

LABOUR DAY A PUBLIC HOLIDAY UNDER EMPLOYMENT STANDARDS ACT, 2000

TORONTO — Many employees will get the day off with public holiday pay on Labour Day on Monday, September 4, 2006. Labour Day is one of eight public holidays under Ontario's Employment Standards Act, 2000.

QUALIFYING FOR LABOUR DAY ENTITLEMENTS

Generally, employees qualify for Labour Day entitlements unless they fail, without reasonable cause, to work:

- Their entire regularly-scheduled shift *before* or *after* Labour Day; **or**
- Their entire shift on Labour Day if they agreed or were required to work that day.

Public holiday pay is an amount equal to an employee's regular wages earned in the four work weeks prior to Labour Day **plus** any vacation pay payable during that period, **divided** by 20.

Employees who qualify for Labour Day entitlements can be full-time, part-time, permanent or on a limited-term contract. They can also be students. It does not matter how recently they were hired or how many days they worked before Labour Day.

ENTITLEMENTS IF YOU ARE SCHEDULED TO WORK ON LABOUR DAY

Qualified employees are entitled to take off Labour Day with public holiday pay. They can also agree in writing to work on Labour Day and:

- Be paid their regular rate for all hours worked on Labour Day **plus** receive a substitute holiday with public holiday pay; **or**
- If the employee and employer agree in writing, be paid public holiday pay **plus** "premium pay" of **one-and-a-half times** their regular rate for all hours worked on Labour Day.

ENTITLEMENTS IF LABOUR DAY IS A NON-WORKING DAY

If Labour Day falls on a non-working or vacation day, qualified employees can **either** take a substitute work day off with public holiday pay **or**, if they agree in writing, they can receive public holiday pay for Labour Day with no substitute day off.

ENTITLEMENTS FOR NON-QUALIFIED EMPLOYEES

Generally, employees who don't qualify for public holiday entitlements **must** work on Labour Day if asked by their employer. Most non-qualified employees are entitled to be paid **one-and-a-half times** their regular rate of pay for **each hour** worked on Labour Day. There is no substitute day off.

If a non-qualified employee is not asked to work on Labour Day, he or she gets the day off with no pay.

SPECIAL RULES / EXCEPTIONS

Retail employees

Most employees who work in retail businesses – businesses that sell goods or services to the public – have the **right to refuse** to work on Labour Day **even if** they don't qualify for public holiday entitlements.

Retail employees who have agreed to work on Labour Day may still refuse the assignment if they give their employer **48 hours advance notice** before the first hour of work on Labour Day.

However, these rules for retail employees **do not apply** to those who work for businesses that primarily:

- Sell prepared meals (restaurants, cafeterias, cafés, etc.)
- Rent living accommodations (hotels, tourist resorts, camps, inns, etc.)
- Provide educational, recreational or amusement services to the public (museums, art galleries, sports stadiums, etc.)
- Sell goods and services that are incidental to the businesses described above and are located on the same premises (museum gift shops, souvenir shops in sports stadiums, etc.).

Under the Retail Business Holidays Act, most retail outlets must close on Labour Day.

Hospital, continuous operations and hospitality employees

Employees in hospitals, continuous operations and the hospitality industry may be required to work on Labour Day **if** it falls on a day they would normally work and **if** they are not on vacation. This applies to employees who work for hospitals, nursing homes, hotels, motels, tourist resorts, restaurants and taverns, as well as to employees who work for continuous operations (operations or parts of operations that do not shut down or close down more than once a week such as oil refineries and alarm monitoring companies).

Elect-to-work employees

Elect-to-work employees – those who decide without penalty whether or not to work when requested – are **not** covered by the public holidays provisions of the Employment Standards Act, 2000 **except** for the right to be paid **one-and-a-half times** their regular rate of pay for **each hour** worked on Labour Day.

EMPLOYEES NOT ELIGIBLE FOR PAID PUBLIC HOLIDAYS

Some employees are **not** eligible for Labour Day entitlements because public holiday provisions under the Employment Standards Act, 2000 do not apply to certain jobs. These employees include:

- Seasonal workers (employees who work for an employer no more than 16 weeks in a calendar year) in a hotel, motel, tourist resort, restaurant or tavern who are provided with room and board
- Taxicab drivers
- Professionals such as lawyers, doctors, teachers, architects, chiroprodists, chiropractors, dentists, massage therapists, optometrists, pharmacists, professional engineers, physiotherapists, psychologists, public accountants, surveyors, veterinarians and those covered under the Drugless Practitioners Act
- Students in training for any of the professions listed above
- Students who instruct or supervise children or who work at a children's camp or recreational program operated by a charitable organization
- Hunting and fishing guides, commercial fishers and some farm workers
- Commissioned salespeople, except route salespeople, who normally work away from their employer's place of business
- Employees who install and maintain swimming pools
- Employees in landscape gardening, mushroom growing, or the growing, transporting and laying of sod
- Employees who grow flowers or trees and shrubs for retail and wholesale trade
- Employees who breed and board horses on a farm or who keep fur-bearing mammals for propagation or the production of pelts for commercial purposes
- Construction workers who receive 7.3 per cent or more of their wages for vacation pay or holiday pay
- Residential building superintendents, janitors or caretakers who live in the building
- Firefighters
- Registered real estate salespeople.

INFORMATION SOURCES

For more information, **employees and employers may call** the Ontario Ministry of Labour's Employment Standards Information Centre at (416) 326-7160 or 1-800-531-5551, or visit the nearest ServiceOntario Centre.

Written information – including employment standards fact sheets on subjects such as public holidays – can be accessed via the Ontario Ministry of Labour's website at www.labour.gov.on.ca or through Publications Ontario (1-800-668-9938).

PUBLIC INQUIRIES (Employees and Employers):

Pay rates and time off:

Ministry of Labour
(416) 326-7160 or
1-800-531-5551

Store openings:

Ministry of Government Services
(416) 326-8800 or
1-800-889-9768

MEDIA INQUIRIES:

Pay rates and time off:

Belinda Sutton
Ministry of Labour
(416) 326-7405

Store openings:

Jason Wesley
Ministry of Government Services
(416) 327-2805

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<http://www.labour.gov.on.ca/>