

# Minimum Requirements for Annual Vacations with Pay in Employment Standards Legislation

Jurisdiction	Length of Vacation <sup>1</sup>	Scheduling of Vacation	Division of Vacation Time <sup>2</sup>	Notice Required <sup>3</sup>	Waiver of Vacation <sup>4</sup>	Amount of Vacation Pay	Payment of Vacation Pay (Timing) <sup>5</sup>
<b>Federal</b> <i>(Canada Labour Code, Part III; Canada Labour Standards Regulations)</i>	2 weeks; 3 weeks after 6 consecutive years of employment (s.184)	Within 10 months of entitlement (s.185(a))	<i>Not specified</i>	2 weeks (s.13(3) of Reg.)	Yes <sup>6</sup> (s.14(1),(2) of Reg.)	4% of annual wages; 6% after 6 years (s.183)	Within 14 days before vacation begins <sup>7</sup> (s.13(4) of Reg.)
<b>Alberta</b> <i>(Employment Standards Code)</i>	2 weeks; 3 weeks after 5 consecutive years of employment <sup>8</sup> (s.34)	Within 12 months of entitlement (s.37(1))	One unbroken period; or, at employee's written request, employer can agree to two or more periods of at least one day (s.37(1),(2))	2 weeks (s.38)	<i>Not specified</i>	4% of annual wages; 6% for employees entitled to 3 weeks of vacation <sup>9</sup> (s.40)	No later than regular pay day following start of vacation; at employee's request, vacation pay must be paid at least one day before the vacation starts (s.41)
<b>British Columbia</b> <i>(Employment Standards Act)</i>	2 weeks; 3 weeks after 5 consecutive years of employment (s.57(1))	Within 12 months of entitlement (s.57(2))	Periods of one or more weeks (s.57(3))	<i>Not specified</i>	<i>Not specified</i>	4% of total wages earned in the year of employment (if employee has completed at least 5 calendar days of employment); 6% after 5 consecutive years of employment (s.58(1))	7 days before beginning of vacation or, if agreed by the employer and the employee or provided for in a collective agreement, on the employee's scheduled pay days (s.58(2))
<b>Manitoba</b> <i>(Employment Standards Code)</i>	2 weeks; 3 weeks after 5 consecutive years of employment (s.34(1))	Within 10 months of entitlement (s.35)	Periods of not less than one week; where a business customarily shuts down for an extended period each year, employees can be required to take their vacation during that period (ss.37,38)	15 days (s.36)	<i>Not specified</i>	2% of wages earned in the year of employment for each week of vacation <sup>10</sup> (s.39(2))	Last working day before the vacation unless the employer and the employee agree otherwise (s.39(3))

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<b>New Brunswick</b> <i>(Employment Standards Act)</i>	2 weeks or 1 day per month worked during vacation pay year (whichever is less); 3 weeks or 1¼ days per month worked during vacation pay year (whichever is less) after 8 consecutive years of service (s.24)	Within 4 months after end of vacation pay year (s.24)	<i>Not specified</i>	1 week (s.25(1)(a))	<i>Not specified</i>	4% of wages earned in the vacation pay year; 6% after 8 consecutive years of employment (s. 25(1)(b))	At least 1 day before the vacation begins (s.25(1)(b))
<b>Newfoundland and Labrador</b> <i>(Labour Standards Act)</i>	2 weeks; 3 weeks after 15 years of continuous employment (s. 8(1),(1.1))	Within 10 months of entitlement (s. 8(1))	One unbroken period, or combination of unbroken periods of 1 or 2 weeks, at employee's option; <sup>11</sup> employer and employee may agree to shorter periods (s. 8(3))	2 weeks <sup>12</sup> (s. 8(4))	<i>Not specified</i>	4% of total wages earned during 12-month period; 6% after 15 years of continuous employment (s. 8(1),(1.1))	At least 1 day before annual vacation, or a part of it (s. 10)
<b>Northwest Territories/ Nunavut</b> <i>(Labour Standards Act; Annual Vacations Regulations)</i>	2 weeks; 3 weeks after 6 years of employment (whether continuous or accumulated over the past 10 years) (s. 16)	Within 10 months of entitlement (s. 17(a))	<i>Not specified</i>	<i>Not specified</i>	Yes <sup>13</sup> (ss .2,3 of Reg.)	4% of wages; 6% for an employee entitled to 3 weeks of vacation (s. 15)	1 day before beginning of vacation (s. 17(b))
<b>Nova Scotia</b> <i>(Labour Standards Code)</i>	2 weeks; 3 weeks after 8 continuous years of employment (s. 32(1)(a))	Within 10 months of entitlement (s. 32(1)(a))	One unbroken period; employer and employee may agree to divide annual vacation in two or more periods, including at least one unbroken period of one week or more (s. 32(2))	1 week <sup>14</sup> (s. 32(1)(b))	Yes (restricted) <sup>15</sup> (s. 33)	4% of wages; 6% after 8 continuous years of employment (s. 32(1)(c))	1 day before vacation begins; if vacation is broken, 1 day before an unbroken vacation period of at least one week (ss. 32(1)(c), 32(2)(b))
<b>Ontario</b> <i>(Employment Standards Act, 2000)</i>	2 weeks <sup>16</sup> (s. 33(1))	Vacation must normally be completed no later than 10 months after entitlement <sup>17</sup> (s. 34)	One two-week period or two periods of one week each, unless employee requests in writing to take the vacation in shorter periods and employer agrees <sup>18</sup> (s. 34)	<i>Not specified</i>	Yes <sup>19</sup> (s. 41)	4% of wages earned in the applicable period (normally a 12-month period) <sup>20</sup> (s. 35)	Normally, before vacation begins; if employer pays employee's wages by direct deposit or employee does not take his/her vacation in complete weeks: payment on or before pay day for period in which vacation falls; if employee agrees and a wage statement sets out vacation pay: payment on pay day of each pay

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							period where it accrues; or, payment at a time mutually agreed upon by both parties <sup>21</sup> (s. 36)
<b>Prince Edward Island</b> <i>(Employment Standards Act)</i>	2 weeks (s. 11(1)(a))	Within 4 months of entitlement (s. 11(1)(a))	One unbroken period (s. 11(1)(b))	1 week (s. 11(1)(b))	<i>Not specified</i>	4% of wages (s. 11(1)(c))	1 day before beginning of vacation (s. 11(1)(c))
<b>Quebec</b> <i>(Act respecting labour standards)</i>	2 weeks; 3 weeks after five years of uninterrupted service <sup>22</sup> (ss. 68, 69)  1 additional week of <i>unpaid</i> annual leave may be taken in certain cases <sup>23</sup> (s. 68.1)  Employees with less than one year of uninterrupted service: one day per month of uninterrupted service during reference year (2 weeks maximum) (s. 67)	Within 12 months following the end of the reference year <sup>24</sup> (s. 70)	One unbroken period, or two periods if employee requests; <sup>25</sup> with consent of employer, may be divided in more than two periods; some exceptions may apply <sup>26</sup> (s. 71)	4 weeks (s. 72)	No <sup>27</sup> (ss. 72,73)	4% of gross wages during the reference year; 6% of gross wages for employees entitled to three weeks of annual leave; special provisions apply to employees who are absent because of sickness, accident or maternity leave <sup>28</sup> (s. 74)	Before beginning of vacation <sup>29</sup> (s. 75)
<b>Saskatchewan</b> <i>(Labour Standards Act)</i>	3 weeks; 4 weeks after 10 years of employment (s. 30)	Within 12 months of entitlement (s. 31(1)(a))	One unbroken period; or, at employee's option, two or more periods of at least one week each; <sup>30</sup> nevertheless, with written approval of Director of Labour Standards Branch, employer may arrange to close his/her business and require employees to take their vacation at that time (s. 31)	4 weeks <sup>31</sup> (s. 32)	Yes <sup>32</sup> (s. 37)	<sup>3</sup> / <sub>52</sub> of total wages earned in year of employment; <sup>4</sup> / <sub>52</sub> of total wages for employees entitled to 4 weeks of annual holidays (s. 33(1))	Within 14 days before each period of vacation (vacation pay may be divided) <sup>33</sup> (s. 33(2),(3))
<b>Yukon</b> <i>(Employment Standards Act)</i>	2 weeks (s. 21(1))	Within 10 months of entitlement (s. 22(a))	<i>Not specified</i>	<i>Not specified</i>	Yes <sup>34</sup> (s. 23)	4% of wages earned in year of employment (if employee has been continuously employed for a period of at least 14 days <sup>35</sup> ) (s. 25)	1 day before beginning of vacation (s. 22(b))

## Notes:

1. Normally, an employee must have completed one year of service with his/her employer in order to be eligible for two weeks of annual vacation. However, in New Brunswick and Quebec, an employee with less than one year, but at least one month of service is entitled to pro-rated vacation time and pay. Furthermore, in Alberta, Manitoba, Ontario, Saskatchewan and the federal jurisdiction, employers can establish a common anniversary date for employees for the purpose of calculating vacation entitlements, but must provide prorated vacation and pay to employees with less than one year of service on that date.
2. In Newfoundland and Labrador, an employee must have worked for at least 90% of normal working hours over a continuous 12-month period in order to be entitled to an annual vacation. Newfoundland and Labrador is the only jurisdiction with a minimum working hours requirement regarding annual leave.
3. Although the formula used to calculate vacation pay—annual wages times 4% or 6%—is common to most jurisdictions, there is relatively little consistency across Canada as regards the types of earnings (e.g., salary, tips, holiday pay) that are to be considered as “wages”. The definition of wages varies in the employment standards legislation of each jurisdiction, both in terms of breadth and precision. For example, Quebec’s *Act respecting labour standards* defines wages as “remuneration in currency and benefits having a pecuniary value due for the work or services performed by an employee” (s. 1(9)). This is broader, but also much less specific, than definitions used in provinces such as Alberta and Ontario, which explicitly list the types of payments (e.g., tips, expenses, discretionary bonuses) that are not deemed to be wages for vacation pay (and other) purposes.

### *Labour Law Analysis*

#### *International and Intergovernmental Labour Affairs*

#### *Labour Program, Human Resources and Social Development Canada*

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<sup>1</sup> Refers to the length of vacation in weeks, based on length of service. Normally, an employee must have completed at least one year of service to qualify for an annual vacation. In some cases, vacation time may be prorated.

<sup>2</sup> Refers to the number and minimum duration of periods, if applicable, in which vacation time must be taken.

<sup>3</sup> Refers to the minimum period of notice that an employer must give to an employee before the latter is to begin his/her annual vacation. This assumes the employer and the employee were unable to agree on a mutually satisfactory date.

<sup>4</sup> Refers to the possibility, for an employee, to waive an annual vacation to which he or she is entitled. This may be subject to a number of specific conditions, and therefore does not necessarily apply to all employees. Even if an employee does not take an annual vacation, his/her employer must still pay any vacation pay earned.

<sup>5</sup> Any earned vacation pay not yet received by the employee must be paid when his/her employment is terminated.

<sup>6</sup> Pay in lieu must be given within 10 months of specified year of employment.

<sup>7</sup> Payment may be made on the regular pay day during or immediately following the vacation where it is not practical to pay before the vacation or where it is an established practice in the industrial establishment.

<sup>8</sup> Any break in the employee's employment with the employer of less than three months is to be counted as a period of continuous employment for the purpose of calculating vacation entitlement (s.36). An employer may reduce an employee's vacation and vacation pay in proportion to the number of days the latter was or would normally have been scheduled to work, but did not due to an absence (s.44).

<sup>9</sup> Employees paid monthly are entitled to an amount equal to their wages for their normal work hours in a month, divided by  $4 \frac{1}{3}$ , for each week of vacation. (s.39)

<sup>10</sup> The employer must also add, to an employee's vacation pay entitlement, 2% of the cash value of the board and lodging (or allowance in lieu thereof) provided in the employment year, in respect of the employee's regular hours of work, for each week of vacation (s.39(2)(b)).

<sup>11</sup> In order to decide the number and duration of periods in which his/her vacation time will be divided, the employee must give notice of his/her intention to the employer before the date on which he/she becomes entitled to the vacation (s.8(3)).

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- <sup>12</sup> Unless otherwise agreed in writing. Furthermore, where an employer cancels or changes the dates of his/her employee's annual vacation after having given him/her notice, the employer must reimburse the employee for reasonable expenses he/she incurred with respect to the cancelled or changed vacation that he/she cannot otherwise recover (*s. 8(5)*).
- <sup>13</sup> On a joint application made by an employer and an employee in which the latter agrees to waive his/her right to a vacation for a designated year, a Labour Standards Officer (LSO), if satisfied of the existence of exceptional circumstances, may authorize the waiver. The employer must still pay vacation pay to the employee. A vacation can be postponed if the employer and the employee file a written agreement with the LSO or if the LSO authorises an employee's request for postponement because of exceptional circumstances (*ss.2, 3 of Reg.*).
- <sup>14</sup> Notice applies to an unbroken period of vacation of at least one week (*s. 32(2)*).
- <sup>15</sup> An employee who works for an employer for less than 90% of the regular hours during a continuous 12-month period may waive his/her entitlement to a vacation by notifying the employer in writing. In this case, vacation pay must be paid by the employer no more than one month after the end of the twelve-month period in which it was earned (*s.33*).
- <sup>16</sup> An employee is entitled to 2 weeks' vacation for each completed vacation entitlement year. Both active and inactive employment must be included in the calculation of a vacation entitlement year. Moreover, if the employee does not take his/her vacation in complete weeks, the employer must base the number of days of vacation that he/she is entitled to on the number of days in his/her regular work week (or if he/she does not have a regular work week, on the average number of days that he/she worked each week during the most recently completed vacation entitlement year) (*ss. 33(1)-33(3)*).
- <sup>17</sup> An employee who is taking a pregnancy, parental, family medical or emergency leave on the day on which the annual vacation must be completed, may complete the uncompleted part of the vacation immediately after the leave expires or, with the agreement of his/her employer, at a later date. Alternately, the employee may forego the remaining vacation time and receive vacation pay instead (*s. 51.1*).
- <sup>18</sup> However, where an employer establishes an "alternative vacation entitlement year" for an employee, the rules for dividing vacation time are different. (An "alternative vacation entitlement year" is a common anniversary date, whereby employees' vacation time and vacation pay entitlements are calculated on the basis of a recurring 12-month period starting on a date set by their employer; in contrast, a "standard vacation entitlement year" refers to a 12-month period starting on the first day of employment of an individual employment). Where an employee's start date does not coincide with the first day of his/her first alternative vacation entitlement year, he/she is entitled to pro-rated vacation and vacation pay for the "stub period" (i.e. the period of time between these two dates), to be taken within 10 months of the end of that period. If the vacation entitlement is two to five days, it must be taken in consecutive days. If it is equal to more than five days, at least five days must be taken in a period of consecutive days and the remaining vacation days can be taken in a separate period of consecutive days. However, an employee can take vacation in shorter periods, upon written request, with the agreement of his/her employer (*s. 35.1*).
- <sup>19</sup> An employee may be allowed to forego a vacation to which he/she is entitled with the approval of the Director of Employment Standards and the agreement of his/her employer (*s.41*).
- <sup>20</sup> Wages excluding vacation pay.
- <sup>21</sup> These provisions do not apply to employees represented by a trade union and whose employer contributes to a multi-employer vacation benefit plan. Moreover, if an employee goes on strike or is locked out during a time for which his/her vacation had been scheduled by the employer, the latter must pay the employee the vacation pay that would have been paid with respect to that vacation, even if it is considered to have been cancelled (*s.37, 39*).
- <sup>22</sup> This is calculated at the end of the reference year.
- <sup>23</sup> Employees entitled to two weeks of annual leave and who have at least one year of uninterrupted service are also entitled, if they apply for it, to an additional week of annual leave without pay, to be taken in an unbroken period. This does not apply to employees already entitled to three weeks of annual leave with pay. An additional unpaid annual leave need not follow immediately a paid annual leave.
- <sup>24</sup> However, a collective agreement or a decree may allow the parties to defer an annual leave until the following year. In addition, an employer may allow an employee, at the request of the latter, to take part or all of the annual leave during, rather than after, the reference year. An employer may also agree to defer an employee's annual leave to the following year, if the employee is absent at the end of the 12 months following the end of the reference year by reason of sickness or accident, or for family or parental matters (*s.70*).
- <sup>25</sup> The employee's employer may refuse the request if he/she closes his/her establishment for a period equal to or greater than the employee's annual leave (*s.71*).
- <sup>26</sup> The following exceptions apply: 1) A leave not exceeding one week may not be divided. 2) Any employer, who, before March 29, 1995, closed his/her establishment for any period of annual leave, may divide into two periods the annual leave of an employee who is entitled to three weeks of vacation, one being the closing period. However, one of the two periods must last at least two weeks. 3) A collective agreement or a decree may include a clause providing for, or prohibiting, the division of an annual leave into two or more periods (*ss. 71, 71.1*).
- <sup>27</sup> Employers are prohibited from replacing an annual leave by a compensatory indemnity, unless a special provision is contained in a collective agreement or decree. However, at the request of the employee, the third week of leave may be replaced by a compensatory indemnity if the establishment closes for two weeks on the occasion of the annual leave (*ss.72, 73*).
- <sup>28</sup> Should an employee's absence due to sickness or accident or a maternity leave during the reference year result in the reduction of his/her annual leave indemnity, then the employee is entitled to an amount equal to twice or three times (depending on whether the employee is entitled to two or three weeks of annual leave) the weekly average of wages earned during the period of work. An employee with less than one year of uninterrupted service and whose annual leave is less than two weeks is entitled to an amount proportional to the days of leave credited to his/her account. An annual leave indemnity is not to exceed the amount to which an employee would have been entitled had he/she not been on leave or absent (*s.74*).

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<sup>29</sup> Unless provided otherwise in a collective agreement or decree.

<sup>30</sup> An employee who wishes to divide his/her vacation time must give notice to his/her employer no later than the day on which he/she becomes entitled to the annual holiday (s.31(1)(c)).

<sup>31</sup> Unless agreed otherwise in writing by the employer and the trade union or, where there is no trade union, by the employer and the employee. Saskatchewan's legislation specifies that notice must be given for each vacation period (s. 32). In addition, where an employer does not permit an employee to take an annual holiday as scheduled by agreement, the employer must reimburse the employee for any monetary loss he/she suffered as a result of the cancellation or postponement (s. 33(4)).

<sup>32</sup> Because of a shortage of labour, an employee can agree in writing with his/her employer to forego an annual vacation. Such an agreement must be filed with the Director of the Labour Standards Branch. In such a case, the employee must be paid the annual holiday pay to which he/she is entitled within 12 months of entitlement (s.37).

<sup>33</sup> Where an employee does not take an annual holiday to which he or she is entitled, his/her employer must pay the annual holiday pay no later than 11 months after the date the employee becomes entitled to the annual holiday (s.33(1.1)).

<sup>34</sup> An employer and an employee may enter into a written agreement whereby the employee will not take the annual vacation to which he/she is entitled. The employer must nevertheless pay to the employee, within 10 months of the date it is due, the vacation pay to which the employee is entitled (s.23).

<sup>35</sup> Employees who work irregular hours or less than five days a week are entitled to vacation pay if they have worked their usual work days and usual hours in a two-week period (s.25(3)).

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