Vacations Quiz



Can employers force employees to take vacations at a certain time?

1. No, an employee has the right to pick when they want their vacation to start.
2. No, an employee has the right to pick when they want their vacation to start, but an employer can refuse the start time.
3. Yes

Answer

Yes, generally, they can.

A lot of employers don't know this but there are two entitlements when it comes to vacation under the legislation: you have an entitlement to vacation pay, and you have an entitlement to vacation time and, generally, an employer can 'force' vacation time.

An employer can look at the business needs and say, 'We need you to take vacation at a certain time during the summer' or 'We've already got three people scheduled to be off, you've got to work around that.' Employers do have a lot of sway when it comes to picking and choosing when their people can take time off.

More information of relevance about vacations

Basic rules

- Employers must provide an annual vacation to most employees based on length of service to make sure they can rest from work without loss of income.
- Employers must give vacation time, and employees must take the vacation to which they're entitled.
- Employees must work for one year before they're entitled to vacation time
- Employees are entitled to these minimum paid vacations:
    - 2 weeks with pay after each of the first 4 years of employment
    - 3 weeks with pay after 5 consecutive years of employment

Employee eligibility

BASIC ELIGIBILITY

Most employees are entitled to vacation time and vacation pay after being employed for one year.

However, upon employee request and employer’s acceptance, an employee can take vacation with pay before completing a full 12 months of employment.

EXEMPTIONS FROM THE MINIMUM STANDARDS FOR VACATIONS AND VACATION PAY

Some employees who work in specified industries and professions aren’t eligible for annual vacations and vacation pay, including:

- licensed or registered salespersons of real estate and securities
- commission salespersons who solicit orders principally outside the place of business of their employer; route salespersons are not exempt
- extras in a film or video production
- licensed insurance salespersons who are paid entirely by commission income
- teachers

EXCEPTIONS TO THE MINIMUM STANDARDS FOR VACATIONS AND VACATION PAY

Construction workers

Employers aren’t required to give their construction employees vacation time. However, construction employees must be paid vacation pay of at least 6% of their wages.

Vacation time

EMPLOYEE ENTITLEMENTS

Employers must give vacation time and employees must take the vacation to which they’re entitled. Where employees have already been paid vacation pay, their time off will be without additional pay.

HOW VACATION TIME IS CALCULATED

The minimum vacation pay and vacation time is accrued during 12-month periods as follows:

Length of employment	**Number of weeks’ annual vacation**
Less than 1 year	Not entitled unless stated in contract
1 to 5 years	2 weeks
More than 5 years	3 weeks

TIMING OF VACATIONS

Employees must take their vacation time sometime in the 12 months after they earn it.

LENGTH OF VACATIONS

An employer is required to provide annual vacations to employees. Employers are to provide vacations in one unbroken period, however, an employee can request, in writing, for the vacation to be broken into shorter periods and if the request can be accommodated, the employer should provide this.

Vacation time is allowed to be taken in half-day increments if agreed to by the employer and employee.

DISAGREEMENTS ABOUT VACATION DATES

Employers are allowed to deny requests for vacation at specific times due to operational reasons. If the employer and employee can’t agree on the employee’s vacation time, the employer can decide when it will be taken. However, the employer must give the employee at least 2 weeks’ notice in writing of the vacation start date.

WHEN A GENERAL HOLIDAY FALLS DURING A VACATION

If qualified for the general holiday, the employee can take off either the first scheduled working day after their vacation; or, in agreement with the employer, they can take another day that would otherwise have been a work day, before their next annual vacation.

Vacation pay

EMPLOYEE ENTITLEMENTS

Vacation pay is based on an employee’s wages paid for work (not other earnings) at the time the vacation is taken.

For the purpose of calculating vacation pay, the definition of wages doesn’t include:

- overtime pay
- general holiday pay
- termination pay
- an unearned bonus
- tips and gratuities, or
- expenses and allowances

How vacation pay is calculated

FOR EMPLOYEES PAID MONTHLY

For employees paid by monthly salary, the employer must pay the employee’s regular rate of pay for the time of their vacation.

Each week of vacation pay is calculated by dividing their monthly wage by 4.3333 (which is the average number of weeks in a month).

FOR EMPLOYEES PAID OTHER THAN MONTHLY

For employees who are paid hourly, weekly, or by commission or other incentive pay, the employer must pay:

Length of employment	**Number of weeks’ annual vacation**	**% of wages**
Less than 1 year	Not entitled unless stated in contract	4% of wages
1 to 4 years	2 weeks	4% of yearly wages
5 years or more	3 weeks	6% of yearly wages

Change of benefits

INCREASING VACATION PAY

If the employer agrees to provide vacation pay greater than required by the Code, Employment Standards can enforce this.

REDUCING VACATION PAY

If the employer intends to reduce an employee's vacation pay, they must notify the employee before the start of the pay period in which the reduction takes effect. However, the rate must always be at least the minimum required by the legislated standards. This can only be applied on future vacation pay to be accrued and can't be applied retroactively on vacation pay earned, but not yet paid to the employee.

An employee's annual vacation period can also be reduced if that employee is absent from work. The reduction in vacation period may be made in proportion to the number of days the employee was or would normally have been scheduled to work, but did not.

When vacation pay is paid out

When an employer pays an employee vacation pay each pay period, they must pay it:

- at least once a month,
- on each pay period, or
- at least one day before the employee's vacation if vacation pay has not previously been paid out, and the employee requests it, and
- no later than the next regular pay day after the vacation begins

An employer must provide an employee with a statement of earnings that includes vacation pay at the end of each pay period.

Anniversary date

Employers can establish a common anniversary date for employees, for vacation purposes. However, an employee must not lose any entitlement to vacation time or pay as a result of the introduction of a common anniversary date.

Change of ownership

When a business changes ownership, it doesn't affect an employee's vacation benefit entitlement. The previous owner must pay all vacation pay accumulated up to the date of transfer of ownership, and the new owner must grant any vacation time accumulated.

Vacation pay owed at termination

BEFORE 12 MONTHS OF EMPLOYMENT

If employment terminates before an employee completes 12 months of employment, the employer must pay 4% of the employee's wages earned during employment.

AFTER 12 MONTHS OF EMPLOYMENT

If employment terminates after an employee becomes entitled to annual vacation, the employer must pay the unpaid vacation entitlements for the previous year, plus:

- for an employee who's entitled to 2 weeks' vacation:
    - at least 4% of the employee's wages for the period from the date they last became entitled to an annual vacation to employment termination date
- for an employee who is entitled to 3 weeks' vacation:
    - at least 6% of the employee's wages for the period from the date they last became entitled to an annual vacation to employment termination date

Timing of payout

- Employers are prohibited from requiring employees to use vacation entitlements during the termination notice period, unless agreed to by both parties.
- Where proper termination notice is given, vacation pay must be paid within 3 days of termination.
- Where neither the employer nor employee have to give termination notice, vacation pay must be paid within 10 days of termination.
- If an employee quits without giving proper termination notice, the employer must pay vacation pay to the employee within 10 days after the date on which the notice would have expired if it had been given.

It's no easy task keeping track of the various federal, state, and even local laws and ordinances governing employee leave. When drafting a leave policy for your workplace, it is imperative that you understand these laws and how they interact with one another. For instance, some local municipalities (such as San Francisco) require employers to offer limited paid sick time. And even though employers are not required to offer their employees paid vacations, those that do must treat it as compensation and pay out any unused vacation time when employees are terminated or laid off.

Below are some of the most frequently asked questions about employee leave policies (and their answers).

Do I get vacations and vacation pay if I work part-time?

Yes, as long as you are eligible for vacations and vacation pay.

What is the minimum vacation time that I am entitled to as an employee?

Under the Employment Standards Code, you are entitled to the following:

- minimum of 2 weeks of vacation each year after 12 months of employment;
- Minimum of 3 weeks of vacation each year after 5 years of employment.

Your employer can always agree to give you more than the minimum.

When can I take my vacation?

You must take your vacation within 12 months of becoming entitled to it. You can take your vacation in pieces (a few days here and there) if your employer agrees. Each vacation period must be at least half a day long. For example, if you earned 2 weeks of vacation between January 1, 2018 and December 31, 2018, you must take 2 weeks of vacation sometime in 2019.

If you and your employer cannot agree when you can take your vacation, your employer has to give you at least 2 weeks' written notice of the start date of your annual vacation. If this happens, you must take your vacation when your employer says so.

How does vacation pay work?

If you are paid a salary each month, your employer continues to pay your salary while you are on vacation. (Technically speaking, vacation pay for each week of vacation is equal to your monthly salary divided by 4.33 – the average number of weeks per month.)

If you are not paid monthly (such as if you are paid hourly, weekly or on commission), vacation pay is equal to:

- 4% of your annual wages if you are entitled to 2 weeks' vacation;
- 6% of your annual wages if you are entitled to 3 weeks' vacation.

Vacation pay is based on wages for the year the vacation time was earned. For example, if your vacation year is from January 1st until December 31st and you are taking a vacation in 2019, your vacation pay will be based on your wages between January 1, 2018 and December 31, 2018.

Is vacation pay based on my total earnings?

Vacation pay is based on your "wages".

Wages include:

- salary;
- hourly pay;
- money paid for time off instead of overtime pay;
- commission or other incentive-based pay.

Wages do not include:

- overtime pay;
- general holiday pay;
- vacation pay (except that vacation pay is added to wages in order to calculate the next year's vacation pay);
- termination pay;
- bonuses or gifts not tied to performance;
- expenses or allowances; and
- tips or other gratuities.

Can I get my vacation pay before my vacation?

Your employer does not have to pay your vacation pay until the next regular payday after your vacation begins. If you want it sooner, you can ask your employer to pay your vacation pay at least one day before the vacation starts. If you make this request, your employer must comply with it.

Can my employer reduce my vacation and vacation pay if I don't show up for work?

Yes. If you were scheduled to work but did not, your employer can reduce your vacation and vacation pay in proportion to the number of days you did not work.

Does my employer have to pay out vacation pay if my employment ends?

Yes. Your employer has to pay you vacation pay that you have earned.

Can my employer change my vacation pay without telling me?

No. Two things:

1. Your employer cannot pay you less than the vacation pays set out in the Employment Standards Code.
2. If your employer is paying you more than the minimum, your employer can only reduce the rate if they give you notice of the reduction before the start of the pay period where the reduction takes effect.