

Wages, Salary & Benefits Policy



The very idea of a Model Policy governing wages and benefits is an oxymoron given the infinite number of possible arrangements. The point of this Model Policy is to lay down a pro forma template illustrating what to cover in your policy. The Model Policy also incorporates the minimum requirements of a particular jurisdiction's employment standards rules—in this case the Employment Standards Act (ESA) based on the recent changes implemented by Bill 148.

1. Purpose

This Policy is designed to make employees aware of the general rules ABC Company follows with regard to employee work hours, wages, vacations, leaves of absence, and other key terms of employment regulated by the *Employment Standards Act* (“ESA”).

2. Scope

This Policy applies to non-union employees who are covered by the ESA. This Policy does **not** apply to employees who are:

- Unionized and whose terms of employment are governed by a collective agreement between ABC Company and the employees' union;
- Exempt from the ESA or specific provision(s) of the ESA on which a particular Section of this Policy is based; or
- Employed in an industry that is subject to specific employment terms and conditions under a separate regulation made under the ESA, e.g., ambulance services, automobile manufacturing, or mineral exploration and mining.

3. Policy Benefits Are Minimums

The provisions set out in this Policy reflect the minimum compensation and benefits that an employee is entitled to receive under the ESA. While employees will receive nothing less the ESA requires, ABC Company may grant employees compensation and benefits that are more generous than those required by this Policy.

4. Probationary Periods

The first 3 consecutive months of an employee's employment will be deemed a probationary period that ABC Company will use to assess the suitability of the employee's performance and conduct on the basis of quality, completeness, accuracy, productivity, efficiency, prompt and regular attendance, overall character, judgment, loyalty, dedication, attitude, professionalism, and potential for growth and development.

ABC Company may terminate the employee if it determines he/she is unsuitable at the end of or at any time during the probationary period. Probationary employees terminated for unsuitability are not entitled to receive working notice or payment of wages in lieu of notice under the ESA and this Policy.

Employees who are determined to be suitable will be offered the position on a permanent basis at the end of the probationary period. Once hired on a permanent basis, employees will be entitled to termination notice and other rights accorded permanent employees under this Policy and the ESA.

5. Payment of Wages

Definition: For purposes of this Section and the rest of this Policy, "wages" includes:

- Monetary remuneration payable by the company to an employee under an employment contract, oral or written, express or implied;
- Any payment the company is required to make to an employee under the ESA; and
- Any allowances for room or board under an employment contract or prescribed allowances.

The term "wages" does not include:

- Tips and other gratuities;
- Sums paid as gifts or bonuses at the company's discretion and that are not related to hours, production, or efficiency;
- Expenses and travelling allowances; or
- Company contributions to a benefit plan and payments to which an employee is entitled from a benefit plan.

Employees will be paid on a regular basis set out in the pay schedule established by ABC Company's HR or payroll department (weekly, bi-weekly, etc). Wages will be paid either by cash, cheque payable only to the employee, or by direct deposit into a financial institution under an arrangement that meets the requirements of Section 11(4) of the ESA. Method of payment will be determined by ABC Company, subject to its obligations under applicable regulatory requirements and employment contracts.

In the event employment ends, ABC Company shall pay employees the wages to which they are entitled no later than seven (7) days after the employment ends and the day that would have been the employee's next pay day.

Employees will receive with each payment a written statement listing:

- The pay period the wages cover;
- The wage rate (if there is one);
- The gross amount of wages paid and how it was calculated;
- Itemization of each deduction from wages listing the deduction amount and purpose;
- Any amounts paid to the employee with respect to room and board under Sec. 23(2)

- of the ESA; and
- Net amount of any wages paid.

6. Source Deductions

ABC Company will deduct from the employee's wage payment income taxes, Employment Insurance premiums, Canada Pension Plan contributions, and other source deductions required by federal and provincial laws.

7. Hours of Work

Employees' work schedules will meet the requirements for hours of work contained in Part VII of the ESA. Work schedules for a particular employee will be established by the employee's supervisor or manager and/or negotiated into the employee's employment contract. The work schedule will be created on a regular basis for an established time frame and made available to all staff before the schedule's start date.

8. Employee Scheduling Rights

In accordance with Section 21.5 of the ESA, employees have the right to refuse ABC Company's request or demand to work or be on call to work on an unscheduled day where the request or demand is made less than 96 hours before the time requested or demanded work or being on call would begin, provided that the employee furnishes written notice of refusal as soon as possible. In addition, the foregoing refusal rights do not apply if ABC Company's request or demand that the employee work or be on call is:

- To deal with an emergency (as defined below);
- To remedy or reduce a threat to public safety;
- To ensure the continued delivery of essential public services, regardless of who delivers those services; or
- Made for other reasons prescribed by the ESA regulations.

For purposes of this Section, "emergency" means EITHER: (i) a situation or impending situation constituting a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by nature, a disease or other health risk, an accident or an act whether intentional or otherwise; OR (ii) a situation in which a search and rescue operation takes place.

Employees employed by ABC Company for at least three months may submit written requests for changes to their work schedules or locations. Effective Jan. 1, 2019, in the event that ABC Company denies said requests, it shall provide written notification listing the reasons for denial.

No employee will suffer any form of reprisal from ABC Company or its agents in retaliation for exercising these rights.

9. Eating Periods & Breaks

Employees are entitled to at least one 30-minute meal break for each five hours of

continuous work so that no employee has to work five consecutive hours without getting time to eat. Meal breaks will be unpaid unless the employee's contract or collective agreement specifically requires otherwise. Employees must notify their supervisors when they take breaks and return from breaks in a timely manner.

10. Sick Days

Employees will be allowed a specific number of sick days per year. These sick days will be unpaid unless the employee's employment contract specifies that sick days will be paid. Employees must follow ABC Company procedures when using their sick days, including calling in to notify their supervisor or manager when they feel too ill to report to work. Unused sick day for one year will not carry forward to the next year.

11. Overtime

Employees who are paid on an hourly basis are entitled to overtime pay at a rate of 1.5 times their regular pay for any hours they work beyond 44 hours per week. Overtime must be approved in advance by the employee's supervisor or manager. ABC Company will also determine whether and under what conditions employees may:

- Enter into averaging arrangements in which work hours over a given work period are averaged and overtime is paid at the end of the period on the basis of the average rather than actual number of hours worked per week during the averaging period;
- Trade overtime pay for extra time off; and
- Bank overtime, i.e., earn overtime pay in one pay period and receive payment for it in a later pay period.

Exceptions: The right to overtime provided for in this Section does not apply to:

- Firefighters;
- Persons whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis;
- Information technology professionals; or
- Any other employee listed in Section 8 of the Exemptions, Special Rules and Establishment of Minimum Wage Regulation as not covered under the mandatory overtime provisions set out in Part VIII of the ESA.

12. Minimum Wages

All employees will be paid at least the minimum wage required by Part IX of the ESA.

13. Three-Hour Rule

Employees who regularly work more than three hours per day who are required to present themselves for work but end up working less than three hours even though they were available to work longer will be paid wages to whichever of the following is greater:

- Amount the employee earned for the time worked + regular wages for the remainder of the time; or
- Three hours of regular wages.

Exception: The above three-hour rule does not apply if ABC Company is unable to provide three hours of work due to fire, lightning, power failure, storms or similar causes beyond its control that result in the stopping of work.

- Amount the employee earned for the time worked + regular wages for the remainder of the time; or
- Three hours of regular wages.

14. Call-In Pay

Effective Jan. 1, 2019, employees who are on call to work but not actually required to work (or are required to work but for less than three hours), will be paid three hours' wages at whichever rate yields the higher sum:

- Amount the employee earned for the time worked + regular wages for the remainder of the time; or
- Three hours of regular wages.

Exception: The above minimum call-in pay requirement does not apply if:

- ABC Company required the employee to be on call for purposes of ensuring the continued delivery of public services, regardless of who actually delivers those services; and
- The employee required to be on call was not required to work.

15. Shift Cancellation Pay

Effective Jan. 1, 2019, ABC Company will pay employees three hours of regular wages in the event that it cancels the employee's scheduled work day or on call period on less than 48 hours' notice. Cancellation pay is due only if the entire work day or on call period is cancelled; cancellation pay is not due if the work day or on call period is simply shortened.

Exception: The above cancellation pay requirement does not apply if:

- ABC Company is unable to provide work due to fire, lightning, power failure, storm or similar causes beyond its control resulting in the stopping of work;
- The nature of the employee's work is weather-dependent and ABC Company is unable to provide work due to weather-related reasons; or
- Other exceptions stipulated in the ESA regulations apply.

16. Public Holiday Pay

Eligible employees are entitled to statutory holiday pay for the following holidays:

- New Year's Day;
- Family Day;
- Good Friday;
- Victoria Day;

- Canada Day;
- Labour Day;
- Thanksgiving;
- Christmas; and
- Boxing Day, December 26.

Public holiday pay will be equal to wages earned in the pay period immediately before the public holiday divided by the number of hours worked in that pay period. If an employee is on Personal Emergency Leave under section 50 of the ESA or vacation during the pay period immediately preceding the public holiday, the above calculation shall be applied to the pay period before the start of that leave or vacation.

If the public holiday falls on a day that would ordinarily be a working day for the employee and he/she is not on vacation that day, the employee shall be entitled to the day off with public holiday pay.

Exception: The above entitlement does not apply if the employee fails, without reasonable cause, to work:

- All of his/her last regularly scheduled day of work before the public holiday;
OR
- All of his/her first regularly scheduled day of work after the public holiday.

In the event that ABC Company and the employee agree that the employee will work on a public holiday that would ordinarily be a working day for him/her, the employee shall be paid public holiday pay for the day plus premium pay for each hour he/she worked on the public holiday.

Eligiibility: The employee shall not be entitled to public holiday pay for a holiday that falls on what would ordinarily be a working day that the employee agrees to work if the employee, **without reasonable cause**, does not actually perform any of the work that he/she agreed to perform on the public holiday.

Where the employee fails to perform any of the promised work due to **reasonable cause**, he/she shall receive public holiday pay for the holiday. Exception: The preceding entitlement does not apply if the employee also fails, without reasonable cause, to work all of the last regularly scheduled day of work before the public holiday or all of the first regularly scheduled day of work after the public holiday.

If the employee performs some of the agreed work that the employee agreed work on the public holiday but fails, **without reasonable cause**, to perform all of it, the employee shall receive premium pay for each hour worked on the holiday but shall have no other entitlement.

If the employee performs some of the agreed work on the public holiday but fails, **with reasonable cause**, to perform all of it, he/she shall receive public holiday pay for the holiday plus premium pay for each hour worked on the holiday. Exception: If the employee also fails, without reasonable cause, to work all of the last regularly scheduled day of work before the public holiday or all of the first regularly scheduled day of work after the public holiday, ABC Company shall give the employee premium pay for each hour worked on the public holiday, but the employee shall have no other entitlement.

If the employee performs all of the agreed work on the public holiday but fails, without reasonable cause, to work all of the last regularly scheduled day of work before the statutory holiday or all of the first regularly scheduled day of work after the holiday, ABC Company shall give the employee premium pay for each hour

worked on the holiday, but the employee shall have no other entitlement.

When the public holiday falls on a day that would not ordinarily be a working day for an employee or a day on which the employee is on vacation, ABC Company shall substitute another day that would ordinarily be a working day for the employee to take off work and for which the employee shall be paid public holiday pay as if the substitute day were a public holiday. The day substituted for a public holiday referred to in the previous sentence shall be:

- The first day that would ordinarily be a working day for the employee immediately after the public holiday; or
- The most recent day that would ordinarily be a working day for the employee immediately preceding the public holiday.

Where a public holiday falls on a day that would not ordinarily be a working day for an employee and the employee is on a leave of absence under the ESA or on a layoff on that day, the employee is entitled to public holiday pay for the day but has no other entitlement with respect to the public holiday.

17. Paid Vacation

Entitlement: ABC Company shall give an employee a vacation of:

* At least two weeks after each vacation entitlement year that the employee completes, if the employee's period of employment, including both active and inactive employment, is less than five years; or

* At least three weeks after each vacation entitlement year that the employee completes, if the employee's period of employment, including both active and inactive employment, is five years or more.

Vacation Pay: Vacation pay will be no less than:

* Four percent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is less than five years; or

* Six percent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is five years or more.

Vacation Procedures: Employees must get prior approval from their supervisor or manager on the timing of vacations, (i.e., when during the year employees may take their vacation and for how long,) following the procedures and in accordance with the rules set out by ABC Company and/or collective agreement or employment contract. Vacation arrangements must meet the requirements of Part XI of the ESA.

18. Unpaid Leaves of Absence

All employees are entitled to take unpaid leaves of absence without forfeiting their employment in accordance with Part XIV of the ESA.

General Rights & Duties for All Leave Types

Employees shall continue their participation in ABC Company pension, life insurance, accidental death, extended health, and dental plans unless they elect in writing not

to do so and ABC Company shall continue to make contributions to said plans on the employee's behalf during the leave unless the employee gives ABC Company written notice of his/her intention not to make employee contributions to the plans. Exception: The above provisions do not apply to reservist leave taken under Section 50.2 of the ESA.

The amount of time an employee is on unpaid leave of absence under this Policy will be included for the purposes of determining the employee's rights under an employment agreement, including:

- The length of the employee's employment—whether or not the employment is active;
- The length of the employee's service—whether or not the service is active; and
- The employee's seniority.

Time spent on unpaid leave will *not* be included in determining whether a probationary employee has completed his/her three-month probationary period.

Employees on leave may defer taking vacation until the leave expires or if agreed to by ABC Company and the employee, until a later date in accordance with Section 51.1(1) of the ESA. If an employee is on leave on the day by which he/she must complete his/her vacation must be completed under Section 35(1) or Section 35.1(2) of the ESA, the uncompleted part of the vacation must be completed immediately after the leave expires or at later agreed to by ABC Company and the employee. An employee to whom this paragraph applies may forego vacation and receive vacation pay in accordance with Section 41 rather than completing his or her vacation under this paragraph.

When leave ends, ABC Company will reinstate the employee to the position he/she most recently held with the Company or to a comparable position if that position no longer exists, at whichever of the following wage rates is greater:

- The rate the employee most recently earned with ABC Company; and
- The rate he/she would be earning had he/she worked throughout the leave.

Specific Types of Unpaid Leave

ABC Company will establish separate HR policies listing the procedures employees must follow to notify ABC Company of leave, how long leaves can last, and other ground rules that apply to the taking of each kind of leave of absence, including:

- Pregnancy leave under Sections 46 and 47 of the ESA;
- Parental leave under Sections 48 and 49;
- Family medical leave under Section 1;
- Organ donor leave under Section 49.2;
- Family caregiver leave under Section 49.3;
- Critical illness leave under Section 49.4;
- Child death leave under Section 49.5;
- Crime-related child disappearance or death leave under Section 49.6;
- Domestic or sexual violence leave under Section 49.7;
- Personal emergency leave under Section 50;
- Leave for declared emergencies under Section 50.1;
- Reservist leave under Section 50.2; and
- Leave for jury duty under Section 41(1) of the Juries Act.

19. Termination of Employment

Employees terminated without just cause after 3 or more months of continuous employment with ABC Company will receive written termination notice or wages in lieu of notice based upon length of service, as required by Section 57 of the ESA:

Length of Employment	Termination Notice
Less than 1 year	1 week
1 to 3 years	2 weeks
3 to 4 years	3 weeks
4 to 5 years	4 weeks
5 to 6 years	5 weeks
6 to 7 years	6 weeks
7 to 8 years	7 weeks
8 years or more	8 weeks

Exceptions: Termination notice will not be provided to an employee:

- Who is employed in construction;
- Terminated for willful misconduct, disobedience, or willful neglect of duty that is neither trivial nor condoned by the company;
- Who is on temporary lay-off and does not return to work after a reasonable time after ABC Company asks him/her to do so;
- Whose contract has become impossible to perform or frustrated by fortuitous or unforeseeable events or circumstances;
- That turns down an offer of reasonable alternative employment with ABC Company or alternative employment made available through a seniority system;
- Terminated or laid off for any reason beyond the company's control, including:
 - Complete or partial destruction of plant;
 - Destruction or breakdown of machinery or equipment;
 - Inability to obtain supplies and materials; or
 - The cancellation or suspension of, or inability to obtain, orders;
- Terminated during or because of a strike or lock-out at the place of employment;
- Who is otherwise listed as not being entitled to termination notice in Section 2 of the Termination and Severance of Employment Regulation.

20. Statutory Severance:

ABC Company will pay statutory severance to employees terminated after five or more years of employment where required under Section 64 of the ESA.

21. Equal Pay for Equal Work

ABC Company will not pay an employee of one gender less than the rate of an employee of another gender for equal work. For purposes of this Policy, the right to equal pay for equal work applies when:

- Employees of each gender perform substantially the same kind of work in the same establishment; AND
- The performance of such work requires substantially the same skill, effort, and responsibility; AND
- The work is performed under similar working conditions.

The right to equal pay for equal work does not apply if the rate of pay is based on

seniority, merit, a system that measures earning by quality or quantity of production or by any factor other than gender.

22. No Reprisals

No employee will suffer dismissal, intimidation, or other harmful treatment in retaliation for:

- Asking ABC Company to comply with the ESA legislation or regulations;
- Making inquiries about his/her rights under the ESA;
- Filing a complaint with the Ontario Ministry of Labour under the ESA;
- Exercising or trying to exercise his/her rights under the ESA;
- Giving information to an Ontario employment standards officer;
- Taking part in an ESA hearing or legal proceeding;
- Taking or becoming eligible to take unpaid leave under this Policy;
- Having to pay part of his/her wages to a third party under a court order or garnishment;
- Exercising his/her right to refuse to work an unscheduled day made within 96 hours under Section 8 above; or
- Exercising his/her right to request schedule or location changes after three months of employment under Section 8 above.