

I Haven't Taken Vacation In Three Years Because Of Staff Shortages. Am I Entitled To Pay?



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THE QUESTION

I've been working for the same company for three years as a full-time, salaried employee. My employment offer was for equal-time shifts, which means two weeks on and two weeks off, plus three weeks of vacation. I have never been able to take my vacation days because of staff shortages. Am I entitled to request vacation pay in lieu? Should I be remunerated for the additional weeks that I've worked for the past three years?

THE ANSWER

If you have been unable to take vacation time because of staff shortages throughout your employment, this likely violates your rights under your province's labour code or act. For example, under Ontario's Employment Standards Act (ESA), employees with less than five years of service are entitled to a minimum:

- Two weeks of vacation time after each 12-month period; and
- 4 per cent vacation pay (based on gross wages)

The ESA requires employers to ensure employees take this vacation within 10 months of the entitlement year (for example, vacation earned in 2024 must be used by October 2025). The minimum two weeks of vacation per year cannot be forfeited.

Your additional third week of vacation is a contractual benefit, not a statutory one. Depending on your employment terms, it may be subject to a "use-it-or-lose-it" policy. You should review your contract to confirm.

Employers cannot contract out of ESA obligations. Payment in lieu is not a substitute for ensuring you take your mandated time off. While past vacation time cannot be retroactively taken, you are likely justified in requesting compensation for unused vacation from 2023 and earlier. (You still have until October 2025 to use your 2024 vacation.)

Moving forward, remind your employer of its obligation to schedule your vacation annually. Once you reach five years of service, your ESA entitlements increase to three weeks of vacation time and 6 per cent vacation pay.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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