

# Employment Standards

## A Quick Guide to Employment Standards

*The Employment Standards Code* provides employees with information regarding minimum wage standards, protection for young workers, paying wages and more.

### What is Employment Standards?

Employment Standards is a government program under Manitoba Growth, Enterprise and Trade. It administers laws on minimum wages, hours of work, holidays and other workplace entitlements and responsibilities. The program enforces *The Employment Standards Code*, *The Construction Industry Wages Act*, *The Remembrance Day Act*, *The Worker Recruitment and Protection Act* and *The Retail Businesses Holiday Closing Act*. It also investigates complaints about violations of these laws.

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

Most employees in Manitoba fall under provincial jurisdiction. Some employees work in industries regulated by the federal government. These employees must contact Canada Labour Program if they have concerns about how their wages have been paid.

Independent contractors are not employees and are not covered by employment standards legislation.

Other employees, such as some agricultural workers, construction workers, professionals, part-time domestic workers, landscape workers and, election workers are entitled to some employment standards but not all.

### Are self-employed persons/independent contractors covered by The Employment Standards Code?

No. Self-employed persons/independent contractors are not covered by *The Employment Standards Code*, but this type of employment relationship can be complicated. The nature of the relationship between both parties would determine whether someone is truly an independent contractor. Several details need to be considered, such as:

- Who controls duties and schedules

- The ability to negotiate payment
- The method of payments

Individuals who are owed wages and feels they may be an employee, can file a claim with Employment Standards. An officer will make a determination if the person is an independent contractor or an employee for the purposes of *The Employment Standards Code*.

## **Are people employed in agriculture covered by Employment Standards legislation?**

Many employees working in agriculture are covered by Employment Standards legislation, but there are still some exceptions. Employees working on a farm owned by a family member are excluded from most standards. Other employees working in agriculture are covered by some or all standards. See the [Agriculture](#) fact sheet for more information.

### **Minimum Standards**

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

Minimum wage is \$11.00 per hour effective October 1, 2015.

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

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

## **Can a contract offer benefits that are lower than the Employment Standards?**

No. Employees cannot agree to work for less than the minimum standards, whether or not a contract exists. There are some provisions that allow employers and employees to agree to different terms, but they can never agree to less than the minimum standards.

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

No. All employees are covered by *The Employment Standards Code* regardless of the number of hours they work. However, because certain wages (such as vacation pay and general holiday pay) are based on a percentage of total earnings, the wages paid to employees will be affected by the number of hours they work.

### **Young Workers**

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

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

## **At what age can a child start working?**

All employees under 16 years old must have a permit from Employment Standards before they can work. Children under 12 years old are only allowed to work for an employer in exceptional circumstances.

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

Yes. Employees under 16 years old cannot work:

- On a construction site
- In industrial or manufacturing processes
- Drilling or servicing rigs
- On scaffolds or swing stages
- Pruning, repairing, maintaining, or removing trees

Employees under 18 years old cannot work in the following industries:

- Forestry
- Saw or pulp mills
- Confined spaces
- Underground in mines or on the face of open pit quarries
- Asbestos abatement and removal

Additional restrictions may be put on permits to ensure the work will not harm the safety or wellbeing of the child.

## **How much are children allowed to work?**

During a week of school, employees under 16 years old can work up to 20 hours per week. Additional restrictions may be put on permits to ensure the work will not harm the safety or wellbeing of the child.

## **How do I apply for a Child Employment Permit?**

Download a [Child Employment Permit Application](#) or contact Employment Standards. The application requires information from the child, parent/guardian, and employer. Return the completed form to Employment Standards by mail, fax, email, or in person.

## **What if the child's job changes?**

Each permit names the workplace, child and job duties approved for that child. It also lists any special conditions that must be followed. Employment Standards must be notified if there are any changes because the permit may no longer be valid.

If the child wants to work for a different employer, a new application for a Child Employment Permit must be made even if the job duties and hours stay the same.

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

Employees under 16 years old are not allowed to work alone without specific conditions placed on the permit. Employees under 18 years old cannot work alone between 11:00 p.m. and 6:00 a.m.

All employers must have a safety plan for employees who are working alone. This is required under Workplace Safety and Health laws. Anyone with concerns about a child or young person working alone should contact Employment Standards or Workplace Safety and Health.

### **Paying Wages and Keeping Records**

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

Employees must be paid at least twice a month, within 10 working days of the end of a pay period. If the employment is terminated, employees must be paid within 10 working days from the date of termination.

## **Do employers need to provide pay statements when they pay wages?**

Employers must give employees written pay statements when they are paid, unless the wage payments will be the same over a period of time and the employer provides a statement showing wages to be paid, wage rate, deductions, and net amount on each of the dates. Pay statements are sometimes referred to as pay stubs.

## **Can employers provide an electronic pay statement?**

Yes. *The Employment Standards Code* requires the employer to provide a written statement, which may include an electronic pay statement.

## **What must a pay statement show?**

Pay statements must show:

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

## **Who must keep records?**

Employers must keep records of their employees, the hours they work, and the wages paid. It is strongly suggested employees also keep records of the hours they work and what they have been paid.

## **What records are employers required to maintain?**

Employers must keep records for all employees that show:

- Name, address, date of birth, and occupation
- The date the employment started
- The regular wage and overtime wage at the start of employment and whenever the wage rate changes
- The regular and overtime hours of work, recorded separately and daily
- Date wages are paid and the amount paid on each date
- Deductions from wages, and the reason for each deduction

- If applicable, overtime that is banked with the written agreement of the employee and employer and the dates the employee takes the banked time off with pay
- The dates on which general holidays are taken
- The employees hours of work on a general holiday and the wages paid
- Start and end dates of annual vacations, the period of employment in which the vacation is earned, and the date and amount of vacation wages paid
- The amount of any outstanding vacation wages when the employment ends and the date this is paid to the employee
- Copies of documents on maternity leave, parental leave, compassionate care leave or other leaves, including dates and number of days taken as leave
- Dates of termination of the employment
- Copies of work schedules

If an employee is paid a monthly or annual salary, it can be divided into an hourly wage for record keeping purposes. Regular hours of work are not required to be recorded if they do not vary on a daily basis, but any overtime or other changes should be recorded.

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

Employees are entitled to at least minimum wage in each pay period and cannot agree to work for less. The hourly wage for employees must be calculated in every pay period to ensure it is at least minimum wage. The [Minimum Wage](#) page has more information.

## How much are employees paid for reporting to work?

When an employer decides to cancel shifts or to send employees home early, those scheduled to work more than 3 hours, and

- Work less than 3 hours, must be paid for at least 3 hours
- Work more than 3 hours, must be paid for all hours worked

If employees are scheduled to work less than 3 hours, they must be paid for their entire scheduled shift.

The following table explains what an employee is entitled to be paid if the employer cancels or cuts the shift short. When employees are notified of the change in schedule before reporting to work, they are not entitled to reporting pay.

<b><i>Scheduled to work</i></b>	<b><i>Actually worked</i></b>	<b><i>Must be paid for</i></b>
3 hours or more	Less than 3 hours	3 hours
<i>Example: 4 hours</i>	<i>Half an hour</i>	<i>3 hours</i>
<b><i>Scheduled to work</i></b>	<b><i>Actually worked</i></b>	<b><i>Must be paid for</i></b>
Less than 3 hours	Less than scheduled hours	Entire scheduled shift
<i>Example 2.5 hours</i>	<i>Half an hour</i>	<i>2.5 hours</i>

## Deductions from Wages

### What can be deducted from employees' wages?

The general rule is employers can only make deductions from wages when these are:

- Required by law (i.e. statutory deductions)
- For something for which employees agree to pay and is of a direct benefit to them, or
- To compensate for any cash advances or payroll errors.

Examples of what can be deducted from employees wages include:

- Pay Advances
  - ◆ Employees and employers should agree on how and when to repay the money when the advance is given, such as paying in regular instalments or in one lump sum. However, no interest, service charges, or any other fees related to the advance may be deducted.
  - ◆ If employers and the employees cannot agree on how and when the cash advance will be paid back, employers can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
- Payroll Error Corrections
  - ◆ Employers can correct any payroll errors as soon the employee or employer notices them. Employees and employers should agree on how and when to make the correction, such as paying in regular instalments or in one lump sum.
  - ◆ If employers and the employees cannot agree on how and when the payroll error will be corrected, employers can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
- Cost of Tools
  - ◆ Employers can only deduct the amount agreed to by employees and only if: a) the tools remain the property of employees; b) are not unique to the particular employer; c) are available for purchase from different suppliers; d) can reasonably be expected to be used at different employers in the same occupation; e) are voluntarily bought from the employer instead of another supplier.
  - ◆ If the employer and employee cannot agree on how and when the employee will reimburse the employer for the cost of the tools, the employer can deduct the amounts equal to what would be allowed if they had a garnishment under *The Garnishment Act*.
  - ◆ Employers cannot deduct the cost for tools that are required by law.
- Photo Radar Tickets or Red Light Camera Tickets
  - ◆ Employers may deduct the minimum amount payable if employees give written consent to do so.
- Cost of Courses and Training
  - ◆ Only sometimes. Employers cannot charge an employee for a course that has no value to them outside of the workplace. This includes most mandatory employer-specific courses. Employers may deduct the cost for all or part of a course or training that directly benefits their employees if they voluntarily attend and agree to pay.
- Cost of Room and Board

- ◆ With employees consent, employers can charge for room and board if employees have no other practical options for obtaining meals and lodging. The amount employers are allowed to deduct cannot reduce employees earnings below minimum wage for the pay period by more than \$7 per week for the room and by more than \$1 for each meal.

## **What types of things cannot be deducted from employees wages?**

Employers cannot charge interest or fees for cashing cheques or providing payroll advances. Employers cannot recover business expenses from the wages of employees.

Unauthorized deductions include:

- Fees to cash cheques
- Cost of damage to company property and vehicles (i.e. insurance deductible, parking tickets, or other violations, with the exception of photo radar ticket or a red light camera tickets)
- Cost of lost, stolen or broken tools, equipment, products, or faulty service
- Cost of cash or inventory shortages, dine & dashes, or drive offs
- Cost of personal safety equipment
  - ◆ Safety equipment is an employers responsibility. There are exceptions for safety headwear and some safety footwear. Contact The Workplace Safety and Health Branch at 204-945-3446 or visit their website [safemanitoba.com](http://safemanitoba.com) for more information.
- Cost of a uniform

## **What is a direct benefit to employees?**

Examples of deductions that directly benefit employees include:

- Health or insurance packages
- Voluntary purchases of goods or services from the employer
- Some types of educational expense
- Meals and rent

The cost for room and meals can be deducted if employees have no other practical options for obtaining meals and lodging. These deductions cannot take employees below minimum wage in a pay period by more than \$1 for each meal and \$7 per week for the room.

Employees must agree to the deduction. This often happens at the start of employment. For example, an employer will have a mandatory health insurance package. If the employee was aware of the health insurance package before they began to work for the employer, and chose to accept the job, Employment Standards would determine the employee agreed to the deduction.



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

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

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

Employers can require employees to wear a uniform, however, they cannot make employees pay for it. Uniforms are usually clothing that is unique to a business, identified with the employers logo, symbol, name, or colours, making it of no practical use outside of that workplace. Employees often have no choice in style, colour, or where to buy it.

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

Yes. Employers can have a dress code and set standards for employees appearance while they are working. This may include telling employees to remove jewellery while working, or requiring all serving staff to wear a clean, pressed white shirt and black pants at work.

If the dress code requires clothing that would be of no practical use to employees out of the workplace, it is considered a uniform and not a dress code. A dress code would allow the employees to wear their own clothes to work. A common example of a dress code is the loose fitting clothing that identifies nurses in the workplace. Employers can require this attire and do not have to provide or pay for it unless they require a logo or emblem that identifies the company.

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

Employers may not deduct wages to cover any costs for faulty work, poor quality work, loss of customers, cash shortages, or damages to their property. This includes: the cost of car accidents and parking tickets involving company vehicles, dishes broken by employees, customers leaving without paying. See the [Deductions](#) fact sheet for more information.

Employers have the right to take action against an employee who caused the damages in civil court. If a court issues an order of repayment, the employer can then garnish the wages of the employee.

## What are the standard hours of work?

Standard hours of work are 40 hours a week and 8 hours a day. Employees are entitled to their regular wage rate for work during these hours. If employees work more than the standard hours in a week or in a day, this is overtime and must be paid at the overtime rate.

## Who controls scheduling?

Employers control schedules. They make or approve work schedules that suit their business needs and can change work schedules at any time. Sometimes employers involve employees in decisions about scheduling, but are not required to do so.

## Do employers need to provide transportation to or from work?

If an employer's place of business and an employee's residence are located within the boundaries of the same city or town, the employer must provide the employee with adequate transportation between the residence and the workplace when the employee's shift begins or ends after 12 midnight and before 6:00 a.m.

## Who decides when overtime will be worked?

Employees cannot work overtime without the knowledge or permission of their employers. Employees must be paid at 1½ times their regular wage rate if employers ask, allow, or acknowledge the overtime.

Employees and employers can agree, as part of the terms of employment, that a certain amount of overtime is required. Overtime is voluntary or by agreement, except in declared emergencies.

## When are employees entitled to breaks?

Employees are entitled to a 30 minute unpaid break after every five hours of work.

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

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

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

Yes. Most employees are entitled to have at least one day of rest (24 hours) each week.

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

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

Employers can also change employees schedules after a shift has started. If employees are scheduled for 3 hours or more and the employer ends the shift early, wages must be paid for 3 hours or for the time worked, whichever is greater. See the Wages for Reporting for Work fact sheet for more information.

## **Can employees change schedules?**

Employers control work schedules, but some employers allow employees to switch shifts with co-workers or to change schedules.

## **Do employers need to pay overtime that occurs when employees change the schedule?**

If employees work overtime, they must be paid overtime wages. Employers who allow employees to change the schedule or switch shifts cannot refuse to pay for overtime that occurs as a result. Employers should know the weekly and daily hours employees are working.

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

Employers can end employees' shifts early or start additional ones if they are within standard hours of work. If employees are scheduled for 3 hours or more and the employer ends the shift early, wages must be paid for 3 hours or for the time worked, whichever is greater. Overtime is voluntary or by agreement. More information can be found on the Wages for Reporting for Work and Overtime pages.

## Overtime

### What is the overtime wage rate?

Employees are paid 1 ½ times their regular hourly wage for each hour (or part of an hour) worked during overtime.

### How are overtime hours determined?

Overtime is determined by the number of hours employees work in a day and in a week. Any hours worked over 8 hours in a day or 40 hours in a week are overtime.

Below are some examples of how to calculate overtime. Days where overtime hours are worked are shown in bold:

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total	Regular	Overtime
	8	8	8	8	8	<b>8</b>	48	40	<b>8</b>
	8	6	6	8	<b>10</b>		38	36	<b>2</b>
	<b>10</b>	6	<b>10</b>	6	<b>10</b>		42	36	<b>6</b>
7	6	8	7	7	8		43	40	<b>3</b>

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

Yes. Employers and employees can agree in writing to bank overtime. The agreement must follow these rules:

- For each hour of overtime worked, 1 ½ hours of time is banked, which is paid at the regular wage rate when the employee takes the time-off;
- Employers must schedule time-off during the employees regular hours;
- Employers must provide the time-off within three months of it being earned, unless Employment Standards authorizes a longer period.

### Do salaried employees receive overtime?

Yes. Employees who are paid by salary are entitled to overtime. An hourly wage can be calculated to determine the overtime pay per hour.

For example: an employee who earns a salary of \$450 per week and is expected to work a 40-hour week is paid \$11.25 per hour. Overtime is paid at 1 ½ times the regular wage rate. Using this example, the employee would

earn \$16.87 per hour for overtime.

To calculate an employees hourly wage:

$$\text{Salary earned per week} \div \text{Total Hours} = \text{Hourly Wage} \quad \$450 \div 40 = \$11.25 / \text{hour}$$

To calculate the overtime rate:

$$\text{Hourly Wage} \times 1.5 = \text{Overtime} \quad \$11.25 \times 1.5 = \$16.87 \text{ Hour of overtime}$$

## Can a salary include some overtime?

Yes. Employers and employees can agree on a salary that includes a specific amount of overtime. Agreements should be made before any overtime is worked and must clearly identify wages for working more than the standard hours. Clearly written agreements can save future disagreements.

For example: An employee earns a salary of \$700 per week and is expected to work a 50-hour week. This agreement means the employee is working 40 regular hours and 10 hours of overtime each week as part of the salary. To calculate an hourly wage rate for the salary, the overtime hours are first converted to standard (regular) hours by multiplying them by 1 ½.

In this example

$$10 \text{ overtime hours} \times 1.5 = 15 \text{ regular hours}$$

These are then added to the regular hours:

$$40 \text{ regular hours} + 15 \text{ regular hours} = 55 \text{ regular hours}$$

The hourly wage an employee should be paid for regular hours worked is then calculated by dividing the salary by the total number of regular hours:

$$\$700 \text{ salary} \div 55 \text{ regular hours worked} = \$12.73/\text{hour}$$

For the overtime hours worked, the employee must be paid at 1 ½ times this hourly wage:

$$\$12.73/\text{hour} \times 1.5 = \$19.10 \text{ overtime wage}$$

If the employee works more than the agreed 50 hours, the employee must be paid at the overtime wage for those hours.

## Overtime exclusions

Employees who substantially control their hours of work and earn more than twice the Manitoba average industrial wage may be exempt from the hours of work and overtime provisions. More information can be found on the [Overtime Exemption – Workers Who Substantially Control Their Hours of Work](#) page.

Employees who primarily perform management functions may be exempt from the hours of work and overtime provisions. This does not necessarily include all employees who are called managers or supervisors. More

information can be found on the [Overtime Exemption – Workers Who Perform Management Functions Primarily](#) page.

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

Job titles have no impact on whether employees are exempt or not. The factors that are considered include the nature of their work functions and their level of control and authority in the organization.

## **What is the Manitoba Industrial Average Wage?**

Statistics Canada establishes the Manitoba Industrial Average Wage each year. If employees make twice that amount and have substantial control over their hours of work, they may be exempt from overtime.

<i>Year</i>	<i>Manitoba Industrial Average Wage</i>	<i>Twice the Manitoba Industrial Average Wage</i>
June 1, 2016 May 31, 2017	\$45,768.84	\$91,537.68
June 1, 2015 May 31, 2016	\$44,869.24	\$89,738.48
June 1, 2014 May 31, 2015	\$43,134.00	\$86,268.00
June 1, 2013 May 31, 2014	\$42,021.72	\$84,043.44
June 1, 2012 May 31, 2013	\$40,890.20	\$81,780.40

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

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

Most employees are told by the employer what days and hours they are required to work. They can request changes to their schedules, but do not have the final say. These employees do not have substantial control over their hours of work.

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

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

## Overtime for incentive-based pay plans

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

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

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

1. Calculate the regular hourly wage by dividing the total incentives earned in the pay period by the total number of hours worked in the pay period.
2. Calculate the overtime pay wage rate by multiplying the regular hourly wage by 1 ½ times.

In each pay period, employees must be paid their hourly wage for all standard hours worked and their overtime wage (1 ½ times the regular hourly wage) for all overtime hours worked.

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

## What is incentive pay?

Incentive pay is based on how productive employees are rather than the number of hours they work. Common examples include commission salespeople, flat-rate mechanics, and pieceworkers.

### Leaves

## What leaves are available to employees?

There are twelve protected 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>	28 weeks	For an employee to care for a very ill family member
<u>Long-Term Leave for Serious Injury or Illness</u>	17 weeks	For an employee who has a long-term serious injury or illness.
<u>Domestic Violence Leave</u>	10 Days and 17 Weeks	For an employee to address a situation of violence in the home.
<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
<u>Leave Related to the Death or Disappearance of a Child</u>  If the child has disappeared If the child has died	52 weeks 104 weeks	For parents dealing with the death or disappearance of a child that occurred as a result of a crime
<u>Leave Related to Critical Illness of a Child</u>	37 weeks	For parents to provide care and support to a critically ill child

## Who decides what type of leave an employee is taking?

Employees must tell their employer what type of leave they are taking. The employer will need enough detail to show the time off work meets the requirements for the leave.

When employees request time off, the employer should ask whether they are advising of a leave available under *The Employment Standards Code* or requesting permission for unpaid time off. Employers do not control when employees can take a leave provided by law, but they do control other types of time off work.



## **Does the employer need to pay during the leave?**

Only Domestic Violence Leave has a paid portion. Employers are not required to pay wages during any other protected leave, although may choose to provide greater standards or wages than those set out in the legislation. For all leaves, employers must provide the time off and allow employees to return to their job when the leave has ended.

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

The federal government has income support programs to cover certain types of leave. To learn more, call Service Canada toll-free at 1 800 O-Canada (1-800-622-6232).

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

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

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

Employees must be given a position that is comparable with the same pay and benefits if the job they were doing prior to the leave is no longer available. There may be some circumstances where employers do not have a position available for reasons completely unrelated to the leave. For example, employees who are on unpaid leave would not necessarily be protected from losing their jobs if the employer shut down part of their operations and reduced their workforce based on a seniority system.

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

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

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

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

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

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

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

## **Who qualifies for Compassionate Care Leave?**

Employees who have worked with the same employer for at least 90 days qualify for this leave. Employees must provide a certificate from a doctor indicating a family member has a serious medical condition, has a significant risk of death within the next 26 weeks, and needs care and support.

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

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

## **Who are considered family members?**

Family is defined very broadly for Employment Standards purposes. Children, stepchildren, parents, grandparents, spouses, common law spouses, brothers, sisters, step-brothers, step-sisters, aunts, uncles, nieces and nephews are all considered family members. The definition also includes those who are not related, but whom the employee considers to be like a close relative.

### **Vacations and Vacation Pay**

## **How long is a vacation?**

Employees must receive at least two weeks of vacation after each of the first four years of employment. After completing 5 years of work with the same employer, employees must receive a minimum of 3 weeks of vacation.

## **What are employees paid while on vacation?**

Vacation pay is calculated based on the gross earnings in the previous year. Employees who are entitled to two weeks of vacation receive 4% of their gross wages as vacation pay and employees with three weeks vacation receive 6%.

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

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

## **Can employers put vacation pay on every cheque?**

Employers may put vacation pay on every cheque. Employees are still entitled to take time off as vacation, but because it has already been paid, they do not receive any additional vacation pay while they are off.

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

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

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

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

Employers cannot use vacation for the notice period when terminating employment.

When employees are terminating employment, they may use vacation for the notice period if the employer agrees. Employees are entitled to all outstanding vacation pay when their employment ends. See the [Termination of Employment](#) fact sheet for more information.

## 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.

<i>General Holiday</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
New Year's Day	January 1	January 1	January 1
Louis Riel Day	February 20	February 19	February 18
Good Friday	April 14	March 30	April 19
Victoria Day	May 22	May 21	May 20
Canada Day	July 1	July 2	July 1
Labour Day	September 4	September 3	September 2
Thanksgiving Day	October 9	October 8	October 14
Christmas Day	December 25	December 25	December 25

## Are Easter Sunday, Terry Fox Day, Remembrance Day and Boxing Day general holidays?

Employees who do not work on Easter Sunday, Terry Fox Day, and Boxing Day do not have to be paid because these are not general holidays.

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](#) fact sheet for more details.

## How is general holiday pay calculated?

Employees who consistently work the same number of hours get one regular work days pay as general holiday pay.

- For example, an employee who always works 8 hours a day, 5 days a week, would get their regular wages for 8 hours as general holiday pay.

For employees whose hours of work or wages vary, general holiday pay is calculated at 5% of the gross wages (not including overtime) in the 4 week period immediately before the holiday.

- For example: an employee who works varying hours each day, and earned \$1200 in the 4 weeks before the holiday, is entitled to general holiday pay of \$60 ie.  $\$1200 \times 5\% = \$60$

## **Do all employers need to pay 1 ½ times the regular wage for work on a general holiday?**

At most workplaces, employers must pay employees who work on a general holiday their general holiday pay, plus 1 ½ times their wage for the hours worked on that day.

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.

## **Do all employees receive general holiday pay?**

All employees receive general holiday pay unless:

- They are scheduled to work on a general holiday, but are absent without the employer's permission.
- They are absent without the employer's permission from their last scheduled workday before the holiday, or their first scheduled workday after the holiday.

Election officials, enumerators and any other temporary person appointed under *The Elections Act* are not entitled to general holiday pay.

## **What if employees work on the general holiday?**

Employees who work on a general holiday are normally entitled to 1 ½ times their regular rate of pay for the hours worked on the day in addition to their general holiday pay.

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

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

If employers end the employment before a general holiday, employees are still entitled to general holiday pay of 5% of total wages (excluding overtime, but including wages in lieu of notice) for the four-week period immediately before the holiday. The general holiday pay must be paid with the last wages no later than 10 days after the employment ended.

## What retail businesses can be open on Sundays and general holidays without a by-law?

The following types of retail businesses can be open:

- Businesses where no more than four people (including the owner) are working at any one time
- Restaurants
- Pharmacies
- Laundromats
- Boat and motor vehicle rental, repair and service shops
- Places with educational, recreational or amusement purposes
- Tourism and recreational facilities including summer resorts
- Other retailers selling nursery stock, flowers, garden supplies and accessories, fresh fruit and vegetables, and gasoline and related goods for motor vehicles

Municipalities can pass a by-law to allow shopping on Sundays and some general holidays at retail businesses not listed. These businesses can be open Sunday shopping hours on Louis Riel Day, Victoria Day, and Thanksgiving Day.

Unless a retail business is included on the above list, it cannot be open on the following days: New Years Day, Good Friday, Easter Sunday, Canada Day, Labour Day or Christmas Day.

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

## What are Sunday shopping hours?

Shopping hours on Sunday are allowed for any period between 9:00 a.m. and 6:00 p.m. in municipalities that have passed a new by-law on or after August 1, 2012.

## Can retail stores be open on General Holidays?

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

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

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

### Termination of Employment

## What is termination of employment?

Termination of employment is when the employment relationship is ended by either the employer or employee.

Common expressions for termination of employment include:

- Fired
- Quit
- Let go
- Discharged
- Dismissed
- Permanently laid off
- Terminated

## Do employees need to give notice of termination?

Yes. The amount of notice depends on how long the employee has been employed by the same employer:

<i>Period of Employment</i>	<i>Notice Period</i>
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 the employee has worked for the same employer.

<i>Period of employment</i>	<i>Notice period</i>
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.

## Is there a period when no notice is needed?

Yes. Employers and employees do not need to give notice of termination when the employee has been employed for 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. Employers cannot have a notice policy that differs from the requirements of the legislation. The only exclusion is a unionized workplace, where a collective agreement specifies different notice requirements.

## Can employers pay wages instead of providing notice of termination?

Employers can pay the amount of wages employees would otherwise have received had they worked out the notice period (often called wages in lieu of notice). Employers can also allow employees to work for part of the notice period and pay wages in lieu of notice for the remainder.

Employees who work the same hours every week receive their regular earnings for wages in lieu of notice. For employees who work varying hours every week, wages in lieu are based on the average of the earnings for regular weekly hours worked over the last 6 month period. Vacation wages and overtime wages are not added to wages paid in lieu of notice.



## **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 business days of the last day of work. An employer can pursue any lost money through civil court.

## **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 employees are placed on a temporary layoff period of no more than 8 weeks in a 16 week period. There are additional considerations for determining the layoff period for temporary help employees. See [Temporary Help Agency](#) fact sheet.
- When the employee works in the construction industry
- When the employer can prove just cause, see [Just Cause](#) fact sheet
- When employment is for a specific length of time or a specific task or job
- When the employee has substantial control over whether or not to accept work and is not penalized by the employer for choosing not to work, except for temporary help employees who are entitled to notice if they regularly work more than 12 hours per week
- If the employer acts in a manner that is improper or violent toward the employee
- Under *The Elections Act*, election workers can be terminated for specific reasons by the person who appointed them. The worker can appeal to the Legislative Assembly

Employers must consider each situation on a case by case basis if deciding not to provide a notice period to an employee.

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

Under *The Employment Standards Code*, employees and employers can terminate employment without any reason, but are required to give proper notice of the termination. Employers who believe they have good reason (just cause) to terminate an employee without notice must be able to show sufficient evidence. Employment Standards investigates complaints related to whether the employee should have been provided a notice period.

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

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

## For more information contact 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](mailto:employmentstandards@gov.mb.ca)

Website: [www.manitoba.ca/labour/standards](http://www.manitoba.ca/labour/standards)

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

*Available in alternate formats  
upon request.*

Date Published: February 21, 2017

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