The ESA Rights & Benefits of Seasonal Employees

Work and overtime rules for seasonal employees are largely the same as for other employees. In fact, “seasonal employment” and “seasonal employee” are terms that hardly ever appear in employment standards (ESA) laws. But applying those standard rules to seasonal employees does pose payroll challenges. The key question: How much time of service does it take for seasonal employees to accrue the same ESA statutory rights and benefits as other employees regarding statutory holiday pay, unpaid leave and termination notice? Let’s go through each of these issues one by one.

Eligibility for Statutory Holiday Pay

There are no ESA provisions specifically addressing seasonal employees’ entitlement to statutory holiday pay specific to seasonal employees. In other words, seasonal employees have the same statutory holiday pay rights as other employees.

In most jurisdictions, employees must have a minimum amount of service time to be eligible for statutory holiday pay—typically, 30 days of employment with the employer. The catch: In three jurisdictions—PE, NL and YK—the required days of employment must both be continuous *and* fall within the current period of employment. In all other jurisdictions, the required number of days employed for eligibility may fall either:

- At any time before the holiday itself (as in BC or under the federal *Canada Labour Code*); or
- Only in the prior 12 months (as in NB, NT and NU).

Example
Ed works for a fishing resort off the New Brunswick coast that offers only seasonal employment, terminating all staff at the end of the season. He first started working for the resort in 2010. His latest period of employment began on June 20. From January to May of the current year, he worked 105 days.

In New Brunswick, employees are entitled to statutory holiday pay if they’ve been employed at least 90 days in the prior 12 months. Since Ed met that test, he’d have been entitled to statutory holiday pay for Canada Day, July 1, 2018.

Amount of Statutory Holiday Pay

As with eligibility, there are no specific ESA rules governing how much pay a

seasonal employee earns for actually working the statutory holiday. In other words, the key question is whether seasonal employees are *eligible* for statutory holiday pay. If so, they're entitled to the same pay as non-seasonal employees for working the holiday, including premium pay. BC, NS and PE are the jurisdictions where employees not entitled to statutory holiday pay can be paid at straight time for any work on a statutory holiday. In all other jurisdictions, time-and-a-half applies.

Exception: Manitoba is the only jurisdiction that specifically addresses seasonal employees' pay for statutory holidays worked. Under the Manitoba *Employment Standards Code*, seasonal employees may be paid at either time-and-a-half for work on a statutory holiday or given another paid day off work for statutory holidays worked. Many jurisdictions have similar rules not for seasonal employees but for all employees (seasonal and non-seasonal) at specific types of *workplaces*, such as hotels, motels, tourist resorts, etc.

ESA-Required Leaves

In most jurisdictions, employees must have some minimum amount of employment time to qualify for parental, maternity, compassionate care and other forms of ESA-guaranteed leave. Some provinces make exceptions for particular kinds of leave. BC is the only jurisdiction where employees qualify for all forms of leave regardless of how long they've been employed with the company.

However, as with statutory holiday pay eligibility, none of the required lengths of employment for leave are specific to seasonal employees. Instead the key question is whether the length of employment required must be *continuous* or whether it can constitute a number of prior periods of employment. For example, in Ontario, all lengths of required employment for leave must be continuous. By contrast, in Manitoba, an employee with at least 90 days' service is entitled to long term leave for serious illness. There's nothing in the Manitoba legislation that says all of these 90 days must be continuous or fall into a single period of employment.

Notice of Individual & Group Termination

In contrast to statutory holidays and protected leaves, ESA laws do include notice requirements for individual and group termination that are specific to seasonal employees. Patterns:

- In BC, AB and NB, *individual* termination notice provisions don't apply to seasonal employees;
- In QC and under the *Canada Labour Code*, *group* termination provisions don't apply to seasonal employees; and
- In YK and NU, seasonal employees aren't entitled to notice of termination if their employment is less than 6 months or 90 days per year, respectively;
- In Manitoba, where employees are subject to seasonal termination, the periods of active service, together with the gaps between seasonal employments are all considered a single period of employment for purposes of qualifying for notice or wages in lieu of notice. Result: Seasonal employees may have greater entitlement to notice of termination.

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