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Guide to the Nova Scotia Labour Standards Code

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Department of Labour, Skills and Immigration
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Purpose of this Guide

The purpose of this Guide is to help people understand how Nova Scotia Labour Standards legislation applies to employment relationships, and the role of the Nova Scotia Labour Standards Division in enforcing the legislation.

The Guide provides information on many Labour Standards topics, as follows:

Important Note:

This Guide deals only with Nova Scotia Labour Standards legislation. There are other laws that might apply to employment relationships such as Occupational Health and Safety (OHS) legislation and Human Rights legislation. Also, people might have recourse through the courts to deal with workplace issues. For example, an employee might file a court claim against their employer seeking damages for wrongful dismissal. Or an employer might file a court claim against an employee to recover a debt the employee owes the employer.

Introduction to Labour Standards

Labour Standards Division

The Labour Standards Division administers provincial Labour Standards legislation by providing awareness sessions and presentations to employers, employees and recruiters; investigating and resolving Labour Standards complaints; auditing pay and recruitment records; and answering inquiries from the public by phone, email and in person.

What the Legislation Does

Labour Standards legislation establishes the minimum employment rules in Nova Scotia that employers and employees must follow. It includes rules specific to recruiting workers and hiring foreign workers.

These rules also include minimum standards for wages, deductions from pay, vacation pay, overtime pay, holidays with pay, leaves, ending employment, and other things. It is not legal for employers and employees to agree to terms, conditions, and benefits that offer less than the legislation offers. However, employers can give their employees greater benefits than those in the legislation.

Employees, employers and recruiters have rights and responsibilities under these rules. A person who feels they have not received a benefit under the legislation can contact Labour Standards about filing a Labour Standards complaint (see also section on *Labour Standards Complaint Process*).

Generally, Labour Standards legislation applies to:

- employers whose business is regulated by the provincial government
- employees who work for an employer regardless of the number of hours of work, e.g., permanent, full time, part time, casual, seasonal
- recruiters who assist individuals, including foreign workers, in finding work in Nova Scotia and the individuals they assist

However, not all employees are covered by all areas of the legislation. The rules can be complicated. If you have any questions, contact the Labour Standards Division.

The legislation does not apply to:

- employers whose business is regulated by the federal government
- people who are self-employed or an independent contractor
- employees who do domestic service for or give personal care to an immediate family member in a private home and are working for the householder (foreign worker protections *do* apply to this group)

- employees who do domestic service for or give personal care in a private home and are working for the householder for 24 hours or less per week (foreign worker protections *do* apply to this group)

As well, we do not process complaints from:

- unionized employees who have access to a grievance process to get what they are entitled to under their collective agreement

Discrimination under the *Labour Standards Code*

It is against the law to fire, layoff, or discriminate in any way against an employee because they:

- made a complaint, or assisted another employee in making a complaint, under the *Labour Standards Code*
- were about to make an inquiry about their rights or another employee's rights under the *Labour Standards Code*
- initiated an inquiry, investigation or proceeding, or assisted another employee in initiating an inquiry, investigation or proceeding under the *Labour Standards Code*
- testified or were going to testify (or if the employer believes that person is going to testify) in any investigation or hearing that takes place under the *Labour Standards Code*
- disclosed or were about to disclose information that is required under the *Labour Standards Code*
- discussed or disclosed information in the workplace about their wages or the wages of another employee, as permitted by the *Labour Standards Code*
- took or said they were intending to take (or if the employer believes the employee will take) a leave of absence that an employee may take under the *Labour Standards Code*
- exercised their right to refuse to work on Sundays or Retail Closing Days
- need to have their wages garnished

Six Months Limitation Period

Complaints must be filed with the Nova Scotia Labour Standards Division within six months of a violation of the Nova Scotia *Labour Standards Code* taking place for the Division to have the authority to address the complaint. For example, an employee begins a new job and regularly works overtime hours without receiving overtime pay. Eleven months later, the employee ends their employment and files a complaint with Labour Standards claiming overtime pay dating back to the beginning of their employment. If Labour Standards finds the employer violated the overtime pay provisions of the Code, Labour Standards can only order the employer to pay overtime pay owed within the 6-month period preceding the date the employee filed their complaint.

Protecting Pay

The *Labour Standards Code* says that employees must be paid for their work. In most cases they must earn a minimum hourly rate as set by the minimum wage orders. There are also strict rules about the types of deductions employers can make from employees' pay (see also sections on *Minimum Wage* and *Deductions from Pay*).

Types of Pay

Pay includes wages (e.g., hourly, salary, commissions, piecework, holiday pay, overtime pay and non-discretionary bonuses) and vacation pay. Pay does not include tips and gratuities. Tips and gratuities are not protected by the *Labour Standards Code*.

Frequency of Pay

The *Labour Standards Code* says that:

- employees must be paid at least two times each month
- employees must be paid within five working days after the end of the pay period
- if an employee is not at work when they would normally be paid, or is not paid for any other reason, then that employee must be paid when they ask for it at any time during regular working hours

Forms of Payment

Employers must pay employees by cheque, cash, money order, email transfer or direct deposit.

Equal Pay for Equal Work

An employer cannot pay an employee — who is doing **substantially the same work** as another employee — a different rate of pay based on gender. This rule applies not only to employees who identify as female or male but also employees who do not identify exclusively, or at all, with the gender binary of female or male. Employers may pay different rates of pay only if the difference in pay between employees of different genders is based on:

- a seniority system that pays more experienced employees a higher rate of pay than less experienced employees
- a merit pay system that pays employees more based on a system that objectively measures employees' performance
- a system that pays employees more based on the quality and/or quantity of the work they produce
- a factor other than gender

For example, an employer can hire employees of different genders to do the same job and offer them a different rate of pay based on their level of education and previous work experience.

Another example, employees of different genders doing the same job could be paid a different rate of pay because one of the employees works the night shift and the other does not.

If employees have not been paid equal pay for equal work, employers must raise wages, not lower them, to achieve equal pay.

The equal pay rules in the *Labour Standards Code* are different from pay equity or equal pay for work of equal value. For questions about pay equity, contact the Nova Scotia Human Rights Commission.

Equal Pay: Wage History and Pay Secrecy

Employers sometimes ask job applicants about their wage history to determine the applicant's value to the business and give the employer a sense of what compensation the job applicant might be expecting. This practice can perpetuate unfairness for individuals whose pay history reflects unequal pay based on their gender. To address this issue:

- Employers are not allowed to ask about the wage history of a job applicant or employee. Individuals can, however, voluntarily choose to provide an employer with confirmation of their wage history by providing the employer with written authorization to obtain the information from the individual's current or former employer.
- Employers are not allowed to require that a job applicant's wage history meet criteria set by the employer such as a minimum or maximum level.
- Recruiters hired by or operating under a contract with an employer to help the employer fill a position must also follow these rules.

Some employers forbid employees from discussing their pay with others in the workplace. Pay secrecy rules can prevent employees from identifying situations of unequal pay. To address this issue:

- Employers are not allowed to keep employees from discussing or disclosing information in the workplace about their own wages or the wages of other employees.
- Employers are not allowed to discipline, fire or discriminate in any other manner against employees because they have discussed or disclosed information in the workplace about their own wages or those of other employees as permitted by the *Labour Standards Code*.

Meetings and Hours

Employees are required to be paid for time they spend doing work at the employer's request. Examples: If an employee is required to attend a work-related meeting, that time may be considered work. If an employer requires an employee to stay beyond the scheduled shift to conclude business (such as to close cash, clean, etc.) that may also be considered work.

Minimum Wage

There are three minimum wage orders:

- Minimum Wage Order (General)
- Minimum Wage Order (Construction and Property Maintenance)
- Minimum Wage Order (Logging and Forest Operations)

This section deals with the Minimum Wage Order (General). There are separate minimum wage orders for employees employed in construction and property maintenance as well as those employed in logging and forest operations. For information on those minimum wage orders, contact Labour Standards.

Minimum Wage Order (General)

The Minimum Wage Order (General) sets the minimum wage rate, which is the least amount of money an employer must pay an employee for each hour of work. It also sets employment standards for the following:

- overtime, for some groups
- being called into work at times other than scheduled working hours
- employees waiting for work on the work premises
- piecework
- deductions for board, lodging, and meals
- deductions for uniforms

Minimum Wage Rate

As of April 1, 2024, employers must pay employees at least $15.20 per hour.

Overtime

The Minimum Wage Order (General) contains overtime requirements for some groups. Overtime is also addressed in the *Labour Standards Code* and in the Construction and Property Maintenance Minimum Wage Order (see *Overtime* section of this document).

Call In

If an employee is called in to work outside the employee's regular work hours, the employer must pay the employee for at least three hours of work at the minimum wage rate, that is, at least $45.60 ($15.20 x 3 hours). This is true even if the employee works only one or two hours. For example, if the employee makes $17 per hour and the employee is called in for one hour's work, the employer must pay the employee at least $45.60.

Waiting for Work

Employees must be paid at least minimum wage for all time spent at the workplace, at the request of the employer, waiting to perform work. For example, an employee who works at a restaurant is told by the supervisor to be at work by 8:00 am. The employee arrives at work at 8:00 am but does not actually start performing work until 9:00 am when the restaurant gets busy. The employee works serving tables from 9:00 am to 1:00 pm and then leaves for the day. In this situation, the employee would be entitled to pay at the minimum wage rate for the time the employee spent waiting for work from 8:00 am to 9:00 am. The employee would be entitled to their regular rate of pay for those hours worked between 9:00 am and 1:00 pm.

Piecework

Many employers in Nova Scotia pay employees by the amount they produce and not by the hour. This arrangement is called "piecework." The Minimum Wage Order (General) says that an employer cannot pay an employee less for piecework than that employee would have earned at the minimum wage for the number of hours worked. For example, an employee is paid $9 for each hat the employee sews. During a one-week period the employee produces 40 hats. The employee is entitled to be paid: $9 per hat x 40 hats, or $360. To produce the 40 hats, the employee worked 30 hours. At the minimum wage the employee would have earned $456 ($15.20 x 30 hours of work). The employee is entitled to be paid at least the same as if the employee was being paid the minimum wage for each hour worked. The employee is, therefore, owed an additional $96 ($456 -$360).

Note this rule does not apply to employees employed on a farm whose work is directly related to harvesting fruit, vegetables, and tobacco.

Board and Lodging

The Minimum Wage Order (General) tells employers how much they can take from an employee’s minimum wage for board and lodging the employer provides. These amounts are as follows:

For board and lodging for each week: $68.20

For board only for each week: $55.55

For lodging only for each week: $15.45

For a single meal: $3.65

Note, an employer cannot charge an employee for a meal not received

For employees paid more than the minimum wage, the deductions could be larger in total than the above amounts, but they must not bring the employee below the minimum wage by more than the above amounts.

Deductions for Uniforms

If an employer requires employees to wear uniforms, aprons, or smocks, the employer may not take the cost of the uniform from the employees' wages if doing so will take their hourly rate below the minimum wage. For example, if an employee works 30 hours each week earning $15.50 per hour then the employee earns $465 ($15.50 x 30) each week. If the employer takes $25 off the weekly pay for a uniform, then the employee will have earned $440 that week, or $14.67 per hour (440 ÷ 30). Since $14.67 per hour is below the minimum wage, the employer cannot take that much from the employee's wages for the cost of the uniform.

The employer may take from the employee’s wages the cost of dry cleaning a uniform that is made of wool or a heavy material. The employer may do this even if the employee’s wages then fall below minimum wage.

Employees Not Covered by the Rules

The minimum wage rules do not apply to the following employees:

- certain farm employees
- apprentices employed under the terms of an apprenticeship agreement under the Apprenticeship and Trades Qualifications Act (see NS Apprenticeship Agency)
- anyone receiving training under government sponsored and government approved plans
- anyone employed at a non-profit playground or summer camp
- real estate and car salespeople
- commissioned salespeople who work outside the employer’s premises, but not those on established routes
- insurance agents licensed under the Insurance Act
- employees who work on a fishing boat
- employees who fall under the minimum wage orders concerning Logging and Forest Operations and Construction and Property Maintenance
- athletes while engaged in activities related to their athletic endeavour
- other workers: see page 4-5

Deductions from Pay

Employers make deductions from pay for various reasons. Often these deductions are lawful, but sometimes they are not.

Lawful Deductions

Lawful deductions include:

- statutory deductions (income tax, CPP, EI)
- court ordered deductions (for example, garnishment)
- those that provide a benefit to employees (for example, health plans)
- charges for board and lodging as authorized by the Minimum Wage Orders
- recovery of pay advances, overpayments
- deductions for employee purchases from the employer's business on account, if there is a clear agreement between the employee and the employer that these can be deducted
- deductions for dry cleaning of woolen or other heavy material uniforms

These deductions can be made even if they bring the employee's wages below the minimum wage.

Other Deductions

Some employers make deductions from employees' pay for losses, shortages, damage, etc. Also, some employers make deductions for employee debts that are not for purchases on account. These deductions:

- must not take the employee's gross wages below minimum wage
- must be authorized by a clear agreement between the employer and the employee (deductions are authorized by the employee when there is a written agreement or when the employee has acted in a way that shows the employee accepts the deduction - we recommend that employers use written authorizations for all such deductions)

If the deduction is for losses incurred while the employee is working, it must be supported by a written authorization by the employee. The authorization should be made in advance, ideally when the employee is hired. Authorizations made after the loss occurs will be open to challenge. The authorization should specify the kind and amount of deductions that will be made. It should be dated and signed by the employee. If the deduction is for losses caused by customers leaving the employer's business without paying for goods or services, the employer must be able to show that the loss is the fault of the employee.

Recovery of Recruitment Costs

Individuals who recruit workers for employment in Nova Scotia cannot charge the workers, including foreign workers, a fee for recruitment related services. Employers cannot make deductions, directly or indirectly, from employees' pay to cover the costs of recruiting.

Vacation Time and Vacation Pay

The *Labour Standards Code* says that employers must give employees both vacation time and vacation pay.

Vacation Time

Earning Vacation Time

Employers must give employees vacation time of two weeks after each period of 12 months of work and must give the vacation time within 10 months following the 12-month earning period. In their ninth year of service (having completed 8 years), the employee must receive three weeks' vacation time.

Taking Vacation Time

Employers decide when employees will take their vacation time. Employers must tell employees when their vacation will begin at least one week before it begins. Many employers let their employees choose when to take vacation time; however, the employer has the final say.

Employees who work full time must take vacation time. Employees who work less than 90 percent of the regular working hours during the 12 months when they earned vacation can give up vacation time and just collect their vacation pay (see below for information on vacation pay). When an employee tells an employer in writing that the employee will give up vacation time, the employer must pay the employee vacation pay no later than one month after the date the 12 month earning period ends.

Vacation Time May Be Broken

If the employer and employee agree, the vacation time may be broken into two or more vacation periods, if the employee receives a full two weeks' vacation (or three weeks in their ninth year onward), and the employee receives at least one unbroken week of vacation.

Vacation Pay

Earning Vacation Pay

An employee earns vacation pay during the first 12 months of work for an employer and every 12 months after that. Employee status does not affect vacation pay (full-time, part-time, seasonal, etc.). Employers must pay employees vacation pay of at least 4 percent of gross wages[1]. Vacation pay earnings increase to 6 percent of gross wages at the start of an employee's eighth year of service (after completing 7 years).

[1] Wages includes salaries, commissions, and most other forms of compensation except vacation pay.

Paying Vacation Pay

An employer can pay vacation by:

- accumulating the vacation pay over the 12-month earning period and paying it out to employees at least one day before they take their vacation time - note an employee can ask for accumulated vacation pay earlier but the employer does not have to provide it until one day before the employee's vacation.
- adding the vacation pay to each cheque, or
- including the vacation pay in with the employee's hourly rate - in this case, the employer must ensure the employee's rate of pay is at least minimum wage plus 4 percent, or 6 percent for employees from the start of their eighth year (after completing 7 years)

The employer must make it clear to each employee how they are being paid their vacation pay. The employer can do this, for example, by showing accumulated vacation pay on every pay stub, showing on the paystub that vacation pay is paid out with each pay, by having employees sign a clear statement acknowledging they are aware that vacation pay is included in their hourly rate of pay, or by stating on each paystub that vacation pay is included in the hourly rate of pay.

Employees do not earn wages when they take their vacation time. Vacation pay is intended to be the employee's pay during their vacation time, even if the employee receives vacation pay on each pay.

If an employee's job ends and the employee has accumulated vacation pay, the employer must pay the accumulated vacation pay within 10 days after the employment ends.

If there is a dispute and the employer cannot show vacation pay was paid, the employer will normally have to pay the vacation pay (see also information section on *Records*).

Employees Not Covered by the Rules

The rules on vacation time and vacation pay do not apply to the following employees:

- real estate and car salespeople
- commissioned salespeople who work outside the employer's place of business, but not anyone with an established route
- a salesperson who sells mobile homes
- employees who work on a fishing boat
- athletes while engaged in activities related to their athletic endeavour
- other workers: see page 4-5

Overtime Pay

The general rule for overtime is that employees are entitled to receive 1½ times their regular wage for each hour worked after 48 in a week. A week is defined as a consistent seven-day period, e.g., Monday to Sunday, Wednesday to Tuesday. For example, if an employee makes $16 per hour, that employee would make $24 per hour for every hour worked over 48 hours.

These rules also apply to some salaried employees. Certain industries are characterized by irregular working hours and conditions and do not follow the general rule. Some have special rules about overtime and some others are not covered by overtime.

Special Rules

Some groups of employees have special rules to deal with overtime, called wage orders. The jobs covered by these wage orders are listed below.

Minimum Wage Order (General)

The following groups of employees receive overtime at 1½ times the minimum wage after 48 hours worked in a week:

- oil and gas employees (but not those in retail)
- managers, supervisors, and employees employed in a confidential capacity. This includes managers and supervisors in the construction industry
- primary fish, aquaculture and agricultural processors (but not meat)
- flat-rate auto mechanics/auto body technicians
- some types of professionals and their trainees
- information technology (IT) professionals (but not employees who provide basic operational/technical support)
- shipbuilders and related employees (but not those in retail)
- transport (*this group receives overtime after 96 hours in a 2-week period*)

Minimum Wage Order (Construction and Property Maintenance)

The following groups of employees receive 1½ times their regular wage after 110 hours worked over a two-week period:

- those constructing, restoring or maintaining roads, streets, sidewalks, structures (such as buildings) or bridges
- those doing paving of all sorts
- water and sewer installers
- landscapers and snow removal employees
- sawmill employees
- metal fabricators and machine shop employees

For example, these employees could work 60 hours one week and 50 hours the following week without earning overtime because the combined hours do not exceed 110.

Note: For municipal employees doing street construction, restoration or maintenance work, overtime is 1.5 times their regular rate after 48 hours in a week; if these employees are unionized the collective agreement applies instead.

Employees Not Covered by the Rules

The overtime rules do not apply to the following employees:

- most farm employees
- apprentices employed under the terms of an apprenticeship agreement under the Apprenticeship and Trades Qualifications Act (see NS Apprenticeship Agency)
- anyone receiving training under government sponsored and government approved plans
- anyone employed at a non-profit playground or summer camp
- real estate and car salespeople
- commissioned salespeople who work outside the employer's premises, but not those on established routes
- insurance agents licensed under the Insurance Act
- employees working on a fishing boat
- employees in the logging and forest industry
- live-in health care and live-in personal care providers
- janitors and building superintendents in buildings that include their residence
- athletes while engaged in activities related to their athletic endeavour
- employees who work under a collective agreement
- other workers: see page 4-5

Fixed Cycle Averaging Agreements

An employer and employee may agree to average the employee's hours of work over a number of weeks - where there is a pre-determined, fixed cycle of work that repeats over a specific period and provides for extended time off. This means the employer would not need to pay overtime based on the number of hours the employee works in one week. Instead, overtime would be based on hours exceeding the total regular hours worked in the cycle. For example, if the cycle is 4 weeks (48 x 4 = 192) then overtime is payable once the employee exceeds 192 hours of work during the four-week cycle.

There are conditions that must be met for employers and employees to do this: see our website or contact Labour Standards for information on this.

Holiday Pay

The *Labour Standards Code* gives employees who qualify six holidays with pay: New Year's Day, Nova Scotia Heritage Day, Good Friday, Canada Day, Labour Day, and Christmas Day.

Note: A separate law covers Remembrance Day; it is explained at the end of this section.

Qualifying for Paid Holidays

To qualify for these holidays, an employee must:

1. be entitled to receive pay for at least 15 of the 30 calendar days before the holiday, and
2. have worked on their last scheduled shift or day before the holiday and on the first scheduled shift or day after the holiday

First, during the 30 calendar days right before the holiday, the employee must be entitled to receive pay for 15 of those days. This does not mean that the employee must have worked 15 out of 30 days. The important words to remember are "entitled to receive pay." For example, if an employee is sick and the employer has a paid sick time policy, or if the employee is attending a course and is being paid wages for attending, or if the employee has recently taken vacation time, the employee may still qualify for the paid holiday.

Second, the employee must have worked on their last scheduled shift or day before the holiday and on their first scheduled shift or day after the holiday. The important word to remember is "scheduled." Many people believe this means that if the employee does not work the day after the holiday then the employee does not qualify to receive holiday pay. If the day is one when the employee is not scheduled to work, then they may still qualify for the paid holiday.

Note: If an employer tells an employee not to report for work on their last scheduled work day immediately before the holiday, or their next scheduled work day after the holiday, then the employee is still entitled to receive holiday pay if they meet the first qualification.

Paying an Employee for a Holiday

If an employee qualifies for the holiday and is given the day off, the employer must pay a regular day's pay for that holiday. If the employee's hours of work change from day to day the employer should average the hours worked over the 30-day period immediately before the holiday to calculate what to pay the employee for the holiday. For example:

- if an employee worked 20 of the 30 calendar days before the holiday for a total of 170 hours, the calculation would be as follows: 170 ÷ 20 = 8.5 average hours worked per shift

Earned commissions are wages under the *Labour Standards Code*. If an employee regularly earns commissions as part of their compensation, commission earnings must be included when calculating a regular day's pay for the employee. For example:

- if an employee worked 17 of the 30 calendar days before the holiday and earned a total of $2040 in wages (including commissions), the calculation could be as follows: $2040 ÷ 17 = an average day's pay of $120

Note: Employees earn vacation pay on the wages they receive for a holiday.

When the Holiday Falls on an Employee's Regular Day Off

If the employee qualifies for the holiday and the holiday falls on the employee's regular day off, the employer must give the employee a different day off with pay. The employer can give the day off with pay on the working day immediately following the holiday, the working day immediately following the employee's vacation, or another day agreed upon by the employee.

Calculating Holiday Pay When the Employee Works on a Holiday

An employee who works on a holiday and who qualifies to be paid holiday pay is entitled to receive both of the following:

- a regular–or average–day's pay (see Paying an Employee for a Holiday, previous section), and
- one and a half times the employee's regular rate of wages for the number of hours worked on that holiday

When the Employee Works on a Holiday in a Continuous Operation

A continuous operation is:

- any industrial establishment in which production continues without stopping
- any service that runs trucks and other vehicles
- any telephone or other communications service
- any service or production in which employees normally work on Sundays or public holidays

In a continuous operation, the employer can pay for holidays worked in one of two ways:

- according to the calculation already described, or
- by paying straight time for the hours worked and giving the employee a different day off with pay (the employer can give the day off with pay on the working day immediately following the employee's vacation or another day agreed upon by the employee)

Note: An employee in a continuous operation will not be entitled to holiday pay if they do not report for work on the holiday after being called upon to work that day.

Employees Not Covered by the Rules

The holiday pay rules do not apply to the following employees:

- most farm employees
- real estate and car salespeople
- commissioned salespeople who make sales at locations other than at the employer's premises, except those on an established route
- employees who work on a fishing boat
- employees who work in the manufacturing or refining processes of the petrochemical industry
- athletes while engaged in activities related to their athletic endeavour
- employees who work under a collective agreement
- other workers: see page 4-5

Remembrance Day

An employee who works on Remembrance Day and who is entitled to receive wages for at least 15 of the 30 calendar days immediately before Remembrance Day may be entitled to receive another day off with pay. That day with pay may be taken at the end of the employee's vacation or any other day the employee and employer may agree upon.

Retail Closing Days and the Right to Refuse to Work

Retail Closing Days

Some retail businesses are not allowed to open on certain days of the year. These days are:

- New Year's Day
- Nova Scotia Heritage Day
- Good Friday
- Easter Sunday
- Canada Day
- Labour Day
- Thanksgiving Day
- Christmas Day
- Boxing Day

The Right to Refuse to Work

The *Labour Standards Code* gives employees of these retail businesses the right to refuse to work on the closing days listed above. For example, if a retail business were to schedule an employee to stock shelves while the business was closed on New Year's Day, the employee could refuse to work on that day.

The *Labour Standards Code* also gives employees of these same retail businesses the right to refuse to work on Sundays.

Employees who have agreed to work on Sundays or closing days must give their employer seven days' notice of their intent not to work on Sundays or closing days in general or on a particular Sunday or closing day. If an employer provides an employee with less than seven days' notice that the employee is scheduled to work on a Sunday or closing day, the employee must notify the employer of their intent not to work that day, within two days of being informed of the schedule.

Employees who have the right to refuse to work are protected against retaliation and can be reinstated to their job with back pay if they are fired because they refused to work on Sundays or closing days.

Exceptions

Retail businesses that are not required to close and whose employees do not have the right to refuse to work on closing days and Sundays include:

- grocery stores that at no time operate in an area greater than 4000 square feet (note if two or more stores selling groceries are owned by related persons and are in the same building or are adjacent or near one another, they are considered one store for the purposes of determining whether the store must close and whether employees have the right to refuse to work)

- drug stores if they do not have more than 2000 square feet dedicated to food items, are not larger than 20,000 square feet in total, and are not in a department store
- farm sales of agricultural products
- Christmas tree sales
- retail gas stations (motor vehicle service stations)
- restaurants, bars, taverns etc., and tourism/hotel services
- confectionary stores
- stores selling handicrafts and souvenirs to tourists
- canteens
- fruit and vegetable stands selling local produce
- flea markets and rummage sales
- retail fish stores
- laundromats
- billiard and pool halls
- video or DVD rental places
- modular (prefabricated) home sales
- nursery and plant stores
- art galleries
- antique stores
- the sale of books, newspapers, magazines
- used clothing stores
- private clubs, veterans and other clubs, but not clubs set up for retail sales
- public games for gain and reward
- public performances, cinemas
- excursions
- car rental and boat rental operations
- buses, trains and other modes of transportation
- ferry operations
- telephone and telegraph operations
- broadcasting
- newspaper publication
- retail businesses providing goods and services on an emergency basis

Note: The right to refuse to work on closing days and on Sundays does not apply to employees who work under a collective agreement.

Making a Complaint

If an employee feels they are not going to be given the right to refuse to work under these rules, contact the Labour Standards Division right away. Labour Standards will try to resolve the matter.

Remembrance Day Closing Rules

Remembrance Day has different closing rules. Generally, retail businesses are required to close on Remembrance Day, with some exceptions. Check to see how the Remembrance Day Act applies to your business or employer using the online Remembrance Day assessment tool.

When the Employer Ends the Employment

Under the *Labour Standards Code*, employers must tell an employee in writing that they will fire or suspend or lay off that employee. This is called giving notice. "Notice" is the letter telling the employee they will no longer work for the employer after a given date. It is also the time between when the employee receives the letter and the date the letter says is the employee's last day of work. How much notice an employer must give an employee depends upon how long the employee was employed. The following table shows the notice times for each period of employment.

Written Notice Requirements

If the employee has a period of employment of	**The employer must give**
3 months or more but less than 2 years	1 week
2 years or more but less than 5 years	2 weeks
5 years or more but less than 10 years	4 weeks
10 years or more	8 weeks*

*The rules are different for employees of ten years or more (see subsection below on *Employees with 10 Years of Service*).

If the employer does not want to give the employee notice, the employer must give the employee pay in lieu of (in place of) notice. This means that the employer must pay the employee as much pay as they would receive if that employee worked during the notice period. Pay in lieu of notice is due, as one lump sum, within five working days after the expiration of the pay period in which the termination occurred (generally the employee's regular pay day).

Periods of Employment/Length of Service

An employee's period of employment (how long they worked for the employer) may be broken because the employee is laid off, suspended, or fired. The *Labour Standards Code* states that an employee's period of employment is considered unbroken unless it is broken:

- by 12 months or more of lay off or suspension
- by more than 13 weeks that resulted from the employer firing the employee

Also, if an employee quits and is rehired, their period of employment is broken, and they start a new period of employment based on their rehire date.

When the Employer Gives Notice

When an employer has given the employee proper notice that the job is ending, the employer:

- may not change the employee's rate of pay or any other condition of employment, such as benefits
- may not require the employee to use remaining vacation during the notice period unless the employee agrees
- must pay the employee all the wages they are entitled to receive (within 5 working days after the end of the pay period in which the final wages were earned)
- must pay accumulated vacation pay within 10 days after the employment ends

Change in Terms and Conditions of Employment

If the employer makes a significant change to fundamental terms and conditions of an employee's employment (e.g., reduces pay, hours of work, demotes the employee) and the employee doesn't agree to the change, the situation might fall under the termination rules in the legislation. For example, if an employer reduces an employee's weekly hours from 40 to 20 without proper notice, and the employee quits within a reasonable period because of the change, the employee might be able to file a Labour Standards complaint for pay in lieu of notice.

Note, if an employer breaches an employee's terms and conditions of employment, the Code allows the employee to quit without notice, even if the breach is not significant. See also section on *When the Employee Ends the Employment*.

The Right to End Employment Without Notice

The *Labour Standards Code* says that there are times when an employer does not have to give notice or pay in lieu of notice that the employee will be fired or laid off. Some examples are listed below:

- when an employee works for the employer for less than three months
- when an employee works for the employer for a set term or task no longer than 12 months and the employee's job ends when the set term or task ends
- when there is a sudden and unexpected lack of work that the employer could not avoid, e.g., because of an explosion in the workplace
- when the employer offers the employee other reasonable employment
- when an employee has reached the age of retirement based on a bona fide occupational requirement (for most jobs, mandatory retirement is not allowed)
- when a person is laid off or suspended for 6 days or less - note employees with 10 or more years of service cannot be suspended without just cause

An employer can also end employment without notice or pay in lieu of notice when an employee has been guilty of wilful misconduct or disobedience or neglect of duty that has not been condoned by the employer. To end an employee's job without notice, the employer must

usually show that the employee has been given progressive discipline but their behaviour/performance has not improved.

Condonation

Condonation means that the employer has not corrected a behaviour in the past. Condonation is an issue if, for example, an employer ignores an employee's poor performance at work and then one day fires the employee for the same poor behaviour. If an employer condones an employee's behaviour and then fires him/her without notice, the employer may be in violation of the *Labour Standards Code*. An employee must be told that the employer will no longer allow the poor performance. The employee must understand what will happen if their performance does not improve.

Progressive Discipline

Depending on the problem an employer is having with an employee, it may be better to correct the problem by using progressive discipline rather than by ending the employee's job.

Progressive discipline can begin with spoken warnings, move to written warnings and suspensions, and then end with firing the employee. For example, an employee who is a good worker but does not follow work procedures properly may just need spoken and written warnings to correct the problem. The discipline should match the seriousness of the problem.

There are times when the steps above would not need to be followed because of the seriousness of the employee's behaviour. For example, if the employer can prove that the employee has stolen from the employer, then the employer may be able to fire the employee without warning or notice.

Employees with 10 Years of Service

The *Labour Standards Code* says that an employee with 10 years or more of service cannot be fired or suspended without good reason or just cause. What is good reason will depend on the employee's and employer's circumstances.

To show that the employer had good reason, the employer may have to show all the following:

1. the employer has made their expectations clear to the employee
2. the employer has warned the employee to change behaviour
3. the employer has given the employee a reasonable chance to change behaviour
4. the employer has warned the employee that not improving behaviour could lead to being fired

There may be limited circumstances, like a theft, in which an employer may fire an employee with 10 years of service and not have to follow the four steps.

When Labour Standards finds that an employee with 10 years or more of service has been fired without good reason, the employer may be ordered to bring the employee back to the job with

full back pay dating to the date the employee was fired. If the employee does not wish to go back to the job, Labour Standards may order pay in lieu of reasonable notice, which could be more than the 8 weeks' statutory notice required for an employee with 10 or more years of service.

Note: An employee of ten years or more can be laid off with 8 weeks' statutory notice for shortage of work or due to the employer eliminating the employee's position. The law requires that an employer must act in good faith in deciding whether to eliminate a particular position.

Exceptions to the Requirement to have Just Cause or to Give Notice

The *Labour Standards Code* says there are times when an employer can end the employment of an employee with 10 years or more of service without just cause and without notice or pay in lieu of notice. This includes:

- when there is a sudden and unexpected lack of work that the employer could not avoid, e.g., because of an explosion in the workplace
- when the employer offers the employee other reasonable employment
- when an employee has reached the age of retirement based on a bona fide occupational requirement (for most jobs, mandatory retirement is not allowed)

Ending the Employment of 10 or More Employees (Group Notice)

The *Labour Standards Code* says that an employer must give notice to employees and the Minister of Labour, Skills and Immigration when firing or laying off 10 or more employees within any period of 4 weeks or less. The amount of notice groups of employees are entitled to receive depends on the numbers being laid off:

- 8 weeks' notice for a group of 10 to 99 employees
- 12 weeks' notice for a group of 100 to 299 employees
- 16 weeks' notice for a group of 300 or more employees

Notice to the Minister

When an employer is required to give group notice under the *Labour Standards Code*, the employer must also notify the Minister of Labour, Skills and Immigration, in writing, of the situation. Written notice to the Minister should include the following information:

- the name and address of the company laying off employees
- the reason employees are being laid off
- the number of employees being laid off
- if more than one location of the business is affected, the number of employees being laid off at each location and the address of each location
- the date written notice is being given to employees
- the date employees' employment is ending
- the number of weeks' notice and/or pay in lieu of notice being given to employees

- contact information for an individual who the Department of Labour, Skills and Immigration can get in touch with if more information about the lay off is needed

When a Business Is Transferred or Sold

It is important to know that the *Labour Standards Code* says that an employee's employment is not broken if a business is transferred or sold in any manner. If an employee worked for both the seller and purchaser of a business, when the employee's employment comes to end, the employee may be entitled to notice that the job is ending or pay in lieu of notice based on how long the employee worked with both the past owner and the person who bought the business.

Employees Not Covered by the Rules

The rules about the employer ending the employment do not apply to the following employees:

- employees employed in the construction industry (doing onsite work). For example, this rule would not apply to an employee operating an excavator at the worksite but would apply to an administrative assistant working in the office
- real estate and car salespeople
- commissioned salespeople who work outside the employer's place of business, but not those on an established route
- employees who work on a fishing boat
- practitioners or students in training for architecture, dentistry, law, medicine, chiropody, professional engineering, public or chartered accounting, psychology, surveying, veterinary science, optometry, or pharmacy (for the purposes of reinstatement claims for 10-year employees only)
- athletes while engaged in activities related to their athletic endeavour
- employees who work under a collective agreement
- other workers: see page 4-5

When the Employee Ends the Employment

Employees normally must give their employers written notice that they are quitting their jobs. “Notice” in this case is the amount of time between when the employee tells the employer in writing that they are leaving their job and the time the employee actually leaves.

How much written notice an employee must give depends on how long they have worked for the same employer.

An employee must give:

- one week’s written notice if they have a period of employment three months or more but less than two years
- two weeks’ written notice if they have a period of employment of two years or more

Duty of the Employer When Notice Is Given

When an employee has given the employer proper notice that they are quitting, the employer:

- may not change the employee’s rate of pay or any other condition of employment, such as hours of work or benefits
- must pay the employee all the wages they are entitled to receive (within 5 working days after the end of the pay period in which the final wages were earned)
- must pay accumulated vacation pay within 10 days after the employment ends

Periods of Employment

An employee’s period of employment (how long they worked) at one workplace may have been broken because the employee was laid off, suspended, or fired.

This is important to know if the employee is about to resign and must decide whether to give their employer one or two weeks’ notice.

The *Labour Standards Code* states that an employee's period of employment is considered unbroken unless it is broken:

- by 12 months or more of layoff or suspension
- by more than 13 weeks that resulted from the employer firing the employee

Also, if an employee quits and is rehired, their period of employment is broken, and they start a new period of employment based on their rehire date.

When an Employee Does Not Need to Give Notice

Just as an employer sometimes does not always need to give an employee notice their employment is ending, there are also times when employees do not need to give notice. These are:

- when the employee has been employed less than three months
- when the employer breaks the terms and conditions of employment (for example, the employer fails to pay the employee wages or reduces the employee's rate of pay or hours of work)

When an Employee Does Not Give Notice

When an employee quits without providing notice required by the Code, the employer may file a complaint with the Labour Standards Division and claim pay owed to the employee. If the employer can show they experienced a financial loss or hardship because the employee quit without proper notice, Labour Standards might find the employer is entitled to keep all, or a portion of, pay owed to the employee. As an example, an employer may be able to claim an employee's final pay to compensate the employer for the cost of paying other workers overtime pay to finish work the employee would have completed if the employee had not quit without notice.

In situations where the Code does not require an employee to give notice, such as when an employer breaches an employee's terms and conditions of employment, there is no basis under the Code for an employer to pursue compensation for any financial cost or hardship experienced by the employer because of an employee's abrupt quit.

Employees Not Covered by the Rules

The rules about employees giving notice of quitting their jobs do not apply for the following employees:

- employees employed in the construction industry (doing onsite work). For example, this rule would not apply to an employee operating an excavator at the worksite but would apply to an administrative assistant working in the office
- real estate and automobile salespersons
- commissioned salespersons who work outside the employer's place of business, except those on established routes
- employees who work on a fishing boat
- athletes while engaged in activities related to their athletic endeavour
- employees who work under a collective agreement
- other workers: see page 4-5

Leaves from Work

This section is about the leaves of absence that the *Labour Standards Code* says employers must allow employees to take. The leaves of absence are pregnancy and parental, end of pregnancy, reservist, compassionate care, critically ill child care, critically ill adult care, domestic violence, crime-related death or disappearance of a child, emergency, sick, bereavement, court, and citizenship ceremony.

During a leave of absence, an employee leaves the job intending to return. The intent is to provide job protection so employees can take time off from their job for the leave. Employees can qualify for multiple leaves under the *Labour Standards Code*.

Most of the leaves are unpaid leaves of absence, meaning that the employer does not have to pay the employee during these absences. Employment Insurance benefits may be available for some of these leaves. In the case of domestic violence leave, employees are entitled to receive pay for part of the leave.

For all protected leaves under the *Labour Standards Code*, the employer must:

- allow the employee to keep up, at the employee's own expense, any benefit plans to which the employee belongs - note the employer must give 10 days' written notice before the option to keep up employee benefits is no longer in effect, and
- accept the employee back to the same position held by the employee immediately before the leave began, or, where that position is not available, in a comparable position with no loss of seniority or benefits when the employee returns from the leave

In addition, employers are required to keep confidential any information they receive in relation to a protected leave of absence an employee takes. Employers must not share the information except in situations where:

- the employee has consented to the information being shared
- an agent or employee of the employer, such as a manager, needs the information to do their job, or
- the law requires that the information be disclosed

Pregnancy Leave, Leave for End of Pregnancy, and Parental Leave

Employees do not need a certain length of service to qualify for pregnancy leave, leave for end of pregnancy or parental leave − an eligible employee could take either of these leaves shortly after starting their employment.

Pregnancy Leave

Pregnancy leave is an unpaid leave for pregnant employees. It can last up to 16 weeks. An employer can require that an employee take an unpaid leave of absence if the pregnancy interferes with the employee's work. There are times when the *Human Rights Act* or the employee's contract prevents this.

Parental Leave

The *Labour Standards Code* also allows parents to take parental leave to care for their newborn or newly adopted children. This unpaid leave is up to 77 weeks. For employees who also take pregnancy leave, they can take a total of 77 weeks combined pregnancy (16 weeks) and parental (61 weeks) leave.

To Take Pregnancy or Parental Leave

To take pregnancy or parental leave, an employee must give the employer at least four weeks' notice of both the date on which leave will start and, if the employee plans to return early, the planned date of return to work. If the employee cannot give four weeks' notice of leave because the employee has been employed for fewer than four weeks, the baby is born early, because of a medical condition, or because of an unexpected adoption placement, then the employee must give as much notice as possible. Pregnancy leave can begin not sooner than 16 weeks before the expected date of delivery, and not later than the date of delivery.

An employer can ask for proof of entitlement for pregnancy or parental leave. This can include a certificate from a doctor or adoption worker.

If an employee is taking both pregnancy and parental leaves, the employee must take them one right after the other and not go back to work between the two leaves.

If an employee is taking parental leave but not pregnancy leave, the employee can take up to 77 weeks' leave in the time after the child is born or arrives in the home. The employee loses this right if the leave is not taken within 18 months after the child arrives in the home.

If a newly arrived child must go into hospital for more than one week, the employee can return to work and use the rest of the parental leave after the child comes out of hospital.

Employees who take pregnancy and/or parental leave may qualify for maternity benefits and/or parental leave benefits under the federal government's Employment Insurance program. For more detail on these benefits, contact Service Canada.

Leave for End of Pregnancy

Leave for end of pregnancy is an unpaid leave of absence for employees who have experienced an end of pregnancy. End of pregnancy means a pregnancy that does not end in a live birth. This is a new leave (under the *Labour Standards Code*) that comes into effect on January 1, 2023.

The reason a pregnancy ended does not matter for an employee to be eligible for this leave, and employers are not entitled to know why a pregnancy ended.

Leave for End of Pregnancy – Employee Whose Pregnancy Ends

If an employee's pregnancy ends before they have completed their 19th week of pregnancy, the employee is entitled to an unpaid leave of absence of up to 5 consecutive working days.

If an employee's pregnancy ends after they have completed their 19th week of pregnancy, they are entitled to an unpaid leave of absence of up to 16 consecutive weeks.

If an employee's pregnancy ends while they are on pregnancy leave, and they have taken more than 10 weeks of pregnancy leave when their pregnancy ends, they are entitled to up to 6 additional weeks of unpaid leave from the day their pregnancy ended.

An employee whose pregnancy ends after their 19th week of pregnancy and who initially chooses to take the 5-day leave can then decide to take the longer leave entitlement (minus whatever portion of the 5 days they already took). The leave periods must be taken consecutively – the employee cannot return to work between the leave periods. As well, the total leave time for end of pregnancy cannot be more than 16 weeks, and it cannot be more than 6 weeks if the employee was on pregnancy leave for more than 10 weeks when their pregnancy ended.

Leave for End of Pregnancy – Spouse, Former Spouse, Surrogacy, Adoption

The following people are entitled to up to 5 consecutive working days of unpaid leave:

- The spouse of an individual whose pregnancy ended without a live birth
- The former spouse of an individual whose pregnancy ended without a live birth, if they would have been the biological parent
- A person who would have become the parent of a child born as a result of the pregnancy through a surrogacy agreement
- A person who would have become the parent of a child born as a result of the pregnancy under an intended adoption pursuant to the laws of Nova Scotia

To Take Leave for End of Pregnancy

An employee must provide their employer with as much notice as possible of their intention to take the leave, and the anticipated start and end date of the leave. If the employee begins the leave before they can provide their employer with notice, the employee must advise their employer as soon as reasonably possible of the date the leave began and the end date of the leave.

The employer may ask the employee to provide a form developed by the Labour Standards Division to support the employee's entitlement to leave for end of pregnancy. It is an employer's choice whether to require the employee to provide this form to the employer. An employee can obtain the form online as follows:

- Leave for End of Pregnancy (Employee whose pregnancy has ended)
- Leave for End of Pregnancy (Spouse, Former Spouse, Surrogacy, Adoption)

Employees can also obtain the form by contacting the Labour Standards Division at 902-424-4311, 1-888-315-0110 (toll free in Nova Scotia) or labourstandards@novascotia.ca.

Some examples of how leave applies when an employee's pregnancy ends

- An employee's pregnancy ends without a live birth in their 10th week of pregnancy. The employee is entitled to five consecutive working days of unpaid leave for the end of their pregnancy

- An employee's pregnancy ends without a live birth in their 20th week of pregnancy. The employee informs their employer that they are taking 5 days of leave for end of pregnancy and begins the leave. Three working days after starting the leave, the employee realizes they need additional time and immediately provides notice to their employer that they will be taking the 16-week leave. The employee is entitled to 16 weeks, minus the three days of leave the employee has already taken

- An employee was on pregnancy leave for 6 weeks when their pregnancy ended without a live birth. The employee can take the remainder of their 16-week pregnancy leave entitlement under the *Labour Standards Code*, which is 10 weeks

- An employee was on pregnancy leave under the *Labour Standards Code* for 14 weeks when their pregnancy ended without a live birth. The employee qualifies for up to 6 additional weeks of leave from the day their pregnancy ended, which totals 20 weeks of leave

Reservist Leave

The *Labour Standards Code* includes a leave for employees who serve in the Canadian Forces reserve force and require time off from their civilian employment for the purpose of service. The leave can be taken for a deployment—inside or outside of Canada—and associated activities; training required by the Canadian Forces, including military skills training; travel related to deployment and training; and treatment, recovery or rehabilitation with respect to a physical or mental health problem resulting from deployment or training activities. To qualify for this leave, the employee must be employed with their civilian employer for a period of at least three months.

Eligible employees can take up to 24 months of reservist leave within any 60-month period. They can take more leave than this if the leave is required as a result of a national emergency under the Emergencies Act (Canada).

Employees who take reservist leave must return to work no later than four weeks after a deployment related period of service ends. Employees who take reservist leave for training that is unrelated to deployment must return to work no later than the next regularly scheduled working day after the training related period of service ends.

To Take Reservist Leave

An employee must give their employer four weeks' written notice of their intention to take reservist leave, the anticipated start and end date of the leave and the anticipated date of return to work. If an employee receives less than four weeks' notice from the Canadian Forces of a requirement to participate in a period of service, they must provide their civilian employer with as much notice as reasonable in the circumstances—the notice does not need to be given in writing if it is not practicable to do so. If there are any changes to the anticipated start and end dates for the leave and the anticipated return to work date, the employee must inform the employer of these changes as soon as reasonably practicable and must do so in writing if possible.

An employer can require an employee to provide a certificate from an official with the Reserves confirming the employee is a member of the Reserves who is required for service and specifying the dates for the period of service.

Compassionate Care Leave

Compassionate care leave is an unpaid leave that allows an employee to take time off work to provide care and support to a seriously ill family member (or a person like family).

To qualify for this leave, the employee must have worked with their employer for at least three months. A qualified medical practitioner must issue a medical certificate stating that the employee's family member has a serious medical condition with a significant risk of death within twenty-six weeks. Employees who need to take compassionate care leave must give their employer as much notice as possible before taking the leave. An employer can ask in writing for a copy of the medical certificate.

Employees who qualify for compassionate care leave can take up to 28 weeks' leave, which must be taken within a 52-week time frame. The leave can be broken up into several periods of at least one week in duration during the 52-week time frame. The 52-week time frame begins on the first day of the week in which the certificate is issued, or, where the leave began before the certificate was issued, the first day of the week in which the leave began.
Employees who take a compassionate care leave may qualify for a compassionate care leave benefit under the federal government's Employment Insurance program. For more detail on this benefit, contact Service Canada.

Critically Ill Child Care Leave

Critically ill child care leave is an unpaid leave that allows an employee to take time off work to provide care and support to a critically ill or injured child (under the age of 18 years old) who is a family member (or a person like family). To qualify for this leave, the employee must be employed with their employer for a period of at least three months. A qualified medical practitioner must issue a medical certificate stating that the child has a critical illness and the period for which the child needs care.

The employee can take up to 37 weeks' leave, which must be taken within a 52-week time frame. The leave can be broken up into several periods of at least one week in duration during this time frame. The 52-week time frame begins on the first day of the week in which the child became critically ill.

In some circumstances, an employee may need further leave, which may be taken if an additional certificate is issued—the total combined leaves must not be more than 37 weeks in the 52-week time frame.

The leave ends when the number of weeks stated in the medical certificate has been taken.
If the employee stops providing care to the child, the leave ends at the end of the week in which the employee stops providing care. An employee can choose to return to work earlier by giving at least 14 days' notice.

Employees who take a critically ill child care leave may qualify for a benefit under the federal government's Employment Insurance program. For more detail on this benefit, contact Service Canada.

To Take Critically Ill Child Care Leave

The employee must let the employer know in writing as soon as possible of their intention to take the leave. Where the leave must begin before written notice can be given, the employee must advise the employer of the leave as soon as possible. The employee must also give the employer a plan setting out how the leave will be taken, since the leave can be broken up into more than one period over the 52-week time frame. This leave plan can be changed during the leave with the employer's agreement or by providing the employer with reasonable notice.

The employer can ask in writing for a copy of the medical certificate.

Critically Ill Adult Care Leave

Critically ill adult care leave is an unpaid leave that allows an employee to take time off work to provide care and support to a critically ill or injured adult (18 years old or older) who is a family member (or a person like family). To qualify for this leave, the employee must be employed with their employer for a period of at least three months. A qualified medical practitioner must issue a medical certificate stating that the adult has a critical illness and the period for which the adult needs care.

The employee can take up to 16 weeks' leave, which must be taken within a 52-week time frame. The leave can be broken up into several periods of at least one week in duration during this time frame. The 52-week time frame begins on the first day of the week in which the adult became critically ill.

In some circumstances, an employee may need further leave, which may be taken if an additional certificate is issued—the total combined leaves must not be more than 16 weeks in the 52-week time frame.

The leave ends when the number of weeks stated in the medical certificate has been taken. If the employee stops providing care to the adult, the leave ends at the end of the week in which the employee stops providing care. An employee can choose to return to work earlier by giving at least 14 days' notice.

Employees who take a critically ill adult leave may qualify for a benefit under the federal government's Employment Insurance program. For more detail on this benefit, contact Service Canada.

To Take Critically Ill Adult Leave

The employee must let the employer know in writing as soon as possible of their intention to take the leave. Where the leave must begin before written notice can be given, the employee must advise the employer of the leave as soon as possible. The employee must also give the

employer a plan setting out how the leave will be taken, since the leave can be broken up into more than one period over the 52-week time frame. This leave plan can be changed during the leave with the employer's agreement or by providing the employer with reasonable notice.

The employer can ask in writing for a copy of the medical certificate.

Domestic Violence Leave

Domestic violence leave can be taken by an employee who is experiencing domestic violence or whose child (under 18) is experiencing domestic violence. The employee may take up to ten intermittent or consecutive days per calendar year. The employee may also take up to 16 consecutive (continuous) weeks per calendar year. Up to three days of the leave must be paid by the employer. To qualify for this leave, the employee must be employed with their employer for a period of at least three months.

Under the *Labour Standards Code*, domestic violence is defined broadly. It is an act of abuse that can be physical, sexual, emotional, or psychological. It can include coercion, stalking, harassment, or financial control. Or it can be a threat of such abuse.

The leave applies to situations of abuse involving the following relationships:

An employee who is abused by:

- their current or former intimate partner
- their child
- a person under 18 years who lives with them, or
- an adult who lives with them and is related to them by blood, marriage, adoption, or foster care

An employee whose child is abused by:

- the child's current or former intimate partner, or
- a person who lives with the child

Domestic violence leave can be used by an employee to seek medical attention for themselves or their child; obtain services for themselves or their child from a victim services organization, psychological or other professional counselling (or certain culturally-specific services); relocate temporarily or permanently; or seek legal or law enforcement assistance.

To take Domestic Violence Leave

An employee must advise their employer in writing as soon as possible of their intention to take domestic violence leave, and the anticipated start and end date of the leave. The employer may ask the employee to provide a form developed by the Labour Standards Division to support the employee's entitlement to domestic violence leave. It is an employer's choice whether to require the employee to provide this form to the employer. An employee can obtain the form online here: Domestic-Violence-Leave-Notification-Form.pdf (novascotia.ca).

Employees can also obtain the form by contacting the Labour Standards Division at 902-424-4311, 1-888-315-0110 (toll free in Nova Scotia) or labourstandards@novascotia.ca.

The longer part of domestic violence leave is up to 16 consecutive weeks. To end the longer leave early, the employee must give the employer written notice of at least 14 days before the employee wishes to end the leave, or as much notice as possible.

The shorter part of the leave is ten days, which can be taken at different times or all at once. An employee may end this leave early by giving as much notice as is reasonably possible.

Up to three days of domestic violence leave, per calendar year, must be paid by the employer. For the three paid days, each day must be paid at the employee's regular wage for all hours the employee would have worked that day if the leave had not been taken. The employee can choose which of the days are the three paid days by notifying the employer in writing of this. Otherwise, the employer must treat the first three days taken of the leave as paid days.

Any part of a day taken for domestic violence leave counts as a full day of leave. If an employee works a portion of a day, they must be paid for the time they worked on that day. Also, paid leave for any portion of a workday counts as one of the three paid days that an employee is entitled to under the *Labour Standards Code*. For example, if an employee takes domestic violence leave for three hours of a seven-hour shift, and works the remainder of the shift, that will count as one of their ten days of leave. Further, if the employee receives pay for the three hours of leave on that day, it will count as one of the three days of paid leave.

The law also requires that employees attempt to schedule appointments during non-working hours, if possible.

Learn more about domestic violence leave under the Nova Scotia *Labour Standards Code* by taking our free online public education course, which takes approximately 20 minutes to complete: http://lae.velsoftlabs.com/

More information about domestic violence leave can also be found in the brochure.

Domestic Violence Leave Brochure (PDF)

Domestic Violence Leave Brochure: French (PDF)

Crime-related Child Death or Disappearance Leave

Crime-related death or disappearance leave is an unpaid leave for parents and guardians who are facing the death or disappearance of their child (under 18 years of age) resulting from a probable crime. To qualify for this leave, the employee must be employed with their employer for a period of at least three months. The employee is not entitled to the leave if charged with the crime.

An employee can take up to 52 consecutive weeks of unpaid leave if their child has disappeared and up to 104 consecutive weeks if their child has died.

Where a missing child is found alive during the 52-week leave period, the employee can continue the leave for another 14 days. If the child is found dead, the disappearance leave ends immediately, and the employee can start 104 weeks of leave related to the death of the child.

Where the death or disappearance no longer seems to be the result of a crime, the employee can continue the leave for another 14 days and the employee must give the employer notice in writing of their return to work as soon as possible.

The employee can end the leave early by giving the employer 14 days' written notice.

Employees who take a crime-related death or disappearance leave may qualify for income support through a federal government grant. For more information on this grant, contact Service Canada.

To Take Crime-related Child Death or Disappearance Leave

The employee must let the employer know in writing as soon as possible of their intention to take the leave. Where the leave must begin before written notice can be given, the employee must advise the employer of the leave as soon as possible.

The employee must also give the employer a written plan outlining the period that they will take the leave, which can be changed during the leave period with the employer's agreement or by giving the employer 4 weeks' written notice.

The employer can ask for reasonable evidence of the death or disappearance of the child and evidence showing it was likely due to a crime.

Emergency Leave

Employees are entitled to an unpaid leave if they are unable to perform their work because of:

- an emergency declared under the Emergency Management Act, or
- a direction or order of a medical officer—or a public health emergency declared—under the Health Protection Act, or
- an emergency declared under the Emergencies Act (Canada)

Employees are also eligible for the leave if they cannot perform their work because they need to care for a family member who is affected by one of the emergency situations noted above and the employee is the only person who can reasonably care for the family member in the circumstances.

Employees are eligible for the leave for as long as the emergency prevents them from being able to perform their work. For example, if an employee can perform their work remotely, the leave does not apply.

Sick Leave

Employees are entitled to receive up to three days of unpaid sick leave each year. This leave may be used to care for an ill parent, child, or family member. It can also be used for medical, dental, or other similar appointments for the employee or the employee's family member.

Medical Certificates for Employee Absence due to Sickness or Injury

The *Patient Access to Care Act* includes measures to reduce administrative burdens on healthcare providers, giving them more time to see patients. Schedule B of the Act, the *Medical Certificates for Employee Absence Act* is administered by the Labour Standards Division. This Act limits the circumstances in which employers can require employees to provide medical notes and broadens the scope of healthcare professionals who can provide them.

The following is intended to provide general information on the *Medical Certificates for Employee Absence Act*. For questions about this Act, contact the Labour Standards Division.

Key Features of *Medical Certificates for Employee Absence Act* (the Act):

- Employers cannot require employees to provide a medical note unless:
    - the employee has missed more than five consecutive working days due to sickness or injury or
    - the employee has already had at least two non-consecutive absences of five or fewer days due to sickness or injury in the preceding 12-month period

  For example, if an employee missed six consecutive days of work (first absence), then two consecutive days (second absence) followed by four consecutive days (third absence) in a 12-month period, the employer could ask for a medical note for only the first absence. The employer could not ask for a medical note for the second or third absences because they are not more than five consecutive days, and the employee has not had more than two non-consecutive absences of five days or less in the preceding 12-month period.

- Employers must accept medical certificates from various qualified health professionals, not just physicians.

- An employee can file a complaint with Labour Standards if they believe their employer has contravened the Act.

- Labour Standards is provided with the same powers to enforce the Act as those it has to enforce the *Labour Standards Code*.

- Labour Standards decisions in relation to the *Medical Certificates for Employee Absence Act* can be appealed to the Labour Board.

Bereavement Leave

Employees can take unpaid leave of up to five working days in a row if their spouse, parent, guardian, child/child under their care, grandparent, grandchild, sister, brother, mother in-law, father in-law, daughter in-law, son-in-law, sister-in-law, or brother-in-law dies. Employees must give their employers as much notice as possible that they will take this leave.

Court Leave

Employees can take unpaid leave if they must serve on a jury or the court says that they must appear as a witness. They must give their employer as much notice as possible that they will take court leave.

Citizenship Ceremony Leave

Employees are entitled to take an unpaid leave of absence of up to one day, or less if the employee chooses, to attend their citizenship ceremony. If possible, employees must give their employer 14 days' notice that they plan to take the leave. If this is not possible, they must give as much notice as is reasonably possible. If the employer asks, the employee must provide evidence that they are attending their citizenship ceremony on a particular day, for example the "Notice to Appear" sent by Citizenship and Immigration Canada.

Discrimination against an Employee

It is against the law to fire, lay off, or discriminate in any way against an employee who has taken or has said that they intend to take—or if the employer believes the employee may take—a leave of absence that the *Labour Standards Code* says the employee should be able to take. If a complaint is filed Labour Standards will investigate to determine if:

- the employer has good reason to fire or suspend the employee for past behavior and can show that the behaviour has not been allowed in the past
- there is lack of work that the employer could not foresee and avoid
- the business has stopped operating or the employee's job is no longer needed, and the employer is unable to provide other reasonable employment. The employer must show that they acted in good faith

If Labour Standards finds an employee has been discriminated against for having taken a leave or for intending to take a leave, the employer may be ordered to bring the employee back to the job with full back pay dating to the date the employee was fired. If the employee does not wish to go back to the job, Labour Standards may order a reasonable alternative remedy.

Hours of Labour (Period of Rest, Breaks)

Period of Rest

The *Labour Standards Code* states that under normal circumstances employers must grant employees a rest period of at least 24 consecutive hours in every 7 days.

Emergency Situations

An employer can require more than six days of work in a row if, for example, there has been an accident or if urgent work must be done to machinery or a plant. In these emergency circumstances, the employer can require only as much work as is needed to avoid serious interference with the ordinary operation of the workplace. It is important to note that the employer still must follow break and overtime rules.

Requesting an Exemption to the Rules

In limited circumstances, employers may apply to the Director of Labour Standards for a temporary exemption from the period of rest rule. This is called a variance. For example, a call centre may take on a new contract and need to provide employees with training in relation to the contract within a short period of time. The employer could apply for a variance to temporarily have employees work more than 6 days without a rest during the training period.

In determining whether to grant an exemption, Labour Standards considers several factors, such as:

- if the employer's request for an exemption is due to a special project or undertaking
- if the exemption is temporary in nature
- if the employer is proposing an alternative period of rest arrangement in which the number of rest days employees are entitled to following a work period are equal to at least 1 day off each 7-day period
- if the majority of employees support the alternative period of rest arrangement requested by the employer
- if the workplace is unionized, whether the union supports the employer's request
- health and safety considerations

It is important to note that even if a variance is granted, the employer still must follow break and overtime rules.

Employees Not Covered by the Rules

The day of rest rules do not apply to the following employees:

- most farm employees
- commissioned salespeople who work outside the employer's place of business
- employees who work on a fishing boat

- practitioners or students in training for architecture, dentistry, law, medicine, chiropody, professional engineering, public or chartered accounting, psychology, surveying, or veterinary science
- employees employed in offshore oil and gas work while under the jurisdiction of the Canada – Nova Scotia offshore Petroleum Board
- athletes while engaged in activities related to their athletic endeavour
- other workers: see page 4-5

Rest or Eating Breaks

Employees are entitled to an unbroken half hour break, so the employee is never working more than 5 consecutive hours without a break. For example, if an employee works a shift of 12 consecutive hours, the employee should receive a full half hour break plus an additional 30 minutes in breaks that can be taken as a whole or split into two or more periods totalling 30 minutes.

Employers are generally not required to pay employees for breaks. However, if an employee is required to remain at the job site under the control of the employer and be available to work if necessary, during the break, then this will likely be considered work. If so, the employee must be paid for this time.

Where it is necessary for medical reasons, under the *Labour Standards Code* an employee is entitled to take rest or eating breaks at times other than those summarized above; also, an employee may have a right to additional breaks as an accommodation under the Human Rights Act.

Exceptions to the Requirement to Provide Breaks

An employer does not need to give a break if it is impractical because of an accident, urgent work is necessary or because of other unforeseeable or unpreventable circumstances, or because it is unreasonable for an employee to take a meal break. In these situations, an employee must be able to eat at work unless this is unsafe or unreasonable.

Employees Not Covered by the Rules

The rest or eating breaks rules do not apply to the following employees:

- athletes while engaged in activities related to their athletic endeavour
- employees who work under a collective agreement
- other workers: see page 4-5

Employment of Children

The *Labour Standards Code* has rules about when children may be employed in Nova Scotia. The laws about the employment of children do not apply to people who are 16 years and over.

The law generally divides children into two groups: those under 14 and those under 16.

Children Under 14

It is against the law to pay wages to a child under the age of 14 to do work that:

- is likely to be unwholesome or harmful to the child's health or normal development
- is likely to keep the child out of school or make it hard for the child to learn at school

It is against the law to employ a child under 14 to do work:

- for more than 8 hours a day
- for more than 3 hours on a school day unless a certificate has been issued under the Education Act to allow the child to work
- for any time during the day when that time plus the time the child is in school adds up to more than 8 hours
- between the hours of 10 pm of any day and 6 am of the next day

Children Under 16

The *Labour Standards Code* says that no one is to employ a child under the age of 16 in certain types of work, such as:

- mining
- manufacturing
- construction
- forestry
- work in garages and automobile service stations
- work in hotels
- work in billiard rooms, pool rooms, bowling-alleys, or theatres

Children Working in Restaurants

Employers may employ children aged 14 and 15 to work in restaurants provided they make sure these employees:

- are not operating cooking equipment
- are provided with safety training on all equipment and
- are provided with adequate supervision

Exception

The rules regarding children under 16 years of age not being allowed to work in the types of businesses identified previously do not apply to a situation where an employer employs a member of their own family. However, an employer who employs a family member under the age of 14 must still comply with the rules outlined previously for children under 14.

Liability of a Parent or Guardian

Any parent or guardian of a child whose employment violates the *Labour Standards Code* can be fined unless the parent/guardian can prove that the child worked without their knowledge.

Making a Complaint

Complaints about employers hiring under aged children are treated as priority complaints by Labour Standards. If you have concerns about the employment of under aged children, contact Labour Standards immediately.

Foreign Worker Recruitment and Employment

The *Labour Standards Code* provides employment protections for most employees in Nova Scotia. Some of the protections are specific to foreign workers who are especially vulnerable to unscrupulous recruitment and hiring practices. Below is information on Labour Standards rules in place to protect foreign workers. These rules apply to workers who are recruited for employment in Nova Scotia and are not Canadian citizens or permanent residents of Canada.

The Foreign Worker Rules

Changes to Terms and Conditions of Employment

Employers cannot eliminate or reduce a foreign worker's wages, benefits or other terms or conditions of employment (e.g., hours). Also, a foreign worker cannot agree to an elimination or reduction in wages. There are limited exceptions to this rule.

Withholding of Property

Employers and recruiters cannot take or keep a foreign worker's property (e.g., passport, work permit).

Recovery of Recruitment Costs

Recruiters cannot charge workers a fee for recruitment-related services. Employers cannot make deductions, directly or indirectly, from workers' pay to cover the costs of recruiting. These rules apply to all workers, not only foreign workers.

Recruiter Licensing

Most individuals who wish to provide foreign worker recruitment-related services in Nova Scotia must be licensed with Labour Standards.

With limited exceptions, if an employer wants to use a third-party recruiter to hire foreign workers, the employer must use a recruiter who is licensed. A list of licensed recruiters is available on the Labour Standards website.

Employer Registration

Most employers who wish to recruit and hire foreign workers for employment in Nova Scotia must obtain a Foreign Worker Employer Registration Certificate from Labour Standards.

Records

Employers must keep employment records of all employees, including foreign workers. Employers must also keep records related to the recruitment of employees. These records must be kept for at least 36 months after the work has been performed. Recruiters must keep records

related to the recruitment of foreign workers for at least three years after performing recruitment services (see also section on *Records*).

Workers Not Covered by the Foreign Worker Rules

There are three categories of foreign workers who are exempt from the foreign worker rules:

1. International Students - Students whose main reason for being in Nova Scotia is to study.
2. Specialized Service Providers - Individuals brought into the province for short periods of time to provide specialized services. For example, an individual employed by a company in Germany who is sent to Nova Scotia for three days to service equipment their employer sold to a company in Nova Scotia.
3. Independent Contractors - Individuals who are recruited from other countries to perform work in Nova Scotia as independent contractors (i.e., self-employed workers).

Note, international students are covered by the rest of the *Labour Standards Code*.

Exceptions to the Requirement to be Licensed

The following types of recruiters do not need to be licensed to provide foreign worker recruitment-related services:

- those who recruit foreign workers for jobs with provincial government reporting entities, for example provincial government departments, Nova Scotia Health Authority (hospitals), Nova Scotia Community College and school boards; municipalities; and universities
- those who recruit foreign workers for jobs that fall under National Occupational Classification (NOC) Codes “0”, for example senior management jobs, and “A”, for example physicians, university professors and creative performing artists (e.g., actors)

Important note: If you are recruiting foreign workers for one of the organizations or types of jobs listed above and are also recruiting foreign workers for organizations or jobs that do not fall within the exemptions, you must be licensed.

Employers do not need to be licensed to recruit foreign workers to work for the employer’s own business.

Exceptions to the Requirement to be Registered

The following types of employers do not need a Foreign Worker Employer Registration Certificate to recruit and hire foreign workers:

- provincial government reporting entities, for example provincial government departments, Nova Scotia Health Authority (hospitals), Nova Scotia Community College and school boards; municipalities and universities

- employers who seek foreign workers for jobs that fall under National Occupational Classification (NOC) Codes “0”, for example senior management jobs, and “A”, for example physicians, university professors and creative performing artists (e.g., actors)

Important note:

If you are an employer using a third-party recruiter to find foreign workers and you fall under these registration exemptions, you are also exempt from the requirement to use a licensed recruiter.

Concerns about Foreign Worker Recruitment

If you have concerns about an individual without a foreign worker recruiter licence helping foreign workers find employment in Nova Scotia or helping employers in Nova Scotia find foreign workers, you can contact the Labour Standards Division.

You can also contact Labour Standards if you have concerns in relation to a foreign worker being charged fees by someone to help the foreign worker find employment in Nova Scotia, a foreign worker being required to reimburse their employer for recruitment costs, or other possible violations of the *Labour Standards Code.*

Records

Employers and recruiters are required to keep and maintain records relating to the employment and recruitment of employees and individuals.

Employers

Employers must keep employment records to show that employees receive at least the benefits they are entitled to under the *Labour Standards Code*. These records must be kept at the employer's main place of business and must be kept for at least 36 months after the work has been performed. As well, employers must be prepared to show that all outstanding pay has been paid.

Employers must keep the following information:

- a list of the names of all employees, showing the employees' age, and last known address
- a record of the rates of wages, hours of work, vacation periods, leaves of absence, pay, and vacation pay each employee received
- a record of the date each employee began work and, if the employee no longer works for that employer, the last day the employee was employed
- a record of when employees were laid off or fired and the dates when those employees received notice of the end of their jobs
- a record of how much each employee has been paid

Employers who use a recruiter to recruit employees for employment must also keep the following information for 36 months after the work has been performed:

- the name and address of any person the employer paid a recruitment fee to and the date and amount of the payment

Pay Statements

Employers must give employees pay statements when paying their wages. The pay statement must include:

- the pay period for which the employee is being paid for
- the number of hours for which the employee is being paid for
- the wage rate (for example, $17 per hour, 1800 bi-weekly, $100 per day)
- details of all the deductions made from the employee's pay
- how much the employee is being paid after deductions are made

Employers can provide electronic pay statements if employees are able to access them confidentially and print them.

Recruiters of Foreign Workers

Recruiters of foreign workers must keep and maintain the following records for at least three years after the records are made:

- accurate financial records of the recruiter's operations in Nova Scotia
- a copy of each agreement the recruiter has entered into respecting the recruitment of a foreign worker
- a list of every foreign worker recruited by the recruiter for employment in Nova Scotia

Method of Keeping Records

Employers and recruiters may keep records using any method (from a manual system using a payroll book from a stationery store to a computerized bookkeeping/payroll program). The records must be organized, easy to read, accurate, and up to date.

Inspection of Records

Labour Standards officers can inspect all records of employers and recruiters that in any way relate to the recruitment and employment of individuals, including foreign workers.

They also have the right, at any reasonable time, to enter any work place or office to:

- inspect any place where people might work or where any individual was or is being recruited
- talk to any employee or any individual who was or is being recruited during or outside working hours

Employers and recruiters who fail to keep records, or to keep them up to date, and who fail to give information to the Director of Labour Standards or a Labour Standards officer, may be guilty of a violation under the *Labour Standards Code*.

Labour Standards Complaint Process

Contacting Us

To ask a question or file a complaint, call Labour Standards (1-888-315-0110, toll-free in NS) or view our full contact information on our website.

When Labour Standards receives a complaint, we first decide if we have the authority to address the concerns raised by the complainant. A complaint will not move forward if, for example, the complainant's concerns do not fall under Labour Standards legislation or if the complaint is filed more than 6 months after a possible violation of the legislation occurred. If we have the authority to deal with the complaint, it will be assigned to a Labour Standards Officer for processing.

Processing Complaints

The officer will handle the complaint in a fair, impartial and objective way. The officer's role is to ensure compliance with the minimum standards set out in the legislation. The officer does not represent the parties to the complaint. "Parties" to the complaint include the person or business making the complaint (complainant) and the person or business against whom the complaint is made (respondent).

Settlement of Complaints

The officer will first try to resolve the complaint by asking the parties if they want to settle the matter. If the parties are interested in settling, the officer will facilitate settlement discussions. Settlement allows the parties to decide what they think would be a fair resolution to the complaint. If the parties do not want to settle, or if settlement discussions do not lead to an agreement, the officer will investigate the complaint. In some cases, the complaint may be reassigned to another officer for further investigation.

Investigation

During the investigation, the officer will collect information from the parties. As part of the investigation, the respondent may need to give the officer information such as payroll records, pay stubs, time sheets, records of disciplinary action taken against an employee and workplace policies. The officer may need to interview witnesses who have information about the complaint. At any point in the investigation, a respondent may decide to settle the complaint, or a complainant may decide to withdraw the complaint. A complainant may withdraw the complaint if, for example, the complainant feels the evidence does not support it.

Making a Decision

If the complaint is not resolved during the investigation, the officer will complete the investigation and make a decision based on the best evidence available.

The *Labour Standards Code* says that employers must keep records showing they met the minimum standards of the Code. If the employer does not have good records, they may not be able to show they met the standards and an employee's complaint may be successful. In some cases, employees keep personal records, such as records of hours worked and pay received, and these records can be used to decide if the employer has met the standards.

If an officer decides that money is owed to a complainant, and how much is owed, the parties cannot agree to settle the complaint for less than the amount owed.

When the officer issues a formal decision, called a Director's Decision, the parties can either comply with the decision or, if they disagree with it, in some cases they may be able to appeal it to the Labour Board.

Sharing Information

Information that we collect is shared with the parties. Usually, the information is communicated to the parties verbally by the officer or through a letter or email.

Appealing a Decision to the Labour Board

The Labour Board is not part of the Labour Standards Division. It is a separate and independent body from the Labour Standards Division.

If an employer or recruiter decides to appeal a Labour Standards decision ordering pay, they will need to file an appeal form with the Labour Board, and provide the Board with either 1) the amount ordered by Labour Standards or $2000, whichever is less, or 2) a bond for the full amount ordered. The payment will be held by the Board until the appeal process is completed. Depending on the outcome of the appeal, a portion or all the payment may be paid to the complainant or it may be returned to the employer or recruiter.

For information about the appeal process, contact the Labour Board.

Contact Information

Phone

1-888-315-0110 (toll free in NS)

(902) 424-4311 (HRM)

Email

labourstandards@novascotia.ca

Website

www.novascotia.ca/lae/employmentrights/