

Is a Use-It-or-Lose-It Vacation Policy Enforceable? – Ask The Expert



QUESTION

We have a use it or lose it vacation policy that only allows for 5 vacation days to carry over each year. The vacation carry-over must be used by no later than March 31 of the next year or it is forfeit, removed and will not be paid out. Are we legally allowed to do that in Ontario?

ANSWER

Under employment standards laws, employees can forfeit their vacation *time* by failing to take vacation but they can't forfeit their vacation *pay*. This is an important distinction that's often misunderstood. Many employers have a "use it or lose it" policy with respect to vacation. But this simply means that an employer can require an employee to take vacation time or lose the vacation time; but it doesn't relieve the employer of its obligation to pay the employee the vacation time accrued.

Example: If a salary worker who's entitled to 2 weeks' vacation time per year fails to take and isn't forced by his/her employer to take that 2 weeks' vacation time, the employer is still required to provide the employee an extra 2 weeks' pay.

The Ontario ESA

The Ontario *Employment Standards Act* (ESA) provides a minimum entitlement of 2 weeks' vacation time to all workers to be paid at 4% of gross wages. Employers and employees may agree to more but not less generous terms. Some employed persons are exempt from the ESA, such as certain qualified or registered practitioners (for example, architects, lawyers, accountants, dentists, massage therapists, pharmacists and others).