice. The temporary lay-off provisions do not provide employees with additional notice periods.

Q. What is a group termination of employment?

- A. A group termination is the termination of the employment of 50 or more employees in a four (4) week period.

Q. Are notice requirements different in a group termination of employment situation?

- A. The Act requires written notice of intention to terminate be given to each employee. The periods of notice are:
- eight weeks for 50 to fewer than 200 employees
 - twelve weeks for 200 to fewer than 500 employees
 - sixteen weeks for 500 or more employees

Written notice must also be given to the Minister of Human Resources, Labour and Employment immediately after serving of notice on the employees. In that notice the Minister must be made aware of the number of employees involved, the period of notice involved and the reason for the mass termination of employment. If notice is not given to the Minister, no action can be taken by the employer to terminate the services of those employees. Although an employer provides a notice of intention to terminate to the employees, the employer must also give the written notice of termination within the specified time limits.

Some examples of circumstances that would justify an employee terminating employment without notice are:

- If the employer has:
 - (i) mistreated the employee;
 - (ii) acted in a manner that might endanger the health or well being of the employee;
 - (iii) breached a material condition in the contract of service that, in the opinion of the Director, warrants notice not be given.
- The employee allows the employer to keep wages in lieu of notice.
- The person has been employed for less than 3 months.

Q. May the employer hold back wages when an employee terminates employment without giving notice?

- A. Only if the employee gives consent to the employer allowing the employer to withhold the correct amount of wages in lieu of notice. If the employee does not agree, then the employer is required to deposit the amount of the wages in question into the Unpaid Wages Account and the Director of Labour Standards will determine the issue in accordance with the Labour Standards Act.

Q. Is notice of termination required in the construction industry?

- A. No, notice is not required either by employee or employer.

Q. Does notice have to be given if the employer is only temporarily laying off an employee?

- A. Yes, notice of temporary lay-off has to be given, either one to six weeks notice depending on the length of service of the employee. No notice is required, however, if the lay-off is for less than one week.

Q. What is a temporary lay-off?

- A. It is a period of lay off up to 13 weeks in duration in any 20 consecutive week period.

TIPS OR GRATUITIES

Q. Should an employee share a tip with an employer, a manager or supervisor of the employee or an employer's representative?

- A. No, tips or gratuities are the property of the employee to whom or for whom they are given.

Q. Where a surcharge or other charge is paid instead of a tip or gratuity does this amount belong to the employee ?

- A. Yes, the amount paid shall be considered to be a tip or gratuity and is the property of the employee to whom or for whom it is given.

Q. May an employer make deductions from a surcharge or other charge which is paid instead of a tip or gratuity, or where the amount of the tip or gratuity is itemized on the record of a credit card or debit card payment ?

- A. Yes, the employer may deduct an amount required to be deducted from income by an Act of the province or of Canada from the amount due the employee.

VACATION & VACATION PAY

To qualify for an annual vacation, an employee must have been employed with the employer for at least 12 months and have worked at least 90% of the available working hours. For employees with less than 15 years of consecutive service with the same employer, the vacation must be of at least 2 weeks duration and the employee may choose to take it in either 1 two-week period or 2 one-week periods. The employee must be permitted to take this vacation within 10 months of the time they qualify for it. The employer must give the employee at least two weeks written notice of when the vacation is to be taken.

Vacation pay is calculated at 4% of the employee's gross wages for the period in respect of which the vacation is being given. This payment must be made at least one day before the vacation commences. If an employee does not qualify for an annual vacation, there is still an entitlement to vacation pay - provided the employee has been employed by the employer for at least 5 work days. An employee who qualifies for vacation pay must be paid the vacation pay within 1 week of the termination of employment.

An employee who has been continuously employed with the same employer for 15 years is entitled to 3 weeks annual vacation. Vacation pay after 15 years continuous employment is calculated at 6 percent of the total wages for the period in respect of which the vacation is being given.

Q. Who gets Vacation pay?

A. Any employee who has been employed for 5 work days or more.

Q. How many weeks of vacation does an employee receive?

A. Two weeks, if the employee has worked at least 90% of the available working hours in a continuous 12 month period. After 15 years with the same employer, the vacation time is 3 weeks.

- For a lay-off of one week or less.
- The employee is employed for a firm non-renewable term or for a specific task where the term or task does not exceed 12 months and termination doesn't occur before the term or task is completed.
- The employee has reached retirement age.
- Where the employer has to terminate as a result of an unforeseen economic or climatic conditions beyond the foreseeable control of the employer, or as a result of a major breakdown or destruction of plant machinery or equipment.
- Where a person has been employed for less than 3 months.

Q. What is the period of written notice that has to be given by the employer and the employee?

A. During the first 3 months of employment, no notice of termination is required to be given by either party.

For employment from 3 months up to 2 years, 1 week's written notice is required to be given by either party.

After 2 years but less than 5 years employment, 2 weeks notice must be given by either party.

After 5 years but less than 10 years employment, 3 weeks notice must be given by either party.

After 10 years but less than 15 years employment, 4 weeks notice must be given by either party.

After 15 years employment, 6 weeks notice must be given by either party.

Q. May an employee quit without giving the required notice?

A. There are circumstances when an employee may quit without giving notice but before an employee takes that action, he/she should contact the Labour Standards Division.

TERMINATION OF EMPLOYMENT

Q. Do the notice of termination provisions of The Labour Standards Act apply to collective agreements and written contracts of service?

A. Yes, but only if the collective agreement or the written contract of service is silent on notice, or if the period in the agreement or contract that is required to be given is not the same for the employer and employee.

Q. Does notice of termination of employment have to be given in writing?

A. Notice of termination has to be in writing.

Q. May an employer terminate the employment of an employee without notice?

A. Not ordinarily. An employer or employee may only terminate employment with written notice of termination subject to the exceptions noted in the next answer.

Q. When may an employer terminate employment without giving notice?

- A. Notice of Termination is not required in the following circumstances:
- Where the employee has:
 - (i) wilfully refused to obey a lawful instruction of the employer;
 - (ii) has committed misconduct;
 - (iii) has been so neglectful of duty that the interest of the employer is adversely affected;
 - (iv) breached a material condition of the contract of service that in the opinion of the director or the Labour Relations Board hearing a complaint, warrants summary dismissal.
 - Where the employer pays the equivalent normal wages, including overtime earnings, in lieu of notice (one to six weeks pay, depending upon the employee's length of employment).

Q. When must an employee receive vacation pay?

A. At least one day before going on vacation or within 1 week of termination. Vacation pay may also be paid each pay period as long as the employee is advised and the amount of vacation pay is indicated in the employer's payroll.

Q. How is vacation pay calculated?

A. Vacation pay is calculated as 4% of gross wages, including commissions and overtime. Vacation pay is calculated as 6% of gross earnings for employees with 15 years continuous employment with the same employer.

Q. Are there any deductions to be taken from vacation pay?

A. Vacation pay is subject to all statutory deductions, i.e.; Employment Insurance premiums, Income Tax and Canada Pension Plan contributions.

Q. Do employees, while on vacation, receive their regular wages plus their vacation pay?

A. Employees are entitled to receive only their 4% (or 6%) vacation pay before going on vacation.

Q. When can vacation be taken by employees?

A. The employer shall give the employee at least 2 weeks written notice of when vacation is to commence and it can be taken in one unbroken 2 week period or 2 unbroken periods of 1 week. An employee entitled to 3 weeks vacation shall be permitted to take the vacation in one unbroken period of 3 weeks, in 2 unbroken periods of 2 weeks and 1 week respectively or in 3 unbroken periods of one week.

Q. Can the employer cancel an employee's vacation if it was previously agreed to?

A. The employer may cancel an employee's vacation but must compensate the employee for reasonable expenses that cannot be recovered by the employee as a result of the vacation being cancelled.

PUBLIC HOLIDAYS

Q. How many public holidays are there?

A. There are 6 public holidays throughout the year.

These are: New Years' Day, Good Friday, Memorial Day (Canada Day), Labour Day, Remembrance Day, and Christmas Day.

Additional days may be proclaimed by the Lieutenant Governor-in-Council.

Different holidays may be set by collective agreements in substitution for those days designated under the Act.

Q. If an employee works on a paid public holiday, what are they entitled to receive?

A. Where an employee works on a paid public holiday, they are entitled to receive wages at twice their regular rate for the hours worked on the holiday or an additional day off with pay within 30 days or an additional vacation day. Employees do not have to meet any qualifiers to receive this benefit and the benefit they receive is one of their choice.

Q. What if the employee works a lesser number of hours on the paid public holiday than they would normally have worked?

A. If an employee is required to work less hours on the holiday than they would normally work, the employer is required to pay the employee at their regular rate of pay for the actual hours worked plus a regular days pay.

Q. What entitlement to paid public holiday wages, if any, does the employee have who does not work on the paid holiday have?

A. If the employee has:

- been employed by the employer for at least 30 calendar days prior to the paid holiday and
- worked the shift they were scheduled to work by their employer prior to and after the paid holiday.

he/she is entitled to a days pay for the paid public holiday even though no work was performed on the day.

Q. How is an employee to be compensated if a public holiday falls on a day the employee would normally be scheduled off work?

A. The employee shall not be required to work either on the first working day immediately after the public holiday or another day mutually agreed to by the employee and employer and this day shall be a paid day for the employee.

Q. How is the employee who works shifts of varying hours and who does not work on the paid public holiday to be paid?

A. First, establish whether or not the employee is eligible for paid public holiday benefits by finding out whether or not the employee has:

- been employed by the employer for at least 30 days prior to the paid holiday, and
- worked his/her scheduled shifts prior to and after the paid holiday.

If these criteria are met, the employee has the right to be paid for the paid public holiday.

To establish the rate at which the employee should be paid requires multiplying the employee's hourly rate of pay by the average number of hours worked in a day by the employee in the 3 weeks immediately preceding the holiday.