Can Terminated Employees Still Get Stat Holiday Pay?

Situation

Max Lerner, a student at a local university gets a summer job at a nearby factory. He starts work on May 1 and works 8 hours a day, 5 days a week for 4 months, earning $12 per hour. Max does a good job and the factory is very pleased with his work. But he has to go back to school for the fall semester. His last day of work is Friday, August 30. Max worked 160 hours and earned $1,920 in his last 4 weeks of employment. Labour Day, a statutory holiday, happens to fall on the following Monday, September 2.

Question

How much, if any, statutory holiday pay is Max entitled to for Labour Day?

A. Nothing, because he was no longer an employee on Labour Day
B. Nothing, because he failed to work his first regularly scheduled day after Labour Day
C. Holiday pay at the stat holiday rate
D. 8 hours at time-and-a-half

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Answer

C. The plant must pay Max holiday wages for Labour Day even though he wasn’t employed by the plant when the holiday took place.

Explanation

This scenario illustrates an important principle that some payroll managers fail to recognize: Under the employment standards laws of most provinces, an employee may still be entitled to stat holiday pay even if he wasn’t actually employed on the date of the holiday.

Explanation: Once employees work a minimum period—generally 4 weeks—they accrue the right to receive holiday pay for the next holiday. This may include, in some cases, holidays that fall after they’ve left the company. At the time Labour Day fell, Max

had worked full-time for 4 consecutive months, enough to accrue holiday pay in just about any province. So he’s entitled to holiday pay for Labour Day and C is the right answer.

Why Wrong Answers Are Wrong

A is wrong because the right to stat holiday pay is based on previous service, not current employment status. Moreover, the definition of “employee” under the employment standards laws of many provinces, including AB, MB and ON, include a former employee. Including former employees under the definition of “employees” under employment standards law ensures that people don’t lose the rights they’ve accrued simply because they cease working for the employer. Without this protection, former employees wouldn’t be able to recover unpaid wages from their previous companies.

B is wrong even though many employment standards laws do say that employees don’t get holiday pay if they fail to work the “regular scheduled day” immediately preceding and following the holiday. Technically, however, once an employee is terminated, he has no more “scheduled” workdays and thus can’t fail the test.

D is wrong because the standard rate of stat holiday pay is not time-and-a-half. Holiday pay amount is based on a formula set out in the employment standards law. For example, in ON, the stat holiday pay rate is regular earnings over the prior 4 weeks divided by 20 (in the student’s case, $1,920 ÷ 20 = $96—which happens to be the student’s regular rate for a full day’s work). Time-and-a-half may be due if an employee actually works the holiday. But that’s not what happened in this case.

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