

Not Paying Seasonal Employees for Stat Holidays



Like many companies, you might have temporarily taken on extra staff for the summer that you plan to let go in the fall. Be careful. Seasonal employees may be entitled to statutory holiday pay for holidays that occur *after* their last day of work. Failure to make such payments could subject you to penalties under employment standards laws.

Stat Holiday Pay Eligibility Rules

In some parts of Canada, eligibility for stat holiday pay is based on previous service. For example, in Alberta, employees qualify for it if they've worked at least 30 days in the 12 months before the holiday. In other jurisdictions, stat holiday pay entitlement is based on average earnings. So, for example, in Ontario, stat holiday pay is calculated as earnings in the prior 4 work weeks divided by 20. Average earnings serve the same basic effect as a time of previous employment threshold. Thus, an Ontario employee that hasn't worked in the 4 work weeks before the holiday isn't owed stat holiday pay for the holiday.

The 'No Longer Employed' Trap

One way the trap springs is when the seasonal employee's employment ends just *before* a holiday. Since the employee no longer works for the company when the holiday occurs, payroll assumes that he doesn't get stat holiday pay for the day. But this is wrong. That's because eligibility is based not on current employment status but on earnings/time worked before the holiday occurs. In fact, the ESA of some jurisdictions, such as Ontario, specifically define the term "employee" to include a person who *was* an employee.

The 'Didn't Work Previous & Next Day' Trap

Under typical ESA laws, employees aren't eligible for stat holiday pay if they fail to work on either the last scheduled day before or the next scheduled day

after the holiday. Some employers interpret this exception as requiring the employee to *actually* work the scheduled day immediately before or after the holiday. But that's not the requirement. What the law says is that employees lose eligibility if they fail to work the work day before or after the holiday. Failing to work isn't the same thing as not working. It means not working when they're required or expected to. So the exception wouldn't make a seasonal employee whose last day of work is Dec. 31 ineligible for stat holiday pay for New Year's Day.