

# Employment Standards

## Notice of Dismissal, Layoff or Termination and other employee rights



### 1. How are the terms dismissal, layoff, termination, suspension, and period of employment defined in the New Brunswick Employment Standards Act?

**dismissal** – the termination of the employment relationship for cause at the direction of the employer.

**layoff** – a temporary interruption of the employment relationship at the direction of the employer because of lack of work.

**termination** – the unilateral severance of the employment relationship at the direction of the employer.

**suspension** – a temporary interruption of the employment relationship other than a layoff at the direction of the employer.

**period of employment** – the period of time from the last hiring of an employee by an employer to the termination of his/her employment, and includes any period of layoff or suspension of less than 12 consecutive months.

### 2. What are the requirements should an employer choose to dismiss an employee for cause?

When an employer dismisses an employee for cause, the employer must give the employee the reasons for the dismissal in writing. The *Employment Standards Act* does not have any provisions as to when this notice should be provided, however the Labour and Employment Board has established criteria in this regard. As such, the notice should be provided upon dismissal or within a reasonable time depending on the circumstances. The employer will need to prove that the employee received a dismissal notice. Evidence may be requested to prove the cause existed.

Where the employer does not provide the reasons in writing, the dismissal becomes a termination and for an employee employed with an employer for 6 months or more, the employer will be

required to pay the employee what he would have earned during the applicable notice period.

### 3. What are the requirements should an employer choose to terminate or layoff an employee?

Where an employee has been employed with an employer *for less than six months*, the employer is not required to give the employee advance notice of the termination or layoff.

Where an employee has been employed with an employer for a period of at least *six months but less than five years*, the employer must give the employee at least *two weeks* written notice of the termination or layoff.

Where an employee has been employed with an employer for a period of *five years or more*, the employer must give the employee at least *four weeks* written notice of the termination or layoff.

When an employer provides a written notice to an employee, the employer must allow the employee to work as they normally would during the notice period.

The employer may choose to pay the employee the wages the employee would have earned during the applicable two or four week notice period instead of providing a written notice.

Period of employment	Layoff or termination
Less than 6 months	No notice required
More than 6 months, less than five years	2 weeks notice in writing, or 2 weeks pay
5 years or more	4 weeks notice in writing, or 4 weeks pay

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### 4. What are the requirements should an employer choose to terminate or layoff a group of employees?

When an employer intends to terminate or layoff in a *four week period more than ten employees* if they represent at least *twenty-five per cent of their employees*, the employer must first give notice to the Minister of the Post-Secondary Education, Training and Labour and the employees affected of at least *six weeks* of the termination or layoff. Written notice can be submitted by email, fax, or mail.

### 5. Are there any exceptions to the requirement noted above for an employer to give an employee a written notice of termination or layoff?

Yes, an employer can terminate or lay off an employee without notice where:

- the termination of employment is due to the completion of a definite assignment the employee was hired to perform over a period not exceeding 12 months;
- the employee has completed a term of employment fixed in the employment contract, unless the employee is employed for a period of three months beyond that period;
- the employee retires under an established retirement plan;
- the employee is doing construction work in the construction industry;
- the termination or layoff results from the normal seasonal reduction, closure or suspension of an operation; or
- the employee has refused reasonable alternative employment offered by the employer instead of being terminated or laid off.

In addition, an employer can lay off an employee without notice where:

- the layoff is for a period not exceeding six days, or
- there is lack of work due to any unforeseen reason.

Please contact the Employment Standards Branch to determine if the reasons qualify for unforeseen

### 6. Can the employer pay the employee what they would have earned during the notice period instead of giving them a written notice?

Yes, instead of providing the employee with a written notice, the employer can pay the employee what they would have earned during the applicable notice period.

### 7. Is an employee required to give notice to his employer when quitting?

No, an employee is not required to provide notice to their employer when quitting a job. It is recommended that the employer keep a copy of the employee's notice of quit in their file.

### 8. Is severance pay the same as pay in lieu of notice under the *Employment Standards Act*?

No. The *Employment Standards Act* only considers pay in lieu of notice and is limited to either two or four weeks of pay depending on the employee's period of employment (from 6 months to 5 years, and over 5 years). Severance pay is not the same as pay in lieu of notice. It is a common law matter separate from pay in lieu of notice and is not something that is included in the *Employment Standards Act*.

### 9. Can an employer dismiss an employee for making a complaint to the Employment Standards Branch?

No, employers cannot suspend, lay off, penalize, dismiss or otherwise terminate or discriminate against an employee for making or giving information against the employer with respect to the *Employment Standards Act*.

### 10. Can an employer ask an employee to take a lie detector test?

No, employers are not permitted to ask, require or direct an employee or prospective employee to take a lie detector test. In addition, the results of a lie detector test taken in any other jurisdiction shall not be disclosed to an employer.

### 11. Is the employee entitled to return to work after a workplace injury?

Yes. In the following circumstances when an employee: suffers a workplace injury is entitled to compensation under the *Worker's Compensation Act* has been told they are capable of resuming work by Work Safe NB This right to return to work is administered by the Employment Standards Branch.

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

This is a guide only. For interpretation and application purposes, please refer to the *Employment Standards Act*, its regulations and amendments.



# Employment Standards

Rules of payment and payroll records,  
scheduling and equal pay for equal work

## 1. How often should employers pay their employees?

Employers are required to pay their employees at least every 16 calendar days. On each pay day, employees should receive all wages and commissions owed to them up to seven days prior to pay day.

## 2. In what form are employers required to pay their employees?

Employers must pay each of their employees in Canadian dollars, by cheque or deposit to the employee's personal bank account.

## 3. Do employers have to provide their employees with a pay statement when payment is made?

Yes, employers are required to give each of their employees a pay statement on each pay day showing:

- the dates of the pay period and the gross wages for that period, and
- the amount and description of each deduction, and the net pay.

Furthermore, should the employer choose to provide electronic pay statements at the place of employment, they must:

- provide the employee with confidential access to the electronic pay statement, and
- a means of making a paper copy of his statement.

## 4. Can employers withhold or treat as wages any tips, gratuities or employer imposed surcharges?

No, employers cannot withhold or treat as wages any tips, gratuities or employer imposed surcharges. Tips, gratuities and employer imposed surcharges are the property of the employee to whom, or for whom, they are given. Surcharges

must be distributed to the employee no later than the next regular pay day after which the employer collected them. There are rules regarding the pooling of tips. For more information, please contact the Employment Standards Branch.

## 5. How soon can an employee expect to be paid after employment ceases?

When employment ceases, all wages normally due on the next regular pay day must be paid to the employee at that time. All other outstanding wages, commissions, vacation pay, and other benefits must be paid on the following pay day but no later than 21 calendar days after the employee's last day of employment.

## 6. What should happen when an employee does not receive a pay cheque on time?

An employee should first discuss the issue with their employer in an attempt to resolve the matter. If the employer does not correct the problem then the employee should contact the Employment Standards Branch.

## 7. Can an employer deduct monies from an employee's wages?

The *Employment Standards Act* does not expressly set out the conditions under which an employer may deduct monies from an employee's wages. However, the Labour and Employment Board has established criteria in this regard. Employers should contact the Employment Standards Branch before making any deduction to an employee's wages other than those regulated by law (Employment Insurance, Canada Pension, Income tax, and court ordered).

## 8. Is an employee entitled to a rest period each week?

Yes, all employees are entitled to a weekly rest period of at least 24 consecutive hours, if possible



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## Rules of payment and payroll records, scheduling and equal pay for equal work

on a Sunday. The only exceptions to this are where:

- the employee is required to cope with an emergency; or
- the employee is not usually employed for more than three hours in any one day.

### 9. Does an employee have to work on a Sunday?

An employee who works in certain retail businesses may be able to refuse to work on Sunday. If this employee qualifies and wishes to refuse to work on a Sunday, they must give the employer verbal or written notice of the refusal at least 14 days before any Sunday for which the employee refuses to work.

For more information on which employees qualify, please contact the Employment Standards Branch.

An employer cannot dismiss, suspend, lay off, penalize, discipline or discriminate against an employee for refusing to work on a Sunday if the employee was permitted to do so.

### 10. Do employees have to be paid for training hours?

Depending on the circumstances, training hours may be considered regular hours of work and may be required to be paid, unless the training is a pre-requisite for employment.

### 11. Are employees entitled to food and rest breaks?

Yes, all employees are entitled to food and rest breaks as required under the Occupational Health and Safety Act.

## Payroll records

### 1. Are employers required to keep payroll records?

Yes, employers are required to keep payroll records for each employee showing:

- name, address, date of birth and social insurance number;
- date the employment began;

- number of hours worked each day and each week;
- wage rate and gross earnings for each pay period;
- amount and reason for each deduction from gross earnings;
- vacation dates, vacation pay due or paid, and the dates of payment;
- public holiday pay due or paid, and the dates of payment;
- net amount of money paid;
- dates and reason the employee was on a leave of absence and any document or certificate relating to a leave of absence;
- date of any dismissal or layoff, and the dates of the notices thereof,
- date of cessation of employment;
- any other relevant information about the employer/employee relationship.

### 2. How long must payroll records be kept on file, and where must they be kept?

Employers are required to keep payroll records for at least 36 months. This includes any period after the employee ceases to work for the employer. These records must be maintained in the province of New Brunswick.

### 3. Can an Employment Standards Officer enter an employer's office or any premises to inspect, audit or examine employment records?

Yes, for the purpose of ensuring compliance with the *Employment Standards Act*, an Employment Standards Officer may enter any office or premises and request all employment records and make copies of these items.

### 4. What happens where an employer fails to maintain accurate payroll records?

Where an employer fails to maintain accurate records in accordance with the *Employment Standards Act*, the Employment Standards Branch may accept the evidence of the employee with respect to the employee's employment. In this instance, the onus is on the employer to prove that the employee's evidence is incorrect.

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

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# Employment Standards

## Rules of payment and payroll records, scheduling and equal pay for equal work

### Scheduling

#### 5. Is an employee entitled to a rest period each week?

Yes, all employees are entitled to a weekly rest period of at least 24 consecutive hours, if possible on a Sunday. The only exceptions to this are where:

- the employee is required to cope with an emergency; or
- the employee is not usually employed for more than three hours in any one day.

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For more information on which employees qualify, please contact the Employment Standards Branch.

An employer cannot dismiss, suspend, lay off, penalize, discipline or discriminate against an employee for refusing to work on a Sunday if the employee was permitted to do so.

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Depending on the circumstances, training hours may be considered regular hours of work and may be required to be paid, unless the training is a pre-requisite for employment.

#### 8. Are employees entitled to food and rest breaks?

Yes, all employees are entitled to food and rest breaks as required under the *Occupational Health and Safety Act*.

### Equal pay for equal work

#### 9. Is an employer required to pay an employee of one gender at the same rate as an employee of the opposite gender where both employees perform alike jobs?

Yes, where employees of opposite gender perform substantially the same jobs, in similar work environments, utilizing the same skill level and responsibilities, the employer must pay both employees at the same rate of pay.

Employers may deviate from this requirement where there is:

- a seniority or merit system
- a system that measures by quantity or quality of production
- any other system or practice in place that is not otherwise unlawful

#### 10. Does this law apply to males as well as females?

Yes, both male and female employees are protected as it relates to equal pay for equal work.

#### 11. Where two employees of the same gender do the same work and one is paid less than the other, can the employee make a claim for equal pay?

No, comparisons may only be made between persons of opposite gender.

# Stay informed on **OCCUPATIONAL HEALTH AND SAFETY** in New Brunswick

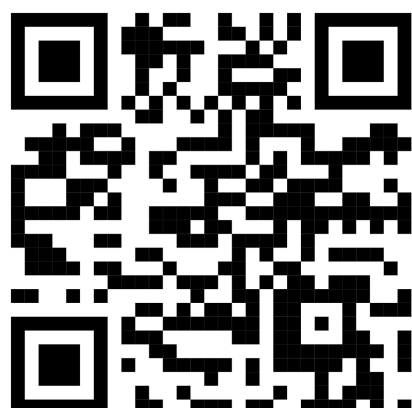
Access essential safety information  
anytime, anywhere!

**Stay Informed on the Law:** Scan the QR code to access the *Occupational Health and Safety (OHS) Act*, general regulations, and other key legislation, including *WHMIS*, *First Aid*, *Working Alone*, *Asbestos regulations*, and *more*—all in one place!

## Acts & Regulations



## Guide to OHS Legislation



# Restez informés sur **LA SANTÉ ET LA SÉCURITÉ AU TRAVAIL** au Nouveau-Brunswick

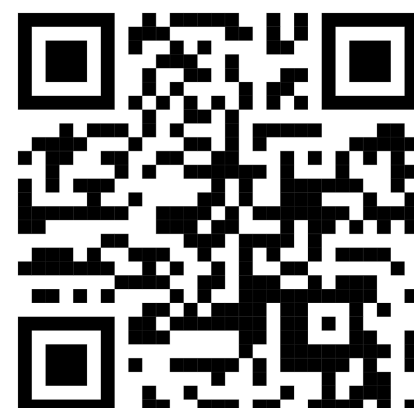
Obtenez des renseignements essentiels sur la  
sécurité n'importe quand et n'importe où!

**Restez informés sur la loi :** Balayez les codes QR pour accéder à la *Loi sur l'hygiène et la sécurité au travail*, au règlement général et à d'autres lois importantes, notamment les règlements sur le *SIMDUT*, les *premiers soins*, le *travail solitaire*, l'*amiante* et *plus encore*, et ce, au même endroit!

## Lois et règlements



## Guide sur la législation en matière d'hygiène et de sécurité au travail



### NEED A PAPER COPY?

You can request a printed version of workplace safety legislation from your employer.

☎ 1 800 999-9775



### VOUS AVEZ BESOIN D'UNE COPIE PAPIER ?

Vous pouvez demander une version imprimée de la législation sur l'hygiène au travail auprès de votre employeur.

✉ [prevention@ws-ts.nb.ca](mailto:prevention@ws-ts.nb.ca)



# Employment Standards

## Minimum Wage, Overtime and Minimum Reporting Wage

### 1. Does New Brunswick have a minimum wage rate?

Yes, New Brunswick does have a minimum wage rate that employers are required to pay their employees for each hour worked. As of April 1, 2025 the rate is \$15.65 per hour.

Subsequently, the rate will be adjusted in accordance with the Consumer Price Index of New Brunswick.

All employees paid by salary, commission and for piece work must receive at least minimum wage for every hour worked.

In addition to the general minimum wage rate, there are special minimum wage rates for:

- certain categories of employees in government construction work (road, bridge and building construction) and;
- counselors and program staff at residential summer camps.

For more information, please contact the Employment Standards Branch.

### 2. Is there a minimum overtime wage rate, and when would it apply?

Yes, there is a minimum overtime wage rate, which is one and a half times the minimum wage. As of April 1, 2025 the rate is \$23.48 per hour. Employers must pay their employees at least one and one-half times the minimum wage for each hour they work in excess of 44 hours during a work week.

### 3. Can employers require employees to work overtime?

Yes, employers have the right to require their employees to work overtime hours. However, employers must compensate employees for all overtime hours worked at the minimum overtime wage rate. Banking of hours is not permitted.

## Minimum Reporting Wage

### 1. Is there a minimum number of hours an employer must pay an employee who has been asked by the employer to report for work?

Yes, the employer must pay the eligible employee the greater of:

- three hours pay at the minimum wage or the minimum overtime rate for those hours, or
- the hours worked by the employee at their regular wage rate.

Note: Where an employment situation is covered by a collective agreement, the provisions of the *Employment Standards Act* relating to the minimum reporting wage do not apply.

### 2. How does an employee become eligible to receive pay for reporting to work for a minimum number of hours?

In order for an employee to be eligible to receive pay for a minimum number of hours, the employee must:

- have reported for work as scheduled or requested by the employer;
- have a regular wage rate of less than twice the minimum wage rate; and
- be regularly employed for more than three consecutive hours in a shift. An employee who has ongoing occasional shifts of at least three consecutive hours would be regarded as having satisfied this requirement.

### 3. Is an employee who works split shifts eligible to receive the minimum reporting wage?

Where an employee works split shifts, and the total number of hours worked in that day are greater than three hours, the employee is entitled to be paid the employee's regular wage rate for the hours worked. In this instance, the minimum reporting wage does not apply.



# Employment Standards

## Minimum Wage, Overtime and Minimum Reporting Wage

### Examples

#### Minimum Wage and Overtime

The calculations and examples below are based on the minimum wage rate of \$15.65 per hour, and the applicable minimum overtime rate (1.5 times the minimum wage rate). As minimum wage changes, the calculations should reflect the current minimum wage.

##### Example 1:

An employee earning the minimum wage of \$15.65 per hour who works 50 hours in one week shall receive a minimum of \$829.48 in total wages for the week.

44 hrs x \$15.65/hr	\$688.60
50 hrs - 44 hrs = 6 hrs @ \$23.48/hr	\$140.88
Total wages	\$829.48

##### Example 2:

An employee earning a regular salary of \$18.00 per hour who works 50 hours in one week shall receive a minimum of \$932.88 in total wages for the week.

44 hrs x \$18.00/hr	\$792.00
50 hrs - 44 hrs = 6 hrs @ \$23.48/hr	\$140.88
Total wages	\$932.88

##### Example 3:

An employee earning a regular salary of \$25.00 per hour who works 50 hours in one week shall receive \$1250.00 in total wages for the week.

50 hrs x \$25.00/hr	\$1,250.00
Total wages	\$1,250.00

In this example, the employee earns more than the minimum overtime rate of \$23.48 per hour, therefore minimum wage overtime is not applicable.

### Examples

#### Minimum Reporting Wage

##### Example 1:

An employee earning \$18.00 per hour, who has worked *44 or fewer hours* for the week, reports to work and is sent home after two hours should be paid \$46.95 in wages for the shift (the greater of the two amounts).

3 hrs x \$15.65/hr minimum wage	\$46.95
instead of	
2 hrs worked x \$18.00/hr regular wage	\$36.00

##### Example 2:

An employee earning \$18.00 per hour, who has worked *more than 44 hours* for the week, reports to work and is sent home after two hours of work should be paid \$70.44 in wages for the shift (the greater of the two amounts).

3 hrs x \$23.48/hr minimum overtime	\$70.44
instead of	
2 hrs x \$23.48/hr minimum overtime	\$46.96

In this example, the employee's regular rate of pay of \$18.00 does not apply because the employee is entitled to the minimum wage overtime rate.

##### Example 3:

An employee earning \$33.00 per hour, reports to work and is sent home after one hour of work shall receive \$33.00 in wages for the shift.

1 hr x \$33.00/hr regular wage	\$33.00
instead of	

3 hrs x \$15.65/hr minimum wage	\$46.95
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In this example, the employee earns more than twice the minimum wage rate of \$15.65 per hour; therefore doesn't qualify for minimum reporting pay.  
(\$15.65 x 2 = \$31.30)





# Employment Standards

## Making a complaint

Employees who believe that their employer may be in violation of the *Employment Standards Act* are encouraged to contact our office for assistance.

- By phone: 1-888-452-2687
- By email: [EmploymentStandards@gnb.ca](mailto:EmploymentStandards@gnb.ca)
- In person at one of our five offices province-wide, by appointment only:
  - Fredericton
  - Dieppe
  - Bathurst
  - Edmundston
  - Saint John

A complaint can be filed in any of the ways indicated above, or

- You can write to us at Department of Post-Secondary Education, Training and Labour, Employment Standards Branch, P.O. Box 6000, Fredericton, NB, E3B 5H1.
- You can print and complete the [complaint form](#) and send it to us either by fax at 1-(506) 453-3806 or by mail at the above-noted address.
- You can complete and submit the [online complaint form](#).

An employee's name and other pertinent information are only revealed to the employer with the employee's permission. However, in some circumstances, an investigation cannot proceed without revealing the employee's name. In such cases, it will be up to the employee to decide if they want to pursue their complaint or not.

Employers cannot dismiss, suspend, layoff, penalize, discipline, or discriminate against an employee for making a complaint or giving information against the employer with respect to the *Employment Standards Act*.

## Investigation process

An Employment Standards Officer will initiate an investigation and work with the employer and the employee to determine whether a violation of the *Act* has occurred. While doing so, the Officer does not have the authority to assess credibility, the investigation relies on evidence obtained, as such, we are a neutral third party in all matters.

If the investigation concludes there is a violation of the *Employment Standards Act*, the Employment Standards Branch will work with the employer and the employee to correct the violation and ensure it does not happen again.

If the investigation concludes that the complaint is unfounded, the matter is considered closed.

In the event either party is unsatisfied with the results of the investigation, they have the right to refer the matter to the Labour and Employment Board for adjudication. This is the final step in the complaint process, where employers and employees are able to present their arguments before the Labour and Employment Board by members, or with representation. The Board, after hearing and considering the evidence, makes a final and binding determination of the case either upholding, overturning, or altering an order, or dismissing the complaint.

Decisions rendered at the Labour and Employment Board, pursuant to the *Employment Standards Act*, are available in the following database; [CanLii - The Canadian Legal Information Institute](#). (Note: searches can be made by entering subject matter, sections of the *Employment Standards Act*, case names, year decision rendered, etc.)

# Employment Standards

## Making a complaint

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### Who is covered

Most employers and employees are covered by the *Employment Standards Act*. The Act does not distinguish among part-time, full-time and casual employees. All employees, which include seasonal and construction workers, are entitled to the minimum employment rights outlined in the *Employment Standards Act*.

### Collective agreements

Unionized employees are typically subject to a collective agreement. Every collective agreement must provide for at least the minimum employment standards set out in the *Employment Standards Act*. Unionized employees are encouraged to familiarize themselves with the grievance process under their collective agreement, and contact their union representative.

### Not covered under the Act

By virtue of the occupation or industry in which they work, some people are not subject to the provisions of the *Employment Standards Act*. These include people who work in a private home for the homeowner (babysitters, home care workers, and construction workers who are employed directly by the homeowner) and independent contractors. In certain situations, people who provide agricultural services to small family farms also are not subject to provisions of the *Employment Standards Act*.

### Federal jurisdiction

Certain industries and workplaces fall under *federal jurisdiction*, areas which include but are not limited to the following; railways, pipelines, ferries, radio and television, banks, cable systems, extra-provincial trucking and shipping, Federal Crown Corporations and many First Nation activities.

To learn more about federal *labour standards* and *occupational health and safety* in federally regulated workplaces, consult Canada's *Labour Program*. For any questions, please *contact* the Canada Labour Program at 1-800-641-4049.

### ROE's/ EI

Employment Standards officers cannot retrieve an employee's Record of Employment (ROE) nor obtain information on Employment Insurance Benefits as they are the responsibility of Employment and Social Development Canada, a federal government agency. Employment and Social Development Canada - Canada.ca

*Employment and Social Development Canada - Canada.ca*

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

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# Employment Standards

## Foreign Workers

Foreign workers have the same rights and obligations under the *Employment Standards Act* as all employees in New Brunswick.

### Employers of foreign workers are required to:

- register foreign workers with the Registry of Employers of Foreign Workers; and
- renew and update their registration annually.

There is no fee to register and employers can access the Registry online through our website

### Employers are prohibited from:

- requiring foreign workers to use and pay an immigration consultant;
- recovering ineligible recruitment and transportation costs from the foreign worker;
- misrepresenting employment opportunities;
- supplying false information about employer and employee rights and responsibilities;
- preventing workers to vacate employer-provided accommodations for private accommodations;
- reducing wages or changing any other terms or conditions of employment undertaken in the recruitment of a foreign worker;
- threatening deportation; and
- taking possession of a foreign worker's identity documents (e.g., passport) and work permit.



# Employment Standards

## Paid Public Holidays and Vacation/Vacation Pay

### 1. What are the paid public holidays in New Brunswick?

There are eight paid public holidays in New Brunswick, which are:

- New Year's Day
- Family Day
- Good Friday
- Canada Day
- New Brunswick Day
- Labour Day
- Remembrance Day
- Christmas Day

### 2. How does an employee qualify for a paid public holiday?

To qualify, an employee must:

- be employed by the employer for at least 90 calendar days (not only work days) during the 12 months before the public holiday;
- have worked their scheduled regular day of work before and after the holiday (this is not necessarily the day immediately before or after the holiday), unless there is a good reason for not doing so (most reasons related to illness are considered acceptable);
- If they have agreed to work on the public holiday report for work and work their scheduled shift unless there is a good reason for not doing so;
- not be employed under an arrangement where they can elect to work or not to work; and
- not be employed in specific occupations exempted by regulation.

### 3. What happens if the holiday falls on a non-working day or during an employee's vacation?

When the holiday falls on a non-working day or during an employee's vacation, the employee who qualifies must receive another working day off with pay in lieu of the holiday, or if the employee agrees, a regular day's pay for that day.

### 4. What must employers pay their employees for a paid public holiday?

All employees are entitled to receive one and one-half times their regular wage rate for each hour worked on a paid public holiday.

An employee who *qualifies and works* on the public holiday must receive their regular day's pay plus one and one-half times their regular wage rate for the hours worked on that day.

An employee who *qualifies and does not work* on the public holiday must receive their regular day's pay for that day.

Employee	Does not work	Works
Qualifies	Regular day's pay	Regular day's pay + 1.5 times regular wages for hours worked
Does not qualify	No wages	1.5 times regular wages for hours worked



# Employment Standards

## Paid Public Holidays and Vacation/Vacation Pay

### 5. When the employee's wages vary from day to day how does an employer calculate a regular day's pay?

The employee shall be paid based on an average day's pay. This calculation takes into account all hours worked (excluding overtime) in the 30 days immediately before the holiday.

For example, for the July 1<sup>st</sup> holiday where an employee has worked a total of 20 days between June 1<sup>st</sup> and June 30<sup>th</sup> for a total of 135 hours the employee is entitled to 6.75 hours (135 hours divided by 20 days) times the employee's regular rate of pay.

### 6. Does the employer have another option than that of paying the employee a regular day's pay when they qualifies for a paid public holiday?

Yes. Instead of paying the employee a regular day's pay for the public holiday, the employer has the option of paying the employee an additional four percent of all of the employee's gross wages.

In addition to paying the 4% of the employee's wages, when the *employee works* on a paid public holiday, the employer must also pay them one and one-half times they're regular rate of pay for the hours worked on each holiday.

### 7. Can an employer and an employee make an agreement whereby another working day off is provided to the employee in lieu of a paid public holiday?

Yes, and employer and an employee can make such an agreement. However, the substituted day must be taken by the employee no later than the employee's next vacation period.

Where the business is a hotel, motel, a tourist resort, tavern, restaurant or considered to be a "continuous operation", the employer has the following options:

1. Substitute without agreement: if using this option, the substituted day off **with pay** must be the first working day immediately after the employee's next vacation period, OR;

2. Substitute with agreement: if not using option 1, the substituted day off **with pay** can be any working day, provided the day is agreed upon with the employee.

If using either option 1 or 2, the employee is to be paid their regular wages for time worked on the day of the public holiday **and must also be paid** a regular day's pay or 4% on all wages which covers the substituted public holiday.

The employer must record the substituted day and also maintain documentation when there is an agreement with the employee.

### 8. Do all employees qualify to receive pay for a public holiday?

No. Employees in certain occupations (e.g. professionals, house and car salesmen) do not qualify to receive pay for a public holiday. For more information regarding the list of occupations, please contact the Employment Standards Branch.

### 9. Where an employee has an arrangement with an employer whereby the employee has the right to determine when he works, is the employee eligible to receive pay for a public holiday?

No. This "elect to work" arrangement may be formal or informal. In either case the employee must have complete discretion as to whether he will work when requested to do so. If the employee's failure to work when requested may result in a loss of employment, loss of future referral for work or any other form of disciplinary or discriminating action, the arrangement may not be considered an elect to work arrangement.

## Vacation and Vacation Pay

### 1. Are employees entitled to an annual vacation?

Yes. Employers are required to give all their employees an annual vacation leave with vacation pay dependent on each individual employee's years of service.

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

This is a guide only. For interpretation and application purposes, please refer to the *Employment Standards Act*, its regulations and amendments.

# Employment Standards

## Paid Public Holidays and Vacation/Vacation Pay

### 2. How much vacation are employees entitled to receive?

An employee who has *less than eight years* of employment with the employer is entitled to a vacation leave of the lesser of the following two options:

- at least one day for each month worked, or
- at least two weeks of vacation per vacation year.

An employee who has *more than eight years* of employment with the employer is entitled to a vacation leave for the lesser of the following two options:

- at least one and one-quarter day for each month worked, or
- at least three weeks of vacation per vacation year.

### 3. What amount is the employee entitled to for vacation pay?

An employee who has *less than eight years* of employment with the employer is entitled to receive a vacation pay equal to *four percent* of his gross wages (before deductions).

An employee who has *eight or more years* of employment with the employer is entitled to receive a vacation pay equal to *six percent* of his gross wages (before deductions).

In both cases, the employee must receive all his accumulated vacation pay at least one day before his vacation begins.

### 4. When can an employee take vacation?

An employee is entitled to take vacation after completing one year of service with the same employer. The employer must give the employee his vacation no later than four months after earning the vacation time.

Employers and their employees can agree on when vacation should be taken. If an agreement cannot be reached, the employer can decide when the employee's vacation will begin as long as he provides the employee at least one week notice prior to the vacation start date.

### 5. What happens where an employee is terminated or quits before taking vacation time?

An employee who is terminated or quits before taking vacation time is entitled to receive all outstanding vacation pay when the employment ceases. Payment must be made when the employee receives his final pay cheque.

Period of employment	Vacation time (whichever is less)	Vacation pay
Less than 8 years	1 day for each month worked, or 2 weeks of vacation per vacation year	4% of gross wages
8 years or more	1.25 day for each month worked, or 3 weeks of vacation per vacation year	6% of gross wages

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# Employment Standards

## Maternity Leave and Child Care Leave

### 1. Who qualifies for maternity leave?

Any pregnant employee is entitled to maternity leave.

### 2. What is the maximum duration of maternity leave, and when must it be taken?

Maternity leave is up to seventeen (17) weeks of unpaid leave, and it must begin no earlier than thirteen (13) weeks before the probable delivery date.

### 3. Does an employer have to pay for a maternity leave or a child care leave?

No, an employer is only required to allow an employee to take a leave of absence without pay for maternity or child care. Employers can offer greater benefits than those provided for in the *Employment Standards Act*.

### 4. Does an employee have other options for compensation while on maternity leave or child care leave?

Yes. The government of Canada offers a program under Employment Insurance that covers certain leaves.

### 5. Is an employee required to give notice of maternity leave?

Yes, a pregnant employee who wishes to take maternity leave must;

- advise their employer four months prior to their expected delivery date or as soon as her pregnancy is confirmed, whichever is later; and
- provide their employer with a medical doctor's certificate confirming pregnancy and the probable delivery date; or
- in the absence of an emergency, give their employer two weeks' notice prior to commencing their maternity leave.

### 6. Can an employer require an employee to begin a leave of absence when their work is affected by their pregnancy?

Yes, an employer may require a pregnant employee to begin a leave of absence without pay when they can no longer reasonably perform their duties or the performance of their work is materially affected by their pregnancy. Any employer imposed leave of absence would be in addition to any maternity leave the employee is entitled to under the *Employment Standards Act*. Therefore, the maternity leave is not affected by the employer imposed leave.

### 7. Can an employer dismiss, suspend or lay-off an employee, or refuse to employ a person because she is pregnant?

No. An employer cannot dismiss, suspend or lay-off or refuse to employ a person because they are pregnant.

### 8. How does a leave of absence affect an employee's employment status?

An employee continues to accumulate seniority during a leave of absence; therefore, the employee's employment status is not affected.

# Employment Standards

## Maternity Leave and Child Care Leave

### Child Care Leave

#### 1. Who qualifies for child care leave?

All parents, natural or adoptive, are entitled to child care leave.

#### 2. What is the maximum duration of child care leave?

Child care leave is up to sixty-two (62) consecutive weeks of unpaid leave.

#### 3. Can either parent take child care leave, and can child care leave be shared?

Yes, either parent of a newborn or adopted child is entitled to take child care leave. Child care leave may be shared by parents; however, regardless of how it is divided, the leave cannot exceed a total of sixty-two (62) weeks.

Furthermore, unless otherwise agreed to by the employer and the employee, where maternity leave and child care leave are taken by the same employee, the leaves must be taken in a consecutive manner.

#### 4. When can an employee begin child care leave?

Child care leave can begin no sooner than on the day a newborn or adopted child comes into the care and custody of the employee.

#### 5. What is the maximum combined duration of maternity leave and child care leave?

The maximum combined duration is seventy-eight (78) weeks.

#### 6. What happens when a leave of absence ends?

When an employee completes a leave of absence, the employee must be able to return to the job they held immediately before taking the leave or to a comparable job with no decrease in benefits or pay.

#### 7. Can an employee be dismissed while on a leave of absence?

No, an employee may not be dismissed from their job while on a leave of absence for any reason arising from, or due to, the leave.

#### 8. How does a leave of absence affect an employee's employment status?

An employee continues to accumulate seniority during a leave of absence; therefore, the employee's employment status is not affected.

#### 9. Is an employee required to give notice of child care leave?

Yes, an employee who is or will be a natural parent intending to take this leave shall:

- a) provide the employer with a medical doctor's certificate specifying the probable date of delivery or the date upon which the birth has occurred, and
- b) in the absence of an emergency, give four weeks written notice to the employer of the commencement date and duration of the leave.

An employee who is an adoptive parent intending to that this leave shall:

- a) provide the employer with proof that a child has been or will be placed with the employee for the purpose of adopting.
- b) notify the employer of the commencement date and duration of the leave upon being made aware of the date of placement with the employee for adoption, and
- c) in the absence of an emergency, give four months notice to the employer before the anticipated day on which a child will come into the employee's care and custody.





# Employment Standards

## Other Employment Standards Leaves

### 1. Family Responsibility Leave

Family responsibility leave gives employees time off to deal with the health, care or education needs of a person in a close family relationship. Employers are required to give employees, upon request, leaves of absence without pay for up to three days per year.

### 2. Compassionate Care Leave

Compassionate care leave gives employees leaves of absence without pay for up to twenty-eight (28) weeks to care for a person in a close family relationship who is critically ill and has a significant risk of dying.

#### How does an employee qualify for Compassionate Care Leave?

In order for an employee to qualify for compassionate care leave, the employee must have a written note from a certified medical practitioner stating that a person in a close family relationship has a serious medical condition that carries a significant risk of death within the next twenty-eight (28) weeks and requires care and support.

In addition to these requirements, other conditions apply:

- should the person in a close family relationship die, the compassionate care leave expires and bereavement leave may then be taken by the employee;
- the leave may be broken up over the twenty-eight (28)-week period, and may only be taken in periods of at least a one-week duration;
- the leave may be shared by two or more employees, but the total leave period taken by the employees may not exceed twenty-eight (28) weeks; and

- there is no length of service requirement for employees to access compassionate care leave.

#### Does an employee have other options for compensation while on Compassionate Care Leave?

The government of Canada offers a program under Employment Insurance that covers Compassionate Care Leave.

### 3. Bereavement Leave

In the event of the death of a person in a close family relationship, an employer must give an employee a leave of absence without pay of up to five consecutive days. Bereavement leave is to begin no later than the day of the funeral.

### 4. Sick Leave

An employee who has worked for the same employer for more than 90 days must be given, upon request, leaves of absence without pay as sick leave of up to five days during a twelve month calendar period.

#### Does an employer have the right to request a physician's note from an employee on sick leave?

Where an employee, due to an illness or injury, requests a leave of absence of four or more consecutive calendar days, the employer can require the employee to provide the employer with a medical certificate certifying that the employee is incapable of working due to illness or injury.

# Employment Standards

## Other Employment Standards Leaves

### 5. Court Leave

**Must an employer give a leave of absence where an employee is summoned to serve on a jury or to act as a witness?**

Yes, where an employee is summoned or selected to serve on a jury or to act as a witness in a court proceeding, the employer must give the employee a leave of absence without pay for the period of time the employee is absent from work for this purpose.

### 6. Leave for Reservists' military service

**Who is eligible?**

Members in all classes ("A", "B", and "C") of the Canadian Forces reserve force are eligible for a leave of absence without pay in order to perform military service.

**What kinds of military service are eligible?**

- Deployment to a Canadian Forces operation either inside or outside Canada,
- Required pre-deployment or post-deployment activities, including training and travel time, within and outside of Canada,
- A period of treatment, recovery or rehabilitation for a physical and/or mental health problem resulting from these activities, and
- Annual training.

**How long can a leave of absence for military service be and what conditions apply?**

An employer must grant a leave of:

- up to 30 continuous calendar days for the purpose of annual training; or
- up to 18 months for purposes other than annual training.

One of the following conditions will apply:

- In the case of a first leave, the employee must have been employed for at least 6 months; or
- In the case of a second or subsequent leave, at least 12 months have elapsed since the date the employee returned to work from his or her most recent leave.

**What kind of notice must an employee give the employer of his intention to take a leave for military service?**

An employee must give the employer at least 4 weeks notice in writing before the beginning of the leave.

The notice must include the start date of the leave and the anticipated date that the employee will return to work.

The employer may require the employee to provide a certificate from an official with the Reserves confirming that the employee is a reservist who is selected for service and, if possible, the expected start and end dates of the required service.

The 4-week notice requirement may be waived under urgent circumstance such as a military call to assist in a natural disaster. In this case, the employee is required to give the employer notice of an intention to take a leave as soon as possible under the circumstances.

**Is it possible to extend a military leave that is in progress?**

Yes. Circumstances beyond the employee's control may require an extension of a leave that is already in progress.

In this case:

- The employee must advise the employer in writing, giving at least 4 weeks notice before the changed date of return to work;

# Employment Standards

## Other Employment Standards Leaves

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- If the employee does not do this, the employer may postpone the employee's return to work by up to 2 weeks beyond the date given by the employee. The employer may not require the employee to return to work earlier than the date given by the employee; and
- The employer is not required to provide an extension that would result in a total leave that is longer than 18 months.

### Can the employer refuse to grant a leave or extend a leave?

An employer may apply to the Director of Employment Standards for an exemption under the *Employment Standards Act* if granting or extending the leave would:

- Adversely affect the health or safety of the workplace or public, or
- Cause the employer undue hardship.

## 7. Death or Disappearance Leave (child)

### Eligibility:

- An employee who is the parent of a child under 18 years old who has died as the probable result of a crime is entitled to an unpaid leave of up to thirty-seven (37) weeks.
- An employee who is the parent of a child who has disappeared as the probable result of a crime is entitled to an unpaid leave of up to thirty-seven (37) weeks.
- An employee is not entitled to the leave if they are charged with the crime.
- If both parents are employees of the same employer, they are both entitled to the leave.
- Employees may end the leave early by giving the employer written notice before they wish to return to work.

### Duration of leave:

- The period during which the employee may take the leave begins on the day that the death or disappearance occurs and ends thirty-seven (37) weeks after that day.
- If the child is found alive within the leave period, the employee is entitled to continue taking leave for fourteen (14) days after the child is found.
- If the child is found dead, or dies as a result of the circumstances of a disappearance, the employee is entitled to take up to thirty-seven (37) weeks of unpaid leave from the day the child is found dead.
- Where it is no longer probable that a child's death or disappearance is the result of a crime, a leave ends fourteen (14) days after that day, unless the employer and employee agree to an earlier return to work.

### Notice requirements:

- Employees must give their employers written notice of their intention to take a leave as soon as possible.
- If possible, the information to be provided to the employer includes the anticipated commencement date and duration of the leave.
- The employer may require the employee to provide evidence that is reasonable in the circumstances of the employee's entitlement to the leave.
- If circumstances beyond the employee's control require a change in the duration of the leave, the employee shall advise the employer of the change. The total leave may not exceed thirty-seven (37) weeks.
- The employee shall provide the employer with written notice as soon as possible that circumstances have changed.

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

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# Employment Standards

## Other Employment Standards Leaves

### 8. Critically Ill Child Leave

Employers are required to provide an unpaid leave of up to thirty-seven (37) weeks to allow parents or other family members to provide care and support for a critically ill child who is under 18 years old.

#### Eligibility:

- An employee who is a parent or other family member of a critically ill child under 18 years old is entitled to the leave.
- If both parents or other family members are employees of the same employer, the leave of absence may be taken wholly by one of the employees or be shared by the employees. The aggregate amount of leave that may be taken by the two employees shall not exceed to thirty-seven (37) weeks.

#### Notice requirements:

- Employees must give their employers written notice of their intention to take a leave as soon as possible.
- If possible, the information to be provided to the employer includes the anticipated commencement date of the leave, the anticipated duration of the leave, and a doctor's certificate.
- If circumstances beyond the employee's control require a change in the duration of the leave, the employee shall advise the employer of the change.
- The leave ends the last day of the week in which either the child dies or at the expiration of the thirty-seven (37) weeks.

### 9. Critically Ill Adult Leave

Employers are required to provide an unpaid leave of up to sixteen (16) weeks to allow parents or other family members to provide care and support for a critically ill adult who is 18 years of age or older.

#### Eligibility:

- An employee who is a parent or other family member of a critically ill adult who is 18 years or older is entitled to the leave.
- If both parents or other family members are employees of the same employer, the leave of absence may be taken wholly by one of the employees or be shared by the employees. The aggregate amount of leave that may be taken by the two employees shall not exceed sixteen (16) weeks.

#### Notice requirements:

- Employees must give their employers written notice of their intention to take a leave as soon as possible.
- If possible, the information to be provided to the employer includes the anticipated commencement date of the leave, the anticipated duration of the leave, and a doctor's certificate.
- If circumstances beyond the employee's control require a change in the duration of the leave, the employee shall advise the employer of the change.
- The leave ends the last day of the week in which either the adult dies or at the expiration of the sixteen (16) weeks.

### 10. Domestic Violence, Intimate Partner Violence or Sexual Violence Leave

Employers are required to grant the employee leaves of absence in each calendar year, not to exceed the total of the following:

- k) up to 10 days, which the employee may take intermittently or in one continuous period, and
- l) up to 16 weeks in one continuous period.

The first five days of this leave are paid and the balance of leave is unpaid leave.

The rate of pay an employee is to be paid shall be an amount equal to the wages the employee would have earned if the employee had worked the regular hours of work for the applicable period.

Employers and employees may enter into an agreement for greater benefits than provided for in the *Employment Standards Act*. Such agreements shall be respected and enforced by the Employment Standards Branch.

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# Employment Standards

## Other Employment Standards Leaves

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If the wages of an employee vary from day to day, the rate of pay an employee is to be paid shall be at least equivalent to the employee's average daily earnings exclusive of overtime for the days on which the employee worked during the 30 calendar days immediately preceding the leave.

### Eligibility:

- The employee requesting the leave must have been in the employ of the employer for more than 90 days.
- The employee or a child of the employee is a victim of domestic violence, intimate partner violence or sexual violence, and the leave of absence is taken for any of the following purposes:
  - a) to seek medical attention for the employee or the child of the employee for a physical or psychological injury or disability caused by the domestic violence, intimate partner violence or sexual violence;
  - b) to obtain victim services for the employee or the child of the employee from a qualified person or organization;
  - c) to obtain psychological or other counseling from a qualified person for the employee or the child of the employee;
  - d) to relocate temporarily or permanently;
  - e) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence, intimate partner violence or sexual violence; and
  - f) for any other purposes related to or resulting from the domestic violence, intimate partner violence or sexual violence.

### Notice requirements:

When the employee advises the employer of their intention to take a leave of absence, the employee

shall provide the employer in writing with the purposes for which the leave is to be taken, with reference to one or more of the above specific purposes.

### Confidentiality and disclosure of documentation:

All documentation or other material received in relation to the employee's leave of absence, is confidential and shall not be disclosed unless

- a) the employee has consented in writing,
- b) the disclosure is made to an officer, employee or agent of the employer who needs the records in the performance of their duties, or
- c) the disclosure is authorized or required by law.

### Additional resources:

For more information regarding domestic violence, intimate partner violence or sexual violence and the impact on the workplace, please contact Women's Equality Branch via e-mail at [web-edf@gnb.ca](mailto:web-edf@gnb.ca) or visit their website at [gnb.ca/women](http://gnb.ca/women).

# Employment Standards

## Other Employment Standards Leaves

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### General Information on Other Leaves

Employers shall not dismiss, suspend or layoff an employee during the leave for reasons arising from the leave alone.

Employers shall permit the employee, upon the end of the leave to resume work in the position held immediately before the beginning of the leave or an equivalent position with no decrease in pay and no loss of benefits accrued up to the commencement of the leave.

An employee granted a leave of absence under the *Employment Standards Act* is deemed to have been continuously employed with the same employer during the leave of absence.

### Definitions

**“close family relationship”** the relationship between persons who are married to one another, between parents and their children, between siblings and between grandparents and their grandchildren, and includes a relationship between persons who, though not married to one another and whether or not a blood relationship exists, demonstrate an intention to extend to one another the mutual affection and support normally associated with those relationships first mentioned.”

**“critically ill child”** means a person who is under 18 years of age on the day on which the qualified medical practitioner certifies that the person’s baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

**“critically ill adult”** means a person who is 18 years or older on the day on which a qualified medical practitioner certifies that the person’s baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

**“qualified medical practitioner”** means a person who is entitled to practice medicine under the laws of a jurisdiction in which care or treatment of a critically ill child or adult is provided.

**“parent”** means a person who, in law, is the parent of, has the custody of or is the guardian of a child or a person with whom a child is placed for the purposes of adoption.

**“family member”** means a family member as defined in the *Employment Insurance Regulations* under the *Employment Insurance Act* (Canada).

**“week”** means the period between midnight on Saturday and midnight on the immediately following Saturday.

**“crime”** means an offence under the *Criminal Code* (Canada).