



Labour

Information on **LABOUR STANDARDS**

4A GENERAL HOLIDAYS - CONTINUOUS OPERATIONS

(This pamphlet should be read in conjunction with Pamphlet 4 of this series.)

Part III of the *Canada Labour Code* (Labour Standards)

The *Canada Labour Code* provides for nine paid holidays per year. The following questions and answers, based on Division V – General Holidays of Part III of the Code, will be of interest to employers and employees under federal jurisdiction. Pamphlet 1 – *Summary* of this series describes the types of businesses covered by the *Code*. It is available from any Labour Program office of Human Resources and Social Development Canada and on the HRSDC website.

1. What is a “continuous operation”?

A continuous operation is as follows:

- a) any industrial establishment in which, in each seven-day period, operations once begun normally continue without cessation until the completion of the regularly scheduled operations for that period;
- b) any operations or services concerned with the running of trains, planes, ships, trucks and other vehicles, whether in scheduled or non-scheduled operations;
- c) any telephone, radio, television, telegraph or other communication or broadcasting operations or services; or
- d) any operation or service normally carried on without regard to Sundays or public holidays.

The idea is that in these operations, they do not have the luxury of shutting down for holidays or only operating during normal business hours such as Monday to Friday from 9 to 5. These types of operations run “continuously”, without regard to holidays or weekends. As a result, special provisions exist in the law to accommodate these operations.

2. Are all employees in such industries considered to work in a “continuous operation”?

Not always. For example, in some trucking enterprises, the organization is divided into various components such as drivers, loaders, dispatchers, mechanics, etc. Many of the above workers may be necessary to the operation of the running of trucks, so are considered to be working in a “continuous operation”.

For others, such as office staff, they usually work in support of the operation by handling paperwork, billing, payroll, etc. Under these circumstances, they are not considered to be working in a “continuous operation” since their presence is not required outside of normal business hours to keep the trucks running.

However, if they regularly need to work weekends and holidays, take calls from drivers on the road, or are generally concerned with dispatching, it may be appropriate to determine that certain office staff are employed in a continuous operation.

3. If an employee’s pay varies from day to day, how do I calculate “a regular day’s pay” for general holiday pay?

Under these circumstances, a regular day’s pay is calculated by taking an average of the last twenty days worked (not counting overtime) before the holiday occurs. A collective agreement may contain a different method. This is acceptable under the Code.

4. Can I simply add a few cents to the mileage rate or hourly rate instead so that it includes general holiday pay? What if the employee agrees to a flat rate for each holiday?

The law does not allow general holiday pay to be included in a per mile rate, or some other form of rate of pay. The regulations say that a normal day’s pay is calculated as in item 3 above. Even if the employee agrees to an alternate arrangement, the law will not allow the employee to settle for less than the minimum required by law.

5. If an employee in a continuous operation fails to report to work as scheduled on a general holiday, or makes themselves unavailable to work in accordance with certain conditions of employment, are they still entitled to the general holiday pay?

- a) If an employer schedules an employee to work on a general holiday and the employee fails to report to work on that day, the employer is not required to pay that employee for the general holiday. It should be noted however that an employee simply stating a preference ahead of time as to days off, does not mean that an employee would refuse a shift if one was scheduled.
- b) Some collective agreements or company policies allow employees to make themselves unavailable for work. The collective agreement or company policy must establish a practice that allows an employee to remove their name from a future work schedule for a specific time period; which in effect does not allow the employer to schedule the employee for work during that time period. If an employee is unavailable to work on a general holiday, the employer does not have to pay the employee for the general holiday.

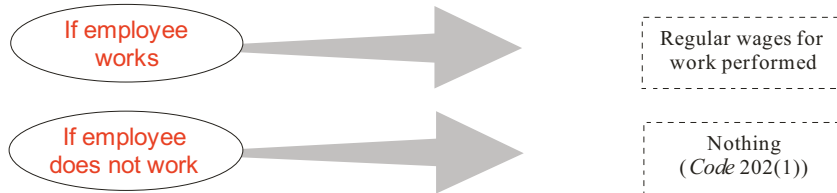
6. What are the special provisions for general holiday in a continuous operation when an employee is required to work on the general holiday?

In such circumstances the Code provides different options to the employer. The options are:

- a) the employee may be paid a regular rate of pay for the general holiday and, for the actual hours worked on that day, no less than time and one-half the regular rate of pay;
- b) the employer may be paid for the actual hours worked on the general holiday, plus a holiday with pay at some other time, which is convenient to both the employee and the employer; or
- c) the employee may be paid for the first day on which the employee does not work after that general holiday, where a collective agreement so provides.

**Division V -
General Holidays Payment Options
for Continuous Operations**

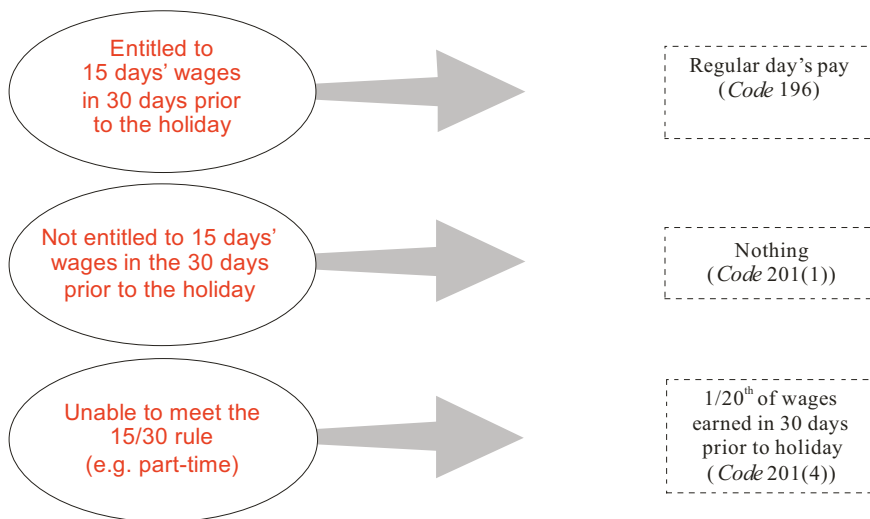
First 30 days of employment



More than 30 days of employment



If employee *does not work and is**



* An employee who does not work on the holiday because he/she has made themselves unavailable to work is not entitled to pay for the holiday (Code 201(2)). See question 5 for more information.

This publication is provided for information only. For interpretation and application purposes, please refer to Part III of the *Canada Labour Code* (Labour Standards), the *Canada Labour Standards Regulations*, and relevant amendments.

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Cat. No.: HS23-2/4-1-2012E-PDF

ISBN: 978-1-100-20885-5

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