How Much Should You Pay Your Employees for the Day?

Statutory holiday pay laws are complicated and it's easy to make mistakes like over payments that cost your company a lot of money or underpayments that expose it to the risk of lawsuits, grievances and penalties. Here's what you need to know to get your stat holiday pay calculations right.

WHAT THE LAW REQUIRES

Canadian employment standards laws include a number of stat holidays (also called "public holidays"). Five of them are holidays recognized in all of Canada: New Year's Day, Good Friday (or, if the employer chooses, Easter Monday in Québec), Canada Day, Labour Day and Christmas Day. Seven days are recognized as statutory holidays in some jurisdictions but not others, including:

- Family Day (AB, MB, ON and SK);
- Victoria Day (Federal, AB, BC, MB, NT, NU, ON, QC, SK, YK);
- June Holiday (Nat. Aboriginal Day—NT/National Holiday—QC);
- August Civic Holiday (BC, NB, NT, NU, QC, SK, YK);
- Thanksgiving (Federal, AB, BC, MB, NT, NU, ON, QC, SK, YK);
- Remembrance Day (Federal, AB, BC, NB, NL, NT, NU, PEI, SK, YK); and
- Boxing Day (Federal, ON).

Eligible employees either get stat holidays off with pay or get paid extra for work they actually do on the holiday. Many jurisdictions, including AB, NL, NT, NU, ON and YK, also allow employers to substitute another paid day off for the statutory holiday if employees request it.

HOW TO CALCULATE STATUTORY HOLIDAY PAY

There are 2 things you need to ask when dealing with stat holiday pay:

1. Is the employee is eligible for holiday pay?

2. If so, how much should you pay him/her for the stat holiday?

QUESTION 1: IS EMPLOYEE ELIGIBLE FOR STAT HOLIDAY PAY?

Employees must meet certain criteria to be eligible for stat holiday pay:

Minimum Length of Service: In most jurisdictions, employees are only entitled to stat holiday pay if they've completed a minimum period of service with the employer before the holiday takes place. Minimum service levels vary by province:

- 30 days before the holiday (Federal, BC, NL, PEI, YK); and
- 30 days in the 12 months before the holiday (AB, NT, NU).

However, in the Federal jurisdiction an employee without 30 days service who actually works on the holiday is entitled to be paid stat holiday pay as well as at time-and-a-half for any actual hours worked. The minimum service level in NB is 90 days in the 12 months before the holiday. In MB, NS and SK, employees don't have to meet minimum length of service requirements to get stat holiday pay. Similarly, in ON, any employee who has worked any time in the previous 4 weeks qualifies for some holiday pay. QC follows the same 4-week rule as ON for non-commission employees; but QC employees paid in part or entirely by commission get some stat holiday pay if they work any time in the 12 weeks before the holiday.

15/30 Rule: Six jurisdictions—Federal, MB, NL, NS, PEI, YK—require employees to "earn wages" for at least a minimum number of days in the period before the holiday. Under Federal, MB, NL, NS, PEI and YK law, an employee must have earned wages in at least 15 of the 30 calendar days before the holiday. Federal law allows for prorating holiday pay of employees who fall short of the 15/30 test, but only for employees who actually work on the holiday and whose terms and conditions make it impossible to meet the 15/30 test. In NL, employees can still qualify for holiday pay if their absence over the 30-day period is attributable to annual vacation, pregnancy or parental, adoption, bereavement or sick leave.

No Failure to Work Scheduled Day Before or After: Most jurisdictions also provide that employees aren't eligible for stat holiday pay if they fail without reasonable cause to work the closest scheduled work day immediately before or after the holiday. The test is *scheduled* work day. So if the statutory holiday falls on a Tuesday, the employee isn't disqualified for not working the Monday before if she was on vacation, laid off or otherwise not scheduled to work that day. Exceptions: BC and SK don't have a failure-to-work-scheduled-day-before-or-after rule.

Employees Don't Receive Greater Holiday Benefits: In some jurisdictions like ON and QC, employees aren't subject to these benefits if their collective agreement or individual contract provides for a more generous stat holiday pay package.

QUESTION 2: HOW MUCH DO YOU PAY EMPLOYEE FOR STAT HOLIDAY?

The common assumption is that employees get whatever they would have gotten if they had actually worked on the stat holiday. But it's not as simple as that. Under employment standards laws, a day of holiday pay for a stat holiday that an employee doesn't work is based not on a day of wages but on the average daily pay the employee received in the period before the holiday took place. Here are the 3 steps in calculating holiday pay under the formula.

Step 1: Determine Relevant Earnings Period

The first step in the calculation is to determine the relevant earnings period on which pay for the stat holiday is based. Most provinces stipulate the period over which earnings are averaged.

Days: Three jurisdictions define the period in days—Federal (20 days), and BC and NB (30 days).

Weeks: Others define it in weeks, with 4 weeks being the most common (MB, NT, NU, ON, QC, SK). For commissioned sales employees in Québec, this number is 12 weeks. Alberta and Ontario define the relevant period in "work weeks," which can be either Sunday to Saturday or another period defined by the employer. In either case, the relevant period ends the week prior to the holiday. So, for example, in a year in which Good Friday falls on March 13, the earnings period based on calendar weeks would end on Saturday, March 7.

Step 2: Calculate Earnings over the Period

The basket of earnings on which stat holiday pay is calculated isn't limited to hourly wages but includes other sums, including:

- Salary;
- Commissions; and
- Non-discretionary bonuses, i.e., money employees earn for meeting specific and pre-stated incentives.

<u>Explanation</u>: Some ESAs, such as BC and NL, base stat holiday pay on amount or rate of "pay," rather than "wages." Others use the term "wages" defined broadly as including salary and other earnings not based on a per hour rate. (**Note:** For the rest of this article, we'll use the generic term "earnings" rather than "wages" to refer to payments that count toward calculating stat holiday pay.)

You also need to recognize the kinds of earnings that *don't* count as earnings, including:

- Overtime;
- Tips and gratuities (except in Québec, where tips that must be allocated by employers for source deductions do count as earnings subject to statutory holiday pay calculations); and
- Vacation pay (<u>Exception:</u> BC and ON do count vacation pay as earnings for calculating holiday pay).

Step 3: Determine What to Divide Total Earnings By

The third step in the calculation of stat holiday pay is to divide the employee's total countable earnings in the period before the holiday by the right denominator to derive an average daily earnings rate for the period. The denominator you use depends on which province's law applies:

- **Actual Days Worked in the Period:** In most jurisdictions, including Federal, AB, BC, MB, NB, NL, NT, NU, NS, PEI and YK, you divide total countable earnings by the number of days the employee *actually worked* in the relevant period; or
- **20:** In ON, QC and SK, the denominator is pre-designated as 20. Thus, an employee's pay for a stat holiday is 1/20 of his earnings in the period before the holiday occurs, regardless of the number of days he actually worked in that period. (<u>Exception</u>: In Québec, the denominator is 60 for employees paid in full or in part by commission.)

Applying the Rules

Let's use this example to illustrate how the rules work:

[box]

EXAMPLE

A call center in Ontario and BC each use a semi-monthly pay period and a work week that runs from Sun. to Sat. for EI and stat holiday purposes. Employees work 5 days a week—Mon. to Fri. Non-discretionary quarterly bonuses are paid on the last day of each quarter, which is also the last day in the semi-monthly pay period.

Jean Pool is a sales agent who works for the ON center. On Tues., June 30, the last day of the pay period, Janine receives her normal $2,000 salary, $250 in overtime and a quarterly non-discretionary $1,000 bonus for exceeding her $10,000 upsales target. Janine's cousin, Dee Ennay, is a sales agent for the BC center who receives the exact same deal. Assume Canada Day falls on Wed., July 1. Both Jean and Dee are "employees" who qualify for stat holiday pay. Neither woman works on Canada Day or has missed a day of work in the period leading up to the holiday.

[/box]

Calculating Jean's Canada Day Pay

Jean's pay for the stat holiday is based on Ontario law.

Step 1: Under the Ontario ESA, the relevant period for determining earnings is the 4 weeks leading up to the week of the holiday—Sun., May 31 to Sat., June 27. Calendar-wise, that window incorporates some or all of 3 pay periods:

- May 16 to 31: (which actually encompasses only, Sun., May 31);
- All of June 1 to 15; and
- Most of June 16 to 30 (9 of the 11 working days from June 16 to 27).

Step 2: Next, we need to calculate Jean's earnings in the relevant period:

0 for period 1 (which includes only Sun., May 31) + $2,000 in salary for period 2 + $1,636.36 in period 3 (9 working days of 11: 9/11 x $2,000) = **$3,636.36.**

Jean's overtime earnings don't count toward her stat holiday pay entitlement.

Step 3: Divide Jean's countable earnings in the period by 20: $3,636.36 ÷ 20 = **$181.82**

Calculating Dee's Canada Day Pay

Let's now do the calculations for Dee:

Step 1: Under BC law, stat holiday pay for a day not worked is based on an "average day's pay" in the 30 calendar days before the holiday takes place. Dee's holiday pay period includes all of the 2 pay periods from June 1 to 15 (11 work days) and June 16 to 30 (11 work days).

Step 2: Dee's earnings in this period:

$4,000 in salary (again, we don't count overtime) + $1,000 bonus received on June 27 **= $5,000**

Step 3: An average day's pay under BC law is based on number of days actually worked in the 30 days before the holiday—22 days in Dee's case. So her average daily pay is $5,000 ÷ 22 = $227.27.

Practical Impact

Notice how subtle differences in stat holiday pay requirements can have a significant impact on actual payments, especially when the employee earns a non-discretionary bonus or other non-regular payment before the holiday. Exhibit A: the case of Jean and Dee. Both have the same job and terms of employment. Both “earned” identical bonuses on the same day. But because of the fact that stat holiday pay in BC is based on calendar days, Dee’s bonus counts toward her Canada Day pay and Jean’s bonus doesn’t. As a result, Dee gets $227.27 for Canada Day and Jean must settle for a regular day’s pay of $181.82. And can you imagine how that discrepancy might affect morale if both women worked for the same company and Jean found out that her cousin got $45.45 more for the holiday?

Conclusion

<u>One final caveat</u>: As with most employment standards requirements, the stat holiday pay formula is just a minimum default standard; you’re always free to pay your own employees more than the laws require. One way to ensure a smoother and more predictable stat holiday pay regime is for employers and employees to agree that quarterly bonuses and similar payments will be considered earned not on the last day of the pay period they’re paid out but on a prorated per-week basis spread out evenly across the quarter. For example, an employee who qualifies for a quarterly $1,300 bonus at the end of the second quarter would be considered to have earned the bonus at a rate of $100 per week from June 1 to Aug. 31, rather than all at once on Aug. 31. In this way, you can prevent quirks in the calendar from leading to arbitrary and unfair situations like they did with Dee and Brandy. In addition to scoring morale points, going to this system will simplify your payroll calculations.

[box]

Pay for statutory holidays an employee doesn’t work must be equivalent of at least:

FEDERAL: a. If wages are hourly or daily, the equivalent of wages employee “would have earned” at his “regular rate of wages for his normal hours of work” or; ii. If wages calculated on a different basis, equivalent of wages employee “would have earned” at his “regular rate of wages for his normal working day” (Canada Labour Code, Secs. 196(2) & (3), respectively). “Regular rate of wages” defined as average daily earnings exclusive of overtime for 20 days worked just before holiday (Canada Labour Standards Reg., Sec. 17(a)).

ALBERTA: “Average daily wage” (Employment Standards Code, Sec. 28), defined as: i. Average daily wage over days worked in past 9 work weeks (“work weeks” are Sat. to Sat.); or ii. If employee has worked less than 9 work weeks, average daily wage for days employee did work for employer (ESC, Sec. 1(1)(b)).

BRITISH COLUMBIA: “Average day’s pay,” calculated as amount paid ÷ days worked, where: a. “amount paid” = amount paid or payable “for work that is done during” and wages “earned” within 30 calendar days before statutory holiday, including vacation taken minus amounts paid or payable for overtime; and b. days worked = days employee actually worked or earned wages in past 30 calendar days (Employment Standards Act, Sec. 45).

MANITOBA: a. “Wage for regular hours of work on a normal workday in the pay period;” or b. If employee’s wages vary, 5% of total wages, excluding overtime, for 4 weeks immediately before holiday (Employment Standards Code, Sec. 23).

NEW BRUNSWICK: a. “Regular wages,” or b. If wages vary from day to day, “average daily earnings exclusive of overtime” for days worked over 30 calendar days before the holiday (Employment Standards Act, Secs. 18(2) and 21(1), respectively).

NEWFOUNDLAND/LABRADOR: Hourly rate of pay x average number of days worked by employee in the 3 weeks before the holiday (Labour Standards Act, Sec. 15(3)).

NORTHWEST TERRITORIES & NUNAVUT: a. If wages calculated based on time, equivalent of wages employee “would have earned” at “regular rate of wages for normal hours of work of the employee”; or b. If wages not calculated on basis of time, daily wage based on the average of his daily wages for 4 weeks before the week of the holiday occurs (Labour Standards Act, Sec. 24).

NOVA SCOTIA: a. If wages are hourly or daily, employer must pay what it “would have paid” employee at employee’s “regular rate of wages for his normal hours of work”; or, b. If wages on a basis other than hourly or daily, employer must pay “what it would have paid” for “regular rate of wages for his normal working day” (Labour Standards Code, Sec. 40).

ONTARIO: Total amount of “regular wages earned and vacation pay payable” in 4 work weeks before the week in which the holiday occurred divided by 20 (Employment Standards Act, Sec. 24(1)(a))

PRINCE EDWARD ISLAND: a. If wages hourly or daily, employer must pay wages it “would have paid” employee at “employee’s regular rate of wages for employee’s normal hours of work”; b. If wages not hourly, daily, weekly or monthly, employer must pay wages it “would have paid” employee at “employee’s regular rate of wages for employee’s normal working day”; (Employment Standards Act, Sec. 10(2) and (3), respectively); and c. “Regular rate of wages” defined as regular wage rate of an employee for an hour of work.

QUÉBEC: a. Employees not paid by commission: 1/20 of “wages earned” during 4 complete “weeks of pay” before week of holiday, not counting overtime; and b. Employees paid in whole or in part by commission: 1/60 of “wages earned” during 12 complete weeks of pay before week of holiday (Labour Standards, An act respecting, Sec. 62).

SASKATCHEWAN: a. If employer pays employee his “regular wages” for the period in which the holiday occurs, employee gets a day’s wages; or b. In any other case, total wages “earned by” employee during 4 weeks before holiday (not counting overtime) ÷ 20 (Labour Standards Act, Sec. 39(1)(a) & (b), respectively).

YUKON TERRITORY: a. If wages daily or hourly, “wages they would have earned at their regular rate of wages for their normal hours of work”; b. If wages not based on hours, days, weeks or months, average of employee’s daily wages (other than overtime) for week in which the holiday occurs; or c. If employee works less than “standard hours of work” or works irregular hours, 10% of employee’s wages (excluding vacation pay) for hours worked in 2 week period before the week the holiday occurs (Employment Standards Act, Sec. 30).

[/box]