

Earnings Included in the Calculation of Vacation Pay

	Fed. ¹	Alta	B.C.	Man.	N.B.	Nfld. Lab.	NWT/ Nun.	N.S.	Ont.	P.E.I.	Que. ²	Sask.	Yukon
Regular wages	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Commissions	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Overtime ³	✓	X ⁴	✓	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
Tips/gratuities	X	X	X	~	X	X	X	X	X	X	✓ ⁵	~	X
Board and lodging (cash value)	✓	~	~	✓	~	~	~	✓ ⁶	✓	✓	✓	✓	~
Vacation pay ⁷	✓	✓	✓	X	X	✓	✓	X	X	X	✓	✓	✓
Holiday pay	✓	X	~	✓	X	✓	✓	✓	✓	~	✓	✓	✓
Termination pay	X	X	✓	X	~	~	✓	✓	✓ ⁸	~	✓	✓ ⁹	✓ ¹⁰
Expenses/travelling allowances	~	X	X	~	~	~	~	~	X	~	~	~	X
Discretionary gifts/bonuses ¹¹	~	X	X	~ ¹²	~	~	~	~	X	~	X	~	X
Benefit plans	~	~	~	~	~	~	~	~	X	~	✓/ X ¹³	~	~

✓ = Included in the calculation of vacation pay
 X = Specifically excluded in the calculation of vacation pay
 ~ = Not specified

Notes:

¹ Under Part III of the *Canada Labour Code*, bereavement leave pay (s. 210(2)) as well as payments to an employee on a leave of absence awaiting her employer's decision regarding maternity-related reassignment or leave (s. 205(2)) are also deemed to be wages, and must therefore be included in the calculation of vacation pay.

² Quebec's *Act respecting labour standards* defines wages as "a remuneration in currency and benefits having a pecuniary value due for the work or services performed by an employee". (s. 1(9))

³ It should be noted that Saskatchewan is the only jurisdiction that *specifically* includes remuneration for overtime when calculating vacation pay. However, most of the other jurisdictions define "wages" in a sufficiently broad manner to include overtime pay (and other forms of remuneration, such as commissions). For example, "wages" in the *Canada Labour Code* (federal jurisdiction) are deemed to include "every form of remuneration for work performed", except tips and other gratuities.

⁴ However, an amount of money paid for time off instead of overtime pay is considered to be part of an employee's wages, and is therefore used to calculate vacation pay entitlement.

⁵ This applies with respect to declared tips.

⁶ Except in the construction industry.

⁷ Refers to vacation pay received during the "reference" or "vacation pay" year (i.e., received in the previous year of employment).

⁸ In Ontario, pay in lieu of termination notice is considered part of an employee's earnings for vacation pay purposes, but severance pay is not.

⁹ Although termination pay is not explicitly listed as regards the calculation of annual holiday pay, section 82 of Saskatchewan's *Labour Standards Act* provides that "All money payable by an employer to any employee under this Act shall be deemed to be wages earned by the employee..."

¹⁰ Yukon's *Employment Standards Act* specifies that "damages awarded in a wrongful dismissal action" are not deemed to be wages. (s. 1(1))

¹¹ This category applies to bonuses given at the discretion of the employer and that are not related to an employee's hours of work, production or efficiency.

¹² Manitoba's *Employment Standards Code* stipulates that "the payment of a bonus or other pecuniary benefit by an employer to an employee does not affect the employee's entitlement to an annual vacation or vacation allowance" (s. 40). However, this does not imply that discretionary bonuses should be added to other wages when calculating an employee's vacation pay entitlement.

¹³ According to Quebec's Labour Standards Board (*Commission des normes du travail*), fringe benefits granted as a replacement of part of an employee's wages are considered to be wages. However, fringe benefits that depend on circumstantial events, which an employee will not necessarily benefit from (e.g., dental insurance or life insurance premiums) are not counted as wages. (Interpretation of subsection 1(9) of the *Act respecting labour standards*; Internet site: <http://www.cnt.gouv.qc.ca/en/lois/normes/definitions/index.asp>).