

# Guide to the Labour Standards Code of Nova Scotia

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# Employment Records

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 12 months after the work has been performed. As well, employers must be prepared to show that all outstanding pay has been paid. In the case of vacation pay, the employer must be able to show payroll records going back 28 months from the date a complaint was filed.

Employers must keep the following information:

- a list of the names of all employees, showing the employees' age, sex, 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 he/she 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

## Method of Keeping Records

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

## Pay Stubs

Employers must give employees pay stubs when paying their wages.

The pay stub must show:

- the pay period the employee is being paid for
- the number of hours the employee is being paid for
- the wage rate (for example, \$10.00 per hour)
- all the deductions made from the employee's pay
- how much the employee is being paid after deductions are made

## Inspection of Records

Labour Standards officers can inspect an employer's payroll records.

They also have the right to enter any work place at any reasonable time to inspect any place where people might work and to talk to any employee during or outside working hours. The Labour Standards Code also says that this can be done when the employer is not at the place of work.

Employers 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.

# Protecting Employees

## **Personal Information**

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The Labour Standards Code provides that when anyone makes a complaint to the Labour Standards Division and asks that their identity be withheld, their name or any identifying information will not be revealed. However, some complaints cannot be pursued on a confidential basis.

## **Discrimination Against a Complainant Or Witness**

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It is against the law to fire, lay off, or discriminate in any way against an employee who has:

- made a complaint under the Labour Standards Code
- testified or is 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 is about to disclose information that is required under the Labour Standards Code
- taken or said that he/she intends to take or if the employer believes he/she will take a leave of absence that an employee may take under the Labour Standards Code
- exercised his/her right to refuse to work on Sundays or Retail Closing Days. Please see separate insert on Retail Closing Days and The Right to Refuse to Work for more information on this topic.

## **Garnishment of Wages**

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An employer may not fire, lay off, or discriminate in any way against an employee whose wages are being garnished.

## **Six Months Limitation Period**

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Complaints must be filed with the Labour Standards Division within six months of a violation of the Labour Standards Code taking place.

# Vacations and Vacation Pay

The Labour Standards Code says that employers must give every employee:

- a vacation of two weeks after 12 months of work and within the following 10 months or, if the employee has been employed with the same employer longer than 8 years, a vacation of at least three weeks
- vacation pay of at least 4 per cent of gross wages (6 per cent for employees after 8 years), which the employer must pay at least one day before the vacation begins

An employer must tell the employee of her vacation at least one week before it begins.

## **Workers Not Covered**

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The following workers are not covered by the Labour Standards Code rules on vacations and vacation pay:

- real estate and car salespeople
- commissioned salespeople who work outside the employer's place of business, but not anyone with an established route
- anyone who works on fishing boats
- people employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week

## **When an Employee Earns Vacation Pay**

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An employee earns vacation pay and vacation during the first 12 months of work for an employer and every 12 months after that.

## **Vacation May Be Broken**

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If the employer and employee agree, the vacation and vacation pay may be broken into two or more vacation periods if the following are true:

- the employee will have two weeks' vacation, or three weeks after 8 years
- the employee receives at least one week of unbroken vacation

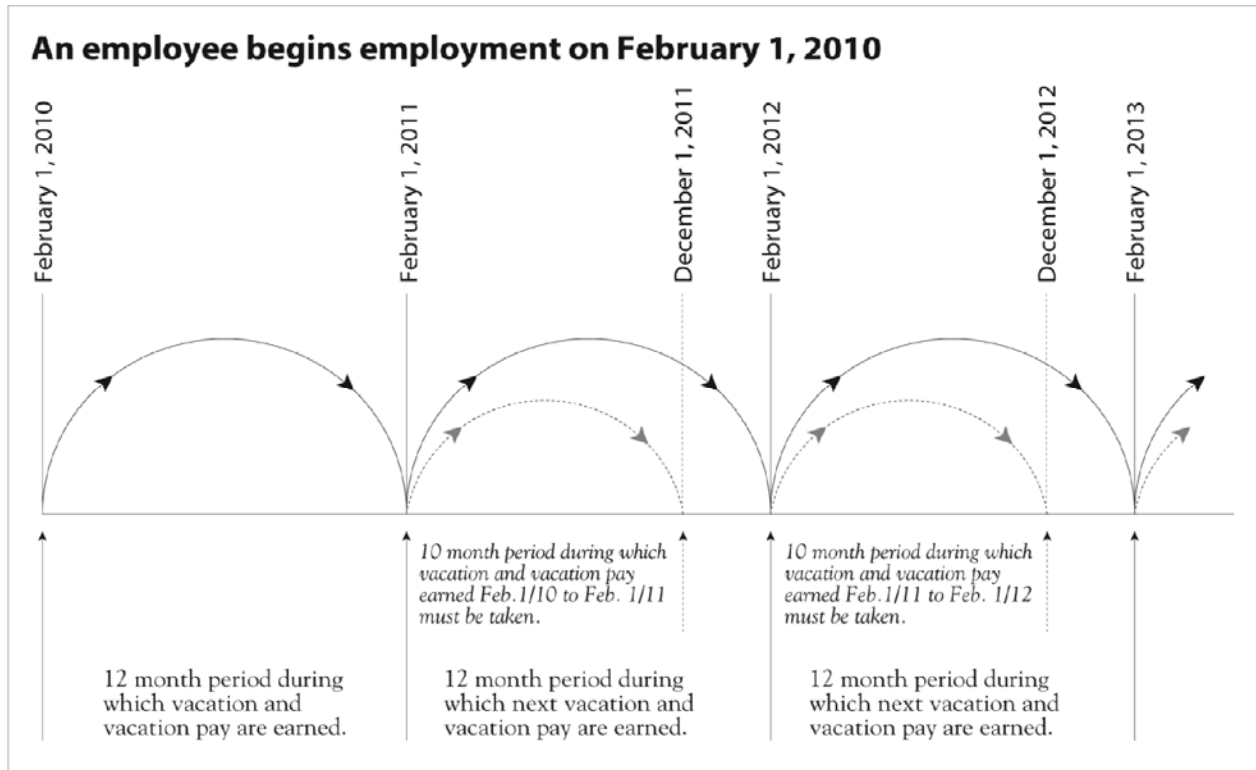
## **Does an Employee Have to Take Vacation Time?**

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Employees who work full time must take vacation time.

Employees who work less than 90 per cent of the regular working hours during the 12 months when they earned vacation can give up vacation time and just collect their vacation pay.

When an employee tells an employer in writing that she will not take vacation time, the employer must pay vacation pay no later than one month after the date the 12-month period ends.



## Vacation Pay Included in the Hourly Rate

An employer can include vacation pay in an employee's hourly rate, which would be paid in every pay cheque.

In that case, the employer will need to:

- have proof that the employee knows that vacation pay will be paid on every pay cheque
- show on payroll records that vacation pay has been paid to the employee
- show on the employee's pay stub that vacation pay is included in the pay cheque
- ensure that the employee's rate of pay is at least minimum wage plus 4 per cent, (6 per cent for employees after 8 years), if the Minimum Wage Order applies to the employee

## Keeping Records

Employers must keep accurate payroll records, including information on vacations taken and vacation pay paid. If a Labour Standards officer audits and finds no record of vacation pay, the Director of Labour Standards might find that the employer still owes the employee vacation pay. See the information sheet titled "Employment Records" for more information on records

## Vacation Pay When Employment Ends

When employment ends, the employee is entitled to receive all accumulated vacation pay that has been earned. The employer must pay it within 10 business days after the employment relationship ends.

# Holiday Pay

The Labour Standards Code gives employees who qualify five holidays with pay: New Year's Day, Good Friday, Canada Day, Labour Day, and Christmas Day. A separate law covers Remembrance Day; it is explained at the end of this information sheet.

## **Who Qualifies for Paid Holidays?**

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To have a day off with pay for these holidays, an employee must:

1. be entitled to receive pay for at least 15 of the 30 calendar days before the holiday
2. have worked his/her last scheduled shift or day before the holiday and 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, the employee may still qualify for the paid holiday.

Second, the employee must have worked his/her last scheduled shift or day before the holiday and the first scheduled shift or day after the holiday. Again, 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 is not qualified to receive holiday pay. If the day is one when the employee is not scheduled to work, then he/she may still qualify for the paid holiday.

## **Exception**

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If an employer tells an employee not to report for work on his/her last scheduled work day immediately before the holiday, or the next scheduled work day after the holiday, then the employee is still entitled to receive holiday pay if he/she meets the first qualification.

## **Workers Who Are Not Covered**

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The following workers are not covered by the rules for holiday pay:

- anyone who works under a collective agreement
- most farm workers
- 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
- anyone who works on a fishing boat
- anyone who works in the manufacturing or refining processes of the petrochemical industry
- anyone employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week

### 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, or if wages change from pay to pay, the employer should average hours or wages over 30 days 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 calculations would be as follows:

$170 \div 20 = 8.5$  average hours worked per shift.

If the holiday falls on an employee's regular day off, the employee is entitled to another day off with pay.

### Calculating a Wage When the Employee Works on a Holiday

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

- the amount the employee would have normally received for that day
- 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 in a Continuous Operation

Employees who work in a continuous operation can be paid for holidays in a different way.

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 work normally 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
- by paying straight time for the hours worked and giving the employee another day off with pay

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

### Remembrance Day

An employee who works on Remembrance Day and who has worked on at least 15 of the 30 calendar days immediately before Remembrance Day may be entitled to receive a holiday 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.

# Equal Pay for Equal Work

This information sheet is about how the Labour Standards Code requires that employers pay male and female employees the same pay for similar work. An employer cannot pay one employee a lesser wage than an employee of the other gender if both employees do similar work.

Employers cannot pay employees less or more just because they are male or female. Men and women must receive the same rate of pay for doing work that is the same or very much the same.

For example, if a restaurant owner has both male and female servers, the owner cannot pay the female servers less just because they are women. If the male and female servers do very much the same work, then the owner must pay them both the same.

Employers may pay different rates between men and women doing work that is very much the same when one of the following is in place:

- 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 sex that makes a difference between employees doing the same work

For example, an employer can hire a male and female employee 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, a male and female employee doing the same job could be paid a different rate of pay because one of them 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.

# Leaves of Absence

## Pregnancy/Parental, Reservists, Bereavement, and Court Leave

This information sheet is about the leaves of absence that the Labour Standards Code says employers must allow employees to take.

During a leave of absence, an employee leaves the job intending to return. Leaves of absence are pregnancy and parental leave, court leave, bereavement leave, sick leave, compassionate care leave and reservists' leave.

### **Pregnancy and Parental Leaves**

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Pregnancy leave is an unpaid leave for pregnant employees. It can last up to 17 weeks. The employee can start the leave up to 16 weeks before the expected date of delivery. She must also take at least one week after the date of delivery. Employees who have worked for an employer for at least one year may qualify for this leave. An employer can require that an employee take an unpaid leave of absence if her pregnancy interferes with her work. There are times when the Human Rights Act or the employee's contract prevents this.

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 52 weeks and is available to every parent that qualifies for it. To qualify for the leave an employee must have worked for the employer for at least one year and must become a parent to the child as a result of its birth or adoption.

### **To Take Pregnancy or Parental Leave**

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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 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.

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, she must take them one right after the other and not go back to work between the two leaves. In this case, she can take up to 52 weeks' total leave (17 pregnancy and 35 parental). If an employee is taking parental leave but not pregnancy leave, he can take up to 52 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 52 weeks after the child arrives in the home. Employees who do not take pregnancy leave but who do take parental leave include natural fathers and adoptive mothers and fathers.

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.

### **The Employee's Rights during Leave**

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During pregnancy and parental leave, employers must let employees keep up at their own expense any benefits plan in which they belong. Employers must give 10 days' written notice before the option to keep up employee benefits is no longer in effect.

When an employee returns from parental leave, the employee must be accepted back into the same position or a comparable one with no loss of seniority or benefits.

## **Reservists' Leave**

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Class C reservists who are on or preparing for an active deployment, within Canada or overseas, can take an unpaid leave from civilian work to fulfill their military commitment to service. In order to qualify for the leave, an employee must be employed with the employer for a year.

Reservist employees can take leave for a maximum period of service of 18 months within a 3 year period and must return to work within 4 weeks of the end of the service period. The start date for a period of military service must be at least 1 year after the employee returned from a leave for a previous period of service.

### **To Take Reservists Leave**

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An employee must give the employer 90 days notice of his/her intention to take the leave and 90 days notice of his/her intention to return to work from the leave. In an emergency situation, where the full 90 days cannot be provided, an employee needs to give as much notice as is reasonably practical.

An employer can require an employee to provide a certificate from an official with the Reserves confirming that the employee requires the leave for a period of active service.

### **The Employee's Rights during Leave**

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During the leave, the employer must let the employee keep up, at the employee's own expense, any benefit plans to which the employee belongs. If the option to keep up the benefits has an expiry date, the employer must give 10 days' written notice before the option to keep up the benefits plan is no longer in effect.

When an employee returns from the leave, he/she must be accepted back to the same or a comparable position with no loss of seniority or benefits.

## **Bereavement Leave**

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Employees can take unpaid leave of up to three working days in a row if their spouse, parent, guardian, child, or a child under their care dies.

Employees can take one calendar day's leave without pay if their 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 they can that they will take this leave.

## **Court Leave**

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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 they can that they will take court leave.

## **Discrimination Against an Employee**

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

- the employer has good reason to fire or suspend the employee 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

# Leaves of Absence

## Compassionate Care and Sick Leave

This sheet is about the leaves of absence that the Labour Standards Code says employers must allow employees to take.

A leave of absence occurs when an employee leaves the job intending to return. Leaves of absence are pregnancy leave, parental leave, court leave, bereavement leave, sick leave, compassionate care leave and reservists' leave.

### **Compassionate Care Leave**

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Compassionate care leave is an unpaid, eight-week leave for employees who need to care for a seriously ill family member who has a high risk of dying within 26 weeks.

To take compassionate care leave, employees must be employed for more than three months with the same employer. Also, they must give their employer as much notice as possible before taking the leave. An employer can ask an employee to provide a medical certificate, from a medical doctor, stating that the employee's family member is seriously ill. The leave can be broken up into separate periods of no less than one-week blocks.

Employees who take a compassionate care leave may qualify for a six-week compassionate care leave benefit under the federal government's Employment Insurance program.

### **The Employee's Rights during the Leave**

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During compassionate care leave, an employer must let the employee keep up any benefit plans to which the employee belongs at the employee's own expense. If this option to keep up the benefits has an expiry date, the employer must give 10 days' written notice before the option to keep up the benefits is no longer in effect.

An employee who returns from compassionate care leave must be accepted back into the same position or a comparable one with no loss of seniority or benefits.

### **Sick Leave**

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Employees are entitled to receive up to three days, 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.

An employee who is denied sick leave may make a complaint with the Labour Standards Division.

### **Discrimination Against an Employee**

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

- the employer has good reason to fire or suspend the employee 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

# Hours of Labour & Breaks

## Hours of Labour

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Under normal circumstances, according to the Labour Standards Code, employers must grant employees a rest period of at least 24 hours in every 7 days.

### Allowing Employees to Work Longer than 7 Days

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Employers may apply to the Director of Labour Standards for an exemption from this requirement of the Labour Standards Code. The Director or a Labour Standards officer will find out if the employer and most of the employees agree and may grant the exemption or require another arrangement for a rest period.

## Emergency Situations

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An employer can require more than six days of work in a row if there has been an accident or if urgent work must be done to the machinery or plant, but can require only as much work as is needed to avoid serious interference with the ordinary operation of the workplace.

## Workers Not Covered for Hours of Labour

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- most farm workers
- commissioned salespeople who work outside the employer's place of business
- anyone who works on fishing boats
- practitioners or students in training for architecture, dentistry, law, medicine, chiropody, professional engineering, public or chartered accounting, psychology, surveying, or veterinary science
- people employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week

- People employed in offshore oil and gas work while under the jurisdiction of the Canada – Nova Scotia offshore Petroleum Board.

## Breaks

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If an employee works more than 5 consecutive hours, the employer must provide the employee with an unbroken half hour break. If an employee works more than 10 consecutive hours, the employer must provide an unbroken break of one half hour plus other rest or eating breaks totalling at least 30 minutes for each other 5 hours of work.

For example, if an employee works a shift of 12 consecutive hours, he/she 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 to 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.

## Exceptions to the requirement to provide breaks

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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.

## Workers not covered by the break rules

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The rules regarding breaks do not cover employees who work under a collective agreement.

# 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**

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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**

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The Labour Standards Code says that no one is to employ a child under the age of 16 in any work that risks the child's well-being, such as:

- mining
- manufacturing
- construction
- forestry
- work in garages and automobile service stations
- work in hotels
- work in billiard rooms

## **Children Working in Restaurants**

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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**

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The rules regarding children not being allowed to work in the types of businesses identified above do not apply to a situation where an employer employs a 14 or 15 year old member of his/her own family.

## **Liability of a Parent or Guardian**

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

# 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 that he/she 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.

## How Much Notice in Writing?

<b>If the employee has worked for</b>	<b>then the employer must give</b>
more than 3 months but less than 2 years	1 week
between 2 years and 5 years	2 weeks
between 5 years and 10 years	4 weeks
10 years or more	8 weeks

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 he/she would receive if he/she worked during the notice period.

## Constructive Dismissal

If an employer constructively dismisses an employee and the employee quits as a result, then the employee may be entitled to pay in lieu of notice under the Labour Standards Code.

Constructive dismissal occurs when an employer makes a significant change to a fundamental term or condition of an employee’s employment without the employee agreeing to the change. Constructive dismissal can involve such things as changes to an employee’s job responsibilities, rate of pay or hours of work. In some situations, it can also involve an employer harassing or abusing an employee.

An employee must quit because of the change within a reasonable period of time in order for the situation to be considered a termination of employment under the Labour Standards Code.

Employers may choose to try to prevent a complaint of constructive dismissal by ensuring employees are given proper written notice before making changes to employees’ terms and conditions of employment.

Constructive dismissal is a complex and difficult issue. Employers and employees faced with a situation that could result in a complaint of constructive dismissal are encouraged to contact the Labour Standards Division for more information on how the issue is dealt with under the Code.

## The Right to End Employment Without Notice

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There are times when an employer does not have to give an employee notice or pay in lieu of notice when ending the employee's job. In order to end an employee's job without notice or pay in lieu of notice, the employer must show that the employer has:

- made their expectations clear to the employee
- warned the employee to change his/her behaviour
- given the employee a reasonable chance to improve his/her behaviour
- warned the employee that not improving his behaviour could lead to his/her being fired

This kind of action would be acceptable if, for example, the employee was late for work again and again. 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.

Ending an employee's job is not always the best way to handle problems with an employee. In some cases, progressive discipline may be used to deal with problems.

## Progressive Discipline

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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 has trouble learning the job may just need several spoken and written warnings. The discipline should match the seriousness of the problem.

## Condonation

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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 has to be told that the employer will no longer allow the poor performance. The employee must understand what will happen if his/her performance does not improve.

## Other Times When Notice Does Not Need to Be Given

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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 a person 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 lack of work that the employer did not expect and could not avoid
- when the employer offers the employee other reasonable employment
- when a person 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

## **Employees with 10 Years of Service**

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The Labour Standards Code says that an employee with more than 10 years 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, he/she may have to show all of the following:

- The employer has made their expectations clear to the employee
- The employer has warned the employee to change behaviour
- The employer gave the employee a reasonable chance to change his/her behaviour
- The employer has warned the employee that not improving behaviour could lead to being fired

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

When the Director of Labour Standards or the Labour Standards Tribunal finds that an employee with more than 10 years 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, the Director of Labour Standards may order a reasonable alternative remedy.

## **Firing 10 or More Employees**

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The Labour Standards Code says that an employer must give notice to employees and the Minister of Labour and Workforce Development when firing or laying off 10 or more employees within four weeks. The amount of notice groups of employees are entitled to receive depends on the numbers being laid off:

- 8 weeks for between 10 and 99 employees
- 12 weeks for between 100 and 299 employees
- 16 weeks for 300 or more employees

## **When the Employer Gives Notice**

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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 that he or she is entitled to receive at the end of the notice period

## **When a Business Is Transferred or Sold**

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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, he or she 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.

## **Jobs Not Included under the Labour Standards Code**

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People who work in the following professions are not covered by the Labour Standards Code's rules about the employer ending the employment:

- people employed in the construction industry
- real estate and car sales people
- commissioned salespeople who work outside the employer's place of business, but not those on an established route
- anyone who works on fishing boats
- anyone in a union with a collective agreement in force

- practitioners or students in training for architecture, dentistry, law, medicine, chiropractic, professional engineering, public or chartered accounting, psychology, surveying, or veterinary science (for the purposes of reinstatement claims for 10-year employees only)
- people employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week

# When an 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 he/she is leaving his/her job and the time that he/she actually leaves.

How much written notice an employee must give depends on how long he/she has worked for the same employer.

He/she must give:

- one week’s written notice if he/she worked between three months and two years
- two weeks’ written notice if he/she worked more than two years

## When an Employee Does Not Need to Give Notice

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Just as an employer sometimes does not always have to give an employee notice that his/her employment is ending, there are also times when employees do not have 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.

## Duty of the Employer When Notice Is Given

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When an employee has given the employer proper notice that he/she is 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
- may not require the employee to use remaining vacation during the notice period, unless the employee agrees
- must pay the employee all the wages he/she is entitled to receive at the end of the notice period

## Periods of Employment

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An employee’s period of employment (how long she worked) at one workplace may have been broken because he/she was laid off, suspended, or fired. This is important to know if he/she is about to resign and has to decide whether to give his/her 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 of layoff or suspension
- by 13 weeks that resulted from the employee resigning or the employer firing the employee

## When an Employee Does Not Give Notice

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When an employee quits without notice, the employer may file a complaint with the Labour Standards Division and claim any wages owed to the employee. The maximum amount the employer may receive is the amount of wages the employee would earn in the notice period. For example, if an employee must give the employer one week's written notice, but quits without notice, then the employer may make a claim on unpaid wages equal to one week's pay.

To claim the employee's unpaid wages the employer must be able to show that he or she lost money or had **extra** costs because of the employee quitting without notice. As an example, this loss or costs may be the cost of paying employees overtime to finish work.

## Six Months Limitation Period

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An employer must make a complaint with the Labour Standards Division within 6 months of the employee quitting without notice in order to pursue a claim to withhold pay under the Labour Standards Code.

## Professions Not Covered

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People employed in certain jobs do not have to give notice that they are quitting their jobs. These people include:

- people employed in the construction industry
- real estate and automobile salespersons
- commissioned salespersons who work outside the employer's place of business, except those on established routes
- anyone who works on fishing boats
- anyone in a union with a collective agreement in force
- people employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week

# Protecting Pay

One of the most common complaints filed with the Labour Standards Division is protection of an employee's pay.

The Labour Standards Code says that:

- employees must be paid for their work
- employees must be paid their wages at least two times each month
- employees must be paid within five days after the end of the pay period

## When an Employee Is Not at Work to Receive Pay

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If an employee is not at work when he/she would normally be paid, or is not paid for any other reason, then that employee must be paid when he/she asks for it at any time during regular working hours.

## Forms of Wages

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Employers must pay wages in Canadian money by cheque or cash or demand for payment drawn upon a chartered bank, credit union, trust company, or any company insured under the Canada Deposit Insurance Corporation Act by direct deposit.

## Six Months Limitation Period

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An employee must make a complaint with the Labour Standards Division for unpaid pay within 6 months of the pay being owed.

## When Labour Standards Will Not Take a Complaint

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The Labour Standards Division will not take a complaint about unpaid pay if the employee has sued the employer in court for the pay. If the employee belongs to a union that has a collective agreement and could file a grievance for unpaid wages, the employee cannot complain through the Labour Standards Division.

# 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 may 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 he/she 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 the purchase of goods or services, the employer must be able to show that the loss is the fault of the employee.

# Minimum Wage

## **What the Minimum Wage Order Does**

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First, the General Minimum Wage Order sets wage rates. A wage rate is the amount of money an employer pays an employee for each hour of work. The General Minimum Wage Order sets the minimum wage rate, which is the least amount of money an employer must pay an employee for each hour of work.

In Nova Scotia there are two wage rates, one for experienced employees and one for inexperienced employees. An experienced employee has done a kind of work for at least three calendar months. An inexperienced employee has done a kind of work for less than three calendar months.

Second, the General Minimum Wage Order sets employment standards for the following:

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

## **The New Minimum Wage Rate**

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Starting April 1, 2009, employers must pay experienced employees at least \$8.60 per hour. They must pay inexperienced employees at least \$8.10 for each hour of work. The minimum wage rate applies to a work week of 48 hours or less.

## **Overtime**

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The General Minimum Wage Order contains some overtime requirements for some groups. Overtime is also addressed in the Code and other special minimum wage orders. For more information see the "Overtime" insert.

## **Partial Hours**

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An employer who pays minimum wage and who pays employees by the hour must round up parts of hours worked over 15 minutes. If an employee works for between 15 and 30 minutes, the employer must pay for one half-hour (or for 30 minutes). If the employee works for between 31 and 60 minutes, the employer must pay the employee for one full hour (or for 60 minutes).

Here are some examples:

- an employee who works for 7 hours and 20 minutes must be paid for at least 7 1/2 hours.
- an employee who works for 7 hours and 40 minutes must be paid for at least 8 hours.

Even if the employee is paid more than minimum wage, the amount paid for partial hours cannot be less than the amount that would have been paid for the day at minimum wage. For example, if an employee works for 2.25 hours at \$8.70, her wage would be \$19.57. If she worked at minimum wage (currently \$8.60/hour), she would earn \$21.50 (2.5 x \$8.60) because the employer would have to pay her for 2.5 hours. She is, therefore, owed an additional \$1.93 for this day (\$21.50 - \$19.57).

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## Call In

If you are an employee and you are called in to work outside your regular work hours, your employer must pay you for at least three hours of work at the minimum wage rate, that is, at least \$25.80 (\$8.60 x 3 hours). This is true even if you work only one or two hours. For example, if you make \$12 per hour and you are called in for one hour's work, your employer must pay you at least \$25.80.

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## 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 starts to get 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 he/she spent waiting for work from 8:00 am to 9:00 am. He/she would be entitled to his/her regular rate of pay for those hours worked between 9:00 am and 1:00 pm.

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

For example, an employee is paid \$4 for each hat he/she sews. During a one-week period the employee produces 40 hats. The employee is entitled to be paid: \$4 per hat x 40 hats, or \$160.

To produce the 40 hats, the employee worked 30 hours. At the minimum wage the employee would have earned \$258.00 (\$8.60 x 30 hours of work).

The employee is entitled to be paid at least the same as if he/she was being paid the minimum wage for each hour worked. He/she is, therefore, owed an additional \$98.00 (\$258.00 - \$160.00).

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## Deductions for Uniforms

If you are an employer whose employees wear uniforms, aprons, or smocks, you 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 \$8.70 per hour then the employee earns \$261.00 (\$8.70 x 30) each week. If the employer takes \$20 off the weekly pay for a uniform, then the employee will have earned \$241.00 that week, or \$8.03 per hour (\$241.00 ÷ 30). Since \$8.03 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.

## **Board and Lodging**

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

For board and lodging, for each week: \$65.00

For board only for each week: \$52.65

For lodging only for each week: \$14.65

For a single meal: \$3.45

An employer cannot charge an employee for a meal not received.

## **Who Is Not Covered by the General Minimum Wage Order**

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- certain farm workers
- apprentices employed under the terms of an apprenticeship agreement under the Apprenticeship and Trades Qualifications Act
- 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
- anyone working on a fishing boat
- anyone who comes under the Minimum Wage Orders concerning Logging and Forest Operations and Construction and Property Maintenance
- anyone employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week

# Overtime

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.

For example, if an employee makes \$10.00 per hour, that employee would make \$15.00 per hour for every hour worked over 48 hours.

These rules also apply to some salaried workers. 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

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

### *General Minimum Wage Order*

Overtime is based on minimum wage

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

- oil and gas workers (but not those in retail)
- managers, supervisors, and employees employed in a confidential capacity
- transport (this group can average over 96 hours in two weeks)
- primary fish and agricultural processors (but not meat)
- flat-rate auto mechanics/auto body technicians
- some types of professionals and their trainees
- IT professionals (but not employees who provide basic operational/technical support)
- shipbuilders and related workers (but not those in retail)

### *Construction and Property Maintenance Minimum Wage Order*

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

- those constructing, restoring or maintaining roads, streets, sidewalks, structures or bridges (except municipal)
- those doing paving of all sorts
- water and sewer installers
- landscapers and snow removal workers
- saw mill workers
- metal fabricators and machine shop workers

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

## Workers Not Covered by Overtime Rules

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The following groups of workers are not covered by overtime rules:

- most farm workers
- apprentices employed under the terms of an apprenticeship agreement under the Apprenticeship and Trades Qualifications Act
- 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
- anyone working on a fishing boat
- anyone employed in a private home by the householder to provide domestic service for a member of the employee's immediate family or for 24 hours or less per week
- those in the logging and forest industry
- live in health and personal care providers
- janitors and building superintendents in buildings that include their residence

# Retail Closing Days and the Right to Refuse to Work

## **Retail Closing Days**

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

New Years Day	Good Friday
Easter Sunday	Canada Day
Labour Day	Thanksgiving Day
Christmas Day	Boxing Day

## **The Right to Refuse to Work**

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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 Years 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 his/her 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**

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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 in close proximity to one another, they are considered to be 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
- the sale of books, newspapers, magazines
- antique stores
- art galleries
- used clothing stores

- private clubs, veterans and other clubs, but not clubs set up for the purpose of 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.

## **Remembrance Day**

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Remembrance Day has different closing rules. Generally, retail businesses are required to close on Remembrance Day, with the following exceptions:

- drug stores, except those in department stores
- service stations
- the hospitality industry
- stores with no more than three persons at any one time operating them
- the operation of a bakery for the baking of products for sale on the next day
- broadcasting
- other retail businesses can remain open until 6am on Remembrance Day to finish a regular shift that started the previous day or to begin, after 9:00pm on Remembrance Day, a regular shift that continues into the following day

The Labour Standards Code does not give employees the right to refuse to work on Remembrance Day.

The Nova Scotia Department of Justice is responsible for enforcing the rules regarding businesses being required to close on Remembrance Day.