

Frequently Asked Questions 1 – 99

What is "substantial control over hours of work?"

Most employees are told by their employer when they are required to work. What days they will work, the hours they will work on those days and when they will take their breaks. Although these employees can request changes to their schedule, they do not have substantial control over their hours of work.

Other employees have the ability to organize their work schedule to suit their needs and the needs of clients. They may need to check in with the employer once and a while, but the employer generally does not set the schedule or control their day-to-day activities. These employees may have "substantial control over their hours of work"

How do you determine if someone has "substantial control over their hours of work?"

In most situations, the employer controls the hours of work. In some situations, they allow an employee this control. If an employee can choose to work or not work at their discretion, they would likely have "substantial control of the hours of work"

Who determines if I have "substantial control of my hours of work"?

The onus is on the employer to prove that an employee has substantial control over the hours of work if they want to use this exemption.

I work when my clients work, not when the rest of the office works, do I have substantial control over my hours of work?

Many factors determine if an employee controls their hours of work. When an employee works is not as important as the flexibility to adjust a schedule without the need for approval from the employer.

What are the general holidays in Manitoba?

There are eight general holidays throughout the year:

- New Year's Day
- Louis Riel Day (3rd Monday in February)
- Good Friday

- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day

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

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.

What if employees work on the general holiday?

Employees who are eligible are paid general holiday pay regardless of whether they work that day or not. An employee who works on a general holiday would normally be paid 1 ½ times the regular rate of pay for the hours worked on the general holiday.

What if the general holiday is on a weekend?

When a general holiday falls on a Saturday or Sunday that an employee does not normally work, the employee must get the next regular workday off, with General Holiday pay. If it is a weekday that the employee would not normally work, the employer must give the employee a day off with holiday pay, that would be a normal workday, before the employee's next vacation, or at a time they can agree the employee can have off.

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.

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 business, climate-controlled agricultural business 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.

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.

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.

Where can I obtain further information?

Our office is here to help. If you have any questions on this issue, or any other Employment Standards concern, call our 24-hour Inquiry Line 1-800-821-4307 outside Winnipeg 945-3352 in Winnipeg. Or you can email us at: employmentstandards@manitoba.ca.

On the Internet, you can find us in both English and French at

<http://www.gov.mb.ca/labour/standards/>

where you can find general information regarding most Employment Standards issues.

This information sheet provides general information on specific provisions of Employment Standards legislation. It is intended as a guide only, and does not represent a legal opinion. For complete information, please refer directly to the Employment Standards Code.

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, to deal with the loss of a family member.

Do employees need to be 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 members. 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 Employment Standards:

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

Fax: 204-948-3046

E-mail: employmentstandards@gov.mb.ca

Website: www.manitoba.ca/labour/standards

This is a general overview and the information used is subject to change. For detailed information, please refer to current legislation including *The Employment Standards Code* and *The Worker Recruitment and Protection Act*, or contact Employment Standards to ask for advice.

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?

No. A layoff is a temporary break in employment, where employees are likely to return to work. 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. The amount of notice depends on how long they've been employed by the same employer:

at least 30 days but less than one year	one week
at least one year	two weeks

Do employers need to give notice of termination?

Yes. The amount of notice depends on how long employees have worked for the same employer:

at least thirty days but less than one year	one week
at least one year and less than three years	two weeks
at least three years and less than five years	four weeks
at least five years and less than ten years	six weeks
at least ten years	eight weeks

Employers can either allow the employee to work out this notice period, or pay wages in lieu of notice, for the same number of weeks, or a combination of both.

How much notice of termination must employers give to their employees?

The amount of notice employers must provide employees depends on the length of time that employee has worked for them.

Period of employment	Notice period
at least thirty days but less than one year	one week
at least one year and less than three years	two weeks
at least three years and less than five years	four weeks
at least five years and less than ten years	six weeks
at least ten years	eight weeks

Employers can still either allow the employee to work out this notice period, or pay wages in lieu of notice, for the same number of weeks, or a combination of both.

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 (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. Employers must pay out all wages the employee has earned up until the last day worked. Employers must pay employees all earned wages within 10 days of the last day of work. An employer can pursue any lost money through civil court.

Is there a period when no notice is needed?

Yes, employers and employees do not need to give notice when the employee has worked less than 30 days. Employers are not allowed to extend or change this period, unless it is negotiated in a collective agreement with a union.

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 situations when employers or employees do not need to give notice of termination?

The following are some cases where notice of termination is not required:

- when employment is for a specific length of time or a specific task or job
- if the employee has substantial control over whether they accept shifts or not and are not penalized by employers for choosing not to work

- when the employer can prove just cause, see [Just Cause](#) fact sheet
- when employees are placed on a temporary layoff
- if the employer acts in a manner that is improper or violent toward the employee
- when the employee works in the construction industry

Employers must consider each situation on a case by case basis when deciding to provide a notice period to an employee.

Do employers need to have just cause to terminate employees?

No, under Employment Standards legislation, employers and employees do not need to provide a reason for ending employment if they provide proper notice of termination. An employer may believe they have just cause to terminate an employee, but this might not be an exception to providing notice.

Do other laws affect termination?

Yes. Employment Standards is only one thing employers and employees should consider when ending employment. The Human Rights Code, The Workplace Safety and Health Act and The Labour Relations Act all deal with ending employment too. There is also civil employment law covering termination issues. Employers and employees should consult a lawyer if they have questions about civil law. More information about other government departments can be found on the [Other Government Support](#) page.

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?

Employers who intend to terminate a group of 50 or more employees within four weeks must notify the Minister of Labour and Immigration and provide more notice than for an individual termination..

Number of Employees	Notice Required
50 to 100	10 weeks

101 to 299	14 weeks
300 or more	18 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.

Who do employers and employees contact with concerns about safety in the workplace?

The Workplace Safety and Health Division is responsible for protecting the health and safety of workers on the job, and protecting the public from unsafe building equipment. It also licenses tradespeople in the province.

The Workplace Safety and Health Division focuses on prevention to reduce workplace and public hazards through education, training, working with employers and employees and inspections or investigations.

Contact Workplace Safety and Health staff at:

Workplace Safety and Health Division
200-401 York Avenue
Winnipeg, MB R3C 0P8
Phone: 204-945-3446
Toll free 1-800-282-8069
Web: www.gov.mb.ca/labour/safety/

Who do employers or employees contact when someone is hurt at work?

Appropriate medical attention should be called for immediately. Then, employers should call the Workers Compensation Board (WCB). The WCB is a workplace injury and disability insurance program for workers and employers, paid for by employers.

Contact WCB staff at:

The Workers Compensation Board of Manitoba
333 Broadway
Winnipeg, MB R3C 4W3
Phone: 204-954-4321
Toll free in Canada 1-800 362-3340
E-mail wcb@wcb.mb.ca
Web: www.wcb.mb.ca

Who do employees contact for help with a decision from the Workers Compensation Board?

The Worker Advisor Office provides free, confidential advice, help and in some cases, representation to workers and/or their dependants who have claims with the Workers Compensation Board. The Worker Advisor Office is not part of WCB.

Contact Worker Advisor Office staff at:

Worker Advisor Office
Room 406 – 401 York Avenue
Winnipeg, MB R3C 0P8
Phone; 204-945-5787
Toll free in Manitoba 1-800-282-8069
Web: www.gov.mb.ca/labour/standards/wao/

Who do employers or employees contact with questions about discrimination or human rights?

The Manitoba Human Rights Commission protects people from many types of discrimination, including in the workplace. The Human Rights Code basically says that a person cannot be discriminated against because of their race, age, disability, religion or another group stereotype.

Contact Human Rights staff at:

Manitoba Human Rights Commission
7th Floor-175 Hargrave Street
Winnipeg, MB R3C 3R8
Phone: 204-945-3007
Toll free 1-888-884-8681
E-mail: hrc@gov.mb.ca
Web: www.gov.mb.ca/hrc/

Who do employers or employees contact about on collective bargaining, unfair labour practices or lack of union representation?

The Manitoba Labour Board settles labour relations disputes between employers, employees and unions, helping them communicate and work toward agreement. The board is also the final level of appeal for decisions made by the Employment Standards Branch. The board tries to mediate disputes, but also has a formal process similar to a

court, where it hears arguments from the employers, employees or unions. Generally the boards decision is the final level of appeal.

Contact The Manitoba Labour Board staff at:

Manitoba Labour Board
500 – 175 Hargrave Street
Winnipeg, Manitoba R3C 3R8

Phone: 204–945–3783
E–mail mlb@gov.mb.ca
Web: www.gov.mb.ca/labour/labbrd/

Who do employers and employees working under federal jurisdiction contact about employment standards?

There are some workplaces that fall under the jurisdiction on the federal government. For more information see the [Who is covered by Employment Standards](#) page. Federal employment standards legislation is enforced by the Canada Labour Program.

Contact Canada Labour at:

Canada Labour Program
391 York Avenue
Winnipeg, MB R3C 0P4
Phone: 204–983–6375
Toll free 1–800–641–4049

Mail:
P.O. Box 8850
Winnipeg, MB R3C 3E6

Who do employers and employees contact about employment insurance and records of employment?

Employment Insurance provides temporary financial help for unemployed Canadians while they look for work or upgrade their skills. Canadians who are sick, pregnant or caring for a newborn or adopted child, as well as those who must care for a family member who is seriously ill with a significant risk of death, may also be assisted by Employment Insurance.

Contact Employment Insurance staff at:

Employment Insurance
391 York Avenue
Winnipeg, MB R3C 0P4
Toll free: 1–800–206–7218

Mail:
P.O. Box 8850
Winnipeg, MB R3C 3E6

Web: www1.servicecanada.gc.ca/en/ei/menu/eihome.shtml

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?

Employees who have worked with the same employer for at least 30 days qualify for this 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. Family leave is to deal with family responsibilities or personal illness.

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.

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 is the difference between maternity leave and parental leave?

Maternity leave is an unpaid leave, taken by mothers 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 need to pay during the leave?

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

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 their Maternity or Parental Leave early?

Employees who want to return to work before their leave has ended must give their employers notice, in writing, at least, two weeks, or one pay period, whichever is longer, 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 must be allowed to return to their previous job, or a comparable one, with no reduction in pay or responsibilities. An employee who believes they were demoted or terminated because they took or requested a leave may file a claim with the Employment Standards.

Employers who do not allow employees to return to work at their old position, or a comparable one, after a leave may be ordered to pay compensation, and in some cases return the employee to their job.

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.

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.

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.

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.

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 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 types of leave are available to employees?

There are eight unpaid leave options for employees

<i>Type of leave</i>	<i>Length of leave</i>	<i>Purpose of leave</i>
<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>Leave for Organ Donation</u>	13 weeks	for an employee to donate an organ or tissue

<u>Bereavement Leave</u>	3 days	for an employee to deal with the death of a family member
<u>Leave for Reservists</u>	When needed for service	For an employee in the Canadian Forces Reserve who needs time to serve
<u>Leave for Citizenship Ceremony</u>	4 hours	For a new Canadian to receive their certificate of citizenship

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