

# Seasonal Employees: Beware of Statutory Holiday Pay SNAFUs

written by Rory Lodge | January 5, 2017



Company ABC takes on temporary employees for the holiday season and lets them go just before Christmas. Of course, upon termination, these seasonal employees get all the payments and benefits to which they're entitled under the law.

Or do they?

If the termination package doesn't include statutory holiday pay for Christmas Day, you might be guilty of an employment standards infraction. This is true even though their employment ended before Christmas.

## **Eligibility of Seasonal Employees for Statutory Holiday Pay**

In some parts of Canada, eligibility for stat holiday pay is based on previous service. In Alberta, for example, employees are eligible for stat holiday pay if they've worked at least 30 days in the 12 months before the holiday.

In other jurisdictions, eligibility for stat holiday pay 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. So, 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 2 Traps to Avoid**

These eligibility rules can result in statutory holiday pay SNAFUs.

### **Trap 1: The 'He/She No Longer Works Here' Trap**

This very common trap occurs when a seasonal employee's employment ends just *before* a holiday. Since the employee no longer works for you on the date of the holiday, you naturally assume that she doesn't qualify for statutory holiday pay for the day. But this assumption isn't always accurate. Eligibility for statutory holiday pay is based not on current employment status but 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.

### **Trap 2: The 'Didn't Work Previous & Next Day' Trap**

Under typical ESA laws, employees aren't eligible for statutory holiday pay if they fail to work on either the last scheduled day before or the next scheduled day after the holiday. Some employers think this means that the employee must *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 statutory holiday pay for New Year's Day.