

Frequently Asked Questions 700 – 799

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.

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:

Incentive Pay(commissions)	= 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

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 effect 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.

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

Issues for all employees in Agriculture

Before the recent changes to the legislation all employees in agriculture had protection in relation to their promised rate of pay, when wages were required to be paid, the records their employers were required to keep and equal wages. These protections apply to all workers in agriculture, including family members working on a farms owned by a member of their family.

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 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.

Issues for farm workers employed on a farm

Effective June 30, 2008 employment standards protections have been expanded to cover employees working on a farm directly in the production of agricultural products. In addition to the protections listed above, these workers now have protections related to: minimum wage; ending employment; young employees; vacations; work breaks and weekly day of rest; unpaid leaves and restrictions on deductions from wages.

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.

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 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.

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.

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.

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 workday, 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.

Who is covered by *The Employment Standards Code*?

Employees are covered by *The Employment Standards Code* unless they are specifically excluded. Some types of employees working in agriculture are excluded from some standards.

Who was excluded from *The Employment Standards Code*?

Before June 30, 2008 employees in agriculture were excluded from most of *The Employment Standards Code*. These employees have always had some protections including being paid their promised wages, no discrimination in wage rates between men and women doing the same amount and type of work, and their employers had to keep records.

As of June 30 , 2008 who is covered by *The Employment Standards Code*?

Under *The Employment Standards Code* there are four broad categories of workers in agriculture. Different provisions apply to each of these categories.

Employees employed by agriculture companies that provide services to farms and farmers are covered by all provisions of *The Employment Standards Code*. These are employees who work for individuals or companies that do not own the farm where the work is being done.

Similarly **Employees who work in climate controlled facilities** are also covered by all of the provisions of *The Employment Standards Code*.

Employees who work on a farm in the primary production of agricultural products on that farm are covered by most of the provisions of *The Employment Standards Code*, but are excluded from reporting pay, general holiday and overtime provisions.

Employees who work on a farm that is owned by a member of their family are excluded from the same provisions of *The Employment Standards Code* as they were before June 30, 2008. For them the legislation is exactly the same.

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.

What are climate controlled facilities where all or substantially all the employee's work is performed?

This covers employees who normally work in one or more climate controlled facilities. Examples would include some mushroom plants, poultry facilities, hog barns or greenhouses.

What an employee is hired to do is a determining factor when considering if all or substantially all of the employee's work is performed in climate controlled facilities. If an employee is hired to work in a climate controlled facility like some hog barns or greenhouses they are covered by *The Employment Standards Code*, even if they work outside for part of their duties.

This is different than an employee who is hired to work on a mixed farm where part of the duties may occur in climate controlled facilities but other tasks are outside. That employee is excluded from overtime, general holidays and reporting pay because they do not do substantially all of their work in a climate controlled facility.

The way weather and climate effect the job someone is hired to do can be a factor when considering if an employee is covered or excluded from general holidays, reporting pay, hours of work and overtime. Employers operating climate controlled facilities are less dependant on the weather and therefore are better able to schedule the hours worked by their employees.

Employees hired to work in these conditions are covered by all the provisions of *The Employment Standards Code*.

Are farm workers covered by the Employment Standards Code?

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

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.

Where can I find more information about specific provisions that apply in agriculture?

The [Employment Standards website](#) has information on most Employment Standards issues. [A Guide to Employment Standards in Agriculture](#) provides an overview of the major issues, and how they apply to agriculture workers.

When do the changes regarding employees working in agriculture come into effect?

The new regulations regarding agriculture workers came into effect June 30, 2008.

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.

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.

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Employees hired to work in these conditions are covered by all the provisions of the Employment Standards Code.

Issues for employees working substantially or entirely in climate-controlled facilities or in the agricultural services sector.

Recent changes to *The Employment Standards Code* have provided employees working on a farm, primarily in the production of agricultural products, working substantially or entirely in climate controlled facilities with the full protection of *The Employment Standards Code*. Further, employees who work in the agricultural services such as custom combining, chicken catching or manure removal also have the full protection of *The Employment Standards Code*. In addition to the protections listed above they have further protections related to; general holidays, reporting pay and hours of work/overtime.

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