

# Statutory Holiday Compliance Game Plan

written by Tina Tsonis | December 15, 2023



5 steps to ensure accurate calculation of stat holiday pay.

Ebenezer Scrooge is a relic from a time where employers were free to force their workers to come to work on Christmas. Thanks to modern employment standards laws, employees get Christmas and other important public holidays off and with pay. While that's a happy ending for the Bob Cratchits of the world, it also creates major payroll challenges for their employers. Stat holiday rules are complicated and confusing and it's easy for companies to slip up, especially in calculating how much pay an employee is entitled to receive for the day. Here's a 5 step compliance plan to help you avoid mistakes and ensure compliance with stat holiday rules, regardless of where in Canada you operate.

## **Step 1. Determine Which Days Are Stat Holidays**

Depending on jurisdiction, there are about 10 [stat holidays per year](#). Only 5 of these are national holidays recognized in all parts of the country:

- New Year's Day;
- Good Friday (Easter Monday in Québec);
- Canada Day;
- Labour Day; and
- Christmas Day.

The remaining stat holidays are recognized in some provinces but not others. For example, Thanksgiving and Remembrance Day are stat holidays in most but not all jurisdictions. Some stat holidays are recognized in just one jurisdiction, like Discovery Day in Yukon and St. Jean Baptiste Day in Québec. There are also stat holidays that fall on the same day of the year but go by different names, such as the third Monday in February, which is called Family Day in BC, AB, SK, ON and NB, Louis Riel Day in MB, Heritage Day in NS and Islander Day in PEI.

## **Step 2. Determine Date of Each Stat Holiday**

The dates of some stat holidays are the same each year, like Christmas and the new Sept. 30 National Day for Truth and Reconciliation. Others occur on different dates, like Thanksgiving which falls on the second Monday of October. But while identifying the precise date of each holiday is pretty straightforward, you also have to deal

with days that fall on weekends. In addition, 9 jurisdictions allow employers to shift the date of stat holidays, subject to certain restrictions:

- Majority of the affected employees must agree (BC, MB, NS, YT, NT, NU);
- 70% of the affected employees must agree (FED);
- Unionized employees may agree to observe a stat holiday on a different date under a collective agreement (FED, SK, MB, NS, NL, YT, NT, NU); and
- If there's no collective agreement, employer must notify and get the government's consent in advance (SK, NS, NT, NU).

## **Step 3. Determine Employees' Eligibility for the Stat Holiday**

**General rule:** All employees are eligible for stat holidays unless a designated exception applies. (Exception to the exception: In Québec, all employees are eligible for the National Holiday in Québec and none of the exceptions discussed below apply.)

### **Exception 1. Employee Not Employed Long Enough**

In some jurisdictions, employees must be continuously employed for a minimum time to qualify for stat holiday pay. The minimum threshold of continuous employment varies by jurisdiction:

- 30 days before the holiday occurs (FED, BC, PE, NL, YK);
- Any 30 days in the 12 months before the holiday (AB, NT, NU); or
- Any 90 days in the 12 months prior (NB).

### **Exception 2. Employee Didn't Work Minimum Number of Days Before Holiday**

In addition to having the minimum amount of employment, some jurisdictions (including FED, BC, NS, PE) also require employees to work a minimum number of days before the holiday to qualify for holiday pay. For example, in BC, to be eligible for stat holiday pay, an employee must:

- Have been employed for 30 calendar days; **and**
- Have worked or earned wages (like paid vacation days or another stat holiday) on 15 of the 30 days before a stat holiday.

### **Exception 3. Employee Has Disqualifying Absence**

Employees may lose their eligibility for stat holiday pay if they're absent at certain times:

- In AB, MB, ON, QC, NB, NS, PE, NL, YT, NT and NU, employees lose eligibility for not working on the last scheduled, working day before or after the holiday;
- Under FED, AB, MB, ON, NB, NS, PE, NL, YT, NT and NU, law, employees lose their eligibility for holiday pay if they don't work on the holiday itself when they were scheduled or required to; or
- In the 3 territories, employees don't qualify for stat holiday pay if they're on certain types of unpaid leave.

However, absences may not be disqualifying in certain conditions, such as where the employer consents to the absence (AB, QC, NS, PE, NL, YT, NT and NU), the absence is due to illness (MB) or other reasonable cause (ON, QC, NB, PE and NL).

## Step 4. Calculate Pay for Stat Holiday Not Worked

There are 5 different ways to calculate “holiday pay,” i.e., pay for a stat holiday that an employee doesn’t work, depending on jurisdiction and type of pay arrangement:

**Method 1: No Change in Pay:** Holiday pay in some jurisdictions is calculated the same as other pay where employees are paid a fixed pay period amount, e.g., a monthly salary, and that amount doesn’t change for the pay period in which the stat holiday falls. This includes employees whose pay is calculated on a weekly or monthly basis, employees whose regular pay period earnings don’t change, and full-time employees with regular hours whose pay is calculated on a weekly or monthly basis.

**Method 2: Percentage of Earnings:** In some jurisdictions, employees in designated industries get a flat percentage of earnings. Examples:

Jurisdiction Industry		Percentage
BC	Silviculture, Commissioned Car or Truck Sales	3.6% of gross earnings, or 1.036 x a piece rate
AB	Construction	3.6 % of wages other than vacation pay and tips and gratuities
SK	Construction	4% of gross wages, other than overtime and vacation pay
MB	Construction	4% of gross wages, other than overtime

**Method 3: Regular Hours/Wages:** Some jurisdictions provide for holiday pay equal to what employees would normally earn in a regular work day:

- Where employees are paid by time and regular work hours don’t vary by day (FED);
- Where wages and regular hours don’t vary by day (MB);
- Where wages don’t vary by day (NB);
- Where pay is calculated on an other than weekly or monthly basis (NS, PE);
- To employees who work on the holiday (NL);
- Full-time employees working regular hours whose pay is calculated on a daily or hourly basis (YK); and
- Where wages are calculated on the basis of time (NT, NU).

**Method 4: Regular Rate x Average Hours:** In NL, holiday pay is based on average hours worked per day in previous weeks: total worked hours, including overtime, divided by the number of days worked in the prior 3 calendar weeks.

**Method 5: Average of Earnings:** In all other cases, holiday pay is calculated as a daily average, i.e., wages divided by a period of time defined in the jurisdiction’s employment standards law. There are a few twists in calculating daily average for purposes of holiday pay. First, you need to know what counts as “wages.” In addition to regular pay or normal earnings, “wages” include compensation in other forms for work or services rendered. But rules as to what to count as earnings for the daily average vary by jurisdiction.

In addition, once you determine which earnings to include in wages, you must figure out the time period over which to average earnings, based on your jurisdiction:

- Earnings in 20 days actually worked before holiday (FED);
- Earnings in 30 days before holiday (BC, NB);
- Earnings in 4 calendar weeks before holiday (SK);
- Earnings in 4 work weeks before holiday (MB, ON, QC, NT, NU); and

- Earnings in 9 work weeks before holiday (AB).

The final step is to determine how many days to actually count in the time period for purposes of dividing earnings. The 2 options:

- Number of days actually worked (Fed, BC, AB, NB, NT, NU); and
- 20 days (SK, MB, ON, QC).

## Step 5: Calculate Pay for Stat Holiday Worked

**Basic Rule:** Stat holiday pay = actual hours worked at time-and-a-half. Note that the exceptions to an employee's eligibility described above for holiday pay, i.e., pay for holiday not worked, don't apply to employees who actually work on the holiday. In other words, employees are entitled to time-and-a-half for working the holiday even if they wouldn't have been eligible for holiday pay for not working the holiday. Exceptions apply:

- In BC, work exceeding 12 hours on a holiday must be paid at double time, provided that employee is eligible for holiday pay for the day; workers aren't entitled to holiday pay, i.e., pay for taking the day off, paid at straight time;
- In NS, PE and NU, employees are only entitled to time-and-a-half if they're also entitled to holiday pay for the day;
- In AB, the rate of pay for work on the holiday done by employees paid partly or wholly by commission or other incentives = minimum wage or the hourly equivalent of any salary paid, whichever is greater; and
- In ON, there are several exceptions for employees who are required to but don't work the full holiday, depending on whether the employee gets a day off in lieu and/or has reasonable cause not to put in the full day.