

Unused Vacation Time – Ask The Expert



Policies surrounding unused and accrued vacation time vary from workplace to workplace. Understanding your rights as an employer and your employee's rights when it comes to vacation accrual is the framework for creating a sound vacation time policy.

Some employers have employee vacation time reset at the beginning of every new fiscal year, while some let vacation time accrue over months and years. But what are your obligations as an employer in respects to creating clear policies that address vacation pay and vacation time accrual?

QUESTION

We are wondering what our obligations with respect to unused accrued vacation are. Can we have a policy that any unused accrued vacation pay will only be paid out to the individual when they leave their employment? Does an employee have the right to request that a portion of their vacation pay accrual be paid out to them at any time?

ANSWER

Vacation pay is governed by both federal and provincial employment laws, and the specific requirements can vary depending on your jurisdiction. However, I can provide general guidance based on Canadian employment standards.

It is generally legal for employers to have a policy that unused accrued vacation pay is paid out only when an employee leaves their employment. This type of policy is common and acceptable as long as it aligns with the relevant labour laws in your province. However, the specifics may vary depending on the province, so it is essential to ensure that the policy does not contravene any local employment standards. For instance, under the Canada Labour Code (which applies to federally regulated employers), employees must receive vacation pay at least once a year, either taken as vacation time or paid out. Similarly, provincial employment standards may have requirements about how vacation pay should be accrued, when it should be paid, and whether it can be cashed out while employed.

Employees do not automatically have the right to request a payout of a portion of their vacation pay while they are still employed unless otherwise stated by the employer or applicable legislation. In most provinces, vacation pay is intended to be taken as time off, and the general expectation is that employees should take their vacation leave. However, if employees request to cash out their vacation time before

leaving employment, it is usually at the discretion of the employer. Employers can choose to allow the payout, but they are not obligated by law to do so unless specific provisions are in place. For example, if an employee has accrued 30 days of vacation pay, the employee may request to have part of that paid out (e.g., 10 days), but the employer is not required to approve such a request unless there is a policy or contractual agreement that allows it. As mentioned, if there is no policy allowing vacation pay cash-out during employment, the employer has the discretion to deny the request.

EXPLANATION

The basic legal framework regarding vacation pay in Canada is as follows:

Federal jurisdiction: Under the Canada Labour Code, employees are entitled to two weeks of vacation after completing one year of employment. Employees **must** be given the opportunity to take their vacation (or paid out) at least once per year.

Provincial jurisdiction: Each province has its own set of laws about vacation entitlements, but they typically provide a minimum of two to three weeks of vacation per year, with a 4% to 6% payout of earned wages for vacation pay. In most cases, vacation pay can either be taken as time off or paid out when the employment ends. But unless otherwise agreed to or outlined by an employment contract or policy, employees generally cannot demand payment of unused vacation pay until they leave the company.

Employers like you are within their rights to determine their vacation pay accrual and payout policies, as long as these policies comply with employment standards in their jurisdiction. Employers have the right to set the following:

- The timing of when vacation **pay** is paid out (i.e., whether it is paid out upon termination or if employees are allowed to cash out vacation pay while still employed).
- Whether employees are required to take vacation or if they can accumulate it over time (some offices have accrued vacation days carry over into the following year, while others have a use it or lose it policy, meaning the vacation days reset every fiscal year for everyone no matter how little or how much was used).
- Whether an employee can request a payout of accrued vacation pay or must take time off instead.

Therefore, it is best to abide by the labour laws of your specific jurisdiction, speak with your team and your HR director about how your company would like to approach vacation day accrual and vacation payout, and you may even want to consult legal counsel to dot all i's and cross all t's to avoid any complications or frustrations down the road. You may set your policies on how vacation pay is managed and cashed out, but you cannot violate the statutory minimum vacation entitlement required by law.

You should ensure that your vacation pay policy complies with the specific provincial or federal employment standards applicable to your business.