

Statutory Holidays Quiz



QUESTION

What are the types of holiday pay in Canada?

ANSWER

- **Statutory Holiday Pay**– This is the pay that an employee is entitled to for being employed during a holiday (whether they work on the holiday or not)
- **Worked Holiday Pay**– Sometimes called “Holiday Premium Pay,” this is pay at an increased hourly rate that an employee earns for working during a holiday

WHY IS IT RIGHT

Canadian Statutory Holiday Rules

Federally regulated employees are entitled to nine paid holidays each year. (New Years, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving, Remembrance Day, Christmas Day and Boxing Day). **There are differences between regulations pertaining to federal employees, provincially regulated employees, part time workers and workers in the private sector.**

If a holiday falls on a non-workday then another day will be observed as the holiday – usually the preceding Friday or the following Monday. The Labour Standards Act leaves it up to the employer to decide, which day will be observed as a holiday so check with your human resources department to be sure. Canada Day is usually observed on July 1st but if that's a Sunday then Monday will be given as a day off. If it's a Saturday then normally Friday becomes the day off.

On national statutory holidays in Canada, also called public holidays, all federal offices including banks, are closed. *Most employees* are entitled by law to take the day off and receive full salary for the day, however, some businesses and essential care workers require employees to work on statutory holidays – in these cases the workers must be compensated financially (1.5x or 2x their regular wages) and in some cases they are also given another day off.

Each province and territory in Canada handles holiday pay a little differently.

QUALIFICATION FOR PUBLIC HOLIDAY ENTITLEMENTS

Generally, employees qualify for the public holiday entitlement unless they:

- Fail without **reasonable cause** to work all of their last regularly scheduled day of work **before** the public holiday or all of their first regularly scheduled day of work **after** the public holiday (this is called the “Last and First Rule”); **OR**
- Fail without reasonable cause to work their entire shift on the public holiday if they agreed to or were required to work that day.

Most employees who fail to qualify for the public holiday entitlement are still entitled to be paid premium pay for every hour they work on the holiday.

Qualified employees can be full time, part time, permanent or on term contract. It does not matter how recently they were hired, or how many days they worked before the public holiday.

Most employees who qualify are entitled to **take these days off work and be paid public holiday pay**.

Alternatively, the employee can **agree electronically or in writing** to work on the holiday and be paid:

- Public holiday pay plus premium pay for all hours worked on the public holiday and **not** receive another day off (called a “substitute” holiday); **OR**
- Be paid their regular wages for all hours worked on the public holiday **and** receive another substitute holiday for which they must be paid public holiday pay.

Some employees may be required to work on a public holiday. While most employees are eligible for the public holiday entitlement, some employees work in jobs that are not covered by the public holiday provisions of the Employment Standards Act (ESA).

The “last and first rule”

The “last regularly scheduled day of work before the public holiday” and the “first regularly scheduled day of work after the public holiday” do not have to be the days right before and right after the holiday.

For example, an employee might not be scheduled to work the day right before or after the holiday. As long as the employee works all of their last regularly scheduled shift before the holiday and all of the first one after it, or has reasonable cause for not working either of those days, they meet this qualifying criterion.

Reasonable cause – Definition

An employee is generally considered to have “reasonable cause” for missing work when something beyond their control prevents the employee from working. Employees are responsible for showing that they had reasonable cause for staying away from work. If they can do so, they still qualify for public holiday entitlements.

CALCULATION FORMULA – PUBLIC HOLIDAY PAY

The formula for calculating the amount of public holiday pay to which an employee is entitled to will depend on when the public holiday occurred.

The amount of public holiday pay to which an employee is entitled is all of the **regular wages earned** by the employee in the four work weeks before the work week with the public holiday **plus** all of the **vacation pay payable** to the employee with respect to the four work weeks before the work week with the public holiday, **divided by 20**.

If the public holiday occurs between January 1, 2018 and June 30, 2018, the amount of public holiday pay to which an employee is entitled is all of the regular wages earned by the employee in the pay period before the public holiday, divided by the number of days the employee worked in that period.

Different pay periods are used if either:

- a. The employee was on a sick, family responsibility or bereavement leave, on vacation or both for the entire pay period before the public holiday, or
- b. The employee was not employed during the pay period before the public holiday.

WHAT ARE “WAGES”

Regular Wages does not include:

- Overtime pay
- Vacation pay
- Public holidays
- Premium pay
- Domestic or sexual violence leave pay
- Termination pay
- Severance or termination of assignment pay payable to an employee.

WHY IS EVERYTHING ELSE WRONG

EMPLOYEES NOT COVERED RELATING TO GENERAL HOLIDAYS AND GENERAL HOLIDAY PAY

- Employees covered by other Acts (for example, lawyers, academic staff);
- Salespersons of automobiles, trucks, buses, farm machinery, road construction equipment, heavy-duty equipment, mobile homes, or residential homes;
- Salespersons who solicit orders, principally outside of the employer's place of business, who are fully or partly paid by commission (this does not apply to route salespersons);
- Licensed salespersons of real estate, insurance (when paid entirely by commission), and securities;
- Salespersons for licensed direct sellers over the age of 16;
- Extras in a video or film production;
- Instructors or counsellors at a non-profit educational or recreational camp for children or handicapped persons or operated for religious purposes.

OTHER EXEMPTIONS

Construction

Because of the nature of the construction industry, you generally are not entitled to a general holiday off with pay. However, special rules ensure that construction workers are compensated for general holidays. Full-time and part-time construction workers are entitled to general holiday pay equal to 3.6 percent of an employee's wage. This can be paid to the employee annually, on termination, or with each pay cheque.

GENERAL

Vacation time falling in general holiday.

- **You are entitled to be paid for general holidays.**
- Your boss does not have to pay you for the holiday if you are away from the job without permission on the last working day before or the first working day after the holiday.

For example: you go away for Family Day long weekend and do not get back in time to go to work on Tuesday. You did not phone in to get your boss' permission about being absent for work on Tuesday. Your boss does not have to pay you for Family Day.

Did not show up for work on a holiday. Do you get paid?

- Your boss does not have to pay you if you do not work on a holiday when you have been asked or scheduled to do so.

Part-time work. Do you get?

- As long as you are covered by the Employment Standards Code and qualify for general holiday pay (you have worked at least 30 days in the previous 12 months before the general holiday), you will be entitled to general holiday pay.

Commission pay and work on a general holiday. Is these payment on the holiday?

- If you are paid entirely by commission, your pay for a general holiday (wages plus time and a half) is calculated based on the current minimum wage rates. If you are paid partly by commission and partly by salary, your pay for a general holiday is based upon whatever is the higher – the salary part of your earnings or the current minimum wage.

Holiday that does not fall on a normal workday. Do you get paid for working on that holiday?

- If there's a holiday that does not fall on a normal workday for you and you work on that holiday, you are entitled to 1.5 times your regular wage rate for hours worked.

For example: You normally work Monday to Thursday every week. Your boss asks you to work on Good Friday so you are entitled to 1.5 times your regular wage rate for hours worked.

A holiday that does not fall on a normal workday. Do there payment for working

on that holiday?

- If there's a holiday that does not fall on a normal workday for you and you do not work on that holiday, you are not entitled to any holiday pay.

For example: You normally work Tuesday to Friday every week. You do not work on Easter Monday so you are not entitled to any holiday pay.

With an irregular work schedule, how do you know whether a holiday is a "normal" work day?

- Whether a holiday falls on a "normal" work day is based on whether the holiday is on a weekday that you have worked 5 of the previous 9 weeks.

For example: You have an irregular work schedule but in the past 5 out of 9 weeks, you have worked on Monday. An upcoming Remembrance Day is on a Monday so it would then be considered a "normal" work day for you.